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The Future of Conservatism: An Argument for a Constitutional Conservatism

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Constitutional conservatism is a blend of populism and elitism: a good thing made of two dubious ingredients. To explain what that is, in brief compass, I will begin from the dilemma of conservatism, move to the task of conservatism, which I believe to be defending liberalism in the wide sense of the word, and last come to the form of conservatism in the American Constitution. Its future will be like its past, except for unpredictable changes.

The Dilemma of Conservatism

What is conservatism? Conservatism is a correlate of liberalism. It follows upon liberalism. It is liberalism's little brother. Conservatism began to be heard of as a political term only after the French Revolution, when it was provoked by the manifest excesses of the Revolution into opposition. But what kind of opposition? Was conservatism to be the alternative to liberal revolution, or was it to supply the defects of that revolution so as to make it work?

There were opponents of the Revolution, usually called "Reactionaries" but still conservatives who wanted to return to the old regime and therefore supported monarchy and religion, the throne and the altar; but there were also conservative liberals such as Benjamin Constant, François Guizot, and Alexis de Tocqueville who accepted the Revolution while blaming its excesses. Later, the great liberal, John Stuart Mill, described the party of progress and the party of order as correlates of a liberal regime, the one making advances, the other providing digestion.

Talking Points

- Conservatives must defend the liberal regime and its ruling middle class. They must defend what Aristotle might call the "interest of the regime."
- The democratic form of government has as its end a democratic way of life. But in the liberal regime, the form is partly distinct from the end: The purpose of democracy is partly to live a democratic life, but also to secure the rights of life, liberty, and the pursuit of happiness.
- The liberal form of government is limited government as opposed to big government. It is constitutional government in a new non-Aristotelian sense. It is popular government because the government is chosen by the people, yet government is also withdrawn from the people so that the people can judge it in democratic elections.

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Here, at the origin of conservatism, we see its fundamental dilemma: Is it the alternative to liberalism, or does it make liberalism work? We can put this in fewer words: Does conservatism go back, or does it go slow? It is a dilemma because these are opposite strategies and require opposite behavior.

If conservatism is the alternative to liberalism, it needs principles and goes back in history to find them. Going back is a revolution against the present, against the liberal status quo. It is a counterrevolution. It brings turmoil, upset, and accusations of extremism—think of the Republican Revolution of 1994. If, on the other hand, conservatism supplies the defects of liberalism and goes slow, it must forget principles and accommodate with liberalism. “Responsible conservatives” like George H. W. Bush and Robert Dole are called “responsible” because they take charge of a situation they do not care for but make the best of it. For such conservatives, all ideas cause problems, including conservative ideas.

The elder Bush spoke deprecatingly of “the vision thing” that he was alleged to lack. This was his wonderful contribution to our political vocabulary. Visions are bad; they are closer to nightmares than to sweet dreams, but in either case they are dreams. In a democracy, vision almost always means the vision of a “more perfect democracy”—more of what we already have. It’s imaginary and not very imaginative.

Conservatism is thus in a dilemma between “go back” and “go slow.” Neither strategy is satisfactory by itself; hence, both are inevitable. Conservatives cannot be consistently responsible or revolutionary, so perhaps they must be both. Being both is being inconsistent, but it might be prudent. Conservatives can try to have it both ways; using prudence keeps you from being an ideologue, but holding to principle keeps you from being inconsistent and opportunistic. With the double strategy of principle and prudence, go back and go slow, conservatives must take on the task of defending liberalism. To defend liberalism is to defend its principles, the best in liberalism; but it is also prudent because liberalism will not go away, and if it did, the forces replacing it would be worse, as we see in the Islamic fascists.

The greatest critic of liberalism was not a conservative, not Edmund Burke, but Jean-Jacques Rousseau. Rousseau saw that liberalism had opposite defects: It was thoroughly selfish because it ignored the community, and it was ignoble because it promoted the mediocre life of commerce. In the 19th century, the first defect was adopted as a target by the Left in promoting socialism and communism, which claimed to cure selfishness, and the second defect was adopted by the Right as its target, which later came to be fascism and Nazism, claiming to cure ignobility and mediocrity. Both of these movements flourished in the 20th century before they were defeated. But as long as we have liberalism, both movements will probably return, though perhaps in a different form that we may find difficult to recognize—because both answer to essential defects in liberalism.

