



# The Conservative Case for the Constitution, Part I: The Problems of Human Nature

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## Key Points

- Many progressives believe the Constitution urgently needs reform to secure democracy, responsibility, and other values.
- A conservative case for the Constitution must defend it as an instrument of government proven by the test of time to govern humans as they truly are.
- Progressive critiques of the Constitution ignore humanity's selfishness and limited capacity for good that the founders understood.

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In the Donald Trump era, progressives have taken their ire out on not only the former president and the Republican Party but also the Constitution. Indeed, a stream of articles has criticized virtually every nook and cranny of our nation's founding charter. In a December article, Salon.com asserted that the Constitution is "hopelessly outdated," citing, among other maladies, "declining public trust," "the electoral crisis," and even the COVID-19 pandemic.<sup>1</sup> In a sprawling *Harvard Law Review* essay, Michael Klarman bemoaned the "degradation of democracy" and called for a number of sweeping reforms, including eliminating equal apportionment in the Senate (despite the constitutional prohibition against it) and the nationwide implementation of multimember districts determined by ranked-choice voting.<sup>2</sup> In a 2019 article in the *Atlantic*, Sanford Levinson warned readers that the "Constitution is the crisis."<sup>3</sup>

This genre is quite a bit older than many progressives might appreciate. Writing in the *Atlantic*

134 years ago, a Princeton academic named Woodrow Wilson compared the American system of government to the British system. He found the former lacking in "responsibility" and called for a major renovation—specifically the initiation of ministerial government, whereby the executive and legislative branches would be merged to some extent.<sup>4</sup>

Many complaints are essentially partisan in nature; their calls are not so much about advancing "democracy," but rather advancing the Democratic Party. Still, there is something deeply American about calls to reform our system of government. After all, the revolutionary generation did exactly that—twice—first by overthrowing King George III's rule and then by replacing the Articles of Confederation with the Constitution. Some founders can certainly be cited as advocates of periodic, sweeping changes. For instance, Thomas Jefferson once wrote to James Madison "that the earth belongs in usufruct to the living; that the dead have neither powers nor rights over it."<sup>5</sup> From that, it follows

that no generation should be bound by a faulty instrument of government written so long ago.

The progressive critique of the Constitution therefore suggests a fair question: How would a conservative case for the Constitution look? For starters, it could not be intended to advance the prospects of the Republican Party, in which political conservatism is now mainly housed. Instead, it must embody a larger understanding of conservatism—one that self-identified Republicans could certainly agree with but might also appeal to moderate Democrats and independents.

Defending the Constitution against radical change hinges foremost on two basic ideas about humanity. First, mankind is a species of dubious morality, capable of working tremendous good but also horrifying evil. This is rooted in human nature itself and cannot be changed. Government's task therefore is to design institutions for humans as they are and not as we wish them to be. The Constitution—especially through the separation of powers, checks and balances, and federalism—does a good job of checking the selfish impulses of both citizen and statesman. This should not be altered.

Second, mankind's ability for understanding is decidedly limited. The rational faculty is no doubt an amazing capacity, separating us from beasts, but it does not elevate the species to the level of godhood. While it serves as the foundation for the acquisition of knowledge, it is much more difficult to know things than we often care to admit. Accordingly, we must judge speculative alternatives to the Constitution strictly. It is not enough to alter the Constitution because it does not conform to some abstract morality or vague social goal such as "more democracy." Instead, criticism against the Constitution should be rooted in an actual failure of the document to provide a specific good to the people of this country, and the alternative should be clearly demonstrated to provide what is lacking.

This sort of argument is unlikely to appeal to progressives. Theirs is a markedly different view of the nature of man, and the left and right have long been, and will continue to be, talking past one another. Where conservatives are prone to celebrate the Constitution and be skeptical of contemporary alternatives, progressives will have the opposite view. But just as the real value of debate is often not in persuasion, rather in refining and improving

one's own thinking, so it is worthwhile for conservatives to think through the progressive arguments and formulate a response. It will help us better understand our own views, identify legitimate progressive criticisms, and perhaps devise solutions to existing problems in our system of government.

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In *The Great Debate: Edmund Burke, Thomas Paine, and the Birth of Right and Left*, the American Enterprise Institute's Yuval Levin demonstrates that the political divide of the contemporary era ultimately relates to fundamental disagreements about the nature of man and society.<sup>6</sup> These deep-seated disputes prompt progressives to criticize the Constitution for being wrongheaded at worst and outdated at best, but which can and should induce conservatives to defend it. Levin's work outlines many points of ontological debate between right and left, but two are especially useful in establishing a defense of the Constitution.

