
Ideology *vs.* Constitutionalism

Innovative Conservation: An Unideological Interpretation of the Constitution

Jay Patrick Starliper

If civil society be the offspring of convention, that convention must be its law. That convention must limit and modify all the descriptions of constitution which are formed under it.

—Edmund Burke

Reflections on the Revolution in France

*Constitution
requires a
people with
proper habits.*

It is essential that each new generation understand the meaning of the United States Constitution. As Aristotle wrote long ago, “It is useless to have the most beneficial laws, fully agreed upon by all who are members of the constitution, if they are not going to be trained and have their habits formed in the spirit of that constitution.”¹ No society can survive without a populace educated to the character of its political institutions. Plato expected only the worst of democracy. The relative freedom of society’s members in a democracy may be appealing, but citizens will not be sufficiently ethical for popular governance to be decent and beneficent for any length of time. Citizens are perpetually tempted to abuse their democratic privileges until society degenerates into barbaric disorder. Many think that the United States is dangerously close to succumbing to such excess.

With the Patriot Act and the National Defense Authorization

JAY PATRICK STARLIPER is the author of *Aesthetic Origins: Peter Viereck and the Imaginative Sources of Politics*.

¹ Aristotle, *The Politics* (New York: Penguin, 1986), 331; 1310a12.

Act recently renewed by the Obama administration, citizens have also surrendered constitutional rights that their ancestors fought and died to defend. Culturally, our civilization shows signs of becoming sadomasochistic, excessively materialistic, and rude without apology. The combination of increasingly centralized authority and moral-cultural decadence should concern every member of society. It seems that even our political representatives are largely unfamiliar with the Constitution's content and underpinnings. More discussion of the framing's full nature and context is thus imperative. Although the meaning of our constitutional tradition is being intensely debated by prominent scholars, some of them seem unaware of important aspects of the framing, and the preservation of constitutionalism in the United States demands an intimate understanding of the Constitution that also does not unduly privilege a particular ideological orientation.

A holistic interpretation of the founding is essential. The entire range of American experience prior to the ratifying conventions must be considered. Too many people are preoccupied with ideologically labeling this complex and conflicted document. Is the Constitution radical or reactionary, liberal or conservative, traditional or innovative? What needs to be considered is that all of these adjectives may be needed to describe parts of the ethos that helped to shape the political foundation of the United States. Though some individuals and ideas were more important than others, lesser influences must not be omitted from consideration. Selective interpretation compromises the meaning of a document and ethos that are permeated with a healthy degree of political tension and diversity. As Peter Viereck has cautioned, "both liberals and conservatives, whenever minimizing each other's American roots, weaken the shared opportunity for the creative richness of the American past to serve America's future."² It must be remembered, writes Forrest McDonald, that the Constitution was a compromise amongst very different cooperating members of a community. "Their positions," he notes, "were diverse and, in many particulars, incompatible."³

*Constitution
rooted in
compromises.*

² Peter Viereck, *The Unadjusted Man* (Boston: Beacon Press, 1956), 108.

³ Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence: University Press of Kansas, 1985), 224.

*Dogmatic
politics
inimical to
the common
good.*

Scholars must never reduce into a catchphrase the complex of personalities and events that created the Constitution. A penchant for ideological tidiness is today debilitating the United States. Our political system is suffering from an excess of partisan ideological polarization. The common good cannot be served well through dogmatic politics. Solutions to political problems require compromise and cooperation, which may be lost in the din of ideological bickering. There is little discourse—and, more importantly, neither respect nor compliments for the opposition, lest one be labeled soft or even a traitor. Liberals are viewed as bloody hearted revolutionaries, conservatives as rich, corrupt capitalists, and the twain shall never reconcile. Yet both inclinations may be essential to the health of the Constitution. Unfortunately, ‘liberal’ and ‘conservative’ have become virtually useless terms, political abbreviations often so misleading that today a classical liberal is considered a conservative and a conservative a libertarian. Intelligent dissent is a lynchpin of representative democracy. The Constitution cannot survive without representatives who publicly debate legitimate policy differences rather than caricature the opposition. Exacerbating the partisan gridlock are prominent scholars who refuse to consider that competing forces were at work when the Constitution was taking shape.

Definitive ideological statements concerning the nature of the Constitution facilitate this dogmatic partisanship. If the Constitution is liberal, then liberal ideology is also the political gospel, and so on. But a closed ideology presuming to have an answer in advance for every potential question will hardly facilitate the compromise, cooperation, and adaptation indispensable to the health of any regime. Both Democrats and Republicans are afflicted with this disease. But human questions are forever subject to scrutiny and reconsideration; there are no definitive answers. Ideologues may smugly brandish their scepters of ‘Truth,’ but only to the detriment of the public good. Browbeating one’s adversaries into submission with a simplistic interpretation of the historical facts does nothing to solve real political problems. The common good dies slowly and painfully, whilst prematurely passionate individuals are able to convince their

constituents, listeners, and readers to evade the questions that matter most.

The Constitution's framing was not simply conservative or liberal, radical or reactionary, Federalist or Antifederalist, English or American; it was an Occidental amalgamation of these various and often competing ideas. The Constitution is the organic product of an assimilated intellectual and experiential heritage in combination with the innovative political insights of ethically and historically minded individuals. It is the result both of tradition and enlightened reason, prescription and creativity, experience and invention, moral imagination and historical sense. The Constitution is liberal *and* conservative. Indeed, it is this liberal-conservative synergy that has enabled the Constitution efficaciously to sustain a civilization for over two hundred years. It is a synthesis of old and new, change and conservation, that is too often neglected in constitutional debates. Ignoring either half of this reality undermines the integrity of the U.S. political heritage.