Liberalism, based mostly on self-interest and the virtues of self-interest, is indeed too selfish and ignoble. Liberalism needs sensible defenders who are aware of its vulnerabilities, who understand its principles and are ready to use prudence in applying them. These sensible defenders are mainly conservatives, because most liberals are so devoted to liberal principles that they overlook the weakness of those principles. A partisan liberal typically pursues liberal principles regardless of the common good, and conservatives need to hold liberalism to the standard of the common good, which includes supporting the virtues of generosity and nobility, even though these virtues are not very liberal.

Big Government/Rational Control

The enemy of conservatism is what is called in America “big government”—a government so large in scope and so beneficent in intent that it tries to save citizens “the trouble of thinking and the pain of living.” The quotation is Tocqueville’s sarcastic description of the government he called the “immense being.” Big government rests on appeal to self-interest and also to motives opposite to self-interest, particularly compassion, even a kind of greatness. President Lyndon Johnson called his version of big government “the Great Society.”

Although the phrase “big government” is recent, the idea is much older. Tocqueville dates it back 10

generations from the French Revolution to the time of Machiavelli, the high point being the statist policy of Cardinal Richelieu and Cardinal Mazarin. The French monarchy tried to apply the idea of “rational control” to all parts of society—for example, in teaching farmers how to farm better, very much like the U.S. Department of Agriculture today.

Rational control is beneficent, not exploitative; mild, not terrifying; and even-handed, not arbitrary. One could say it is the idea of modernity itself, the original vision thing. It means the rational control of risk, the risk to one’s security. Typically, Tocqueville notes, rational controllers exaggerate their capacity to control risk and end up raising expectations they cannot satisfy while they remove or destroy trust in God or trust in tradition, which are the alternatives to rational control. The result is dependence on government together with contempt for government—just what we have now.

Big government is often contrasted with reliance on the free market, liberals being proponents of the former, conservatives of the latter. That contrast is, of course, correct, but government and market are alike in serving the end of rational control: the management of risk. This suggests that conservatives today are, like liberals, committed to the modern idea of rational control. But, as opposed to big government, the market provides management of risk with allowance for taking a risk.

In this regard, one might ask: Who is the conservative, the entrepreneur who takes a risk or the conservative investor who avoids it? The market is more of a mechanism than big government; it offers rational control without rational controllers. But is that really so? What of stock market advisers? Are they not comparable to the social scientists who facilitate big government? For big government is rational control, and rational controllers need science, enabling them to control rationally things previously left to nature or to chance, yet stock market advisers typically say that everything depends on the level of risk you are comfortable with: You should not buy risky stocks if they keep you from sleeping at night.

Thus, it appears that there are irrational dispositions underlying rational control which must be

accepted. Some people have conservative dispositions, others not.

What is a conservative disposition? Aristotle, in his *Rhetoric*, describes the conservative dispositions of old people: They are cautious, weak, malicious, small-minded, cool; more concerned with the useful than with the noble; more given to money than hope, to gain than anger, to calculation than character, to querulousness than to wit; and they are loquacious. Not a pretty picture, and this is how many people regard conservatives. Aristotle also has a chapter on youth, with its opposite vices. How you are seems to depend a good deal on how close you are to death. This is fundamental to the idea of risk as well.

Aristotle’s solution is to say that the mean is the prime of life, between the two extremes. He doesn’t offer a notion that would discount the benefits of the prime of life throughout one’s life, unless that would be what he calls moral virtue. He certainly does his best to reduce the venerableness of the old. Conservatives, despite their love of the old, would do well to avoid the crabbiness of old age.

Despite the unspoken affinity of free-market conservatism for rational control, conservatism mostly doubts the idea of rational control. From David Hume on, conservatives say that the human intellect is not capable of grasping society as a whole so as to reform it. If you attempt to reform everything, you will bring on revolution in which the furies of passion, not reason, will triumph.

For conservatives, reason has its place, which is up close, in front of your nose. The rest they call nature: that which is beyond human control. Nature can be understood with a single swoop of reason; the whole of nature, distinct from humanity, as dramatized by romanticism, is left to take care of itself, as guided by the invisible hand, or is said to require reform by increments, as with the notion of prescription in Edmund Burke’s thought.

In sum, conservatives, as defenders of liberalism, are aware of its defects, which are, to repeat, too much reliance on self-interest, causing liberal principles to be vulnerable to charges of selfishness from the Left and ignobility from the Right, and the related reliance of liberalism on big government and rational control.

