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Kondylis's Konservativismus First Part

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Conservatism was once the root and origin of the right wing. Today it is its punching bag -- a maligned phrase synonymous with cuckoldry, cowardice and submission to the enemy.

Conservatives have conserved nothing, as the saying goes. Conservatism is also, in comparison to liberalism and socialism, the least well understood of the three. In part this owes to its rapid dissolution from the 1860s onward amid national unifications, reform acts, universal suffrage, mediatizations of old dynastic houses, the rising tide of socialism and anarchism reshaping the political battleground with fusions between conservatives and moderate liberals, the *ralliement* policies of the Church, and other factors, leaving very little trace in either institutional memory or among intellectuals and historians.

If conservatism the historical phenomenon long passed away, the word surely hasn't. It has had a remarkable longevity in Britain, a prominent place in the United States since the postwar era, and in West Germany there was the "neokonservativismus" of the school around Joachim Ritter in the 1980s, not to be confused with American neoconservatism -- though both were assailed by Jürgen Habermas. Academics and scholars have defined it in a myriad of ways, but few have provided an interpretive framework as insightful as that supplied by Panagiotis Kondylis (1943-1998) in *Konservativismus. Geschichtlicher Gehalt und Untergang* (1986).

Kondylis is an underappreciated giant of 20th century philosophy. Despite dying young and leaving unfinished manuscripts of what he called his "social ontology," his published bibliography encompasses books and monographs relating to the Enlightenment, conservatism, early modern metaphysics, mass democracy and the eclipse of bourgeois liberalism, Karl Marx's relation to Greek philosophy, international relations in a globalized multipolar world (his work *Planetary Politics after the Cold War* is perhaps his most famous, and

earned him the sobriquet "anti-Fukuyama"), and overviews of individual thinkers as diverse as Montesquieu, Machiavelli, Thucydides, Rivarol, etc. It is only a slight exaggeration to say that Kondylis' bibliography represents, in its own right, a comprehensive education in Western philosophy.

Born to a prominent Greek military family, Panagiotis Kondylis spent most of his life in Germany. He wrote primarily in German, translating some of his books to Greek afterwards. For a long time his books were only available in those two languages, until an anonymous individual began translating parts of his corpus in English over the past several years. *Konservativismus* has not yet been translated, but I was graciously provided a scanned copy by @hispaniccosmist on Twitter, which produced a readable machine translation through DeepL.

Kondylis' academic background was shaped at the University of Heidelberg by his mentors Werner Conze, Reinhart Koselleck and Otto Brunner, who together were the leading lights of *Begriffsgeschichte* (conceptual history), an approach to early modern and modern historiography that was based on rigorous analysis of the semantic origins of political terminology, how they're applied in specific social contexts, in what worldviews they arose out of, and how they change. All of the three aforementioned academics were prominent "right-wingers" in the German academy, in terms of temperament and practical orientation if not necessarily through political activism. Conze and Brunner were both former National Socialists and retained a lot of their views unreconstructed after the war. Koselleck's *Critique and Crisis* analyzed the Enlightenment through an academically sophisticated rendition of the counterrevolutionary anti-Masonic theory about the influence of lodges and secret societies in forming a "public opinion" and "civil society" that could then push and reshape the old regime.

All of Kondylis' books follow a common "polemological" method: the influence of ideas is studied through the analysis of their practical use as weapons in combat for prestige, status and preeminence. More than that, for Kondylis, the true implications of an idea cannot be analyzed intellectualistically, i.e. simply by deducing logical consequences of an idea *in abstracto*; rather, the actual consequences of an idea can be revealed only through its actual use in ongoing polemic among thinkers. It is only by this *praxis* of gaining ascendancy for one's standpoint that an idea can be situated into given contrasts, oppositions, and affinities that makes it recognizable as the bearer of some sort of social-historical content.

In *Konservativismus*, Kondylis seeks at the outset to rebuke common theories of what conservatism was. Firstly, he maintained it was a concrete phenomenon that arose and fell

with a particular worldview of the body politic and its primary defenders, the nobility. This was in opposition to two claims: that conservatism was conceived as a purely reactionary phenomenon against the French Revolution and hence had to invent a theory on the spot from what had been only "non-reflexive" patterns of conformity and obedience to authority prior to that (roughly the theory of Karl Mannheim); and that conservatism is a perennial behavioral pattern defined simply as maintenance of the status quo, or in Michael Oakeshott's famous definition of what it means to be conservative, that it is "to prefer the familiar to the unknown, to prefer the tried to the untried, fact to mystery, the actual to the possible, the limited to the unbounded, the near to the distant, the sufficient to the superabundant, the convenient to the perfect, present laughter to utopian bliss."