*Constitution
liberal and
conservative.*

Conservative Restoration of a Liberal Republic?

It is the well-known thesis of Louis Hartz that the Americans who won independence from Britain appear in retrospect to have been conservatives because, ironically, they "had inherited the freest society in the world It gave them . . . an appearance of outright conservatism."⁴ For Hartz, conservatism is a façade masking the true liberal essence of the American regime. There is indeed ideological continuity between colonial politics and the Constitution, Hartz argues, and this organic connection is the primary reason observers misconstrue the framing as a conservative endeavor. Since the first sailing of the *Mayflower*, he writes, colonial history "had been a story of new beginnings, daring enterprises, and explicitly stated principles—it breathed, in other words, the spirit of Bentham himself. The result was that the traditionalism of the Americans, like a pure freak of logic, often bore amazing marks of antihistorical rationalism."⁵

The Constitution is ostensibly conservative, but the tradi-

⁴ Louis Hartz, *The Liberal Tradition in America* (New York: Harcourt, Brace & World, 1955), 47.

⁵ *Ibid.*, 48.

For Louis
Hartz,
Constitution
rooted in
tradition of
liberalism.

tion conserved is inherently radical, Hartz argues. "That is why the insight of Gunnar Myrdal is a very distinguished one when he writes: 'America is . . . conservative But the principles conserved are liberal and some, indeed, are radical.' Radicalism and conservatism have been twisted entirely out of shape by the liberal flow of American history."⁶ The Constitution is thus, for Hartz, the logical fruit of the Enlightenment, a revolutionary break with the wisdom of the ages. Innovative and rational, the framers were brilliant anti-traditionalists who did not need to respect the past. "The ironic flaw in American liberalism lies in the fact that we have *never* had a real conservative tradition," Hartz famously proclaims.⁷

In *The Creation of the American Republic 1776-1787*, Gordon Wood presents an opposing view. For him, the Constitution was an attempt to staunch the democratic excesses of the Revolution. There is a distinct rupture between the sanguine Whig Republicanism of the Revolution and the framers' sober views of man and government. The despotic failure of several state experiments with democratic legislation prompted American elites significantly to lower their political expectations. "Yet because the Revolution represented," Wood states, "much more than a colonial rebellion, represented in fact a utopian effort to reform the character of American society and to establish truly free governments, men in the 1780's could actually believe that it was failing The people had been given an extraordinary amount of power in the 1776 constitutions but apparently were not qualified to wield it."⁸ The framers saw firsthand that classical republicanism was romantically naive, hence unreliable. People could not be trusted to remain virtuous with so much liberty. A government depending entirely on the virtue of its leaders was doomed. The Constitution could only be sustained by principles respectfully addressing the full ethical range of human nature.

"To the Federalists the move for the new central government became the ultimate act of the entire revolutionary era,"

⁶ Ibid., 50.

⁷ Ibid., 57.

⁸ Gordon S. Wood, *The Creation of the American Republic 1776-1787* (Chapel Hill: The University of North Carolina Press, 1998), 395, 424.

Wood states; “it was both a progressive attempt to salvage the Revolution in the face of its imminent failure and a reactionary effort to restrain its excesses.”⁹ While “Americans had in fact institutionalized and legitimized revolution” with the Constitution, Wood denies any continuity with the utopian impetus of the Revolution.¹⁰ Concerned with human fallibility rather than human potential, the Constitution was, for Wood, a betrayal of the republican emphasis on virtue. Inspired by the history of popular governance and adapted to concrete political concerns, the framers’ political philosophy hardly resembled the democratic ideal of classical republicanism. “By attempting to formulate a theory of politics that would *represent reality as it was*,” Wood states, “the Americans of 1787 shattered the classical Whig world of 1776.”¹¹ But could classical republicanism have been salvaged other than by practical revisions informed by actual political experience? Without the imaginative and practical dexterity of the framers, the new nation might well have been consumed by majoritarian despotism. How, then, was such prudence reactionary?

For Gordon Wood, Constitution betrayed republican emphasis on virtue.

In *Novus Ordo Seclorum*, Forrest McDonald highlights the conflicted essence of the framing. “The ingredients,” he writes, “were incompatible.” “In the truest sense of the terms, the reformation of the Constitution was simultaneously a conservative *and* a radical act.”¹² Briefly defining radical as “to get at the root of the matter,” McDonald asserts that the framers relied little on abstract political philosophy and instead “radically” derived their constitutional principles from the lessons of practical experience. It is implied throughout this incisive study that the Constitution is a synthesis of old and new, wherein inherited prejudices and prescriptions were renovated to accommodate the novel burdens of contemporary circumstances. Tradition was preserved, but unmistakably altered by prudential innovation to create a legitimate and durable regime. “They devised a new order out of materials prescribed by the ages,” McDonald states, “and they were wise enough to institutionalize the pluralism with which they worked and

For Forrest McDonald, the framing “simultaneously a conservative and a radical act . . .”

⁹ *Ibid.*, 475.

¹⁰ *Ibid.*, 614.

¹¹ *Ibid.*, 475; emphasis mine. It is interesting to note that Wood refers to the framers as “romantic” earlier in this same paragraph.

¹² Forrest McDonald, *Novus Ordo Seclorum*, 8, 261 (emphasis added).

