



ISSUE ANALYSIS

Conservatives and the Constitution: The Political Imperative of Retaining our Allegiance to Constitutional Governance

Rob Schwarzwalder

Conservatism has always contended that representative self-government must be grounded in the moral self-control of its citizens, that liberty should be ordered to prevent it from descending into license, and that liberty should only be constrained in order to ensure the public good. Conservatism finds its ontological foundation in the concepts of a personal Creator, human equality under him, the nobility of man, and the reality of human imperfectability.¹

Conservatism also argues that the formation of human character begins in the home and that moral actors (persons) are responsible for the choices they make. Man is more than a vessel into which arbitrary influences are poured with inevitable concoctive results. In his "Prospectus for a Critique of Conservative Reason," Mark Riebling argues that "A conservative explains behavior spiritually, and personalizes responsibility ... A liberal, by contrast, explains behavior mechanically, and externalizes responsibility ... Thus, in the typical policy debate, a liberal makes excuses for the human agent, and a conservative places blame. The spark of the liberal argument – He didn't have the same opportunities you did – meets the conservative conceptual firewall: Lots of people start poor, but still find ways to make it."²

Man is more than a material being. Modern secular liberalism argues that man's spiritual dimension is irrelevant, if not non-existent, since, ontologically, he can be re-formed externally through social and economic policy enacted and enforced by the state. "The march of God in the world," Hegel argues, "that is what the state is." From Karl Marx through Kim Jong-Un, the theoretical and political totalitarians of the world have said (a secular), "Amen."

This philosophical framework naturally leads to a certain vision of government. Conservatism maintains that government must be modest in scope, ordered but not repressive, and established in personal liberty. It must be true to its founding principles yet responsive to the needs of the moment. It must also be grounded in a shared understanding of the nature of the state and the nature of man and, in America, in a shared understanding of its governing Constitution.

It is axiomatic in conservative thought that the decline of individual (and thus societal virtue) leads to the fraying, if not the disintegration, of social life and institutions. As such erosion occurs, it brings about additional chaos. Such social disarray may take the form of childhood poverty, out-of-wedlock pregnancies, educational failure, and criminal activity. These

community challenges are obviously complex. But, in the most general terms, Americans want protection and relief from such social ills and they generally demand government action to bring order and security.

In consequence, the state grows in power and liberty increasingly is constrained by the state in the name of security and safety. A liberal republic thus becomes increasingly authoritarian. This authoritarian growth is not instantaneous. During its rise most basic personal freedoms continue unimpeded and ordinary citizens are lulled into complacency during its rise until they awaken one day to mandatory arm bands.

This last is a bit of hyperbole but, I hope, it makes the point:

- Less virtue = less order and security.
- Less order and security = ever greater government intervention.
- Increasing government intervention = loss of liberty in the name of enhanced security.
- Loss of liberty = the steady demise of representative self-government and the growing entrenchment of massive, invasive statism.

The principles articulated above are valuable and important to understand at all times, but they take on a special urgency now, as “big government conservatism” – oxymoronic as that title may be – is touted by some as permanent and something with which all conservatives must make their peace.

A Written Text and Human Equality

The Founders believed in effective government. Had they not, they would simply have continued under the dysfunctional Articles of Confederation. However, they also disavowed a government that attempts to do too much. The Founders consistently argued that the central government’s strength should be concentrated in limited fields of action.

It is for that very reason they gave us a written Constitution, one that clearly defines both the duties and boundaries of the federal government. Reacting against Britain’s arbitrary political and legal conduct, the Founders wanted a text that would clarify the roles of the federal government and prevent the kind of abuses they had experienced. The written Constitution was designed to permanently explain what the federal government was to be, what it could do, and what it could not do.

To that end, the Founders drafted a text that assigns a relatively small number of functions to the federal government. The text recognizes that God has bestowed upon man certain “unalienable rights” whose protection and advancement is government’s duty.

The premise of these essential rights is the equality of all men. Abraham Lincoln called this the “central idea” of American political conviction, the one “from which all its minor thoughts radiate.” If God is the Creator of persons, and He has given them all ontological equality before Him, then that same equality should be honored by all men toward one another, as they all possess the same set of fundamental rights. It is the job of government, as noted in the Declaration, to defend these rights – to life, liberty, and the pursuit of happiness.

