

## Re-Constituting American Conservatism

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TO BE A CONSERVATIVE in America has always involved a conundrum. Developing in reaction to the French Revolution, conservative political and social thought has characteristically emphasized pious attachment to given particulars and eschewed abstract theorizing about the ideal form of a just or legitimate regime. The ever-provocative Comte de Maistre went so far as to declare that a country seeking to write a constitution for itself proved by that very fact that it had not yet been historically constituted as a nation, while a truly constituted nation gained nothing from scribbling down its constitution.

But in America, the written Constitution (note the capitalization) is an object of public veneration. The United States of America would appear to be precisely the product of abstract deliberation and choice. Ours is the theoretical country *par excellence* and—it is contended—the first universal nation. Is a traditional conservative patriotism even possible in a regime “dedicated to a proposition”? And if not, are conservatives a necessarily subversive element in the American regime?

During the Cold War, the problems of

an American conservatism were obscured by historical circumstances. Confronted with the very concrete threat of Soviet power, tied as it was to the grandest abstraction of all, Marxism-Leninism, even the most traditionalist of conservatives could wholeheartedly defend the American model of political and social order. But with the passing of the Soviet threat, conservative unease with the American way of life has emerged and grown urgent. In 1984, conservatives mockingly denounced American liberals, the children of the 1960s, as the “blame America first” crowd; today, many of those same conservatives have themselves grown acutely critical of America’s corrupt cultural and social *practice*, surely—but also, which is more, of America’s constitutional *theory*.

In the December 7, 1998, issue of *National Review*, Charles Kesler of Claremont McKenna College reflected on these difficulties in an article questioningly titled “All American?” In that essay, Kesler began by noting, correctly, that “the [American] conservative movement ... has always been more confident of what it is against than what it is for.” He also observed, correctly, that the end of the Cold War has rendered such a negative principle of unity unstable. The theoretical muddle of American conservative

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thought in the post-Cold War period is manifested in the practical divisiveness within the Republican Party. For, strange to say, ideas have consequences; and contradictory ideas have divisive consequences.

Kesler sets out to provide post-Cold War American conservatives with a coherent theoretical commitment, one which will unify them and make them politically efficacious. His fundamental counsel is that conservatives should become "more American." But immediately controversy enters in, for Kesler believes that America's essence is its formal political principle: America is a constitutional regime "dedicated to the proposition that 'all men are created equal.'" There is nothing socialistic implied by this equality; rather, Kesler deduces from this natural (or metaphysical?) fact the absolute priority in politics of abstract individual rights. This is "the American project" in Kesler's eyes, the truth of the Declaration of Independence and of the U.S. Constitution, read as a unity.

But in such a recapitulation of our country's founding documents, Kesler implies that ours is uniquely the regime of reason, the regime according to nature, securing by its operation *natural justice* itself. This is American exceptionalism with a vengeance. To be an American in Kesler's view is therefore to be a loyal citizen of the just regime *tout court*, for only an allegiance to political right binds us together as a "people." If this were American patriotism, it would be qualitatively different from all other patriotisms. Indeed, it seems that a patriotism of this sort would be the *only* moral patriotism, for all other affinities are either amoral or immoral. Kesler's is the patriotism of a "proposition."

While he does not put it this way, what Kesler is suggesting for conservatives is that they become the American party of (liberal) rationality and (liberal) justice. Because politics is inevitably partisan,

we can know ourselves politically as an "us" only if we also know a "them." Kesler's revised conservatives would therefore recognize as their enemy all "anti-Americans." For Kesler, these would appear to be all those whose self-understanding is not exhausted by the claims of the ideology of autonomy. If you believe that being recognized as a free and equal rights-bearer is somehow "not enough," that there is more to the life of a moral and political community than this (and that America is or ought to be a moral and political community), then you are anti-American in Kesler's sense.

Such anti-Americans are in the first instance the champions of various forms of "identity-politics"—the multiculturalists. But there is also, in Kesler's view, an enemy within the current conservative movement: namely, the traditionalists, all those who advance claims about the importance of "the Western Tradition," or of "America's British Culture," for understanding what it means to be an American. Given his commitment to universalist liberal abstraction, Kesler can only interpret these as just one more expression of the anti-American, identitarian impulse. In brief, Charles Kesler is suggesting that American conservatives recognize among their enemies...Russell Kirk! But this will never do.

In pressing his case against so-called traditionalist conservatism, Kesler argues that the value of any tradition must be judged by a "goodness independent of tradition." And he is right in this. Traditions cannot be self-validating, though they may contain within themselves intimations of the good not otherwise accessible to human reason. Kesler is, however, wrong to presume that the standard by which to judge traditions is his or any other "abstract principle." Rather, the central question which faces us is, What is Human Nature?, for whatever is naturally just will be that which is in

accordance with human nature.

