VOLUME XIV, NUMBER 3, SUMMER 2014

CLAREMONT
REVIEW OF BOOKS

A Journal of Political Thought and Statesmanship

Algis Valiunas:
The Great War

John Yoo:
Is the President a King?

Paul A. Cantor:
Jonathan Swift

Plus:

Steven F. Hayward:
Barry Goldwater's Extremism

James W. Ceaser:
Three Funerals

William Voegeli:
The Resurgent Left

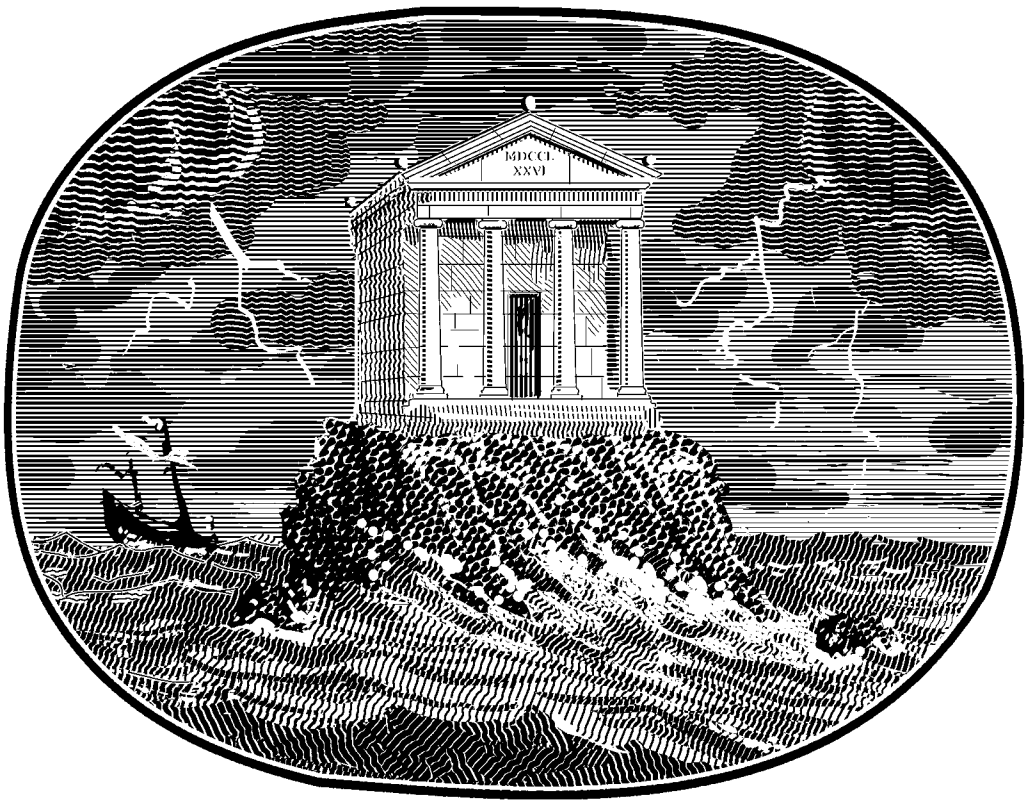
John O'Sullivan:
The Good, the Bad, & the Ugly American

David P. Goldman:
Codevilla at War

A Publication of the Claremont Institute
PRICE: $6.95
IN CANADA: $7.95

Essay by Richard Samuelson

John Adams vs. Edmund Burke



Conservatism is usually regarded as a disposition to conserve a heritage from the past. As William F. Buckley, Jr., said only somewhat playfully in the first issue of his conservative magazine, he meant for *National Review* to "stand athwart history, yelling Stop!"—or, at least, Slow Down. *NR*'s Jonah Goldberg jokes that the most conservative line in the movie *Animal House* is, "But sir, Delta Tau Chi has a long tradition of *existence* both to its members and the community at large." Progressives, who hold that "progress" is virtually locked into the historical process, come close to assuming that change is good unless it can be clearly demonstrated otherwise. Conservatives recognize that some changes are inevitable but that not every change is good, and some are wicked. Believing that the world can be transformed, Progressives feel free to regard the past as a record of things that we can do without. Conservatives are more skeptical that transformative change is, in fact, possible, and if possible, desirable.