Without these essential rights, justice wilts. And, as Supreme Court Justice Joseph Story put it in his masterful 1833 *Commentaries on the Constitution*,

Without justice being freely, fully, and impartially administered, neither our persons, nor our rights, nor our property, can be protected. And if these, or either of them, are regulated by no certain laws, and are subject to no certain principles, and are held by no certain tenure, and are redressed, when violated, by no certain remedies, society fails of all its value; and men may as well return to a state of savage and barbarous independence.³

Put more simply, if justice is not grounded in dependably permanent laws that themselves are grounded in the Constitution, all of our rights become matters of any given jurist's, president's, or legislator's whim.

The Application of the Constitution in Public Life

Consider Abraham Lincoln's address at the Cooper Union in 1860. Although it is an undeniably powerful speech, at times it reads like a term paper examining the Framers' views of federal authority. Lincoln's premise is that the Constitution's drafters believed that the federal government had the authority to prevent slavery in properties owned by the federal state.

But, one might ask, if the original meaning of the Constitution were unimportant, if it simply could be reinterpreted according to the whims of a given judge, a given Congress, or a given generation, why worry about what the framers said and did concerning the expansion of slavery? For example, as Lincoln noted, "so far, I have been considering the understanding of the question manifested by the framers of the original Constitution. In and by the original instrument, a mode was provided for amending it; and, as I have already stated, the present frame of 'the Government under which we live' consists of that original, and twelve amendatory articles framed and adopted since."⁴

The premise – that the Constitution had a fixed and understandable meaning – of what arguably was Lincoln's greatest speech (other than the Gettysburg Address) seems irrelevant, even pathetic, in the light of today's positivist jurisprudence.

It was Lincoln's respect for the Constitution that drove him to enact the Homestead Act in 1862, which "proposed the selling off of vast tracts of federally owned land to homesteaders at fire-sale prices." As historian Allen Guelzo notes:

The Homestead Act was, in modern terms, the greatest privatization scheme in American history. Yet it is based upon the same premise as the railroad legislation and the 'land-grant' colleges: that government may indeed have a role in the life of citizens by encouraging and promoting entrepreneurship and ownership.⁵

Lincoln understood that such a role was limited by the Constitution. Thus, the Homestead Act did not involve state lands, establish new federal agencies, or pick "winners and losers" in the private sector. It simply opened up land (over which the federal government had authority) to opportunity for private risk and, consequently, prosperity that Americans would create for themselves.

An analogous modern example is the charitable deduction one can subtract from his federal income tax. This policy encourages citizens to donate to private charities. By removing the onus of responsibility from the government, it encourages a thriving civil society – without overextending the federal government’s realm of authority.

It is this kind of principled constitutional application that is still needed today.

Warring Views of the Constitution

Conservatives view the Constitution’s restraints and guarantees with relief and appreciation: they prevent the state from invasive and exorbitant actions while encouraging “ordered liberty” in all spheres of life. Contemporary liberals, on the other hand, often regard this understanding of the Constitution with alarm. The many restraints imposed by the Constitution can be maddening to those who wish to bring about social transformation that seems unattainable through legislation. Advocates of such change often rely on judicial means to achieve their political ends. Why? Because some jurists are willing to redefine words or develop a most creative interpretation of the Constitution’s text to obtain the political goals they seek.

The Constitution’s meaning is sufficiently clear and its limitations on government clearly distinct. But there is a difference between clear limitations and their application to changing circumstances and needs. For example, in the early 1830s, Chief Justice Marshall ruled that the constitutional provision calling for “postal roads” implied that Congress had to pay for the construction of roadways on state land. In other words, the federal government had to pay for the land it requisitioned from the states.

This is a reasonable application of the Constitution to a situation its drafters had not explicated, and it is consistent with what the Framers had in mind. Nowhere in the text does the Constitution suggest that the federal government should pay for the strategic defense initiative or that the prosecutorial offices of the Department of Justice should be ordered as they are; these are commonsense applications of the authority granted by the Constitution to the federal government.

However, applications of constitutionally authorized functions are different from deliberate attempts to get around what the Constitution says Uncle Sam can and cannot do. Yet the Supreme Court continues to stretch its meaning into something it was never intended to be or, as the late Harvard Law professor Raoul Berger memorably put it, the Court “continually” revises the Constitution “under the guise of interpretation.”⁶

As Jefferson noted, such a view of the Constitution reduces it to “a mere thing of wax in the hands of the judiciary, which they may twist, and shape into any form they please.”⁷ These days, it seems that the legislative and executive branches are molding the wax quite well in their own rights.

