Burke on Law, Revolution and Constitution

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Introduction

Edmund Burke occupies an ambiguous position in legal, political and constitutional thought. A lawyer by training, he gained his reputation primarily as a man of letters and skilled parliamentarian. Possessed of great intellectual and literary talents, many have nonetheless questioned whether he was able to elaborate a coherent political philosophy. One difficulty is that although Burke excelled at the essay form, these vary considerably in tone and mood, revealing ambiguities about his political convictions, his philosophical beliefs and his jurisprudential thought. Depending on context, Burke is capable of appearing in the guise of conservative, liberal, and radical. Is he, we might ask, a realist, a historicist and a consequentialist thinker? Or is he an idealist or even a Romantic? The sheer range and variety of his political writings might cause us to conclude that his genius is founded not on his political philosophy but of his singular grasp of the character of the practical engagement of politics.

In this paper, I outline the main themes of his political writing. These themes are distilled from the position Burke takes on the four great issues that most occupied his attention: the revolutions in North America and France and the status of, and treatment within the British Empire, of Ireland and India. A question immediately presents itself. Does he maintain a consistent position over these controversies? He supports the claims of the American colonists for independence, advocates an extension of English legal and political privileges to the Irish, and opposes the harsh governmental regime instituted by the East India Company in India. His arguments on these issues are decidedly liberal. And yet, when it comes to the revolutionary overthrow of the *Ancien Régime* in France, his denunciation is vehement. The work for which he is most famous, *Reflections on the Revolution in France*, acquires a classic status in modern political thought as the epitome of conserv-

ative thought. Can his positions on these issues be reconciled?

Burke himself thought so, though not all commentators are convinced. He evidently changed his view on particular questions, as is illustrated with respect to his treatment of the Glorious Revolution. In *Thoughts on the Cause of the Present Discontents*, written in 1770, he recognized that that Revolution had brought about certain fundamental changes to the English system of government; he accepted, for example, that the Revolution had deprived the Crown and the government of many useful prerogatives[1]. But in a late work, *An Appeal from the New to the Old Whigs* (1791), he denies this to be the case. Instead, we find him maintaining that the Revolution was justified only on the basis that «the people, who have inherited its freedom … are bound in duty to transmit the same constitution to their posterity»[2]. Such discrepancies might cause us to think that perhaps there are, in reality, two Burkes: the liberal youth and the conservative man. I suggest, however, that although his essays present differences of emphasis, there is a consistency of thought.

This consistency has been clouded by the subsequent reception and reworking of his ideas. Burke is best known to us today as a conservative who stoutly defended the virtues of traditional hierarchical ordering. This was not the case during the 19th century. Then, especially under the influence of his biographer, John Morley, he was refashioned as a liberal and a positivist whose thought helped shape the ideas of John Stuart Mill and his disciples[3]. To get to the core of Burke's distinctive contribution, these layers of accretion must be stripped away and his work examined in the context of his times.

My objective in this short paper, then, is to sketch the main themes that emerge in Burke's works. I take these to be those of law, revolution and constitution. In common with many thinkers of his time, Burke was strongly influenced by Montesquieu, with whom he shared a belief that the complex relationship between law and society is formed by the cultural and historical life of a nation. His ideas were also shaped by the works of Bacon, Locke and Hume, from whom he acquired a belief in the importance of the experience. But alongside the practical, evolutionary mode of thought Burke retained a Christian belief in the workings of natural law. Burke therefore blends historical sensibility and moral principle in a manner opposed to the Cartesians of his day[4], projecting a compelling account of the proper relation between thought and action, theory and practice. These underlying influences have a defining impact on his views on law, revolution and constitution.

1. *Constitution*

We should first consider Burke's arguments on how governments acquire authority. His basic stance is that government is to be evaluated according to the degree to which it is able properly to attend to the needs of its people. Authority flows not from the manner of its constitution, but from the ends it is able to realize. All governmental power is acquired by artifice. Since it is a derogation from the principle of the natural equality of mankind, it can be justified only by demonstrating how it works to the benefit of its people[5]. This is Burke's cardinal rule. It is

clearly outlined in *An Appeal from the New to the Old Whigs*, where he states that:

> The practical consequences of any political tenet go a great way in deciding upon its value. Political problems do not primarily concern truth or falsehood. They relate to good or evil. What in the result is likely to produce evil, is politically false: that which is productive of good, politically is true[6].