Intellectuals often assume that conservatism is fundamentally the same in America and Europe, and they take Edmund Burke as the model on both sides of the Atlantic. Yet the use of the terms "Left" and "Right" to describe the main political alternatives didn't begin until the French Revolution. If American conservatism is grounded in the principles of the American Revolution—the principles of 1776—then the French debates of 1789 might not be the place to look to discover its meaning. The American Left forgets this when it suggests that America's conservatives secretly yearn for throne and altar, an allegation both rhetorically convenient and historically uninformed. So little do our conservatives long for a return to the aristocracy and established church of Old Europe that, as Leo Strauss once quipped, one of this country's most conservative groups is called the Daughters of the American Revolution! The result is an asymmetrical debate. America's "Left" thinks it's basically in the same fight as Lafayette, Danton, and Robespierre. The American "Right" begs to differ.

To a remarkable degree, America's conservatism, unlike Europe's, defines itself *against* history, or perhaps "History," understood in the progressivist sense. It is not so much about seeing a particular culture survive through time as it is an effort to preserve a form of government and a way of life based on certain self-evident truths—valid always and everywhere—about God, man, and nature. Insofar as American politics and culture rest upon those truths, of course, American conservatives are rightly concerned about the maintenance of American culture. Quite often, the fight is against leftists who think capital-H History has rendered those truths obsolete. And if their view of History is correct, then the political sides are, by definition, the same in America and in Europe. Meanwhile, the old-fashioned Continental Right is uncomfortable with the very idea of human nature. As Joseph de Maistre, a leading French reactionary, wrote in 1797, "Now, there is no such thing in the world as Man," and hence there could not be such a thing as the rights of man. "In the course of my life," he continued, "I have seen Frenchmen, Italians, Russians, etc.; I even know, thanks to Montesquieu, that one can be a Persian. But, as for Man, I declare that I have never met him in my life."

By contrast, Americans (progressive ideologues excepted) believe it's important to study the founding not just because it's part of our history, but because its self-evident truths really are true. There are some truths, in short, accessible to man as man, applicable, at least

potentially, to all men everywhere. Whether they are Italians or Russians, for example, human beings remain neither brutes nor gods. American conservatism defends certain "values" like these less because they are part of our tradition, though they are, than because they are true and good. Similarly, America's conservatives defend the truths of 1787—embodied in our Constitution, holding that a system of limited, delegated, and separated powers is the best—perhaps the only—way to secure a government dedicated to the rights of man, properly understood. To many on the Left (and on the European Right), the idea that men can know truth—as distinguished from ironic "truth"—is self-evidently false, as is the idea that certain things are right for man because they accord with his nature, others wrong because discordant. Progressives posit that what's best for man is an artifact of History, always changing, improving with the age. This perspective explains progressives' otherwise bizarre charges of "nihilism" against America's conservatives: to deny the truth of History is, from this perspective, to believe in nothing.

Scholars have puzzled over this element of American political thought. The distinguished historian John Pocock takes the truth of History as a given, finding that American development "has been early modern rather than historicist; it has been envisaged in the form of a movement out of history." The renowned political scientist Louis Hartz believed "the traditionalism of the Americans, like a pure freak of logic, often bore amazing marks of anti-historical rationalism." The historicist premises of Pocock, Hartz, and others are hardly an objective starting point, however, no matter how much progressives like to think they are. This way of thinking is only a "freak of logic" if their view of the nature of history is simply true.

