INTRODUCTION

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Yearly topics are chosen by the general membership of the ASPLP. One can only imagine what was in the minds of the majority who voted for “American Conservatism” as the topic sometime in 2005, when the vote was held. Perhaps some of the voters were interested in what is distinctive about American conservatism, as distinguished from “conservatism” across the Atlantic or, ultimately, across the world. Indeed, given that one of the co-editors teaches at the University of Toronto, one can well ask if “American conservatism” includes Canadian conservatives, and perhaps even Mexican or Latin American variants. With regard only to the United States and Canada, it is surely the case that one cannot understand the history of the latter without taking into account that it received a substantial influx of immigrants in the late eighteenth century who had rejected in the most dramatic way possible the particular vision thought to be connected to the American Revolution—or, as David Armitage has well argued, the secession by thirteen colonies from the constitutional order of the British Empire. To this day, of course, the formal head of the Canadian state remains Her Majesty Queen Elizabeth II, which may (or may not) be important in understanding what continues to separate the two countries and their respective conservatisms. As one moves south, it is of course hard to escape the historical importance of the Roman Catholic Church—and, as in Mexico, the resistance to it—in understanding the conservatism(s) that have been important from Mexico to Argentina.
For better or, possibly, for worse, in organizing the panels we interpreted the title to refer—though it is hardly its only semantic “sense”—to conservatism within the political history or culture of the United States. Thus this book begins with an extended conversation that seeks to delineate key aspects of “American conservatism” and its differences from both “American liberalism” and “conservatism” as practiced elsewhere. In the first of these chapters, James Kurth takes a historical approach to the question, teasing out the evolving interaction between economic, socio-religious, and security-oriented aspects of American conservatism. David Sidorsky engages in an equal tour de force, extending the analysis by arguing that each of these three aspects of American conservatism reflects a critical response to the core liberal ideals and attitudes central to that respective arena. They are the two longest essays in the book, deservedly so given the vast expanse of their analyses (and sheer breadth of the topic).

Almost inevitably, one wonders whether a discussion of American conservatism is an implicit invitation to talk about American exceptionalism and the extent to which American conservatism turns out to be just another variety of Louis Hartz’s “liberal tradition in America.” Sidorsky several times notes, for example, differences between European conservatives, who on occasion praised the virtues of fixed hierarchies, as against American conservatives who instead adopted notions of “equal opportunity” as a mechanism of assuring that success in economic competition would not be based on irrelevant factors (such as having been born into a legally favored group); resultant inequalities would therefore be legitimated on the basis of personal responsibility for one’s position in life. Similarly, relatively few European conservatives were critics of government as such, whereas contemporary American libertarians, rightly or wrongly identified as “conservatives” within the American political spectrum, proudly trace their heritage back to Jefferson, Emerson, or Thoreau, among other American figures who were certainly suspicious of government, especially if it took a “consolidated” (and invariably nationalized) form. Along these lines, Patrick Deneen comments that Sidorsky’s analysis of conservatism leaves a sense that American conservatism is not conservatism at all, but rather part and parcel of Hartz’s American
liberalism. Deneen offers “social conservatism” as the only variety of American conservatism that could not be mistaken for liberalism, but for Deneen, that which is fundamentally “American” may be the common ground between conservatives and liberals, not their differences.

In the early twenty-first century, one can scarcely discuss conservatism in America without taking into account controversies about the relationship of church and state. It was certainly not logically entailed that religion during this period would become identified with American conservatism; consider the role that organized religion played, for example, in the Civil Rights Movement of the 1950s and 1960s, as was true of many “progressive” movements, dating to the campaign against slavery. In his recent book on the Civil Rights Act of 1964, for example, Clay Risen emphasizes the vital role played in its ultimate passage by wide-ranging interdenominational and interracial coalitions of religious groups. But in the early twenty-first century, the identification of “religious” and “conservative” sensibilities has become commonplace, especially with regard to the trope of “religious liberty.”