Extra-Constitutionality as a Pretext for Federal Action

As *The Weekly Standard’s* Jay Cost has observed, “Our government was never meant to accomplish the grand, bold tasks that both sides today believe it should.” Instead, he says,

There is a reason why Congress and the courts, for instance, have had to expand the meaning of the interstate commerce clause almost to the point of absurdity: This is the only way around what was intended to be, and was sold to skeptical citizens at the time as, a limited grant of power.⁸

Indeed, extra-constitutionality is the stock-in-trade of the left: what the Constitution does not explicitly prohibit becomes fair game for federal action. Consider what former Rep. Jesse Jackson, Jr. (D-IL) said about a massive federal jobs program he envisioned: “If there are extra-constitutional opportunities that allow the president administratively to put the people to work, he should pursue every single one of them.”⁹

The extra-constitutional powers of the President have long been debated and substantially debunked.¹⁰ Sadly, some conservatives have accepted the rationale that what is not expressly forbidden is inferentially encouraged.

In his eloquent book, *Our Chief Magistrate and His Powers*, then-former President and future Supreme Court Chief Justice William Howard Taft describes how two of his predecessors, James Garfield and Theodore Roosevelt, used extra-constitutionality dangerously:

...the view of Mr. Garfield and Mr. Roosevelt, ascribing an undefined residuum of power to the President, is an unsafe doctrine and ... might lead under emergencies to results of an arbitrary character, doing irremediable injustice to private right. The mainspring of such a view is that the Executive is charged with responsibility for the welfare of all the people in a general way, that he is to play the part of a Universal Providence and set all things right, and that anything that in his judgment will help the people he ought to do, unless he is expressly forbidden not to do it. The wide field of action that this would give to the Executive one can hardly limit.¹¹

Congress has joined the Executive in playing quite freely in this “wide field,” to the detriment of the liberty and security our Founders sought to permanentize through a clear written constitutional text.

It is regrettable that some conservatives find in extra-constitutionality sort of an agreeable middle ground between originalism and positivism—between the Founders’ constitutional vision and its degradation into an ever-growing administrative and authoritarian state.

Even well-educated and well-intended bureaucrats will necessarily remain somewhat removed from the diverse and complex details of human need and be hindered from offering effective compassion to those in need. A conservative understanding of the various distinct but often intersecting sphere of authority and activity posits that families, churches, non-profits, and more local forms of government will, almost certainly, provide more effective and compassionate care than a heavily bureaucratic, administratively impenetrable, increasingly massive and demanding national government.

Conservatives agree with the Founders—a government that diffuses power and authority to local governments better guarantees of effectiveness and integrity than impenetrable,

centralized system. Additionally, the Constitution only gives the federal government the power to tax for the purposes expressed therein. If other purposes are wanted, there are means to amend the Constitution – or else countenance anti-republican government.

In particular, conservatives should jettison an idea whose time will never come – extra-constitutionality as the basis of “conservative” action. Extra-constitutionality, the twilight ground between originalism and positivism, is not a sufficient pretext for federal activism.

Similarly, simply because people like something or are used to it cannot be a justification for its interminable continuance. The absence of a constitutional prohibition of something should not serve as a pretext for asserting its constitutionality. The terms of the Constitution define and limit the roles of the federal government, and do so definitively.

Otherwise, there would be no Tenth Amendment, which states: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” How would we know to what this amendment refers if the meaning of text regarding delegated federal powers was somehow opaque?

Or why would there be a process for amending the Constitution written within the text of that document itself? Why amend something whose words simply can be reinterpreted into a meaning commensurate with the political agenda of those in power, or whose silences serve as an avenue for federal intervention?

To justify federal action on the basis that it is not specifically forbidden by the Constitution is ill-advised. If I tell my daughter, “Don’t have a cookie before dinner,” and she instead has a bowl of ice cream, she has not violated my explicit instruction but has defied its obvious intent. What the Constitution does not specifically condemn or approve has been left, *explicitly by its text*, to the states. Acknowledging this is simple fidelity to the historical record.