What about the famous American belief in progress? A strain of the American mind is quite realistic about it, agreeing with John Adams's comment, "I must esteem all the speculations of divines and philosophers about universal and perpetual peace as short-sighted, frivolous romances." Americans supported Ronald Reagan's defense build-up in the 1980s because we subscribe to the ancient wisdom that those who wish for peace had best prepare for war. We have hope, even under President Obama, but we also agree with Benjamin Franklin that "he that lives upon hope will die fasting." American conservatism appeals to that clear-eyed realism. It highlights the difference between progress in science and technology, which can be cumulative, and progress in morals and politics, which in practice must start over again with every generation. Accordingly, our conservatives foster a tradition of statesmanship that returns to the truths and the wisdom of the founders as touchstones; as opposed to Europe's conservatives, who see themselves mainly as managing their own particular political tradition over time.

Burke, Adams, and the American Revolution

Comparing John Adams's ideas with Edmund Burke's helps us understand this American conservatism. With some justice, scholars like Russell Kirk and Peter Viereck have called Adams America's first conservative. Yet his conservatism differed in important ways from Burke's, reflecting the argument that split the British empire in 1776.

Because of the nature of the American Revolution, America's conservatism was much more comfortable than Europe's with "the laws of nature and of nature's God." In England before the American Revolution the dominant opinion held that Parliament had the legal right to make law for the colonies "in all cases whatsoever," as the Declaratory Act of 1766 held. Burke agreed on the law's validity, but thought it beside the point. Of Parliament's sovereignty over the colonies, he noted that "this speculative idea of a right deduced from the unlimited nature of the supreme legislative authority, [is] very clear and very undeniable, but when explained proved and admitted little to the purpose." He argued Parliament would be foolish to assert its legal rights in ways that would have adverse consequences. Along the same lines, he emphasized the importance of precedents, even if they were not, and could not be, legally binding on Parliament; and he counseled the need to manage change slowly over time. In his "Speech on Conciliation with the Colonies," he argued that the question "is not, what a lawyer tells me I *may* do; but what humanity, reason, and justice tell me I *ought* to do." As a narrow matter of formal law, Burke agreed with the 2nd earl of Pembroke that "A parliament can do any thing but make a man a woman, and a woman a man." With such sweeping power, then, there was no necessary connection between what was right and what was legal. Living under such a constitution, Burke's statesmanship made sense

American law was different. In a 1766 essay, Adams pondered the British constitution's essence. "Some," he wrote, "have defined it to [be] the practice of parliament; others, the judgments and precedents of the king's courts; but either of these definitions would make it a

constitution of wind and weather, because the parliaments have sometimes voted the king absolute, and the judges have sometimes adjudged him to be so. Some have called it custom, but this is as fluctuating and variable as the other." Instead, he located the British constitution in British constitutionalism—the mode of reasoning about constitutional things. One of the premiere American lawyers of his day, Adams was a close student of Edward Coke, the great English jurist of the late 16th and early 17th centuries. Common law was not mere legal traditionalism in Coke's view. "The laws of nature are most perfect and immutable," Coke wrote, "whereas the condition of the human law always runs into the infinite and there is nothing in them which can stand for ever. Human laws are born, live, and die." Good law was a matter of applying the laws of nature to particular circumstances. Coke explained the matter with a legal pun, listing the four virtues as fortitude, temperance, justice, and *juris*prudence.

But what was prudence? Fellow Revolutionary Benjamin Rush noted to Adams that their friend Charles Lee dismissed prudence as a "rascally virtue." Adams replied that

> his meaning was good. He meant the spirit which evades danger when duty requires us to face it. This is cowardice, not prudence.

That was not prudence properly understood.

> By prudence I mean that deliberation and caution, which aims at no ends but good ones, and good ones by none but fair means, and then carefully adjusts and proportions its good means to its good ends. Without this virtue there can be no other. Justice itself cannot exist without it. A disposition to render to every one his right is of no use without prudence to judge what is his right and skill to perform it.

Prudence divorced from the other virtues would become amoral pragmatism.