Even William F. Buckley, the subject of the penultimate essay in this collection, different from his nineteenth-century European counterparts in having no throne around which to rally, could certainly be viewed as a proponent of recognizing the importance of paying due heed to the altar as instantiated in the Roman Catholic Church. As we revise this introduction in the fall of 2015, it is safe to say that the place of religion, both organized and within the consciousness of individual citizens who “conscientiously object” to performing certain legal duties, has scarcely subsided within politics; one might well regard it as one of the defining realities of contemporary politics in the United States. The most prominent example is surely Kim Davis, the hitherto obscure elected clerk of a Kentucky County who literally went to jail rather than provide to same-sex couples the marriage licenses the U.S. Supreme Court held they were now entitled to, in the bitterly-divided Obergefell decision in June 2015. And much notice was taken of the fact that Pope Francis, during what appeared to be a highly successful visit to the United States in September, met her privately and reportedly hugged her (though there was subsequent controversy about
who exactly arranged the audience and whether the Pope had been briefed about its importance). Moreover, *Obergefell* as well as an earlier case involving the business corporation *Hobby Lobby* has assured the presence of much future litigation on the ability of at least non-public officials, whether discrete individuals or institutions, to be “accommodated”—which in effect means the ability to avoid compliance with a legal requirement imposed on all other citizens—with regard to their continuing opposition to same-sex marriage, contraception, or abortion. Richard Garnett’s essay on the institutional freedom to be accorded religious institutions is especially timely. Ingrid Creppell in her comment on Garnett’s chapter argues that the essence of at least one important wing of American conservatism is “anti-governmentism,” a striking deviation from the calls for “law and order” that some might identify with conservatism.

It is appropriate, then, that the volume turns next to a more explicit consideration of the relationship among self-described conservatives with the American legal order, including, of course, the U.S. Constitution. Kenneth Kersch reflects on aspects of “legal conservatism” in the twenty-first century, arguing that the Constitution and the common law in America serve as two central examples of the role of constitutive narratives in American conservative thought. In so doing, Kersch argues that too much attention is paid to the putative divisions within the conservative movement and not enough to what these strands have in common: namely, the conservative rejection of all things liberal as having forsaken the truths of the American founding and Constitution. Gerald Gaus carries this claim further, arguing in part that conservatism is better positioned than is liberal philosophy, *contra-*Rawls, to give insights into what a just moral order might look like. Johnathan O’Neill, however, draws a distinction between constitutional conservatism and American conservatism. The balance and restraint crucial to the ability of constitutionalism to deliver the stability it promises are somewhat in tension with the political objectives of the American conservative movement, O’Neill argues. His argument is especially interesting in light of a 2014 book by John Compton, *The Evangelical Origins of the Living Constitution*, noting the emphasis by nineteenth-century Evangelical reformers on the importance of transforming constitutional doctrine in order to
overcome such sins as the use of alcohol and slavery, rather than maintain a commitment to the existing constitutional order that tolerated both.

Turning from this focus on conservatism and constitutionalism, our contributors then consider two important figures within the history of post–World War II American conservatism: William F. Buckley and Leo Strauss. Carl Bogus finds in William F. Buckley, Jr., a figure indispensable to American conservatism, for his ability to square the circle contemplated in James Kurth’s piece. Bogus credits Buckley with the formation of a coalition among what he describes as the “fundamentalist,” “libertarian,” and early “neoconservative” elements of the conservative movement. He thus gives as evidence of Buckley’s importance the identity crisis that American conservatives have faced “post-Buckley.” Just as important, Bogus argues, was his willingness to draw the line against those ostensible mid-century “conservatives” identified with the John Birch Society, who viewed President Dwight Eisenhower as at best a Communist dupe, if not perhaps a more conscious agent of the Soviet Union. In his reply, Eldon Eisenach thinks Bogus has made too much of the internal challenges that conservatism faces looking ahead. For Eisenach, the real story is the lack of anything that might be termed a “coherent liberal political agenda.” The success in recent decades of the Republican coalition in American politics is to be attributed more to the ideological “vacuum” on the left than to the role of any one figure or subgroup in the conservative sphere. Eisenach instead finds as threads common to all aspects of American conservatism an emphasis on the family and the importance of the rule of law.