Kondylis mocks this view of the conservative, as though he is some kind of eminently "peace-loving and peace-making man" who lives intuitively in accord with nature, and is not riled to action until some external force disturbs him. Far from conservatives having to invent theory, they already had the entire repertoire of Aristotelian-scholastic, Romano-canonical, Germanic-ständisch (and other) traditions that they could reformulate for their tasks at hand. As to the behavioral definition of conservatism, it is utterly vapid since it cannot "allow us to conclude the specific, concrete content of a certain stance and behavior even also when its bearer is not named." Communists resisting liberalization, and liberals resisting communism, all become "conservative" by virtue of their preference for the familiar over the unknown. The oft-cited conservative orientation to "concrete things" as opposed to "abstract ideas," itself the result of social scientists taking conservative arguments at face value, in no way tells us what the "concrete" is concretized *with*. Moreover, as Kondylis writes, "If conservatives opposed the Enlightenment, it was because they were more or less clear about what they were supposed to oppose; and they were clear about this because they could theoretically rely on the traditional, albeit modernized, ideological and socio-philosophical thought of the *societas civitas*

Neither were conservatives a purely reactive and passive bunch. Activism, rebellion, sedition, and all the usual weapons of war were employed by them as with any other group for the furtherance of their desired ends. Baronial revolts, the Fronde, the conservative theory of dictatorship honed in the 19th century, proactive struggles against the liberal enemy as with Metternich's Carlsbad Decrees of 1819, or the *Demagogenverfolgung* across Germany, etc. all attest to conservatives being as shrewd and crafty as all men can be. But in a more fundamental sense, all political action has a reactive component insofar as it is raised as a counterpoint to something. The liberal who claims that the natural order has been trampled for centuries by the sins and iniquities of conservatives and aristocrats is no less "reactive"

than the conservative who bemoans the deliberate subversion of the natural order by liberals; without interplay between opposing forces, there is no political action at all. Indeed, as conservatives were losing their influence more and more, their position began to reflect that of their liberal enemies, that of the weak outsider fighting established hierarchies -- but one's social position does not in itself imply whether one's vision is positive or reactive.

Understanding conservatism accurately is mired by the further difficulty that just as conservatism was eroded with the triumph of the liberal state and its dichotomies of private/public and state/society, this very same separation of state and society would not last for long, but be abolished anew, this time with the decisive triumph of the state and its newfound mass-democratic ethos, both of the welfare beneficiary and the mass consumer. As a result, liberalism became just as antiquated as conservatism, but with remnants of old guard liberalism adopting the mantle of conservatives, who took some vestigial arguments of conservatism proper, but ended up loading them with an entirely different context. If one looks only at disembodied "ideas," then one will be bound to make historical errors.

I. *Societas civilis* and the struggle against sovereignty.

II. Absolutism and revolution. The struggle against the awakened nation.

III. Conservatism, dictatorship, and the social question. The birth of sociology.

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I. *Societas civilis* and the struggle against sovereignty.

Throughout the book, Kondylis consistently refers to the pre-modern European polity and its worldview as the *societas civilis*. This will no doubt sound strange to many readers, given how "civil society" nowadays means NGOs, bail funds, and activist lobbies. It is originally the Latin translation of *koinōnía politikḗ*, and was a standard term for 'polity,' 'community,' and so on by many medieval and early modern authors, as documented by the 19th-century legal scholar Otto von Gierke in his *Natural Law and the Theory of Society, 1500 to 1800*. Remembering that Kondylis studied under the Heidelberg school of conceptual history, such a usage is directly traced to the *Geschichtliche Grundbegriffe*, an encyclopedic dictionary of conceptual history published from 1972 to 1997, to which Kondylis himself contributed entries on "Reaction" and "Restoration."