This provides the bedrock of principle running through all Burke's works. On this foundation he argues for reforms to the government of Ireland, defends the claims of the American colonists, criticizes the East India Company's regime in India, and vehemently opposes the revolution in France. «I cannot think that what is done in France», he declares in 1792, «is beneficial to the human race». But if that did prove to be the case, then neither the British constitution nor any other should prevail against it[7].

This suggests that Burke's views about constitutional ordering are not as conservative as some have imagined. He does not believe, as some imply, that the authority of a constitution rests on its ancient lineage. Rather, his argument is that the prescriptive constitution proves its worth not by virtue of its longevity but from the good outcomes it produces. The existence of a long-established constitution does not therefore render irrelevant any discussion of a government's legitimacy. His point is that it eliminates allegations that government is illegitimate simply because it has not been authorized by its present generation of subjects. Burke's argument about the prescription of the constitution is directed in particular against radical natural rights claims, specifically, the claim that each generation has the right to determine its own arrangements of government. Any claim based on natural rights is abandoned at the moment humans enter into civil society and form governing arrangements. Thereafter, the justification of government rests only on the benefits it bestows.

The existence of a long-standing constitution does not therefore end all discussion of its rightness or authority. Such a constitution has proven its value over many generations and, given the fickleness of human reason, the fact that this arrangement is the consequence of the work of «many minds, in many ages» makes it intrinsically worthy of respect[8]. Of the British constitution, which is taken as the epitome of a prescriptive constitution, he states:

> It is no simple, no superficial thing, nor to be estimated by superficial understandings. An ignorant man, who is not fool enough to meddle with his clock, is however sufficiently confident to think he can safely take to pieces, and put together at his pleasure, a moral machine of another guise, importance and complexity, composed of far other wheels, and springs, and balances, and counteracting and co-operating powers. Men little think how immorally they act in rashly meddling with what they do not understand[9].

The criterion of a good constitution, then, is the goodness of the results it produces. But Burke is also saying that 'good results' in the treacherous field of the political are not easily calibrated and it is for this reason that the inherited arrangements of government should not lightly be tampered with. This does not require blind adherence to the existing constitution, although it would appear to rule out radical change. Sensitive incremental reform of the constitution is fine: we should get rid of the accretions that no longer deliver good government. But we must never lose sight

of the fundamentals: we must always work with the grain.

Consequently, the principle of prescription in government – of adherence to the inherited constitution – does not entail stasis. «A state without the means of some change», he maintains, «is without the means of its conservation»[10]. But does this suggest that the type of revolutionary change embodied by the French Revolution on the foundation on natural rights claims should be opposed? Burke answers in the affirmative, reasoning that a constitution is not created by a political pact through which a people, at a particular moment in time, agree the fundamental principles of its government. The constitution is a pact that subsists through time: the constitution «is a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born»[11]. Constitutions undoubtedly change through time, but these changes must be gradual, evolutionary, and they must remain fixed on the objective of promoting the public good.

2. *Rights, Reform and Revolution*

That Burke's view on the authority of the constitution provides the basis for understanding many of the contentious political issues of his times is most clearly illustrated with respect to his position on Ireland and America.

He consistently promoted the cause of reform in Ireland. Seventeenth century upheavals in Ireland had entrenched Protestant rule in an overwhelmingly Catholic country. Burke argued that no one could contend that the existing regime – in which Catholics were barred from participation in political affairs and Irish Protestant rule was sustained by bargaining with the English government – was in the best interests of the Irish people. Reform was required not because of a Romantic notion of self-government, but because England needed the support of the Irish to ensure their own security. Basic political reforms – including that of Catholic emancipation – were needed to ensure that Ireland remained within the British Empire[12]. His position on Irish affairs conformed to his general political philosophy. In *Thoughts on the Cause of the Present Discontents* (1770), he noted that «the people have no interest in disorder» and that «where popular discontents have been very prevalent, it may well be affirmed and supported that there has been generally something found amiss in the constitution, or in the conduct of government»[13].

Burke's views with respect to the disputes that arose in the American colonies are similarly consistent with his general political convictions. He had initially been in favour of the Declaratory Act, which declared the right of Parliament to tax the colonies – indeed, he may even have been responsible for its drafting[14]. But he soon came to recognize that taxation of the colonists was not prudent politics. A nation is not governed, he explained, «which is perpetually to be conquered»[15]. He therefore argued that the situation demanded restraint on the part of the British Parliament. The question is «not whether you have a right to render your people miserable, but whether it is not in your interest to make them happy». Expanding the point, he adds that it «is not what a lawyer tells me I *may*

do, but what humanity, reason, and justice tell me I ought to do»[16].