Buckley was of course born in America and educated (or not—his first book God and Man at Yale, was bitterly critical) at Yale University; by the time of his death he had become an iconic figure in American culture, not only because of his decades as editor of National Review, but also as a result of his long participation on the television program Firing Line, carried, paradoxically or not, on the publicly financed Corporation for Public Broadcasting. If anyone can be defined as an unproblematically “American conservative,” one might think it was Buckley, the recipient of a Presidential Medal of Freedom from President George H. W. Bush in 1991.
Far more problematic, with regard to identity, is Leo Strauss, the subject of quite distinctive essays by Nathan Tarcov, Arthur J. Jacobson, and Alan Gilbert. Strauss was born in Germany in 1899, served in the German Army in 1917–18, and then enrolled at the University of Hamburg, where he received his doctorate in 1921 under the supervision of Ernst Cassirer. He also apparently sat in on courses at the universities of Freiburg and Marburg, taught by Edmund Husserl and Martin Heidegger. He also intellectually engaged Carl Schmitt. An active member of the German Zionist movement, Strauss left Germany in 1932, first for Paris and then, ultimately, for the United States (and the University of Chicago), where he remained until his death. To put it mildly, he remains a subject of passionate controversy a full four decades after his death in 1973, as revealed by the three essays on his relationship to “American conservatism.” And of course, books regularly appear about him, including, in 2014 alone, Michael and Catherine Zuckert’s *Leo Strauss and the Problem of Political Philosophy* and Robert Howse’s *Leo Strauss: Man of Peace* (2014).

So the question anyone interested in American conservatism must ask is in what sense was Strauss—or another colleague at the University of Chicago between 1950 and 1962, Friedrich Hayek—“American” instead of “European”? (Similar questions, no doubt, could be asked about another influential political theorist of this period, Hannah Arendt, though she has not been claimed as an avatar of American conservatism.) Like Thomas Mann, Strauss emigrated to America, but few people would define Mann as an “American author,” or, for that matter, Mann’s fellow Californian Arnold Schoenberg as an “American composer.” But why, if at all, does the answer matter? We take it that there would be little interest in a volume on “American physics” unless one was particularly interested in the individual biographies of U.S. nationals who happened, say, to end up winning Nobel Prizes in physics. (In which case would Albert Einstein, who spent the last decades of his life in Princeton, New Jersey, qualify? We think not.) There may have been a “Copenhagen school” of physicists who helped to form the basis of quantum theory in the 1920s, but, generally speaking, physics seems to be a cosmopolitan science whose practices and achievements transcend political boundary lines. Political thought, like legal systems, may be more parochial.
Most historians of political thought, we suspect, are quite willing to discuss “German idealism,” “British empiricism,” and “French social thought,” so this does imply that even if geography is not destiny, it may nonetheless be important in generating distinctive styles of thought and approaches to considering the great topics of political and legal theory. And all of us are presumably familiar with the standard distinction between analytic philosophy, identified largely with Great Britain and the United States, and what is frankly denominated “continental” philosophy, in which the Continent is obviously Europe and the chief figures include Nietzsche and Heidegger, among others. But one can scarcely understand American conservatism in the post–World War II period without paying due attention to Strauss, as is the case with other émigré theorists. Tarcov argues that it is a fundamental error to denominate Strauss as “conservative” (or, of course, “liberal”). Jacobson, on the other hand, focuses on Strauss’s move to America and the impact this had on his thought. He is concerned that Strauss and his followers overlooked, perhaps deliberately, the relationship of fascism to reason, tradition, and the conservative/liberal divide. Whatever label one ultimately places on Strauss the person—is “German-American” a suitable compromise?—it is hard to deny that “Straussianism” and “Straussians” seem to be important in the United States in a way that is not true elsewhere. Just as Buckley is unequivocally American, so too are many of the major figures identified as Straussians. Some have had distinguished academic careers, while some also became more directly involved in the machinery of government. Alan Gilbert’s essay focuses on one such fully American Straussian, Robert Goldwin, who became an important conduit for Strauss’s ideas—or, at least, certain versions of them—to power-holders within the U.S. government. Gilbert’s essay is undoubtedly the sharpest in tone and most likely to provoke at least some readers. This testifies to the fact (or at least possibility) that ideas can have genuine consequences, for good or for ill, as Strauss himself seemed to insist in attacking the baleful consequences of abandoning the wisdom of the ancients for the siren calls of the “moderns” such as Machiavelli, Hobbes, and Max Weber. If one takes politics seriously, as Gilbert most certainly does, it is scarcely possible to write of some of these consequences with dispassion. There are those who love Strauss, and those who
deeply dislike (perhaps even “hate”) him and at least some of his devotees. Perhaps a newer, younger generation of theorists will write about him from a more detached perspective, but anyone educated before, say, 1980, let alone during the 1960s or ’70s, will almost certainly have quite strong views about both Strauss and “Straussianism” (whatever exactly may be thought to be the meaning of the latter).