The entry on the word "society" was written by Werner Conze, to whom Kondylis dedicates his book. Conze defines *societas civilis*, in its pre-modern conception as divorced from the city-state of antiquity, to mean a "vertical and horizontal structuring of the community, an order in which state and society could not yet be conceived separate from one another." The Latin expression *civitas sive res publica sive societas civilis*, used as late as Kant, denotes this undivided nature: the city is the commonwealth is the political community, each a microcosm of the body politic as a whole. It was thus, as Conze writes, "a personally constituted order of independent men (heads of families), extending from the monarch through the nobility and patricians to the independent master craftsmen and the farmers as members of village communities, the latter only to the extent permitted by his limited freedom and position before the law." It was a patriarchal system, in which order was achieved through the multiple sovereignty of man over man, as well as through the responsible cooperation of citizens or social classes in communal activities from the provincial diets to the village councils. Consequently, there could be no social history distinct from political history.

Kondylis expands on this definition by providing an ideal-typical worldview of the *societas civilis*. It is marked by the following characteristics: a hierarchical order of estates, orders, ranks and ordained stations; a view that law is given and not made (*jus dicere non dare*); the *justia distributiva* (proportionality, to each his own according to his station) as the standard of justice; an integral relationship between the temporal and spiritual powers; a providential conception of history; a general commitment to a mixed constitution in the Polybian sense of balance; and negatively, the absence of any separation between state and society. The *societas civilis* is one transcendent form, of which all the separate states in history are simply individuations of one and the same common nature.

Above all, conservatism was always an anti-absolutist phenomenon. Kondylis thus puts the monarchomachs and the legal humanists (people like Francois Hotman) not, as is usually done, in some 'proto-liberal' or 'proto-democratic' camp, but as representatives of the traditional idea of *societas civilis* against absolutist encroachments, and hence conservative to that end. This is an important point that will later be revisited in analyzing attempts at rapprochement between conservatism and liberalism. Whigs, in their struggles against both royal absolutism and ministerial oligarchy, were opposed to standing armies, dreaded the 'monied interests,' appealed to provincial liberties and an 'ancient constitution,' ideas which would later be reformulated and reused in various ways by liberals and conservatives alike. For Kondylis, a central methodological assumption is the *heterogony of ends*. Ideas are not fixed essences with unbroken lines of descent that instantiate causal-mechanical implications of 'if X then Y' as

soon as they appear, but are employed in particular struggles by rational and volitional beings to achieve definite ends. Their historical meaning can only be ascertained from the polemical context in which the ideas are used, and not from a mere formal-structural analysis of the ideas themselves, as though they carry in them some *élan vital* independent of human will.

Law is given, not made. There is no room for pure will or command to create uniform binding legislation. Roman law doesn't know of any executive or legislative branch of power, it talks only of *iurisdictio*, itself a very instructive term as it literally means 'to speak of right' (to speak the law). Kings are judges. They are the founts of justice who are committed to preserving peace, ancient liberties, good customs, and to revere God. Kings are the summit of *haute justice*, the highest court of appeal in the body politic. This is why a variety of legal sources -- Roman law, canon law, customary law, edicts and ordinances of a king, the law merchant, etc. could all coexist in a single realm. As Sir Thomas Craig writes in *Jus Feudale* (1613): "From the start, reges (kings) were nothing but judges, so named from regendus ("being prevented from going astray"). Each presided over his own city, which is to say he expounded the law. So it is with the multitude of kings in Holy Scripture. Thus Homer calls kings shepherds of the people, because the governance and guardianship of the people were entrusted to them from the beginning."

Moreover, these judges needed no prior statutes or yardsticks in order to dispense justice, instead they could derive it entirely out of "an innate instinct for natural equity that resided, at that time, in the souls of humans; for, as Cicero rightly says, we are naturally inclined to justice and fairness, and law itself descends from the goodness of that very nature. So, they dispensed justice, because they had been chosen for that job, and drew either from that instinct of nature which has been implanted in the souls of men or from the contracts and agreements which had previously been concluded between the families." Following the birth of the Church at Pentecost and the subsequent canonization of Holy Scripture in tandem with Apostolic Tradition, the revealed law became an autonomous yardstick on its own that clarified and went beyond the natural law.

Another definitive example is Christopher St. Germain, who in 1518 published The Doctor and Student, a pre-Reformation introduction to the English common law. St. Germain identifies in total six grounds for the laws of England: firstly, the law of reason; secondly, the law of God; thirdly, the "divers *general* customs of old time used through all the realm, which have been accepted and approved by our sovereign lord the king, and his progenitors, and all his subjects," fourthly, "divers principles that be called in the law maxims, the which have been always taken for law in this realm; so that it is not lawful for any that is learned to deny

them; for every one of those maxims is sufficient authority to himself," fifthly "divers *particular* customs, used in divers counties, towns, cities, and lordships in this realm: the which particular customs, because they be not against the law of reason, nor the law of God," and only sixth at the end do we have "divers statutes made by our sovereign lord the king and his progenitors, and by the lords spiritual and temporal, and the commons in divers parliaments, in such cases where the law of reason, the law of God, customs, maxims, ne other grounds of the law seemed not to be sufficient to punish evil men and to reward good men."

