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Virtue, Wisdom, Experience, Not Abstract Rights, Form the Basis of the American Republic

Gregory S. Ahern

IN *Natural Right and History*, Leo Strauss writes that "Prescription cannot be the sole authority for a constitution, and, therefore, recourse to rights anterior to the constitution, i.e., to natural rights, cannot be superfluous unless prescription itself is a sufficient guarantee of goodness." [1] Such a characterization results in the accusation that those who hold to prescription as a guide to present conduct are guilty of historical relativism. By contrast, the Straussian hero appears to be the "wise 'legislator' or founder" whose essentially private reason discerns the universal, absolute truth without any regard to public opinion and who imposes the product of his reasoned understanding on an ignorant, and perhaps even recalcitrant, nation.[2]

This argument is taken up by Harry V. Jaffa and his followers including Charles Kesler. Traditional conservatism's respect for the past, writes Kesler, is an "extreme of conservatism" which is "unreasonable and unprincipled." Such conservatism, he says, "does not acknowledge any objective standards by which we may distinguish just from unjust, good from bad, true from false, and so provides us no guidance in choosing what elements of the past should be conserved as a matter of expedience, and what elements must be conserved as a matter of justice. Nor can it provide us with what the past does not furnish – living statesmanship and virtue." [3] The remedy for such "unreasonable and unprincipled" conservatism, Jaffa and his disciples argue, is adherence to what they claim is the central idea of the American political tradition – equality of natural rights.

This "central idea" shapes and determines Jaffa's interpretation of the American Constitution as a document that was designed to secure the rights of man. This leads to the paradoxical conclusion that, "in the decisive respect, the division in the American understanding of sovereignty was not between the state governments and the Union, but between the people's liberty and the law that entitled them to that liberty." [4] Thus, Kesler, citing Thomas Paine, argues that the people can be sovereign only in a subordinate and conditional way and that the extent of the people's sovereignty is determined by the essentially private reason of the wise legislator or statesman.

There are a number of problems with this view. First, it seems to result from a misunderstanding or deliberate misrepresentation of the Western natural-law tradition.[5] Second, it implies that statesmanship and virtue cannot be attained without reference to abstract rights as an ultimate standard. Third, it so redefines the nature of sovereignty that the federal character of the United States is reduced to insignificance, and the sovereignty of the people is left very precarious indeed. Finally, and perhaps decisively, this characterization of the Founding simply is not supported by a close reading of the Constitution or *The Federalist Papers*.

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Gregory S. Ahern is a doctoral candidate in political theory at The Catholic University of America.