It is noteworthy that even some conservatives have taken to using the “General Welfare” clause of the Constitution as a basis for federal action (that, of course, they like). The author of the phrase, James Madison, commented on its meaning in *Federalist 41*: “general welfare” does not refer to “an unlimited commission to exercise every power which may be alleged (sic) to be necessary for the common defense or general welfare;” Madison said this reinvention of “general welfare” reflected “distress” in the minds of those making such a “misconstruction.”

Madison clarified further in letter many years later to former House Speaker Andrew Stevenson:

... if the terms [general welfare and common defense] were meant to embrace not only all the powers particularly expressed, but the indefinite power which has been claimed under them, (why was) the intention ... not so declared? Why, on that supposition, so much critical labor was employed in enumerating the particular powers, and in defining and limiting their extent?¹²

Commenting on Madison’s approach to the role and limits of the federal government, political scientists David Corbin and Matthew Parks write:

By clearly stating, reviewing, and rightly judging the powers conferred upon the federal government in the proposed Constitution, one could assess whether each power granted rightly tended to a necessary object or, conversely, encouraged corrupt political activity. (Madison's) list of powers granted, closely connected to the preamble's list of fundamental purposes for the Constitution, was simple and straight-forward:

- Security against foreign danger;
- Regulation of the intercourse with foreign nations;
- Maintenance of harmony and proper intercourse among the States;
- Certain miscellaneous objects of general utility;
- Restraint of the States from certain injurious acts;
- Provisions for giving due efficacy to all these powers.

All of these objects required specific powers—like “declaring war,” “providing armies and fleets,” “regulating and calling forth the militia,” “borrowing money” —that no right-minded student of American history and politics could deny were necessary for securing the young nation against domestic and foreign foes. Moreover, all the principal ends of the Constitution had been anticipated by the Articles of Confederation so that the extension of federal power in the Constitution amounted to a necessary correction in means rather than an invention of new and dangerous ends.¹³

This is a vitally important qualification: The Constitution did not so much expand the scope of the federal government as provide constituted means of achieving a relatively small but profoundly important set of objectives.

The implications of abandoning this position are summed-up eloquently by the late Harvard law professor Raoul Berger, “Respect for the limits on power are [sic] the essence of a democratic society; without it, the entire democratic structure is undermined and the way is paved from Weimar to Hitler.”¹⁴

We cannot fight every political battle simultaneously, but we should never abdicate principle for the pottage of illusory political peace. That includes ludicrous (or well-intended) expansions of the federal state. To support such expansions implies a deliberately naïve confidence in the efficacy of such.

Some battles are more important than others. But principles remain relevant and conservatives should never surrender their arguments or fail to make them in a compelling and appealing way.

Conservatism and Virtue

Conservatives need to rally around a common banner, to unite around some common principles with clear applications. Conservatism is more than soothing mood music for the right. “Conservatism is a political morality,” writes the philosopher John Kekes. “It is political because it is about the political arrangements that make a society good ... Conservatism is also moral because it takes it to be the justification of these arrangements that they foster good lives.”¹⁵

This mandate is made all the more urgent by the moral confusion of our time. “Our sense of instability, our feeling that everything is up for grabs, and our anxious insecurity has its most destructive source in the triumph of desire over restraint in contemporary culture,” writes R.R. Reno. “Divorce and serial cohabitation bring fluidity and change into the most ancient touchstone of permanence: home and hearth.”¹⁶

When desire and sentiment trump truth and goodness, everything is up for grabs, and the vague but constant feeling of unsettledness described by Reno takes root. This is why it is impossible to speak of conservatism without using moral categories (e.g., Kekes’ use of the term “good”) because conservatism is concerned, primarily, neither with enjoyment nor personal choice but personal and public virtue as ontologically essential to the proper function and stability of government and culture. In *Virtue and the Promise of Conservatism*, Bruce Frohnen offers a neat summary of the relationship between personal morality and a well-ordered society:

Virtue is ... the very basis of conservative political philosophy ... To act rightly, to do as God wills in one’s life, is to act virtuously. But one cannot judge, by the light of one’s own independent reason what it is to act rightly. One needs the guidance of revelation ... the guidance of principles that are self-evident to all men (rather than merely “obvious” to one prideful individual), and the guidance of traditional institutions, beliefs, and practices.¹⁷

As James Madison asked in 1788, “Is there no virtue among us? If there be not, we are in a wretched situation. No theoretical checks--no form of government can render us secure. To suppose that any form of government will secure liberty or happiness without any virtue in the people, is a chimerical idea.”¹⁸

Virtue and ordered liberty are interdependent. “The question of both securing freedom and sustaining limited government,” writes Ryan Messmore, “thus turns on how virtue is cultivated and which communities and institutions are most appropriate for the task.” Messmore concludes that these institutions are family, religion, and local associations.¹⁹

Thus, conservatism assumes that man is not a perfect being, nor one that can be perfected, but that still he is capable of high moral character. It also assumes that transcendent truth exists and is sufficiently accessible to all people as to provide universal norms of social conduct and personal behavior.