. . . a new
order out of
materials
prescribed by
the ages.”

to draw their Constitution loosely enough so that it might live and breathe and change with time.”¹³

For McDonald, the Constitution “marked the culmination of a tradition of civic humanism that dated back more than two millennia and of a common-law tradition that dated back many centuries. But the order from which it sprang was already crumbling.”¹⁴ Disillusioned by the democratic experiments of the state governments, the framers replaced their idealistic notion of republican government wholly dependent on civic virtue with a more practical republicanism that acknowledged and endeavored to curb the unavoidable excesses of human nature. “The lesson,” McDonald states, “as some were candid enough to put it, was that the American public did not possess a sufficient stock of virtue to sustain a republic, as republics had traditionally been conceived.”¹⁵ Having identified the terminal diseases of a republic within their own ethos, the framers contrived federalism, a novel idea of divided sovereignty that would create a vigorous national government and simultaneously preserve the integrity of the states. “The constitutional reallocation of powers created a new form of government unprecedented under the sun,” McDonald writes.¹⁶

The English Inheritance and the Declaration of Independence

A revolution is not necessarily a cataclysmic break with the past, but may be the result of an accumulation of political discontent. A rebellion does not usually occur out of the blue. Jacobins and Bolsheviks destroyed their societies in an attempt to eradicate a corrupt system and to create an egalitarian paradise. The frenzied impetus to deracinate, however, was not novel but had intellectual antecedents in their cultures long before the Bastille or the White Palace were stormed. Similarly, society’s general cultural disposition will shape the outcome of every uprising. Just like an individual undergoing a traumatic event, the characteristic traits of a culture determine the texture of a revolt. Understanding why one revolution culminates in mass murder and another

¹³ Ibid., 293.

¹⁴ Ibid., 291.

¹⁵ Ibid., 179; see also 144.

¹⁶ Ibid., 276.

in democratic legitimacy is akin to comparing the character of a sociopath to that of a saint. For well over three hundred years political mass movements have influenced the course of history. However, each society is unique. So, rather than generically associating every political upheaval with violent social change, it is necessary to explore the unique roots and purposes of each insurrection.

The nature of a revolution influenced by the society's ethos.

Contrary to the conditions preceding most revolutions, the thirteen colonies were economically prosperous and politically stable. Throughout the region many Americans were actually concerned about the unpleasant effects of an insurrection. Samuel Seabury, Jonathan Boucher, and Daniel Leonard, among other men of distinction, voiced their disapproval of any sort of rebellion, arguing that it would destroy a peaceful society. "The Stamp Act," Russell Kirk writes, "had been repealed; the Townshend duties . . . had been abandoned; only the Tea Act of 1773 was still in force, when the first shots were fired at Lexington in 1775. And actually that Tea Act had *reduced* the price of tea in the colonies."¹⁷ The colonists did not have a great deal to complain about. Apart from the occasional economic imposition, Americans suffered little under British authority. England long practiced a policy of what has been called "benign neglect." Americans governed themselves nearly autonomously through English institutions under the casual supervision of a constitutional monarchy on the other side of the Atlantic. Did the occasional illegitimate tax justify revolution?

England was, however, a constitutional monarchy wherein both crown and legislature were legally obliged to respect the rights of their subjects. Passed without the consent of the colonies, the Stamp and Tea acts established a dangerous precedent of arbitrary authority. Parliament had exceeded its constitutional power and violated the rights of the king's colonial subjects. If England was free to abuse the colonies at its discretion, then tyranny threatened. A declaration of independence was deemed necessary for the colonists to reclaim their God-given rights as Englishmen. "What Whiggish America stood for was the long established chartered right of the colo-

¹⁷ Russell Kirk, *The Roots of American Order* (Wilmington: ISI Books, 2004), 394 (emphasis in the original).

nies to govern themselves," Kirk has written. "They looked upon George III as a monarch who intended to make a revolution, by subverting their old ways of self-government; they protested that they, in resisting Crown and Parliament, were preventing this royal revolution."¹⁸ England had usurped the rights of its subjects living abroad. Many Americans feared that this was the first step in a process that would end in the complete oppression of the colonies.

For Russell Kirk, independence was sought to preserve "established constitutional usage."

The American Revolution, then, was not a radical rebellion, but a deliberate restoration. "Their appeal was to established constitutional usage," Kirk notes. "Certainly almost none of the leading patriots thought of himself as a social revolutionary The Americans, in essence, meant to keep their old order and defend it against external interference."¹⁹ The political institutions Americans were protecting were unquestionably English. Each colony was steeped in a tradition of limited government and individual rights that immigrated with the minds and imaginations of the first settlers. Colonists abided by common law and considered themselves subjects of the English commonwealth, who were entitled to certain constitutional rights that had been unlawfully ignored by Parliament. It is indeed ironic that the colonists' deep respect for their English inheritance of constitutional self-government was the source of rebellion. Revolutionary Americans were thus not attempting to contrive what Wood referred to as "a utopian effort to reform the character of American society." Independence was not an attempt to raze English foundations, but to recover the essence of their meaning. "The Americans looked for guidance to their own historical past in America," Kirk writes, "and to the past of the civilization, European and Christian, in which they shared. For novel abstract theories of human nature and society, most of the men who subscribed to the Declaration and the Constitution had no relish."²⁰

Jefferson's abstract rhetoric notwithstanding, the Declaration of Independence is a resolute statement defending the political rights to which the colonists were historically entitled

¹⁸ *Ibid.*, 395.