Kesler champions a notion of natural justice which is founded upon a tendentious account of human nature. He takes Jefferson's self-evident truth that "all men are created equal" to mean that no man may be governed by another or by others without his consent; the liberal is above all committed to the principle of autonomy. Thus, for Kesler, human nature ultimately reduces to individual choice and rights understood as immunities. "Respecting" human nature is exhausted in respecting rights—leaving others alone. But this is not an exhaustive account of human nature or of the moral life as understood by classical philosophy, or by the natural law tradition, or by any traditional form of Western thought before the rise of liberal theory in early modernity, a tradition of thought which reaches its apogee in Kant.

Now what is perennially interesting about Kant is that his moral teaching applies to "all rational creatures," a phrase which is deployed so as to include, besides human beings, *angels* (and *demons*) within a common moral law. Kant's moral teaching does not depend on agents having bodies. But having a body *is* essential to being human. The body is not an accident of our being, but essential to it. And there is more which can be said about our nature beyond our capacity for free choice. For example, that our uniqueness as individuals is the result at some point and in some manner of the union of one man and one woman. For example as well, that, as Aristotle noted, no one would choose to live a life without friendship, and friends are irreducibly *particular*.

Given the controversial claim about human nature which lies at the heart of Kesler's view, he *does* have a coherent account of how the regime of rights—American liberal democracy as currently understood—secures something called "justice." But rights-possessors are nec-

essarily wary beings. Rights are fences against the encroachment of tyranny; that is the great achievement of the Anglo-American tradition of rights. But we are by now familiar with the history of liberal societies, and we cannot but notice that a regime of rights appears to dissolve the conditions of friendship. For friendship requires an openness to another, a leap of trust in which you are open to the potential tyranny of the friend, and this is rendered illegitimate in the rights regime.

The erosion of friendship in liberalism's public realm is also evident in marriage and family life. While Kesler in his *National Review* article deprecates the conservative defense of "traditional family values," he does want to champion a (return to) a rational "republican or democratic family life." But he tellingly offers no account of how his principle of the equal, free individual consent of rights-bearers can serve as the basis for the defense of a family of human beings who are men, women, and children, and not merely disembodied autonomous agents. The family, which Kesler *wants* to defend, does not have a coherent account in his "abstract principle." The first of the little platoons which is the basis for all social life and for every larger loyalty cannot be understood in liberal theory. Liberal "justice" is thus systematically *unjust* to the family. It would be folly for conservatives to subscribe to a rationalism which blinds us to so much of human nature.

Kesler's article is his latest intervention in a long-standing debate among American conservatives about the nature of their relationship to the American Founding and the Western Tradition. His arguments bring to mind a controversy which erupted in 1996 when the journal *First Things* published a symposium titled, "The End of Democracy?" Reviewing recent Supreme Court decisions regarding

abortion, homosexuality, euthanasia, and other cultural issues, the editors of that journal drew attention to what they described as "the judicial usurpation of politics," and raised the question: "whether we have reached or are reaching the point where conscientious citizens can no longer give moral assent to the existing regime." In other words, these editors raised the possibility that the American regime might have become *illegitimate* and that right-minded Americans might no longer owe allegiance to this regime. Possible responses to such a situation were contemplated, "ranging from non-compliance to resistance to civil authority to morally justified revolution." Here was something new: not traditionalists but neoconservatives finding themselves *alienated* from America. The publication of this symposium precipitated the resignation of several members of the editorial board of *First Things* who believed that the journal had taken a stance which was, in effect, "anti-American."

But here is precisely the connection with Kesler. The central text which seemed to the *First Things* symposiasts to indicate the incipient lawless character of the American regime was the majority opinion of the Supreme Court in *Planned Parenthood v. Casey*, with its celebrated, or rather, infamous "mystery passage": "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life." Like Kesler, the defenders of this contemporary understanding of American Constitutionalism reject mere "majoritarianism," even if the majority in question is of the "democracy of the dead." No majority may transgress our fundamental rights. And again, that is true. But what exactly are the rights proper to man? Once again, the question of human nature is central.

Kesler's notion of human equality

holds that no man may "govern" another without his consent. But as any regime-theorist must know, "government" is a matter of something more than formal legislation by political organs. It extends to matters of "influence" as well—both the charismatic qualities and rhetorical arts by which one human being attempts to persuade another *and* the traditional manners and *mores* which govern our behavior without ever being noticed by most of us. (This latter point is why Kesler believes he can defend the "republican or democratic family" but not "the traditional family"—for he believes the family as we have known it is the *construction* of our political order and not something merely natural.) Insofar as rights are the central thing owed in natural justice to man by man, and insofar as any structure of "government" requires consent for legitimacy, which in turn requires that all influences on man be made transparent to subjective reason, it appears that Kesler is saying, effectively, that man has a *right* to live in the world he *wills* himself. In Kesler's current articulation, it is difficult to see where he differs from the "mystery passage." For as we have noted, Kesler's apparent understanding of human nature is an abstract freedom. It would seem conservatives reformed in the way Kesler suggests would have to defend the majority opinion in *Planned Parenthood v. Casey* as an authentic expression of the American ideal.

One of the more amusing, yet telling, elements of the *First Things* controversy was the umbrage taken by many editorialists at the use of the word *regime* in connection with America's constitutional order. For in American journalistic argot, "regime" is the term employed to describe tyrannical *rule* (e.g. "the Castro regime"), while in America we do not even say that we have a *government*: rather, we have an *administration*, such as the Clinton administration. To speak

of America as a “regime” implied in the minds of many that the *First Things* symposiasts believed America a tyranny, but that is not at all what was intended.