The conservative must never compromise about the core convictions emanating from such truth, including the equality of all persons before God and the sanctity of human life from conception until natural death. There are truths that are immutable and clear; to vacate them or qualify them is to step into moral failure.

However, on a subject like immigration reform, while general principles might be found, consensus in specific legislation is much harder. Disagreements on secondary and non-principial issues should be forces for compromise and then action, not division and mutual contempt.

What Happens Once They've Seen D.C.

Those disagreements are accentuated when conservatives suddenly find themselves, as officeholders or appointees, in the nation's capital. There, they have to choose between options that seldom are wholly satisfying and are overwhelmed by the near-microbial intricacy of the federal government. Confident bromides are blunted by the fine print of appropriations bills, the impenetrable alphabet soup of federal departments, agencies, and bureaus, and the maze-like hallways of previously unknown federal buildings.

The relative petrification of the apparatus of the federal government confronts conservatives when they become officeholders. As soon as conservatives take the oath to preserve, protect, and defend the Constitution, they often find themselves enmeshed in a bureaucracy so vast and whose political suction is so great that they nearly drown in it. Some simply "go native" and, while espousing the conservatism that brought them to office, acquiesce to things as they are in order to get along and be safely reelected.

Others put their fists up and fight continuously, succoring their convictions and perhaps, rarely, even winning a victory here and there. But they generally are ineffective and largely irrelevant to policy decisions. They alienate more than they persuade, but have the comfort of self-sustained purity. Such comfort is little more than vanity, and accomplishes nothing for the cause such purists so vehemently say they contend.

Genuine disagreements and grim bureaucratic realities combine to thwart comprehensive or rapid political achievement. So – what then for conservatives?

How to Stay Conservative Once in Power

When conservatives gain the office of the presidency again, and when there are professing conservative majorities in the House and/or Senate, how should they govern? How can they follow the Constitution with integrity while avoiding the sharp edges of dogma held with such rigidity that, invariably, its attempted application comes to nothing? How can the Congress itself rightly call itself "conservative" given the sharp-edged realities of governance?

One of the chief goals of any new conservative president should be the appointment of uniformly constitutionalist judges to the federal courts. No one should be appointed to any federal bench unless he or she believes firmly in the Constitution as it was written and understood by those who drafted and expounded upon it. It should be made clear that non-originalists need not apply and that the new chief executive will fight for the appointment of constitutional jurists however tendentious such fights might become.

Conservatives in the legislative branch face their own set of challenges: If funding for, say, the near-moribund Housing and Urban Development Department and the necessary Veterans Affairs Department is bound-up in the same bill, how should they vote?

Conservatives believe that the Constitution was written with sufficient clarity that it can be understood by intelligent, literate citizens and that bizarre or forced interpretations of it represent a form of ideologically-driven mental aerobatics more than a legitimate means of grasping what it says.

Yet an originalist reading of the Constitution does not mean that we compel common sense to take a holiday. Prudence, the great qualifier of extremism and overreaction, is an intrinsic part of the conservative approach to politics (and life, for that matter). As Clark Forsythe has written in his perceptive book, *Politics for the Greatest Good*:

... considerations of prudence inevitably extend to public policy and politics. Questions about the goals of politics, the purpose of law, the effective use of law, the moral boundaries of law, are as old as the Greek philosopher Aristotle ... A prudential (and legislative) strategy focuses on worthy goals, identifies effective means to achieve those ends and the wise use of limited resources, recognizes the limitations of the fallen world and its constraints on political action, and seeks to preserve the possibility of future progress. A prudential approach balances zeal with knowledge, especially knowledge of the current obstacles and of effective ways of how to overcome them.²⁰

The wise conservative seeks to wed prudence with conviction and achieve principled compromise. There are rare exceptions, such as when the stakes are so high or so involving great moral concerns that compromise cannot be principled.