The first is the capacity of reason to elevate humanity's moral sense to make people better. As Thomas Paine argued in the *Rights of Man*,

There is a morning of reason rising upon man on the subject of government, that has not appeared before. As the barbarism of the present old governments expires, the moral conditions of nations with respect to each other will be changed. Man will not be brought up with the savage idea of considering his species as his enemy, because the accident of birth gave the individuals existence in countries distinguished by different names; and as constitutions have always some relation to external as well as to domestic circumstances, the means of benefitting by every change, foreign or domestic, should be a part of every constitution.<sup>7</sup>

The implication is that man's capacity for goodness is a function of the institutions of government under which he exists. As the latter are reformed, the former can be improved. As it relates to the Constitution, this suggests that an instrument of government designed to restrain the badness of

the people in 1787 is no longer relevant generations later because people are no longer that bad.

Woodrow Wilson gave a modern expression to this argument in his prepresidential writings. “A full century had gone by since the government of the nation was set up,” he argued in the late 19th century.<sup>8</sup> Since then, the country had

drawn together to a common life. . . . Henceforth matters were to be in debate which concerned the interests of society everywhere, questions of the modern world, touching nations no less than communities which fancied themselves to lie apart.<sup>9</sup>

This was markedly different than the country the Founding Fathers were dealing with when framing the Constitution. Back then, the people may have been ignorant, factional, and unfit to rule except for indirectly. But Wilson saw a truly national people, animated by “the common consciousness, the common interests, the common standards of conduct, [and] the habit of concerted action.”<sup>10</sup> Thus, the real danger in democratic government was not narrow majorities governing selfishly for themselves, but government agents that can operate without fear of such a majority.

There is no danger in power, if only it be not irresponsible . . . if it be centered in heads of the service and in heads of branches of the service, it is easily watched and brought to book. If to keep his office a man must achieve open and honest success, and if at the same time he feels himself intrusted with large freedom of discretion, the greater his power the less likely is he to abuse it, the more is he nerved and sobered and elevated by it.<sup>11</sup>

Together, Wilson and Paine establish a key criticism of the constitutional order, which undergirds most contemporary complaints. The human capability for goodness is not fixed over time. It can evolve and improve, and prudent safeguards to restrain a people designed sensibly in one era may

become an unjust prison in another. Contemporary progressive critics of the Constitution usually employ this view as a basis to attack the separation of powers, whose defense will be a subject of a subsequent entry in this series.

Before we can defend the actual provisions of the Constitution, we must first highlight the view of human nature it implicitly endorses. The founders were influenced by many different thinkers, both ancient and modern, but their view of the relationship between reason and morality owes a disproportionately heavy debt to Scottish philosopher David Hume, who rejected not only Paine’s idea that reason can triumph over passion but also the notion that the two are in conflict. “Reason is, and ought only to be the slave of the passions,” Hume urges, “and can never pretend to any other office than to serve and obey them.”<sup>12</sup>

Hume’s view of human morality points toward what Madison called the “great desideratum in government,” or in more contemporary parlance, the essential problem of government. Hume writes,

All men are sensible of the necessity of justice to maintain peace and order; and all men are sensible of the necessity of peace and order for the maintenance of society. Yet, notwithstanding this strong and obvious necessity, such is the frailty or perverseness of our nature! It is impossible to keep men, faithfully and unerringly, in the paths of justice. . . . He is seduced from his great and important, but distant interests, by the allurements of present, though often very frivolous temptations. This great weakness is incurable in human nature.<sup>13</sup>

Hume’s position on the subservience of reason to passion makes such a scenario possible. Humans recognize through their rational faculty that justice is an essential prerequisite for human flourishing, but their passion is their motive force, and reason cannot enable them to secure justice spontaneously. This, Hume argues, suggests the origins of government—an outside institution whose purpose is to restrain the passions for justice’s sake.

The problem, however, is that government is created and implemented by human beings. So, its ability to secure justice is likewise corrupt. As Madison argues in a letter to Jefferson,

The great desideratum in government is, so to modify the sovereignty as that it may be sufficiently neutral between different parts of the Society to control one part from invading the rights of another, and at the same time sufficiently controlled itself, from setting up an interest adverse to that of the entire Society.<sup>14</sup>

In other words, a republican government must be designed to empower good majorities to rule, stop bad majorities—selfish factions that happen to amount to more than half of society—from destroying justice for their own gain, and stop the government itself from becoming such a faction.