This is an unusually complex example, but precisely so it better illustrates the point. Only at the very end do we have "divers statutes made by our sovereign lord the king and his progenitors," the closest thing we have here to the state. This "state" (more properly the realm) is not at all a self-sufficient source of law, but is grounded by five other levels, including two distinct kinds of custom, general and particular. How simple the mere reduction to sovereign and subject is in comparison, but of course at the cost of social leveling. Canonical maxims, compiled by Gratian, such as *Leges instituuntur cum promulgantur, firmantur cum moribus utentium approbantur* (Ordinances are instituted when they are promulgated; they are confirmed when they have been approved by the usage of those who observe them), and *Diuturni mores consensu utentium approbati legem imitantur* (Long standing usages approved by the consent of those following them are like ordinances), were deeply embedded into social consciousness.

Societas civilis frequently appealed to the analogy of the *corpus mysticum*, as written in 1 Cor 12:12-31. Per 1 Cor 7:20 ("Each person should remain in the situation they were in when God called them"), class distinctions were not merely functional specializations and differentiations in the division of labor, but stations in life ordained to every person's rational soul. Man's nature is not what he is as a sensual-historical being prone to concupiscence and disordered habits, but what he ought to be by the covenant (order) of grace. Sir Edmund Dudley, an advisor of Henry VII in the early Tudor period, seems not to have known of a "government" at all as some kind of administration distinct from the state or society. He spoke only of offices, officeholders and councils in the commonwealth, or alternatively the 'realm' or 'countrie' (but not state). *Status* could be used interchangeably with *civitas*, *regnum* and *res publica*.

Sovereignty, as an absolute, indivisible, inalienable constituent power by which legal norms are constructed *ex nihilo* ought of an anarchic pre-social state, is an alien concept in this worldview. Not only alien, but deeply disturbing. Terms like *suprema potestas*, *plenitudo*

potestatis, merum imperium, superioritas territorialis were often cited, but had no such connotation of an absolutely free and unconditional will imposing a decision.

Kondylis employs a vivid metaphor of how the sovereign state intrudes into this eternal divine-natural order:

Sovereign in the full modern sense of the word is ultimately the one who enters the scene as a historical demiurge, who wants to model history on the basis of his own plans and ideas. From this it follows that history is not a rounded and closed circle in the shadow of the eternal order of being, but an open and dynamic movement. If sovereign is the one who does not allow himself to be commanded by anyone and who can command everyone without any exception, this entails an abolition of rule as a personal dependence, which was characteristic of the *societas civilis*.

The people who lived in the wide circle or periphery of the *oikos* and were directly subordinated to its head according to the self-understandings of traditional rule, now come under the direct jurisdiction and constitutional power of the sovereign, are led according to his will and law, which now also the head of the *oikos* has to obey. If the *societas civilis* was socio-politically polycentric and ethico-religiously or ideologically uniform, the modern sovereign state as the founder of universal legislation is, conversely, politically uniform and - at least in a certain phase of its development - ethico-religiously polycentric, i.e. tolerant.

Absolutism did not, however, foundationally upset the *societas civilis*. What it did was accentuate the dualism between king and estates, but without harming the *ständisch* order of the body politic. It did massively increase the preponderance of the king and his ability to bestow favors and rewards, but this helped as much as hindered the *societas* since these favors included a large number of venal offices, which constituted what one could call the "government," staffed by the nobility and haute-bourgeois professions. Thus, while a lot of provincial liberties were restricted and replaced by centralized royal intendants, and while the prospect of convening the Estates-General or making it some permanent high court were definitively put off (at least until the fateful end in 1789), the government was at the same time increasingly patrimonialized, parlements could still remonstrate against edicts, etc. Thus, as both court and petty nobles were well aware, the abolition of nobility would not be a triumph of *royal* absolutism at all, but would entail royal absolutism's self-dissolution into liberal parliamentary government. This is indeed how it played out.