Yet generally, principled compromise, the art of upholding one's convictions in the crucible of politics, is the effective conservative's stock-in-trade. "I would much prefer to get 80 percent of what I want," Ronald Reagan was famous for saying, "than to go off the cliff with the flag flying." The 20 percent not gotten is often the most important, and the percentage lost is usually larger than that. But the Gipper's larger point is well-taken: We can get what we can now and immediately go back to work for what we haven't gotten, without allowing ourselves the luxury of feeling that a partial victory is sufficient.

Principled conservatives must recognize the imprudence, not to mention the impossibility, of unbuilding Rome by fiat. In the case of Social Security, for example, modest steps toward restoring its fiscal viability and expanding the contributory choices of its participants might create the basis for larger-scale improvement of the system over time. These types of changes were envisioned in the plan offered by President Bush in early 2005; some will argue that he proposed his plan without suitable political preparation of the public, but that is a distinct issue from the plan's substance.

Immediate, comprehensive, politically violent action is usually impossible and almost always undesirable: Tearing things up, root and branch, leaves only disruption and pain. Better to take a deliberate but more surgical approach that might not be wholly satisfying. Partial remedies are sounder, and wiser, than surgery without anesthesia: The jarring, sudden actions some conservatives demand would do much harm to the social fabric, creating unrest and even rage among many Americans. Inevitably, unless human nature is re-wrought, *radical* removal of government support from those who currently rely on it would do more harm than good.

As such prudential steps are taken, they must be advanced within the context of a commitment to comprehensive reform for the sake of those they will benefit and for the cause of representative self-government itself. We must never permanently accept as part of our public life things that inherently erode the national good.

Caution uninformed by courage is an excuse for cowardice, while courage untempered by caution is recklessness. This is one of the reasons conservatism makes sense, particularly in relation to government, and why both principle and prudence are essential components of conservative governance.

Following True North, Cautiously but Bravely

A compass, I learnt when I was surveying, it'll-it'll point you True North from where you're standing, but it's got no advise about the swamps and deserts and chasms that you'll encounter along the way. If in pursuit of your destination you plunge ahead, heedless of obstacles, and achieve nothing more than to sink in a swamp, what's the use of knowing True North?²¹

Although these words were put in Abraham Lincoln's mouth by the eloquent Tony Kushner, they capture a healthy chunk of his thinking about politics and are wonderfully instructive for everyone involved in politics today.

Not all conservatives will agree on every issue (witness immigration reform), accept the same political strategy for achieving constitutional governance, or affirm a comprehensive list of identical priorities. Moreover, as we move toward our objectives, doing so without political calculation merely invites failure.

Some conservatives wish to bull forward, evidently unconcerned with success or failure and occupied only with the inner gratification of smug purity. These are psychic luxuries our times can ill afford.

Yet, can conservatives not agree at least on the nature and role of the U.S. Constitution? Certainly, there is an inherently contentious and oppositional quality to the battle over constitutional government. Political scientist John Marini argues that "Until either the administrative state (the government envisioned by the Left and center-Left) or the Constitution is definitively delegitimized, the battle within both government and the electorate over the size and scope of the federal government ... will inevitably continue."²²

Contention and opposition are wearing, but the alternative – acquiescence to Leviathan – is unacceptable.

To herald that the battle is lost and that conservatives need to grow up and get comfortable with the state is more than ill-advised. It is the abandonment of conservatism itself. After a long and useful discussion of whether "the interaction between interests and ideology [can] slice both ways," business economists J.R. Clark and Dwight R. Lee contend:

We do not rule out the possibility that Leviathan's size and scope may be reduced to an extent that does not seem possible today. Many will no doubt view our restrained optimism as worthy of Samuel Johnson's comment about "the triumph of hope over experience." Fair enough. Yet we believe Alfred Marshall had an important insight when he wrote, "Without hope there is no enterprise."²³

We do not know the outcome of the project of conservative governance. God does, and the duty of conservatives is to be faithful, wise, and courageous as we go forward, to share Lincoln's faith that "right makes might."

We do know that to be conservative is to be neither anti-government as such nor affirming of its disproportions. It is to be for the government as framed by the Constitution and founded upon the explicit contentions of the Declaration, bequeathed to us by the wise and brave forebears upon whose sacrifices we build our lives – nothing more, nothing less. Working to this end is surely one of the noblest public callings of our time.