¹⁹ *Ibid.*

²⁰ *Ibid.*, 401.

as transplanted Englishmen. “The Declaration spoke of instituting ‘new Government’, not of overthrowing the state itself, or the social order,” Kirk notes. “That is another aspect of the moderation of the American ‘revolutionaries’: they argued that *governments* might be altered or abolished, but contemplated no pulling down of fundamental institutions and ways of life.”²¹ The Declaration does not establish a regime of any sort. It is not a constitution, but a manifesto intending to unite patriots at home and arouse sympathy abroad. A brief examination of the Declaration reveals it to be a conservative *and* liberal document that embodies the same complex mixture of ideas that would inform the framing.

The document begins with a philosophical justification for rebellion reminiscent of Blackstone and Locke. “We hold these truths to be self-evident, that all men are created equal,” Jefferson proclaims. This was a dangerously awkward and misleading abstract statement from a man who believed in the importance of a natural aristocracy in a society where the only recognized ‘citizens’ were landholding white men. Jefferson then asserts that the unalienable rights of Life, Liberty and Happiness are to be served by government based on popular consent, but the specific means of institutionalizing these sacred entitlements are left unexplained. While these aspirations are, in a very general sense, assumed to be the basis for any legitimate political order, they are not concretely defined. “Is it because liberty in the abstract may be classed amongst the blessings of mankind,” Burke asks, “that I am seriously to felicitate a madman, who has escaped from the protecting restraint and wholesome darkness of his cell, on his restoration to the enjoyment of light and liberty?”²² What are Life, Liberty and Happiness? Why are they worthy of esteem? What quality of life do they require and sustain? Such abstract ideas are dangerously vague. Similar abstractions accompanied the Reign of Terror seventeen years later in France.

The Declaration states that, while governments exist solely to guard these natural rights, they should not be abolished for “light and transient causes.” However, when a government is

Absent specific context, Life, Liberty, and Happiness are dangerous abstractions.

²¹ *Ibid.*, 411 (emphasis in the original).

²² Edmund Burke, *Reflections on the Revolution in France*, edited by J. G. A. Pocock (Indianapolis: Hackett, 1987), 7.

Declaration of Independence mostly a list of specific violations of the English constitution.

responsible for “a long train of abuses and usurpations,” the people must revolt. The Declaration then specifically enumerates the colonists’ twenty-seven concrete historical grievances against England. Since “our repeated petitions have only been answered by repeated injury,” the colonists had to defend their political patrimony against the encroachments of despotism. The second half of the Declaration conservatively defines the specific rights that the British king and Parliament had violated. Jefferson creates an image of a just regime that does not warrant insurrection by utilizing the historical circumstances of colonial oppression. This was in keeping with Burke’s later admonition that “Circumstances (which with some gentlemen pass for nothing) give in reality to every political principle its distinguishing color and discriminating effect. The circumstances are what render every civil and political scheme beneficial or noxious to mankind.”²³

Declaration ideologically of two minds.

“If in effect the colonists declared a right of revolution,” Kirk states, “it was a right only to change a people’s government for the better, and not a right to hack through the roots of the permanent things in a nation.”²⁴ The problem with this statement is Jefferson’s radical language at the conclusion, “that all political connection between them and the state of Great Britain, is and ought to be totally dissolved.” Nonetheless, he does refer to “the ties of our common kindred,” “the connections and correspondence” that are a casualty of English usurpation. “In short, from the earliest times in America the colonial people had been a people separate from the British people, though linked to the British by willing ties of culture and friendship, and by common allegiance to a king,” Kirk explains. “Rather than pulling down a government, the Patriots were defending their own prescriptive governments against what had become an alien government.”²⁵ The Declaration of Independence is thus of two ideological minds. Jefferson justifies a rebellion to conserve traditional political rights by citing both abstract intellectual principles and concrete, actual colonial oppression.

“Never were our Burkean founding fathers more British than when they were revolting against George III,” Viereck

²³ Ibid.

²⁴ Kirk, *The Roots of American Order*, 411.

²⁵ Ibid., 414.

states. “Burke favored their Revolution as defending the traditional rights of freeborn Englishmen against newfangled royal usurpations. In that sense, we may rechristen it not the Revolution but the Conservation of 1776. The fire-crackers of July Fourth celebrate the triumph not of revolution but of restoration.”²⁶ Colonists had experienced popular sovereignty for over 150 years and keenly understood that George III and Parliament had taken significant steps to deprive them of their autonomy. Colonists replied with a declaration of their rights under England’s traditional constitution of custom. But did not the Revolution extirpate those formally hallowed English prejudices and prescriptions? As Americans rejected British constitutional authority, upon what foundation could they erect the pillars of their new society?

For Peter Viereck, July Fourth celebrates “triumph not of revolution but of restoration.”

The State of Nature and the Imaginative Force of Custom

One gets the impression from prominent constitutional historians that Revolutionary America was ominously unstable. “When the decision for independence was made,” writes McDonald, “all claims to rights that were based upon royal grants, the common law, and the British constitution became theoretically irrelevant.”²⁷ Since all political and property rights were predicated upon royal prerogative, the abdication of British sovereignty theoretically absolved every legally binding social agreement. As McDonald notes, “according to one reading of the version of natural-rights theory that was most applicable to their circumstances—that associated with John Locke—declaring independence threw them temporarily into a state of nature wherein all previously existing law (except the law of nature itself) was nullified.”²⁸ Later McDonald discordantly asserts, contrary to Locke, that the state of nature means “the absence of organized *political* society and of government,” not “a situation in which autonomous individuals live outside of society.”²⁹ With the eviction of English authority, American

²⁶ Peter Viereck, *Conservative Thinkers*, 87.