By Burke's day Parliament had left Coke behind, holding itself to be *sovereign* in the new, modern sense of the term—its word was law. That being the case, the challenge a statesman faced was to persuade such a Parliament to act prudently, teaching it how to act in light of this new, absolute, understanding of its powers. Americans rejected that new idea of sovereignty. The notion that law is nothing more than the will of the legislature or the government, however just or unjust, was never accepted by the colonists. (Giv-

ing deference to the legislature, and allowing that its will was law, were two very different things.) That's why it's plausible that Burke's traditionalism was, in reality, a reaction to the particular situation in which he found Britain in the late 18th century. In one of his writings on the American crisis Burke highlighted the importance of human nature in politics: "politics ought to be adjusted, not to human reasonings, but to human nature; of which reason is but a part, and by no means the greatest part." Burkean traditionalism was one way of managing human nature. Whatever the provenance of Burke's traditionalism, even a Burkean would allow that the differences between America and Britain would suggest a very different conservatism in America than in Britain. In his *Reflections on the Revolution in France*, Burke demonstrated why American and British conservatism would be fundamentally different things. He asserted that "[g]overnment is not made in virtue of natural rights, which may and do exist in total independence of it; and exist in much greater clearness, and in a much greater degree of abstract perfection; but their abstract perfection is their practical defect." To Burke, natural rights were distinct from government. No man of 1776 could agree. Similarly, he criticized those who "mixed up law with politicks."

In the colonies law remained political, and in 1776 the Americans made revolution on the basis of natural rights. In other words, American politics never created a strict separation between what is just and what is legal, and American constitutionalism would be grounded upon certain principles of right. When the revolution came, the Americans found that beneath the rights of Englishmen in America were the natural rights of men, and they built their new regime upon that foundation. In the 1790s, Burke criticized a "new, and hitherto unheard-of bill of rights," guaranteeing Englishmen the right "to choose our own governors," "to cashier them for misconduct," and "to frame a government for ourselves." Adams, along with his fellow Americans, embraced all three. How to apply those rights in practice, however, was a very fraught question.

The import of this theoretical distinction comes through when we contrast more closely Burke's dismissal of the right of men "to choose our own governors" with Adams's embrace of it. Consider the Massachusetts Constitution, which Adams regarded as one of his great contributions. In Massachusetts the belief that all men are created equal and that governments are created by men to protect those rights, was clear. The people called a special convention in 1779 to draft a constitution, and that constitution was submitted to the people for ratification. Shortly after ratification, that same constitution killed slavery in the state. The state Supreme Court read the Declaration of Rights in the constitution, saw that it said that "All men are born free and equal, and have certain natural, essential, and unalienable rights," and, on that basis, concluded that slavery was no longer legal in the Commonwealth. "Abstract" notions of right mattered in law and politics.

Like the American Tories, European conservatives sometimes dismissed the principles of nature as dangerous. As understood by many French revolutionaries, they were! Adams's reaction was not to denigrate principles or reason, but to contrast what the *philosophes called* reason with reason rightly understood. Reason, rightly understood, was a better guide than both tradition and "reason." It was, perhaps, the only possible guide: history does not say where it is going, and tradition does not say when *a* tradition has run its course, or how it is to be adapted to changing circumstances. (Recall that Woodrow Wilson claimed to be a disciple of Burke.) The refusal to give up on reason is the quality that most differentiates American from European conservatism.

> If John Adams is correct about human nature, then modern historians are wrong about the nature of history and about the nature of America.

John Adams and the French Mistake

Like Burke, Adams was an early and thorough critic of the French Revolution and the philosophy that produced it. As early as 1790 he predicted the French Revolution would result in the destruction of "a million of human beings," and, as he reflected later on, "In this situation I was determined to wash my hands of the blood that was about to be shed." Yet Adams's critique of the French Revolution was not Burke's. Burke denounced the French revolutionaries primarily for making war on their traditions; Adams denounced them for making war on human nature. This turn has puzzled scholars. In *America and Europe in the Political Thought of John Adams* (1964), for example, Edward Handler allows that Adams was "elaborate in his resort to history," yet he finds Adams's ideas "quite unhistorical." He notes, "Adams never developed, as a Burkean theorist might have been expected to do, a philosophical defense of tradition and prejudice in vindicating the complexity of the American state constitutions." Handler works from an elementary syllogism:

A. Real conservatives use tradition to defend diverse existing institutions;
B. Adams did not rely mainly on tradition to defend existing institutions;
Therefore,
C. Adams was not a real conservative.