We can quote from the memoirs of the Duc de Saint-Simon, whose "aristocratic reform" programme was a common outlook among men of his order at the time, and entailed a revision of the absolutist *societas civilis*:

What I considered the most important thing to be done, was to overthrow entirely the system of government in which Cardinal Mazarin had imprisoned the King and the realm. A foreigner, risen from the dregs of the people, who thinks of nothing but his own power and his own greatness, cares nothing for the state, except in its relation to himself. He despises its laws, its genius, its advantages: he is ignorant of its rules and its forms; he thinks only of subjugating all, of confounding all, of bringing all down to one level. Richelieu and his successor, Mazarin, succeeded so well in this policy that the nobility, by degrees, became annihilated, as we now see them.

The pen and the robe people, on the other hand, were exalted; so that now things have reached such a pretty pass that the greatest lord is without power, and in a thousand different manners is dependent upon the meanest plebeian. It is in this manner that things hasten from one extreme to the other. My design was to commence by introducing the nobility into the ministry, with the dignity and authority due to them, and by degrees to dismiss the pen and robe people from all employ not purely judicial. In this manner the administration of public affairs would be entirely in the hands of the aristocracy. I proposed to abolish the two offices of secretary of state for the war department, and for foreign affairs, and to supply their place by councils; also, that the offices of the navy should be managed by a council. I insisted upon the distinct and perfect separation of these councils, so that their authority should never be confounded, and the public should never have the slightest trouble in finding out where to address itself for any kind of business.

As long as the nation and the people consisted of "all those who possess rights and privileges, and its task is to defend the God-given and nature-given law in its basic existence, despite adaptations and modifications," as opposed to formally equal individuals, then *societas civilis* could survive these shifts in the balance of forces. Indeed, as Kondylis writes, anti-absolutism could not be framed within the procedural framework of the "separation of powers" among executive, legislative and judicial, as this would permanently destroy the still primarily judicial conception of the monarchy, and open the floodgate to uniform legislation and regulation over a "society" conceived as an undifferentiated multitude of people, thus making way for the primacy of statutory law over privileges, immunities, franchises, customs, chartered rights and so forth -- the usual guarantees of ständisch freedom (where freedom/libertas means to live under well-ordered and beneficent laws). Moreover, the principles of representative

government are inimical to the *societas civilis*: the estates do not represent the nation, they *are* the nation, and they are convened not to draft law but to offer aid and counsel.

II. Absolutism and revolution. The struggle against the awakened nation.

In a sense, the ideal conservative polity has always been the aristocratic republic. The dichotomy between king and tyrant, so prominent in classical politics, was a permanent fixture of the aristocratic worldview. Kings could be revered as wise judges, as mighty lords showing liberality, as the *lex animata* and the fount of divine justice, and as custodians of ancient and immemorial freedoms; but as soon as kings tried to evade the boundaries of the fundamental laws of the realm and reshape law to their pure will, they were to be resisted. The Parlement of Paris posthumously overturning Louis XIV's legitimization of his bastard children c.1717 is one prominent example of such conservative resistance.

The Revolution is significant insofar as (at first Jacobinism, and later) liberalism joins the rank of the enemy alongside absolutism, but with much greater urgency. This leads to a heightened conservative monarchophilia, as conservatives now explicitly sought their refuge in the Crown to bolster the decay of the *societas civilis* coming under siege by legal codification, rationalization of the civil service, liberal activism in favor of representative government and opening access to political rights, high finance and the increasing separation of the economic from the political, etc.

The critique of absolutism as a predecessor of the Revolution is a highly consistent conservative motif, but nonetheless, as Kondylis writes, "the monarch, however, is at the head of a meanwhile considerably expanded state apparatus, and an alliance with him against the revolution therefore means - intentionally or unintentionally, consciously or unconsciously - the use of the means made available by modern statehood precisely against those who want to lead modern sovereign statehood to its logical and historical conclusion, that is, to destroy the *societas civilis* for good. The aforementioned effort can be limited, i.e. remain with the more or less intense 'reaction,' or culminate in dictatorship."