The Constitution is, in essence, a solution to this problem of government, and, in a subsequent report, I will argue that it is an excellent solution. But for now, it is necessary to highlight the divide between the progressive ideas laid down by Paine and Wilson and this alternative established by Hume and Madison. Namely, the progressive does not recognize the intractability of this problem. The evolution of society has removed the danger of majorities, and therefore, the task of an instrument of government is to ensure government officials are solely responsible to them.

The conservative would like to believe that Paine and Wilson are correct. He or she would like to think there is such a thing as the “American people,” who are sufficiently virtuous and unified that their will is benevolent. But the conservative is forced by experience, and an investigation into his or her own soul, to acknowledge Hume’s wisdom. Human beings are fundamentally driven by selfish passions that reason cannot reform, and for all the trappings of modern society, we remain, as Alexander Hamilton once succinctly put it, “rather reasoning tha[n] reasonable animals for the most part governed by the impulse of passion.”<sup>15</sup> At best, the rational faculty can redirect those selfish passions toward socially beneficial ends. If this is true for individual humans, it must likewise be true for

communities, including nations. And so, the conservative looks at the fearsome powers of government as a means to not simply do great good on behalf of the people but also wreak tremendous evil on behalf of avaricious and selfish majorities.

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This skepticism of human goodness predates modern conservatism by millennia. It is a central feature of both Judeo-Christian religious traditions and classical philosophy. Cicero, for instance, warned that every good government is separated from a “kindred evil” by merely a “sheer and slippery path.”<sup>16</sup> Likewise, the Greco-Roman historian Polybius sketched out in his *Histories* government’s tragic cycle of “growth, zenith, and decadence.”<sup>17</sup> The difference between a good and bad government for the ancients came down to whether it successfully corralled human selfishness.

Conservatives privilege such old ideas and institutions that have stood the test of time because, just as they doubt man’s capacity for goodness, they doubt his capacity for understanding. In the conservative view, the irreducible complexity of the world is beyond what any one person, group of people, generation, or even civilization can comprehend. As such, traditional notions and systems should be preferred over untried and novel innovations. This is not an anti-intellectual view. Conservatives believe that new knowledge can be acquired—and of course a quick glance at the technological wonders of the past two centuries requires such an acknowledgment. They have a certain humility about man’s position vis-à-vis the rest of existence.

Edmund Burke argued forcefully for this view in his defense of the British Constitution against those who sought to do to Britain what the French Revolution did to France. In *Reflections on the Revolution in France*, he wrote,

We are afraid to put men to live and trade each on his own private stock of reason; because we suspect that this stock in each man is small, and that the individuals will do better to avail themselves of the general bank and capital of nations and ages.<sup>18</sup>



A better summary of the conservative view of tradition is hard to find: Individuals barely understand the world, but *humanity* over the ages has nevertheless slowly created wise institutions.

In the 20th century, philosopher Karl Popper and economist F. A. Hayek forcefully restated Burke's insight. Popper believed that human knowledge was a product only of empirical trial and error and that seemingly established precepts must remain forever provisional. "We know a great deal," he acknowledged, but

our ignorance is sobering and boundless. . . . With each step forward, with each problem which we solve, we not only discover new and unsolved problems, but we also discover that where we believed that we were standing on firm and safe ground, all things are, in truth, insecure and in a state of flux.<sup>19</sup>

Hayek, meanwhile, applied this notion of limits to man's efforts to reshape society, arguing against the conceit of central planning.

It would be impossible for any mind to comprehend the infinite variety of different needs of different people which compete for the available resources and to attach a definite weight to each. . . . The limits of our powers of imagination make it impossible to include in our scale of values more than a sector of the needs of the whole society, and that, strictly speaking, scales of value can exist only in individual minds, nothing but partial scales of values exist—scales which are inevitably different and inconsistent with each other.<sup>20</sup>

Popper and Hayek were neither revanchists nor traditionalists. They both embraced an open society and a market economy, in which ideas and goods are freely exchanged. But just as Burke did before them, they both opposed the progressive assumption that the world is comprehensible to the human mind.

Like Popper and Hayek, the 21st-century conservative favors a wide sphere for debate and discussion. It is all well and good for progressives to criticize the Constitution, and indeed in a later report, I will adduce several ideas for reform from their critique. But while the conservative celebrates debate, we have what Burke called a "prejudice" for the institutions that have served society well.