This argument leaves no room for the possibility that Adams's mode of reasoning differed from Burke's, as America's conservatism differs from England's.

Defending an inherited constitution against innovation, Burke criticized "the total contempt which prevails with you, and may come to prevail with us, of all ancient institutions, when set in opposition to a present sense of convenience, or to the bent of a present inclination." To that end, he assimilated England's Glorious Revolution of 1688 into an English traditionalism. In religion, he did the same, smoothing over the English Reformation. Facing the French Revolution, Burke defended tradition, prescription, and prejudice against unreasoning innovation. He also criticized the French revolutionaries for ignoring the realities of human nature, but it was not his main focus.

Adams, too, opposed innovation for the sake of innovation, but the direction of his thought was different. His focus was on how the *philosophes* misunderstood the nature of man in general and of politics in particular. That understanding is manifest in his major writings of the 1780s and early 1790s—the *Defence of the Constitutions of Government of the United States of America* and the *Discourses on Davila*. *Philosophes* like Turgot criticized Adams for creating a constitution with checks and balances—the Massachusetts Constitution, which separated legislative, executive, and judicial powers, and incorporated a bicameral legislature and a governor with a veto. Adams responded. To defend that "mixed and balanced" constitution, the *Defence* combined a discussion of constitutional ideas and of political philosophers with nearly a thousand pages of case studies from ancient and modern republics. The polemical intent was to demonstrate, empirically, by piling on example after example after example, that there is such a thing as human nature, that it cannot

be changed, and that statesmen cannot afford to ignore it. Moreover, he suggested that the very same human nature provided a standard by which to judge which political institutions were likely to succeed and which were likely to fail, and which were good and which bad.

Adams's mode of argument angers our intellectuals. Joyce Appleby, former president of both the American Historical Association and the Organization of American Historians, takes the typical view, dismissing Adams's book as a "tendentious three volumes of historical extracts." Modern intellectuals—modern historians in particular—want to take the nature of history as settled. Adams draws that premise into question. After all, the French "Prophets of Progress," as one book calls them, laid the foundation of the modern historical view. Adams was criticizing them by criticizing their assumptions about the nature of man and of history. Moreover, if Adams is correct about human nature, then modern historians are wrong about the nature of history and about the nature of America, and, we should add, about the nature of conservatism in America.

Adams's years as a diplomat in Europe gave him the leisure to get to know leading French *philosophes*, and to read deeply in ancient and modern philosophy and history. An acute observer of politics, he worried before the Revolution that the *philosophes* were about to drive France, perhaps all of Europe, into a ditch. The French mistake? To Adams, it was not, à la Burke, the *philosophes'* contempt for their own tradition; it was their contempt for man. Their extravagant hopes for what man could be, fostered contempt for man as he actually is. For emphasis, Adams took a passage from Samuel Johnson as the epigraph for the third volume of the *Defence*: "Some philosophers have been foolish enough to imagine, that improvements might be made in the system of the universe, by a different arrangement of the orbs of heaven; and politicians, equally ignorant, and equally presumptuous, may easily be led to suppose, that the happiness of our world would be promoted by a different tendency of the human mind."

In much of the *Defence* Adams focused on political causes and effects. His conclusions were "proved," as he put it, "by the constitution of human nature, by the experience of the world, and the concurrent testimony of all history." His *Discourses on Davila* begins with a line from Aesop that roughly translates as, "Happy are those who can learn caution from the danger of others." Adams did not deny that men were creatures of habit and that, therefore, custom mattered a great deal. His point was that human life followed patterns discernable in the past and the present. As he put it in *Davila*, "the same causes produce the same effects" among men no less than in the rest of nature. Discussing the example of Renaissance Florence, Adams argued that its "factions grew out of the nature of men under such forms of government." And elsewhere, regarding the history of Pistoia, "their intrigues are full of all that duplicity and hypocrisy which is universal on such occasions."