In any event, it is not only the adjective “American” that makes our topic problematic. Even if one can (or desires to) confidently distinguish between those who are American and those who are not, that still leaves us with the problem of defining “conservatism.” We have already adverted to support of the alliance between throne and altar as one definition of at least post–French Revolutionary conservatism. But are there any serious descendants of Louis Gabriel Ambroise, Vicomte de Bonald, or Joseph de Maistre in the canon of what we ordinarily think of American conservatism? Neither of these figures, for good reason, is mentioned in Sidorisky’s comprehensive overview of strains of American conservatism.

One of the editors of this volume (Levinson) well remembers a graduate course taught by the late Louis Hartz at Harvard on European political thought, which included extraordinarily vivid introductions to Bonald and de Maistre designed to demonstrate their radical differences from anything that might be identified as “conservatism” in America (which Hartz, of course, notably viewed as just another variant of Lockeanism). Consider the fact, for example, that the outstanding list of books republished by the Liberty Fund includes none of their works, even though some of the reprinted works allude to them. This is, not surprisingly, unlike the case with Edmund Burke, whose books are easily available in the United States in many different editions and who continues to be treated as an important intellectual guide by many self-described American conservatives.

But Burke’s (or Hume’s) conservatism is, of course, very different from nineteenth-century liberalism that, with its vision of a minimal (or night-watchman) state, has been so influential on many contemporary libertarians. Whether or not the U.S. constitutional order instantiates, in the unforgettable jibe of Justice Oliver Wendell Holmes, Jr., “Mr. Herbert Spencer’s Social Statics,” there can be little doubt that his brand of conservatism, reflected
in the work of such undeniable Americans as Yale sociologist William Graham Sumner, is light-years away from the noblesse-oblige conservatism associated with, say, Benjamin Disraeli or, indeed, Otto von Bismarck, who was busy developing the German welfare state at the time that Spencer and Sumner were writing.

Moreover, much of the discussion above involves domestic politics and the philosophical issues associated with them. But, of course, there are also divides predicated on what kinds of government and state apparatus are needed to participate effectively in the international order. If Bismarck was in some ways the father of the German welfare state, he is also one of the important figures in the tradition of *realpolitik* or, some would say, *machtpolitik*. Woodrow Wilson, the quintessential “progressive,” fought a war both “to end war” and to guarantee the prospects for “democracy,” and his successors, in both the Democratic and Republican parties, have certainly been willing to support muscular interventionism on behalf of this goal. One suspects that most self-described conservatives, including, say, Henry Kissinger, with his admiration for such figures as Metternich, would find both of these visions naïve and even dangerous. One might return to the earlier question and ask if Kissinger is an “American conservative,” albeit one who, like Strauss, was born in Germany, or simply “a conservative”? But, of course, to identify conservatism, whether American or otherwise, with military interventionism is to ignore one important strain of American conservatism—think in this context of Robert A. Taft—that has been described, especially by its critics, as “isolationism.” It was Taft, after all, who vehemently criticized American membership in NATO and Republican senator John Bricker who sponsored a constitutional amendment that would have ultimately reserved to American states the decision about entering into foreign treaties that arguably changed the political order. And Rand Paul, who is currently running for the 2016 Republican presidential nomination, criticizes at least some “foreign entanglements” that are supported by almost all of his opponents among the fifteen candidates still running as of October 2015.

All of the questions raised above could easily have been asked in 2007, the time of the first set of panels from which many of these papers are drawn. What provoked the later, 2012, gathering in Austin, Texas, though, was not only the delay in publication, but
also, and more importantly, the obvious changes that seemed to be taking place in the quotidian world of American conservatism. If one defines American conservatism (or, for that matter, American liberalism or American as an adjective in front of any other political category) by reference to the actual behavior of people who identify themselves as American conservatives, one can see significant developments taking place with sometimes dazzling rapidity. In January 2007, for example, there was no collapse of the American economy, no “bailouts,” and no Tea Party. John McCain may have been almost literally the last man standing in the competition to represent the Republican Party in the 2008 election, but he had been a “party elder” at least since his near-successful race in 2000 for the Republican nomination. Thus there were many people who predicted his nomination even before the first primary in New Hampshire. But there was, to put it mildly, nothing predictable about his choosing Sarah Palin as his running mate, not to mention the importance that Palin would have in at least some conservative circles in the next several years.