²⁷ McDonald, *Novus Ordo Seclorum*, 58.

²⁸ *Ibid.*, 59.

²⁹ McDonald, *Novus Ordo Seclorum*, 62. McDonald correctly states that revolution abolishes the government and not civil society. However, for Locke the state of nature is the human condition *prior* to society. Once civilization exists, society cannot regress to a prehistoric natural state unless conquered by an

society had no government and thus only the law of nature could restrain “free and equal” men.³⁰ Similarly, Wood writes that “Shays’ uprising in 1786 was only the climactic episode in one long insurrection, where the dissolution of government and the state of nature became an everyday fact of life.”³¹

The political condition of the states in the first years after independence provides further evidence of the comprehensive lack of order. A survey of post-Revolutionary America reveals that people were abusing their new political freedom. Throughout the thirteen former colonies democratically idyllic state constitutions were failing to satisfy the standards of constitutional democracy. Virtue was in short supply. Life, Liberty and the Pursuit of Happiness were challenged by the excesses of majoritarian despotism. Were the citizens of the United States ethically qualified for representative democracy? “American society seemed to possess all the symptoms of the most destructive diseases that could afflict a republic,” Wood writes. “The American people apparently did not possess and were unwilling to acquire the moral and social character necessary to sustain republican governments.”³² It appeared to some leaders that Americans were unable to endure the burden of liberty. “The war with Britain had scarcely begun before the nature and tendency of American behavior was frighteningly revealed,” Wood adds. “The self-sacrifice and patriotism of 1774-1775 soon seemed to give way to greed and profiteering at the expense of the public good.”³³ The prominence of self-interest as a politically motivating force may give the impression that the colonies were regressing to a prehistoric state in which the moral force of traditional authority did not exist.

Despite the unsuccessful experiments with plebiscitary state constitutions, however, the newly independent nation

alien force; see *The Second Treatise*, Chapter 19, Section 211. Lastly, McDonald states “that no matter how Locke is read, the states as political societies, as opposed to the governments thereof, had not ceased to exist upon the declaring of independence,” but this means that Americans never returned to a state of nature (280; see also 145-157).

³⁰ Ibid., 63.

³¹ Wood, *The Creation of the American Republic 1776-1787*, 285.

³² Ibid., 415.

³³ Ibid.

was thriving. "Objectively, the first decade of the history of the United States was a whopping success," McDonald notes. "Despite certain postwar economic dislocations, most Americans were prospering."³⁴ Political disorder was a concern, but the former colonies were far removed from the war of all against all that Hobbes associates with the state of nature. "It is thus difficult to look back at the period and not feel that the pessimism and apprehension so widely expressed did not in some way exaggerate the real problems of the 1780's," Wood writes. "Some of the contemporaries themselves saw an incongruity between the alarms and the situation."³⁵ While there were misguided popular experiments, the public imagination of the new republic was orientated by nearly two hundred years of self-governing experience. There was no longer the physical presence of English authority, but Americans were still emotionally influenced by custom. "Laws," de Tocqueville states, "are always unstable unless they are founded upon the customs of a nation: customs are the only durable and resisting power in a people."³⁶

After independence, Americans still influenced by English customs.

Custom infused a sufficient number of Americans with a disposition that preferred moderation to license and tradition to innovation. There was no Reign of Terror after the Revolution because too many people appreciated the virtues of restraint. Americans were politically free from the mother country, but they were still animated by the law of measure that was indistinguishable from the spiritual core of Western civilization. The living presence of historically evolved convention urged prudence rather than haste. Educated for generations in the wisdom of forbearance, the majority of colonists were not tempted by the idyllic supplications of utopian democracy. The conservative laws of the Constitution were engendered by this cultural bias toward civility. "If they were to be classed in their proper order," de Tocqueville

³⁴ McDonald, *Novus Ordo Seclorum*, 143.

³⁵ Wood, *The Creation of the American Republic 1776-1787*, 395. In the next paragraph Wood states, "But the complaints were far from imaginary." His argument is that Americans expected some utopian transformation as a result of the revolution. Even though American society was economically prospering, when this change did not occur many were very disillusioned.

³⁶ Alexis de Tocqueville, *Democracy in America*, Vol. 1 (New York: Vintage, 1990), 284.

Cultural restraint prevented American Reign of Terror.

writes, "I should say that physical circumstances are less efficient than the laws, and the laws infinitely less so than the customs of the people. I am convinced that the most advantageous situation and the best possible laws cannot maintain a constitution in spite of the customs of the country."³⁷ The soon to be United States resisted romantic notions of classical republicanism. Neither did returning to a savage state appeal to the imaginations of Revolutionary Americans. "For governments may perish," de Tocqueville concludes, "but society cannot die."³⁸

Classical republicanism insufficiently attuned to human fallibility.