Rob Schwarzwald serves as Senior Vice President for the Family Research Council. He oversees the Communications, Policy, and Church Ministries teams. He previously served as chief-of-staff to two Members of Congress and as a presidential appointee in the administration of George W. Bush.

Notes:

¹ A portion of this paper was published by Rob Schwarzwald, "Conservatives and the Constitution," *The Public Discourse*, January 24, 2014, accessed on April 29, 2014, <http://www.thepublicdiscourse.com/2014/01/11940/>.

² Mark Riebling, "Prospectus for a Critique of Conservative Reason," privately circulated paper, September 2009, accessed on April 29, 2014,

http://web.archive.org/web/20110708020244/markriebing.blogs.com/sources_and_methods/a-cr.html. See also, Joe Carter, "Family-First Conservatism: A Tentative Manifesto," *First Things*, October 5, 2010, accessed on April 29, 2014, <http://www.firstthings.com/blogs/firstthoughts/2010/10/family-first-conservatism-a-tentative-manifesto/>.

³ Joseph Story, *Commentaries on the Constitution*, Vol. I, (Boston and Cambridge: 1833), 464, accessed on April 29, 2014, <http://books.google.com/books?id=qAO3x-GN2rsC&dq=joseph%20story%20commentaries%20on%20the%20constitution&pg=PA464#v=snippet&q=freely%2C%20fully%2C%20and%20impartially%20administered&f=false>.

⁴ Abraham Lincoln, "Cooper Union Address," Abraham Lincoln Online Speeches & Writings, February 27, 1860, accessed on April 30, 2014, <http://www.abrahamlincolnonline.org/lincoln/speeches/cooper.htm>.

⁵ Allen C. Guelzo, "Abraham Lincoln or the Progressives: Who was the real father of big government," The Heritage Foundation, February 10, 2012, accessed April 29, 2014,

<http://www.heritage.org/research/reports/2012/02/abraham-lincoln-was-not-the-father-of-big-government>.

⁶ Raoul Berger, *Government by Judiciary: The Transformation of the Fourteenth Amendment* (Indianapolis: The Liberty Fund, 1997), 3.

⁷ "Thomas Jefferson to Spencer Roane," The Founders' Constitution, September 6, 1819, accessed on April 29, 2014, http://press-pubs.uchicago.edu/founders/documents/a1_8_18s16.html.

⁸ Jay Cost, "The Real Price of Politics," *Weekly Standard*, December 2, 2013, accessed on April 29, 2014,

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⁹ Jesse Jackson Jr., In an interview by the *Daily Caller*, "Left of the Mark," October 12, 2011, accessed on April 29, 2014, <http://leftofthemark.com/speaker/jesse-jackson-jr>.

¹⁰ See, for example, George Winterton, "The Concept of Extra-Constitutional Executive Power in Domestic Affairs," *Hastings Constitutional Law Quarterly* 7, no. 1 (1979): accessed on April 29, 2014,

<http://hastingsconlawquarterly.org/archives/V7/I1/Winterton.pdf>.

¹¹ William Howard Taft, *Our Chief Magistrate* (New York: Columbia University Press, 1916), 144-145, accessed April 29, 2014, http://www.archive.org/stream/ourchiefmagistra00taftuoft/ourchiefmagistra00taftuoft_djvu.txt.

¹² "James Madison to Andrew Stevenson," The Founders' Constitution, November 27, 1830, accessed on April 29, 2014, http://press-pubs.uchicago.edu/founders/documents/a1_8_1s27.html.

¹³ David Corbin and Matt Parks, "In Washington, It's Politics 'By Any Means Necessary,'" *The Federalist*, April 27, 2014, accessed on April 30, 2014, <http://thefederalist.com/2014/04/27/in-washington-its-politics-by-any-means-necessary/>.

¹⁴ Berger, *Government by Judiciary*, 460.

¹⁵ John Kekes, "What is Conservatism?," *Philosophy: The Journal of the Royal Institute of Philosophy*, 72 (July 1997): 281, accessed on April 29, 2014,

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¹⁶ R.R. Reno, "The Challenge Facing Conservatism," *First Things*, December 1, 2008, accessed on April 29, 2014, <http://www.firstthings.com/web-exclusives/2008/12/the-challenge-facing-conservat>.

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