For the comte de Montlosier, there was only "une terre classique de la liberte," namely "la France antique," in which monarchy and the person of the monarch were not identical, but the higher levels of the social hierarchy participated in the exercise of monarchical power; thus the monarch was "une sorte d'individuel collectif." Under Louis XIV a "revolution totale" had taken place, which had dealt the "anciennes moeurs" many harder blows than the previous ten kings together. The end result was not merely the disenfranchisement of the nobility, but a

paradoxical state of affairs that was actually much more explosive. For the nobility kept its social privileges or even got new ones in replacement of already lost ones, but these now stood in contrast to the loss of its political functions, thus they had a decorative or parasitic character. In this sense, he anticipates Tocqueville. "L'etat cest moi" becomes the "La France c'est Paris" slogan of the republicans like Adolphe Thiers and Louis Blanc. Franz von Baader often equally assailed the servile ministerial ultra-royalists as much as the liberals. Louis de Bonald charged the absolutist regime with the cession of judicial and military functions to state officials (*homines novi*), abandonment of the countryside and concentration in the cities or at court, luxury, slackening, etc.

Lex must always be derivative of *ius*. For legitimacy coincides with the will of God, while the will of man is no more capable of creating anything other than legality; the magic that emanates from the word "law" is thus a symptom of the decline of a community from legitimacy to legality, from the organic to the voluntaristic. It is in this sense that Joseph de Maistre's *Essay on the Generative Principle of Political Constitutions* ought to be read. On a related note, Montlosier lamented the conflation of equity (*aequitas*) and equality, as the former affirmed the *justa distributiva* of rendering justice in proportion to each man's station, whereas the latter bound all to the same yoke indiscriminately. Jarcke went as far as to decry the singular word "freedom" as misleading, instead focusing on freedoms in the plural as specific privileges and concessions conferring rights and powers over things.

Bonald contrasted "two systems of the sovereignty in society [which] correspond perfectly to two systems of the sovereignty of man over himself or over his reason: some give no other rule to his reason than his reason itself; others give him, in the divine, a rule superior to his reason." Thus, for Bonald, there was a clear distinction between *pouvoir* and *souverain*. The *souverain* is ultimately God, who acts according to his *volonte generale* (Bonald was using that term in its traditional sense to mean God's will to save men, not as Rousseau did). *Pouvoir*, in contrast, is a ministry of the divine exercised by government (monarchical or otherwise). The thesis that sovereignty in itself has nothing to do with governmental power, but is the authority that gives governmental power its indispensable legitimacy, is, of course, a refutation of the voluntaristic-activist concept of sovereignty. It also reiterates the old distinction between the person of the king and the office of kingship.

Adam Mueller unambiguously collapsed the state-society distinction in 1819, in turn strongly influenced by Karl Ludwig von Haller. Mueller wrote that "private and state law are therefore not qualitatively different, as is presented in today's theories, the former of a positive and historical nature, the latter of a philosophical nature and origin, so that private law is based on

property and possessions, and state law on a single primary contract, but both are of the same nature, differing only quantitatively, only according to the size and circumference of the objects; true constitutional law is an ordinary private law applied to greater rights. It flows with private rights from a source, namely, the higher power, which ordered the nature of things and the existing property and possessions on earth and distributed the rights and freedoms of private individuals as well as of states, as we find them when we entered our soon past life; a power before which one can only tremble and bow if it has not revealed itself to us and has wanted to reveal higher laws than the earthly human ones that result from mere wealth and power." For Mueller, the word "state" was in the plural; there were as many states as there were human associations in the body politic, hierarchically ordered by their sphere of duties.

Kondylis criticizes Carl Schmitt's reading of Joseph de Maistre as a sovereign decisionist. Although Maistre consistently underscores the absoluteness of sovereignty insofar as he rejects the right of resistance or any higher appeal, he does not mean that the source of sovereign decision is the *will* of the sovereign. For Maistre, the laws of a given nation are derived from unwritten and immemorial providential revelation. Hence, in the *Considerations sur la France*: "The rights of the people, properly speaking, start fairly often from a concession by sovereigns, and in this case they can be established historically; but the rights of the sovereign and of the aristocracy, at least their essential rights, those that are constitutive and basic, have neither date nor author," also that "No government results from a deliberation; popular rights are never written, or at least constitutive acts or written fundamental laws are always only declaratory statements of anterior rights, of which nothing can be said other than that they exist because they exist." The legitimacy of laws for Maistre are derived precisely from their *not* having a human author. In pp.121-125 of *Du pape*, Maistre says "The forms of sovereignty, moreover, are not everywhere the same; they are fixed by fundamental laws, the real bases of which are never written," and that "it maybe said with equal truth, under two different points of view, that every sovereignty is limited, and that no sovereignty is limited—limited, inasmuch as no sovereignty can do everything; not so, inasmuch as, in its legitimate circle, traced by the fundamental laws of each country, it is always and everywhere absolute, insomuch that no person is entitled to say to it that it is unjust or mistaken. Its legitimacy consists not, therefore, in conducting itself in such or such a way within its sphere, but in not stepping beyond that sphere." That is to say, Maistre certainly recognizes "fundamental laws" as an organic constitutional limitation in the traditional sense. His innovation is to reformulate this insight into a more modern enlightened vocabulary.