Ron Paul was in 2007 a well-known but almost completely marginal libertarian semi-crank; by 2014 his son, a U.S. senator from Kentucky, was leading some early polls for the Republican nomination (though his support dissipated); and one of his many competitors in 2015 is former Arkansas governor Mike Huckabee, who ran for the presidency in 2008 as a vigorous Christian defending religious values against attack by purportedly rampaging secularists (and who has vigorously defended Kim Davis and suggested that her jailing represented a “war on Christianity”). But Senator Ted Cruz, whose name was known to almost no one in 2007, is competing for much the same constituency as Huckabee and is one of those leading the charge against Jeb Bush, who at least in monetary support appears to have been the early choice of what used to be called “country-club Republicans” (notwithstanding the initial support by financial behemoths the Koch brothers for the unsuccessful campaign of Wisconsin governor Scott Walker).

But the most remarkable feature of the Republican race so far is surely that the three leading candidates, as of October 2015, are Donald Trump, Ben Carson, and Carly Fiorina, none of whom has ever spent even a single day holding public office, even as all three of them profess their deep “conservatism” (as do all of the
candidates, for that matter). Trump in particular has emphasized what many would describe as a raw form of nativism predicated on harsh opposition to most immigration. Many mainstream analysts, appalled by Trump’s success, are eager to describe him as not “really” conservative at all, but that, of course, only highlights the indeterminacy of the term and contestation over who precisely is authorized to decide who is, and is not, a “true conservative.” And analysts of contemporary American conservatism would presumably have to take into account as well the remarkable resignation from the position of Speaker of the House by John Boehner in September 2015 in large part because of his inability to establish any kind of effective control over the “Tea Party” faction of Republicans within the House. The announcement of his resignation, by Senator Marco Rubio, yet another candidate for the presidency, before a conference of conservatives meeting in Washington, was met with remarkably loud and extended cheers.

Perhaps one could write a history of English conservatism in the last forty years without mentioning Margaret Thatcher and her belief, among other things, that “there is no such thing as society. There are individual men and women, and there are families.” But surely something would be missing in such a history that so resolutely ignored not only what was going on in the polity at the time, but also the consequences for self-described “conservatives” and those, including members of the academy, who identified with her political projects. For better or worse, American conservatism over the past half-century coincides with the political triumphs of Richard Nixon and then, far more importantly, of Ronald Reagan, of course as well as the two Bush presidencies and other ongoing political developments. But Reagan left the White House more than a quarter-century ago, and, as with disputes within the Democratic Party over the identity of the “true” legatees of Franklin Roosevelt, the Republican Party is faced with similarly contentious debates over the meaning of Reaganism in the twenty-first century.

Part of the practical importance of the fact that Nixon, Reagan, and the two Bushes dominated the White House for almost forty years is that they were enabled to make far more appointments to the Supreme Court than was Bill Clinton. (Jimmy Carter was the only one-term president to be unable to make even a single appointment to the high court, and Clinton, in eight years, was
able to make only two appointments.) This basic reality contributes to the near-hegemonic power on the Supreme Court of five conservative Republican justices, though one of the more bizarre features of the 2015 presidential campaign is the charge by Senator Cruz that Chief Justice John Roberts is not at all a true conservative, as evidenced by the fact that he provided all-important fifth votes to uphold the Affordable Care Act (“Obamacare”) first against constitutional and then against statutory attack.

It is also the case that these five Republican justices are all Roman Catholic (as is Justice Sotomayor, appointed by President Obama). Is this latter fact relevant? Or perhaps one might ask if it is any more relevant than the fact that this same period also saw the election of the first African American president. All one can say with confidence is that the American social and political orders have developed in ways that almost surely could not have been predicted by anyone writing in 1955 when Hartz wrote his masterpiece (and when, say, electing a Catholic president still seemed highly unlikely and a majority Catholic—and entirely non-Protestant—Supreme Court truly unthinkable). American conservatism, like American liberalism, is a project that necessarily takes place in real historical time, inevitably influenced by what Justice Holmes termed the “felt necessities” of the time. There is, obviously, no necessary agreement on what these necessities may be or, even more certainly, what kinds of measures are required to answer their challenges. Readers of this book will have the advantage of knowing how much of the 2016 primary elections will have turned out and what the results might indicate about “American conservatism.” We hope, though, that the following essays offer some illumination as to how one might approach that question.