Because classical republicanism was insufficiently attuned to human fallibility and caprice, the first state regimes and the Articles of Confederation were unable adequately to address the political needs of Americans. Contaminated by democratic idealism, the colonists' initial attempts at self-government were destined for difficulties, but not, as Wood argues, because of a failure of the new governments to meet utopian expectations. The Revolution had never been a quest for utopia. If, for some scholars, the political and economic corruption of the newly independent states proved there was no legitimate sovereignty, it is probably nearer the truth that the Americans in those early years of the Republic needed the benefit of further experience with self-government. "It is difficult to make the people participate in the government," de Tocqueville writes, "but it is still more difficult to supply them with the feelings which they need in order to govern well."³⁹ To many of the framers, Shays' Rebellion provided sufficient proof that government must accommodate the full range of human nature, not simply its virtues. Institutionalized classical republicanism, unless tempered by prudence, would be the death of independence. Educated by their experience, the framers reconciled the republican ideal with the unavoidable imperfections of human nature. It was the only way to save the new republic. "To evils that are common to all democratic nations," de Tocqueville comments, "[Americans] have applied remedies that none but themselves had ever thought of; and, although they were the first to make

³⁷ Ibid., 322.

³⁸ Ibid., 246.

³⁹ Ibid., 329.

the experiment, they have succeeded in it.”⁴⁰

Friedrich Nietzsche and Conservative Rejuvenation

The political health of the United States requires that its citizens understand the extent to which individual rights and limited government depend upon a certain tradition. Liberalism and conservatism are mutually reinforcing ideas that *absolutely cannot survive without the other*. Without reform, conservatism becomes authoritarian and reactionary; without tradition liberalism becomes anarchic and radical. Politics is a constantly evolving set of circumstances that requires officials and the public at large habitually to make adaptations that must be reconciled with the wisdom of the ages.

The ideas of Friedrich Nietzsche may initially seem contrary to the political philosophy underlying the American Constitution, but this is not the case. Indeed, Nietzsche’s philosophy explains the essence of the liberal-conservative synthesis: “It seems to me more and more that the philosopher, being *necessarily* a man of tomorrow and the day after tomorrow, has always found himself and *had* to find himself in contradiction to his today: his enemy has always been the ideal of today By laying the knife vivisectionally to the bosom of the very *virtues of the age* they betrayed what was their own secret: to know a *new* greatness of man, a new untrodden path to his enlargement.”⁴¹ This apparently radical statement is actually a conservative plea not to settle for inferior contemporary standards, a plea in the spirit of the Burkean distinction between the wisdom of the age and the wisdom of the ages. “One has to get rid of the bad taste of wanting to be in agreement with many,” Nietzsche states. “‘Good’ is no longer good when your neighbor takes it into his mouth. And how could there exist a ‘common good’! The expression is a self-contradiction: what can be common has ever but little value.”⁴² Human beings are remarkably effective at self-deception. Nietzsche was pleading

⁴⁰ Ibid., 325.

⁴¹ Friedrich Nietzsche, *Beyond Good and Evil* (New York: Penguin, 1990), 143 (emphases in the original).

⁴² Ibid., 71. By “common good” in this passage, Nietzsche is not referring to the intrinsically good, which, because good for all, is shared or “common.” Rather, he is using “common” in the sense of popularly accepted without serious thought.

with his contemporaries not to be misled by popular truncations of what a full human life entails. A “common,” popularly accepted good is a merely assumed value, one that is taken for granted, and shows spiritual neglect. Morality cannot survive existential inertia.

One could argue that the framers were “men of tomorrow” who had to conquer “the virtues of the age” to create a sustainable regime. To avoid the democratic wrath of the state legislatures and the Congress of Confederation, the framers contrived a false excuse for calling the Constitutional Convention into being: that is, to discuss some marginal commercial amendments to the Articles of Confederation. They again skirted existing state and national laws by ratifying the Constitution through conventions in each state because it would not have been accepted either by individual state legislatures or by a unanimous vote of all thirteen states in the Confederation Congress. Scholars such as Charles Beard and Howard Zinn regard this deceit as damning proof that the framers were oligarchs who saw their political influence waning under the Articles. For such scholars, the Constitution was a fraud empowering selfish men who institutionalized their political and economic hold on society. However, the principles of the actual document do not admit of such an interpretation. The Constitution was indeed written and ratified under dubious circumstances, but its principles reflect an attempt to create a healthy representative democracy that would benefit every member of society. The framers saw their nation as imminently challenged by democratic chauvinism locally and foreign conquest nationally. Being devoted representatives of their civilization, they believed they were acting in the best interest of their country. Unrevised, the Articles inevitably would have failed, and what then?

“A state without the means of some change is without the means of its conservation,” Burke observes.⁴³ Without the assent of all thirteen states there was no legal way to augment the Confederation. The framers were not only experienced in self-government but imbued with historical knowledge. Well aware of the realities of human nature, not only its higher

⁴³ Burke, *Reflections*, 19.

potentialities but also its perennial weaknesses, the framers understood that supposedly classical republicanism was destructively plebiscitary. “When I remember all the attempts that are made to judge the modern republics by the aid of those of antiquity, and to infer what will happen in our time from what took place two thousand years ago,” de Tocqueville would write, “I am tempted to burn my books in order to apply none but novel ideas to so novel a condition of society.”⁴⁴ Thus, even a conservative intellectual like de Tocqueville understood that obsequiousness to the past means impotence in the present. America needed a modified republicanism informed by historical knowledge of the full range of human nature. “Supreme rule of conduct: even when alone one must not ‘let oneself go’.—Good things are costly beyond measure: and the law still holds that he who *has* them is different from him who *obtains* them,” Nietzsche states. “Everything good is inheritance: what is not inherited is imperfect, is a beginning. . . .”⁴⁵ The Constitution was an imperfect beginning that to this day is scarred with the Three-Fifths Compromise and the slave trade. Yet this document still represents an imaginatively translated moral inheritance that stretches back in Western history to Ancient Greece.

