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# Newsroom

## NLJ: Goldstein on Tea Party

In a National Law Journal essay, Professor Jared Goldstein argues that the Tea Party's ideology and rhetoric have long been a part of American life.

**From the NATIONAL LAW JOURNAL:** ["The Tea Party is just the latest movement to argue the modern administrative state is an unconstitutional aberration"](#) by Jared Goldstein



**February 20, 2012:** The failure of the Tea Party movement to rally around a single presidential candidate has convinced many pundits that its time as a major force in mainstream politics may be coming to an end. But make no mistake, even if "Tea Party" fades as a label, the forces that created the

For the past century, a series of movements with different names has argued that the modern administrative state is an un-American and unconstitutional aberration. In the 1930s, the American Liberty League said New Deal programs like Social Security and minimum-wage protections were the work of alien socialists. In the 1950s, the John Birch Society said that fluoridated water was a communist plot and Eisenhower a dupe for the Soviet Union. In the 1960s, Barry Goldwater and his supporters argued that

government programs to end segregation and discrimination conflicted with bedrock principles laid out by the founding fathers. In the 1990s, the "patriot movement" claimed that the United States was giving up its national sovereignty to the United Nations.

What these movements share is an ideology of constitutional nationalism. They are dedicated to a particularly narrow and fixed conception of what America is — defined by a commitment to "individualism" and an opposition to government programs to solve national problems; freedom from government regulation, which they see as tyranny; rejection of experts and elites; and an emphatic belief in America's greatness.

Like the Tea Party movement, earlier movements rallied around the Constitution as the source and embodiment of their narrow nationalist vision. To these groups, the Constitution represents the dividing line that separates the nation they love from all that threatens it. And they fear that the principles embodied in the Constitution are under attack. They believe that government programs to alleviate poverty, unemployment, homelessness and pollution do nothing more than steal money from hardworking Americans and give it to lazy people and moochers. But it is not merely that these policies are misguided; they are unconstitutional, un-American and alien. They could only be supported by people who are out to destroy America.

History offers some comfort for those of us who oppose the ideology of constitutional nationalism, who believe that there is no narrow and fixed notion of what America is and can be, and who do not agree that a fundamentalist understanding of our founding fathers offers solutions to our current problems. All of the earlier constitutional nationalist movements akin to the Tea Party failed and failed miserably.

The last time that constitutional nationalism like that espoused by the Tea Party played a central part of national political discourse was in the mid-1930s, when the American Liberty League challenged the New Deal as an unconstitutional, un-American aberration. Nearly forgotten today, the American Liberty League generated almost daily headlines, declaring that Franklin Delano Roosevelt was a communist and a socialist who foisted fundamentally alien policies on the American people without their consent or support. The league argued that New Deal regulation of banks, farming, energy production and labor were unprecedented acts of government despotism, fundamentally at odds with the Constitution's protections of liberty and federalism.

Roosevelt responded to these attacks by making the American Liberty League the central focus of his 1936 re-election campaign. Rather than taking on the Republican Party and its nominee, Alf Landon, Roosevelt portrayed the Republicans as the pawns of the league, which he said represented the forces of "entrenched greed" that had caused the Depression in the first place. He argued that the league employed

patriotic, constitutional rhetoric as a subterfuge to hide its true mission to protect the right of millionaires to exploit working people without any restrictions. The league got the Constitution wrong, Roosevelt argued; it does not make the government powerless to respond to national problems but instead empowers the people to adopt bold and necessary measures like minimum wage and Social Security.

The American Liberty League not only failed to topple Roosevelt but succeeded in increasing support for the New Deal. In 1936, Roosevelt won re-election by the biggest landslide in U.S. history. The results were widely understood as public ratification of Roosevelt's broad conception of constitutional powers and a repudiation of the league's narrow views. Defeated, the league disappeared from the national scene and became a footnote in history.

With the rise of the Tea Party movement, constitutional nationalism has moved once again from the extreme right wing to the mainstream of American politics. The failure of the movement to elect a chosen candidate in the Republican caucuses and primaries may show that it is not powerful enough to win a national election, but it is too soon to say that this long-standing ideology has become marginal once again.

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*For full story, click [here](#).*

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