What caused the evils that soil history's pages? The *philosophes'* answer was that scarcity had produced strife, and bad men had warped human development, misshaping societies across the globe. Easing the burdens of life would solve the first problem, and the fact that human nature was remarkably plastic, and could be recast, would allow them to take care of the second. Adams disagreed. "Rousseau says the first man who fenced a cabbage yard ought to have been put to death. Diderot says the first man who suggested the idea of a god ought to have been treated as an enemy of the human race." Nonsense. History demonstrated that any good society would have religion for "there is a germ of religion in human nature." Similarly, history demonstrated that individual rights could not be secure without robust property rights. Hence the

Declaration of Rights in the Massachusetts Constitution enshrined the right "of acquiring, possessing, and protecting property." The failure to understand human nature had predictable results in the Revolution. "Helvétius and Rousseau preached to the French nation *liberty*, till they made them the most mechanical slaves; *equality*, till they destroyed all equity; *humanity*, till they became weasels and African panthers; and *fraternity*, till they cut one another's throats like Roman gladiators."

Although Adams turned to history to study human nature empirically, he also studied nature philosophically or rationally, to discover the standard of right and wrong. Nature was, once again, a better guide than history in this instance. One cannot know what is fitting in a particular circumstance without knowing the nature of the creature in question. In the early 1770s, when debating loyalist Massachusetts Governor Thomas Hutchinson, Adams quoted the Dutch philosopher Grotius, "Whatever is originally in its Nature wrong, can never be sanctified or made right by Repetition and Use." Similarly, as Adams wrote to one of his grandsons many years later, "the visible, audible, and palpable changes in this transitory world cannot change principles." The idea that justice was natural, not conventional, was fundamental to Adams, and to Americans in general. The American tradition was founded upon a standard beyond history, in its understanding of man and its understanding of right. This is what Hartz calls the "anti-historical rationalism" of American conservatism.

Conservative Statesmanship

Because all solutions are temporary and provisional, statesmanship is a necessary component of conservatism. "Freedom," Ronald Reagan noted, "is never more than one generation away from extinction."

In his own era, Adams was the leading advocate of a mixed and balanced constitution. He deployed checks and balances to secure limited, constitutional government. Late in life he wrote Thomas Jefferson, "Checks and balances, Jefferson, however much you and your party may have ridiculed them, are our only security, for the progress of the mind, as well as the security of the body." Why was that the case? Few men would not be tempted to abuse power, unless something restrained them. Hence, as Adams noted in the first volume of the *Defence*, "power must be opposed to power, and interest to interest." Human nature was no different in common men or congressmen than it was in kings—all were equally likely to succumb to temptation. It was therefore necessary to divide power. As a practical fact, Adams reasoned, a single legislative house would be run by a cabal of powerful men who were good at assembling a majority to vote their way, creating an aristocracy in the midst of a democratic congress. Hence a second legislative house would be needed so that one could limit the other. A similar logic applied to the other separations of power. Precisely because men were so likely to grasp at more power and to be jealous of whatever power they held, wise constitutional statesmen would turn human nature to the public's benefit.

Such constitutional statesmanship also appreciated the moral effect of laws. At the end of the *Defence* Adams wrote:

> Happiness, whether in despotisms or democracy, whether in slavery or liberty, can never be found without virtue. The best republics will be virtuous, and have been so; but we may hazard a conjecture, that the virtues have been the effect of the well ordered constitution, rather than the cause. And, perhaps, it would be impossible to prove that a republic cannot exist even among highwaymen, by setting one rogue to watch another; and the knaves themselves may in time be made honest men by the struggle.

Constitutions in particular and laws in general shape the characters of the men who live and work under them. Students of human nature could learn the ways that character formation took place. That being the case, there could be no such thing as morally neutral constitutionalism or morally neutral law. Good constitutions therefore would orient men toward virtue and away from vice. In any functioning society, men must not exploit their neighbors. Either they would shun vice by choice, and the constitution could leave men and women free to go about their business as they chose, or, if they would only respond to force, the government would have to be more intrusive. Hence, Adams reasoned, free government could only exist among a virtuous citizenry. The Massachusetts Constitution declares: "A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government."