Bad consequences of the idea of rational control have led conservatives such as the romantic Coleridge, the libertarian Hayek, and the Whig Burke to doubt the value of reason and even, in some cases, to condemn the use of reason in politics. Instead of universal reason, it is better to use prudence and the particulars of each case, and if a general principle is required, let it be historical tradition rather than reason.

Yet we have seen that conservatives can be trapped politically, in a position of serving the ends of their opponents, if they keep solely to the policy of going slow and never think of going back. Conservatives today might find themselves obliged to have recourse to liberal principles when circumstances seem to require vigorous action in order to change an unacceptable situation. One example is the conservative use of the liberal principle of merit in our time in order to oppose “affirmative action” in promoting racial and sex preferences.

Defending Liberalism from Itself

What must conservatives do to defend liberalism from itself? They must defend the liberal regime and the bourgeoisie or the middle class, the ruling class of the liberal regime. They must defend what Aristotle might call the “interest of the regime.”

Liberals today, and some conservatives, are blind to the necessity of maintaining and defending the rulers of the liberal regime. Liberals tend to favor compassion, which means compassion toward the enemies of the middle class. They promote welfare or entitlement policies that reward those who lack the sturdy virtues of the liberal middle class—virtues that make compassion possible.

Libertarian conservatives, unconcerned for virtue, look to loosen the bonds of responsibility and sacrifice that enable a liberal regime to maintain and defend itself. Post-modern liberal intellectuals, especially, forget that respect for themselves depends on respect for the intellect and for reason. They may be joined by conservative intellectuals of a traditional sort who attack reason, confusing reason with rational control.

Toleration and diversity are liberal policies that conservatives must make compatible with the liberal regime. Liberalism can and must, within reason,

tolerate its enemies within a liberal society, but it is not enough to tolerate. Conservatives must be alive to diverse contributions, to liberalism as a whole. They must see left and right not as enemies only, but also as permanent tendencies that cannot be “got rid of.” Conservatives will never kill the Left, for as long as we have a liberal regime, the Left will always come back after every defeat.

Liberals, believing in progress, are less likely to tolerate conservatives because they are impelled to think that those in the way of progress are prejudiced and do not deserve respect. At the same time, liberals are inclined to relativism, wishing not to judge others. In this mood, they maintain that all values are equal, the values of oppressors equal to those of liberals. As progressives, liberals are too hard; as relativists, they are too soft.

Conservatives are both more tolerant and more resistant. They must help out their big-brother liberals, who are weaker than conservatives in mind and spirit. Above all, conservatives must defend the liberal form of government that makes liberal politics possible.

The liberal form of government has an interest in its own survival, like the Aristotelian regime, but it is also unlike that regime. In the Aristotelian regime, the form is the end. For example, the democratic form of government has as its end a democratic way of life. But in the liberal regime, the form is partly distinct from the end. In its view, the purpose of democracy is partly to live a democratic life, but it is also to secure the rights of life, liberty, and the pursuit of happiness.

In liberalism, rights are prior to government and therefore serve as a separate basis by which to judge whether government is doing its job well. We see a sign of this in the question that our politicians often pose to the electorate: “Are you better off?” Being better off is distinct from being a better democrat. It is a separate, nonpolitical standard that a liberal regime adopts for itself and with which it invites support. As such, it can be used against a liberal regime that does not deliver on its promises.

For the Aristotelian regime, there is no such problem in maintaining the form of government; the problem is to restrain the tendency of any form

of government to intensify itself, to make itself more extreme. A liberal regime, however, must struggle to maintain its form of government because it is always being judged against a standard of an end that is outside itself. Its end is not so much democracy as a form of government as it is equal rights, or equality for all men everywhere: that is, human rights.

This is what Tocqueville meant when he spoke of democracy as a continuing democratic revolution. A liberal democracy hurtles forward toward more democracy without considering whether more democracy is in the interest of a liberal regime. Hurling forward toward more democracy: With this we begin to recognize the appeal of Barack Obama. Liberalism seems to have a fundamentally “apolitical” character which is hostile to disagreement or argument or conflict. You see this in the original liberalism of Thomas Hobbes and John Locke. For these 17th century philosophers, the end of society is peace or security.