The confusion arose because, perhaps unknown even to the authors of the *First Things* editorial themselves, “regime” is a term of art current among academic political theorists in the United States. The word entered our vocabulary by way of Leo Strauss, who took exception to the standard English translation of the Greek word *politeia* as “constitution.” In America, “constitution” implies the formal plan of government of the political apparatus. This is certainly in part what Aristotle meant by *politeia* as well: “the arrangement of offices of a city,” especially of the most comprehensive or sovereign office. But Aristotle also observed that every *politeia* always also amounts to “the way of life [*bios*] of a city.” The citizens of a democracy will have democratic habits; the subjects of a tyranny will have tyrannical habits, etc.

The conceit of liberalism has long been that it constitutes a form of *limited* government which does not entail a complete way of life. But the conservative fear—the word is not too strong—is that an anomic understanding of human freedom deeply embedded in the United States Constitution is becoming our *bios*, our way of life, without remainder. Or put another way, the traditionalist fear is that the *written* Constitution, through its authoritative interpretation by the Supreme Court and the elite legal clerisy, has become a tool for the demolition of America’s *unwritten* Constitution. Thus, we are presented with a dispute between champions of the written Constitution and champions of the unwritten Constitution. There are no anti-Americans here. The traditional conservative would contend, however, that his piety for the human goods known in America’s traditional way of life is compatible with the actual text of our written Constitution,

whereas Kesler’s piety for a Constitution dedicated to theoretical liberalism is necessarily hostile to those known goods, and thus at war with the actual Constitution of the American people.

For it is not true that conservatism in America has been alienated from “the roots of its own political tradition,” as Kesler also asserts. That claim assumes that America’s political tradition is that of federal Constitutional liberalism only. But the conservative understanding of politics has always been one which recognizes the *connection* between the “pre-political” and the “political” and which sees that connection running, as it were, both ways. Conservatives from the beginning have recognized that the tendency of liberal political structures when uncontained is to unsettle and upturn the pre-political roots which make common life possible. Conservatives have long contended that liberal regimes *consume* moral and social capital; liberal regimes therefore *depend* for their perpetuation on human forms to which they are hostile. That an uncontained liberal regime might prove to be self-undermining is not surprising to anyone familiar with those ancient philosophers who saw in *every* regime type the seeds of self-destruction. It is only surprising for those who see the work of America’s founding generation not merely as *good* but as the *best*, and who therefore expect an immortality for our regime which is inaccessible to anyone or anything, here below. True conservative patriotism is humbler than that, and it is consequently a truer patriotism.

Dwelling on the roots of our common life rather than on the crowning heights of political structures, conservatives always attend to the stuff of human experience which liberalism treats as mere “externality.” It is this fact which has brought to the fore the cultural issues now so hotly contested in American poli-

tics. The concern about the family is not a novelty of the 1990s. It is a dominant theme in conservative political thought from the beginning. Burke wrote to a member of the revolutionary French National Assembly:

As the relation between parents and children is the first among the elements of vulgar, natural morality, ... Your masters [the Jacobins] reject the duties of this vulgar relation, as contrary to liberty; as not founded in the social compact; as not binding according to the rights of men; because the relation is not, of course, the result of *free election*....

That is, as we have seen above, the ties which constitute the family are not well understood as the product of *consent*.

Most recently, conservative intuitions have led them to a new realm of political concern reminiscent of Tocqueville. That great observer of the American scene looked not so much to the federal Constitution as to American *municipal* practices to understand the nature and the possibilities of the new Democracy. And so today, conservatives have begun to recognize urgent questions of land-use, suburban sprawl, “the new urbanism,” and in general, what might be called the American “settlement pattern.” It is precisely because of their attachment to America’s traditions that conservatives now *notice* with alarm—as a political matter—the world we are building for our dwelling.

The traditional American lived ideal was the formation of towns. In our conquest of the continent, we witnessed almost an eagerness to yoke ourselves into the responsibilities of common life in particular communities. Hence, the civic monuments—libraries, theaters, schools, churches, war memorials—to be found in the towns of a century or more ago. All of these seem to express in bricks and mortar a *will to constitute* ourselves as a *people*. The germ of true patriotism was found in these local attachments. This is a deep good in our constitutional tradition, and conservatives have a duty to name it so.

The current pattern, however, seems just the reverse. The attraction of the suburban subdivision, the “bedroom communities” which liberate a mobile population from costly civic involvements, is seen precisely in the opportunity to evade the responsibilities and burdens of common life, even the burden of knowing your neighbors. In the retreat to our low-tax tract houses, devoid of those front porches where the public and the private can meet, we have all acquired “a room of one’s own,” which is the built expression of the sovereign liberal right to be left alone. But for those with eyes to see the world we are making, it is also clear that we have thrown ourselves into the project of *deconstituting* America. For a merely theoretical people is no people at all. A genuine American conservatism sees this also, and names it so.