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“One lives for today, one lives very fast—one lives very irresponsibly: it is precisely this which one calls ‘freedom,’” Nietzsche writes. “That which *makes* institutions institutions is despised, hated, rejected: whenever the word authority is so much as heard one believes oneself in danger of a new slavery. The *décadence* in the valuating instinct of our politicians, our political parties, goes so deep that that *they instinctively prefer* that which leads to dissolution, that which hastens the end. . . .”⁴⁶ The framers understood that the great problem of political order is how consistently to reconcile authority and liberty. Tradition and custom can easily become oppressive in institutions that are not refurbished to maintain their spiritual essence, whilst disorder is proven to be a recurring threat to liberal government. Legitimacy is difficult to maintain in any regime.

⁴⁴ Tocqueville, *Democracy in America*, Vol. 1, 316.

⁴⁵ Friedrich Nietzsche, *Twilight of the Idols/The Anti-Christ* (New York: Penguin, 1990), 112.

⁴⁶ *Ibid.*, 105.

For Nietzsche, as for Burke, society entails mediation between past, present, and future generations.

“For institutions to exist,” Nietzsche states, “there must exist the kind of will, instinct, imperative which is anti-liberal to the point of malice: the will to tradition, to authority, to centuries-long responsibility, to *solidarity* between succeeding generations backwards and forwards *ad infinitum*.”⁴⁷ Because people are forever obsessed with immediate gratification, convention and institutions are often underappreciated and treated with contempt. To uphold the only workable social contract requires a harmony with the wisdom of the ages that entertains but does not pander to the wisdom of the age. “Society is indeed a contract,” Burke notes, but not one for mere commodities. “It is to be looked on with other reverence, because it is not a partnership in things subservient only to the gross animal existence of a temporary and perishable nature. It is a partnership in all science; a partnership in all art; a partnership in every virtue and in all perfection. As the ends of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born.”⁴⁸

The masses demand to be appeased yesterday. Yet indulging the populace cannot ethically sustain a democratic government. Hence every day is a test, and a regime must adapt or die. To guarantee the preservation of the humble respect for the existing order that is necessary for peace, every renovation must be infused with the “solidarity between succeeding generations backwards and forwards *ad infinitum*.” Each new generation must simultaneously preserve and rejuvenate its heritage, because, as Burke observes:

Our political system is placed in a just correspondence and symmetry with the order of the world and with the mode of existence decreed to a permanent body composed of transitory parts, wherein, by the disposition of a stupendous wisdom, molding together the great mysterious incorporation of the human race, the whole, at one time, is never old or middle-aged or young, but, in a condition of unchangeable constancy, moves on through the varied tenor of perpetual decay, fall, renovation, and progression.⁴⁹

The “unchangeable constancy” to which Burke refers is the

⁴⁷ Ibid.

⁴⁸ Burke, *Reflections*, 85.

⁴⁹ Ibid., 30.

essence of good government and the only sentinel for the real common good. Yet to appreciate the lessons of the past is not to tie one's hands in the present. As Madison explains in *Federalist* 37: "The most that the convention could do . . . was to avoid the errors suggested by the past experience of other countries, as well as of our own; and to provide a convenient mode of rectifying their own errors, as future experience may unfold them."⁵⁰ The liberal-conservative synthesis is the only way for popular sovereignty to endure. Government must adapt to the evolution of society, but reforms must be checked by the eternal constitution of things as exemplified by the cultural and political icons of Western civilization. Tradition needs to be renovated by the present, and change must be tempered by the past. Healthy intuition and penetrating understanding are not passive possessions, but require hard work and tireless inward effort.

Without a vital sense of restraint, a democratic political order will succumb to the impulse of the moment. "This is the first preliminary schooling in spirituality: not to react immediately to a stimulus, but to have the restraining, stock taking instincts in one's control," Nietzsche declares. "Learning to see, as I understand it, is almost what is called in unphilosophical language 'strong will to power': the essence of it is precisely not to 'will', the ability to defer decision."⁵¹ All revolutions are dangerous, because destruction is contagious and civilization is fragile. It is easy to misinterpret the "will to power" as a will to dominate, but a thorough reading of Nietzsche contradicts this impression. The will to power is similar to what Irving Babbitt would later describe as the "will to refrain," to put a check on one's first impulse in favor of a higher, more lasting good.⁵² Put differently, it is the ethical elevation of the person of action who is informed by history but is not controlled by it. "All unspirituality, all vulgarity, is due to the incapacity to resist a stimulus—one *has* to react, one obeys every impulse," Nietzsche writes. "A practical application of having learned to see: one will have become slow, mistrustful, resistant as a learner in general."⁵³

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"will to
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⁵⁰ Madison et al., *The Federalist Papers*, 222.

⁵¹ Nietzsche, *Twilight of the Idols*, 76.

⁵² Irving Babbitt, *Democracy and Leadership* (Indianapolis: Liberty Fund, 1978; originally published in 1924), 6.

⁵³ Nietzsche, *Twilight of the Idols*, 76.

Every instance of nobility ministering to the beneficence of modern civilization is old; the insight each provides into the human condition is timeless. “Great human beings are necessary,” Nietzsche writes; “the epoch in which they appear is accidental; that they almost always become master of their epoch is only because they are stronger, *because they are older*, because a longer assembling of force has preceded them.”⁵⁴ Whilst society has significantly evolved since ancient Babylon, human beings have not. Every major political catastrophe since the Enlightenment has been fueled by a progressive assumption that human nature can be liberated from ailments that are absolutely without remedy. Certain ideas have consistently proven to be spiritually destructive. The wisdom of the ages is not revered solely by virtue of its age but also its historically proven ability to enhance the quality of life for its adherents. The Constitution is informed by this living tradition of *humanitas*.