Peace is what everybody wants as a condition of other ends, decent ends, which may be diverse. You may have one way of life that you prefer, another that someone else prefers, but what you have in common is the minimum condition for all ways of life—or all decent ways of life—and that is peace. Whatever else you want, you must have peace, the minimum condition. The trouble, in this politics of the apolitical, is that the minimum tends to become a maximum. It turns out to be harder to agree on the minimum than liberals expected, and, therefore, you have to adopt the minimum as an end rather than leave it as the condition of all ends. Consider two examples.

In foreign politics, the idea of global justice has now come upon liberalism. Global justice is not the same thing as good government because it is *above* government. Global justice wants to transcend political boundaries, treat the whole world as one liberal society, prosecute criminals far from their homes.

This is done through international courts and also through a network or private sector of non-governmental organizations, or NGOs, outside of normal governments: for example, *Medecins sans frontiers*, Doctors Without Borders. But this leads to conflict between those who believe in global justice

and those who resist it, so that there’s no agreement, and you have to have a struggle for global justice—a struggle to end struggle.

A second example, from domestic politics, is the politics of entitlements. Entitlements are guarantees from government to individuals: for example, Social Security. They were intended by the New Deal to remove the question of pensions and retirement from politics so that security would mean security against political change.

In this way, the New Deal was very apolitical, because the change that it introduced in entitlements was meant to be irreversible, which indeed has occurred to a great extent. But the entitlements were resisted by Republicans, so it turned out that they weren’t nonpartisan. Democrats continued to win elections against resisting Republicans with the slogan “Don’t let them take it away.” I think that comes from the Truman Administration. Maybe entitlements are deliberately set so high that they are impossible to sustain and, therefore, the more responsible Republicans are induced to oppose those entitlements, and party war is on. Maybe the Republicans do the same with taxes.

This is the politics of the apolitical. Conservatives need to defend the necessity and value of politics, which means also of partisanship.

Conservatism and Constitutional Government

Now, we may ask: What is the liberal form of government or politics? It is limited government as opposed to big government. It is constitutional government in a new non-Aristotelian sense. It is popular government because the government is chosen by the people, yet government is also withdrawn from the people so that the people can judge it in democratic elections.

In a democratic election, the people choose the government and judge the same government they choose, so when an election is prospective—looks to the future—and retrospective—judges the past—the people are both responsible for the government they choose and not responsible when they judge it. When they choose it, it’s theirs; when they judge it, it’s on its own. If the people

vote the existing government out, they do not apologize for their own bad choice in the preceding election. They are the sovereign, and sovereigns do not apologize.

The interest of a liberal regime is in the defense of the forms of the Constitution. This is what defending liberalism means. Those forms, on one side, put obstacles between people's will and the government's actions so that the people's will has to be expressed constitutionally. For example, an unpopular government has to be voted out of office instead of being shamed into retirement by low ratings in the polls.

Government is withdrawn from the people for two opposite reasons: so that the people are forced to act on their own and so that the government can act on its own. The people acting on their own are in voluntary association; that's the good sense of populism. Rather than sitting inactive as consumers, clients, or dependents of big government, they're voters; they're participators. The government acting on its own, on the other hand, can control the people. It can maintain its ability to call for forbearance, even sacrifice, from the people. Here it shows responsibility in an anti-populist sense.

Our constitutional government combines populism and elitism, both understood, as we now see, in a healthy way. Its populism is to preserve the forms of consent, especially elections, against the temptation to govern through the polls or to welcome the intrusions of judicial activism, and thus to preserve the practice of democracy. Its elitism is to keep a distance between people and government, not to encourage the arbitrary exercise of power, but, on the contrary, to enable government to act consistently and on principle, and thus responsibly.

This alliance opposes a contrary combination of unhealthy populism and elitism: the populism that wants unending democratization and the elitism that also wants this without regard to the people's needs, especially the need to get their consent.

For conservatives, preserving the forms of popular consent is to insist on constitutional due process.

It is the conservatives' strategy of "going slow." Keeping a distance between the government and the people, however, allows a conservative government to act on principle. To be a conservative is a balancing act. You have to compromise so as to get the consent of a majority, and you have to uphold the principle of restoring our Constitution or limited government with the support of that majority.

But how can we do this? George Bush exercised his constitutional distance by doing just the opposite of what the electorate seemed to ask him to do when it elected a Democratic Congress in 2006. He did not show the vice of "servile pliancy"—that's what *Federalist 71* says about a President who follows the will of the people too closely—and instead ignored the impatience of the American people.