To many of our intellectuals, Adams's principles seem quaint, relics of a bygone age. Woodrow Wilson dismissed checks and balances as an artifact of the age of Isaac New-

ton, suggesting that we should move on, and up, from there. It might not be a coincidence, however, that his critique echoes the one first leveled against American constitutionalism by Turgot. The crisis of the Great War, and then of the Depression helped Wilson and his friends lay siege to Adamsian constitutionalism. In terms of principles, leading figures like historian Carl Becker denigrated natural rights, and any other idea of transcendent truth, asserting that "to ask whether the natural rights philosophy of the Declaration of Independence is true or false is essentially a meaningless question." Meanwhile, the modern administrative state attacked checks and balances, as well as the idea of limited government it was designed to protect.

In 1927, Charles Warren, the dean of American legal history in the 20th century, recognized that Adams was onto something important. In an essay on Adams, he worried about the growing administrative state: "All this imposition of law and creation of criminal offenses by Executive or Administrative regulation is a far cry from the type of 'government by laws' intended by the original framers of our constitutions." In the same article, he pointed out that by turning our backs on the constitutional principles of the founding, we have turned toward arbitrary government:

> Every citizen is subject today to this vast bulk of law made by Federal Executive Departments or Commissions (and frequently, in practice, by minor officials); and yet tomorrow every one of these regulations may be changed by the sole whim or judgment of a Department or Bureau head. Moreover, violations of a large part of these regulations have been made criminal offenses by Congress, so that, every day of the year, these Department or Bureau heads may, by their sole act, manufacture new Federal crimes and offenses. Furthermore, last year, in the Federal Aviation Act, Congress took a new step towards increasing the powers of Executive officials; it granted, for the first time in legislative history so far as I can ascertain, the power to a single individual, the Secretary of Commerce, (as well as to "any officer or employee of the Department of Commerce designated by him in writing for the purpose") "to hold hearings, examine witnesses and issue subpoenas for the attendance and testimony of witnesses and the production of books, papers, documents and other evidence" before him. This was an unprecedented extension of power, as to which we may gravely ponder—especially since similar power is granted to the Secretary of Commerce in the Federal Radio Act which has just been enacted this year.

The modern progressive sees the modern administrative state as a new thing, with its own virtues and challenges. The American conservative sees it differently. The powers Warren discusses, delegated to the secretary of commerce, or any employee of his department, begin to resemble the Writs of Assistance that Adams's friend and mentor, James Otis, Jr., fought in Boston in 1761. By turning our backs on the principles of 1776 and 1787, we are turning back toward arbitrary government, with laws written and enforced by a progressive civil list. That change will, inevitably, alter American character, probably not for the better. From the Adamsian point of view, in other words, the question is not whether government must be updated to meet new challenges. The question is how to do so in a manner that preserves the legal, political, and constitutional principles which have made America an exceptional republic. (Adams's great-grandson, Charles Francis Adams II, for example, suggested allowing administrative bureaucrats to draft laws, but retaining for the people's representatives the right to vote on all such laws through the regular legislative process.)

Exactly one hundred years after Adams's death, Calvin Coolidge—like Adams a son of New England—would point us in Adams's direction. In a speech commemorating the 150th anniversary of the Declaration of Independence, he proclaimed:

> if all men are created equal, that is final. If they are endowed with inalienable rights, that is final. If governments derive their just powers from the consent of the governed, that is final. No advance, no progress can be made beyond these propositions.

From Adams to Coolidge to today, that line of reasoning has been the keystone of American conservatism, which has no desire to return to Burke's "age of chivalry" either in its Arthurian or its progressive form. It seeks, instead, to conserve the truth of human nature by conserving the transcendent legacies of 1776 and 1787.

Richard Samuelson is associate professor of history at California State University, San Bernardino.