The Constitution: A Synergy of Past and Present

“The novelty of the undertaking immediately strikes us,” Madison observes in *Federalist* 37. “It has been shown that the other confederacies which could be consulted as precedents have been vitiated by the same erroneous principles [as those debilitating the Articles], and can therefore furnish no other light than that of beacons, which give warning of the course to be shunned, without pointing out that which ought to be pursued.”⁵⁵ This statement captures the essence of the liberal-conservative synthesis put forth in this article. Madison understood popular democratic misconceptions that had destroyed past republics and were corrupting his own. Through an intense historical education garnered both from books and experience, he acquired the imaginative breadth to help create a novel political arrangement that bore the *humanitas* of the past.

The Constitution is an imaginative amalgamation of the tradition and innovation necessary to preserve the integrity of any government. Both tradition and reform can succumb to

⁵⁴ *Ibid.*, 108-109 (emphasis added).

⁵⁵ Madison et al., *The Federalist Papers*, 222.

excess. Thus each needs the other to make moderation a habit and not an exception. While human nature remains unchanged, circumstances warrant perpetual reconsideration to experimentally ensure that the values by which we live are worthy of respect and not destruction. "But why is the experiment of an extended republic to be rejected, merely because it may comprise what is new?" Madison asks in *Federalist* 14. "Is it not the glory of the people of America that, whilst they have paid a decent regard to the opinions of former times and other nations, they have not suffered a blind veneration for antiquity, for custom, or for names, to overrule the suggestions of their own good sense, the knowledge of their own situation, and the lessons of their own experience?"⁵⁶ Prescription must be refreshed by the fruits of the moral imagination. The test of any civilization is its ability to find the golden mean between a reactionary traditionalism and deracinating revolution. Similarly, it is no coincidence that the Jacobin revolt against patrician negligence culminated in the authoritarianism of Napoleon; the extremes of liberalism and conservatism are fraternal twins.

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The Constitution can be interpreted as embodying the spirit of creative dexterity necessary to avoid such excesses. It requires "spirits strong and original enough to make a start on antithetical evaluations and to revalue and reverse 'eternal values'; . . . heralds and forerunners, . . . men of the future who in the present knot together the constraint which compels the will of millennia on to *new* paths."⁵⁷ The Constitution cannot survive without the vital restraint of conservative augmentation, which requires the frank acknowledgement of its liberal-conservative heritage. The extreme partisanship currently besieging the United States is a direct result of a fundamental misunderstanding of our political foundations. Democrats and Republicans point fingers and attack the ignorant opposition when our polity cannot survive without their good-natured cooperation. This fanatical 'us and them' political paradigm is rending the American political fabric. Our representatives should set aside partisan and ideological squabbles and engage in serious political dialogue. The Constitution cannot survive unless the conservative-liberal synthesis is respected and

⁵⁶ *Ibid.*, 98.

⁵⁷ Nietzsche, *Beyond Good and Evil*, 126.

celebrated by both parties. That synthesis transcends party. Without the kind of compromise, made possible when people seek to view reality in all of its complexity and not just the aspects that would most easily support their own narrow self-interest, the United States may continue to muddle along for a while longer, but the numerous serious problems confronting the country will not be properly addressed in the absence of an intimate understanding of foundations and a corresponding willingness to shun partisanship. "True statesmanship is a humanistic mediation and not an indolent oscillation between extremes," writes Babbitt.⁵⁸ But neither must the need for synthesis above party be confused with the kind of lazy compromise that is nothing more than "splitting the difference," the course routinely proposed by self-appointed "moderates." Like Babbitt, Nietzsche would have disdained such easy and therefore irresponsible compromise.

It is because Americans do not now appear capable of genuine compromise, as encouraged by the conservative-liberal dynamic of the Constitution, that America's future looks gloomy.

The health of a nation is measured by the quality of its relationships. The prevalence of something like Aristotelian true friendship that is necessary to sustain popular governance can only exist, as Aristotle stressed, between ethical equals. Without an adequate understanding of the Constitution's moral and cultural prerequisites, Democrats and Republicans will lack the moral and imaginative qualities necessary to cooperate; hence free government, which is dependent on inner ethical control, is imperiled. The Constitution was constructed to encourage the opposite tendency. It is not ideologically skewed to either side of the ideological scale; its fulcrum lies in the center where conservatism and liberalism humbly meet.

⁵⁸ Irving Babbitt, *Democracy and Leadership*, 134.

He argued that the Constitution grew out of wealthy fears of debtor rebellions. He claimed that the Constitution's systems of power and representation were devices for keeping power in the hands of the rich. Beard held onto his claim that the Constitution was made in the interests of the wealthy. Validity in his Claim? Beard's claim had some validity, BUT to say framers were foes of democracy is inaccurate, they didn't have great trust in popular rule but they wanted a system of self government. Most Important Point. As long as there are private property rights, a majority will never rule. The constitutional court. 137. Questions as to the interpretation of the Constitution. The High Court of Uganda. 138. High Court of Uganda. (i) The following objectives and principles shall guide all organs and agencies of the State, all citizens, organisations and other bodies and persons in applying or interpreting the Constitution or any other law and in taking and implementing any policy decisions for the establishment and promotion of a just, free and democratic society.