The conservative motif of the continuity between absolutism and revolution aside, another defining characteristic was conservatism's ambivalence towards the nation. In the conception of the *societas civilis*, the nobility is the nation is the people is the commonwealth. But in no way could the nation ever be acknowledged as an independent constituent power, as the source of authority, or as the foundation of public law. For one thing, this would be too great a concession to historicism, as it would exaggerate folkways, customs and mores, but downplay the no less crucial aspect of divine law and eternal transcendent order. In other words, it would give too much to particularity, whereas the *societas civilis* based itself on the integral union of universality and particularity. And, of course, the "rights of the nation" reinterpreted in the revolutionary sense were meant to level class distinctions. Some of the most strongly anti-nationalistic treatises came not out of pacifists and communists, but out of conservatives. I can cite the Spanish traditionalist Juan de Olazábal Ramery's *Errores nacionalistas y afirmación vasca* (1919), a counterblast to Basque nationalism, as a late example. The conservative struggle against Italian nationalism is also instructive.

"No nation without the old provinces, no nation without the old nobility," cried Adam Mueller. Radowitz wrote that "the most formidable force of the present, nationality, had become the most dangerous weapon in the hands of the enemies of the legal order." As late as 1866, Ernst Ludwig von Gerlach was thundering: "Beware of the abominable heresy that the holy commandments of God do not apply in the fields of politics, diplomacy and war, and that in these areas there is no higher law than patriotic selfishness. *Justitia fundamentum regnorum!*" Friedrich August von der Marwitz, conservative Prussian officer, wrote: "Prussia is an assemblage of many provinces that varied widely in their laws and customs, it can also never become a nation because each province has as its neighbors other provinces to which, though not a part of the same state, it feels basically more closely related than it does to the distant and, to it, unknown other provinces of the Prussian state, as for example, the Mark Brandenburg is to Saxony, Silesia to German Bohemia and Moravia, Prussia to Curland and Lithuania. To endeavor to meld them into one means to rob them of their individuality and to create a dead carcass out of a living body." Marwitz also scoffed at the idea of national or popular armies raised by conscription, arguing that mercenaries could be just as loyal or disloyal as the rabble.

Conservatives could at various times flirt with the nation in the sense of a unity "held together by a collective will that was not merely dynastic, but existential and historically preserved," as in military exigency with the German Wars of Liberation, but not without reservation and without danger. Kondylis: "The *societas* was under the aegis of a law that anchored the

existing hierarchical division, that is, the diversity of rights and individuals, but in the elements that constituted the nation, all individuals, by definition, had to participate equally, since a greater or lesser participation in religion, language, or custom could not be conceived on the basis of class differences. In this sense, the nation, even in its traditionalist version, contained a strong egalitarian component; it could therefore be understood, even in a counterrevolutionary context, as a kind of *volonte generale* or, at least, as an overarching authority to which all states had to submit in order to achieve higher goals."

It was through foreign policy goals, the Austrian-Prussian rivalry, and disputes about the maintenance of the German Confederation, that a reform-oriented "national-conservative" faction gained sway. Other countries followed a similar pattern: disputes between Piedmont and Austria being exploited by national-liberal agitation. This led to the gradual abandonment of the *ständisch* vision, not only by putting the idea of the state ahead of the *civitas christiana*, but also by modernizing this idea so that it could remain effective in the international field.

Kondylis concludes: "We need only say that the emergence of a national-conservative current, with the *de facto* - and in part even explicit - abandonment of essential aspects of pure conservatism, was a further indication of its growing inability to formulate an active policy in line with the new situation on the basis of its own premises, and thus also of its downfall. Nationalism, snatched from the hands of the revolution and turned against it, could temporarily secure the ruling position in the state for conservative elites on condition that they would prove capable of successfully playing new social roles; but this was fatal for conservatism proper as a historical phenomenon and movement. At least in this E. L. v. Gerlach was not mistaken."

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