It seems now that the Republicans are losing both ways in regard to the war in Iraq. Either they lose the war, in which case they're blamed because they started a war they couldn't win, or they win the war, in which case they started a war which they couldn't win right away and therefore should have abandoned, as if losing a war were like selling a stock: Take a loss and take it off your income tax.

The practice of forms means the forms of democracy, and especially elections. Tocqueville's advice was this: Try to draw the principles of democracy from the practice of democracy, not the practice from the principles. In practice, conservatives are Republicans. Conservatives, if they want to establish conservatism, need a majority of the people and therefore need a majority party. Ross Douthat and Reihan Salam have recently written a new book called *Grand New Party*, which I recommend to you.¹ *Grand New Party* is something of a repudiation of the Grand Old Party, separating Republicans from "Old." I don't know if that will work entirely, because conservatism seems to have an inseparable connection to what is "old."

Conservatism has to be responsible, which means for the common good. It's not enough to be right, but it's also not enough to win, so what happens in practice is that you win some and you lose some.

1. Ross Douthat and Reihan Salam, *Grand New Party: How Republicans Can Win the Working Class and Save the American Dream* (New York: Doubleday, 2008).

Virtue, Necessity, and Choice

Constitutional conservatism stands for political liberty. This means the right to choose with the chance that you may lose. You cannot bring politics to an end as the liberals want. The search for the apolitical is a search for a definitive end, which is characteristic of modern political philosophy.

This definitive end might be a natural end which is guaranteed by nature, beyond human tampering, choice guided by natural law or natural right. That could seem conservative, and there are conservative Catholics and conservative libertarians who believe in natural law, some kind of bright line. For example, conservative Catholics, addressing the question of abortion, look for a bright line to see where life begins. Where does it begin—at conception, at birth, or at maturity?

There's a difficulty here: Nature doesn't seem to give us a bright line of distinction which says, yes, this is natural and, no, that is unnatural; don't do it. There are conservative libertarians who want a bright line where liberty ends. It ends at the state. You obey the state because you've made a contract to obey. But it seems that life is not contractual. Neither birth nor death is by consent, and there's a lot in between those two things which is not by consent.

Aristotle says, "Man is by nature a political animal." By political animal he means an animal that makes laws and conventions. Laws and conventions are statements or commands that could be otherwise than they are.

And that's part of our nature: that we make ourselves to be otherwise than we could be. So we have these differences in different societies, and even within a single society. But politics tries to naturalize our conventions. When you're in politics, you have to remove any sense of the arbitrary, and, therefore, your virtue comes to be understood, or you try to make understood, as your necessity.

Take the example of the war in Iraq. President Bush said it was a necessary war. The opponents of the war say it was a chosen war in which choice means whimsical; you didn't have to do it. If you're for something, you have to argue for it with certain reasons, and the better reasons are the more compelling reasons, so you seem to remove your sense

of having done something virtuous by giving your reasons, since your reasons say why it was necessary. And if it was necessary, then what credit should you get for doing it?

The opposite is true with what is chosen. People who are for choice in abortion are against it in war. When they have a pro-choice position with an abortion and I hasten to say that I do not take this position, the pro-choice position becomes a kind of necessity to protect women's equality. When men are confronted with pregnancy, they can walk away from it; women have to have the right of abortion in order to equalize themselves with men.

Tocqueville said that political liberty is best shown in its practice. His choice, then, is a choice and not a necessity. Our political liberty can best be shown in conventions, expectations, that are in between virtue and necessity—courtesies that a woman should be able to expect from a man, for example.

Liberalism has a certain absolutism to it which denies this middle point between virtue and necessity. For liberalism, an action is either illegal or all right. We conservatives need to recover our sense and our defense of what is normal or what can be *expected* of most people, not necessarily what can be *required* of all people. Conservatives need a new feminism. Where should we get it—from new principles from which we draw practical conclusions? Why not just look at a healthy, normal woman like Sarah Palin and get a new feminism from her? She seems to have made a success of it.

Conventions preserve liberty because conventions are expectations. They're not absolutely required, and yet they preserve the good sense of our citizens as our society sees it. Conservatism needs to recover respect, not so much for customs, but for conventions as noncompulsory guides to the good life.

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