We are generally men of untaught feelings; that instead of casting away all our old prejudices, we cherish them to a very considerable degree, and, to take more shame to ourselves, we cherish them because they are prejudices; and the longer they have lasted, and the more generally they have prevailed, the more we cherish them.<sup>21</sup>

While the conservative will tolerate and even encourage the progressive arguments against this and that government provision, they are not disposed to think much of them. Society is old and has stood the test of time. We who live today are young and foolish. Recognizing our smallness creates in the conservative mind an appreciation for what has been done before and a humility when suggesting changes to the existing order.

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The conservative view of human nature leaves one quite skeptical of an individual man, yet in awe of mankind. That a species as morally and intellectually frail as we are could nevertheless build durable, reasonably successful institutions speaks to the fact that, while we do not possess nearly as much virtue and wisdom as we might fancy, we nevertheless possess some. However, while the achievements of civilization are worthy of praise, they are not perfect, as perfection is outside our moral and intellectual capacity. Accordingly, conservatives should be prepared to consider reforms. Again, Burke is useful in this regard; while he defended the foundations of English civilization against the radical Jacobins, he was still a Whig and a reformer. There is a difference between tearing down and building up.

There is nothing conservative about refusing to admit the need for reform. Instead, the conservative is defined by the criteria he or she demands that any reforms meet. The previous considerations regarding human nature suggest four general principles. First, conservatives should only endorse reforms that are consistent with their view of human nature. So, for instance, democratization can and has often been a valid reform agenda, but “democracy” is not a good in and of itself. Just as individuals are selfish and shortsighted, so are entire peoples. Conservatives must take care not to endorse any reforms that elide this truth.

Second, reforms should intend to address practical needs in society that are currently underserved. Many liberals speak predominantly in the abstract—reducing polarization, maximizing governmental responsibility, or eliminating gridlock. These values are ethereal; they do not necessarily point to real-world problems. Instead, they often belie a progressive tautology. Gridlock, for instance, is a feature, not a bug of the American system, so to complain about it in the abstract may be nothing more than claiming that the Constitution does not embody the critic’s values. If, on the other hand, there is a specific issue or problem that our government does not handle well—such as how gridlock today prevents the government from passing necessary appropriations bills timely—that is a different matter. That is an actual problem for which specific solutions could be proffered, evaluated, and eventually implemented.

Third, specific reforms must minimize the possibility of negative externalities or unintended side effects. Almost inevitably, that means changes should be modest in scope. Sweeping reform proposals are almost always speculative in nature, with a substantial yet unmeasurable possibility of bad or even extreme side effects.

Here, remembering Hayek’s warnings about the limits of central planning and Popper’s admonitions about the narrow scope of scientific inquiry are especially useful. Just because, for instance, a professor writes a breezy article in the *Atlantic* that employs comparative analysis to argue that the

United States is wrong not to employ a parliamentary system, it is not enough of a reason for change. It is too big a proposal with too thin an evidentiary basis. Conservatives should want to see how changes function in cases with clear analogues to our unique nation. So, we might gain purchase on the question of whether term limits would work for Congress by looking at how similar laws have worked in the states. But sweeping aside vast swaths of our constitutional order because comparatively small and homogenous European democracies have functioned well for the past 70 years is just not good enough.

Finally, conservatives should admire and emulate the progressive desire for reform—not just because reforms are necessary but also because a system that remains unadjusted for too long may be vulnerable to collapse. Indeed, conservatives should be strategic and look for ways to address needs expressed most strongly by constituencies usually on the left. Doing so will actually strengthen the existing constitutional order. For instance, progressives are right to complain that wealthy interest groups have too much influence over the policymaking process, but they usually offer extreme changes to our system of government to address that. Conservatives, on the other hand, should look for modest tweaks that might have profound benefit. For instance, increasing the pay and number of congressional staffers dedicated to researching policy problems might reduce the legislature’s reliance on outside interest groups to provide needed information on the potential effects of a policy proposal.

There is a positive, conservative case for the Constitution. Progressives are not going to agree with it, naturally, because they are progressive. But the case still should be made. Over the next several reports, I will defend key parts of our system of government, in a way that ultimately leans heavily on this understanding of human nature. Human beings are limited in both their moral vision and their understanding. The Constitution ultimately is a good instrument of government because it sees humankind in this way, for what it actually is, rather than what progressive reformers wish it to be.

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## Notes

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