For Burke, such questions could not be resolved purely by legal formalities of right and duty; they were determined according to the political logic of prudence and the maintenance of peace. Once it is established that prudence dictates restraint, however, he is not slow to convert the matter into an issue of principle. The liberty-loving settler colonists who carried their common law rights with them were not prepared to submit to taxation by an institution in which they had no representation. So far as Burke is concerned, the Americans were justified in claiming that by being subjected to taxation without representation they were reduced to the status of slavery (though the ironic dimension of the claim being made by the colonists seems to have escaped them).

This right of rebellion, Burke implies, is established only when prudential requirements can be converted into a general political principle. The starting point is the right to liberty enshrined in the common law and from which the constitutional laws of England derive. These rights are not bequeathed by statute law; rather they are rights on which the foundation of governmental authority rests. Only if governments ignore these conditions and subvert basic liberties without any evident utility, might the people be justified in rebelling. Burke's argument has the doctrine of Parliamentary sovereignty – and especially a parliament stuffed with the King's placemen – directly in his sights. Yet we must also acknowledge that his argument comes close to upholding those natural rights that elsewhere he decries as abstract metaphysical nonsense.

This stance on the American conflict poses a more general question: in what circumstances might the overthrow of the established government be justified? When might the abuse of governmental authority lead to the establishment of a right of rebellion? The explanation he provides is based on the doctrine of necessity. The clearest evidence that he accepts such a doctrine of necessity – that of reason of state – can be found in his account of the Revolution of 1688[17]. Burke believes that necessity could be invoked only in the most extreme case, when action is clearly needed and would redound to the benefit to the entire society. On these grounds, he maintains that the Glorious Revolution of 1688 was entirely justifiable.

Burke therefore accepts the revolutionary character of the events of 1688 but argues that the overthrow of James II amounted only to «a small and a temporary deviation from the strict order of a regular hereditary succession»[18]. He accepts that the adoption of William of Orange as king «was not properly a *choice*» but «was an act of *necessity*, in the strictest moral sense in which necessity can be taken»[19]. The crown was therefore «carried somewhat out of the line in which it had before moved; but the new line was derived from the same stock» and «it was still a line of hereditary descent»[20]. Consequently, the «principles of the Revolution did not authorize them to elect kings at their pleasure, and without attention to the antient fundamental principles of our government»[21]. And neither was the overthrow the result of mere misconduct. «No government could stand a moment», he claims, «if it could be blown down with any thing so loose and indefinite as an opinion of *misconduct*»[22]. On the contrary, only a

«grave and overruling necessity obliged them to take the step they took»[23].

For Burke, such a revolutionary act will always amount to «an extraordinary question of state» and be «wholly out of the law». It is «a case of war and not of constitution». And it is therefore a question «of dispositions, and of means, and of probable consequences, rather than of positive rights». But he was keen to emphasize that this type of remedy «was not made for common abuses» and it therefore «is not to be agitated by common minds»[24]. Governments «must be abused and deranged» before revolution can be contemplated: «a revolution will be the very last resource of the thinking and the good»[25]. Burke was here at pains to emphasize the point that revolutionary action is not generated from general theories of government and constitution, nor from abstract concepts of right. The legitimacy of such action must be assessed by reference to the specific political circumstances. And the relevant criteria are whether it is driven by necessity and undertaken with a minimal degree of disruption to the established order.

3. *The Revolution in France*

Can Burke's account of revolutionary action driven by necessity be reconciled with his infamous views about the nature and significance of the French revolution? His tone in *Reflections* undoubtedly differs from that of earlier works. With respect to earlier political conflicts, he had expressed understanding for popular insurrection on the grounds that the people are not easily roused but that when motivated into action they are invariably right[26]. The tone in *Reflections* is decidedly different. Here he places the initial blame for the revolution on the king's advisers, but thereafter on the cabal that expresses its revolutionary spirit. Most striking is his characterization of the role of 'the people', which deviates considerably from earlier formulations.

Burke first rails against the perfidy of the king's advisers who informed him that by convening the Estates General «he had nothing to fear but the prodigal excess of their zeal in providing for the support of the throne»[27]. These counsellors are held responsible for having seen «the medicine of the state corrupted into its poison»[28]. Through their ineptitude in promoting the «perilous adventures of untried policy» the French people have been motivated to «rebel against a mild and lawful monarch, with more fury, outrage, and insult than ever any people has been known to rise against the most illegal usurper, or the most sanguinary tyrant»[29].

His immediate target with respect to failures of statecraft may be right: it was indeed a failure of «rash and ignorant counsel»[30]. But one cannot help but feel that his views on the people are exaggerated. Was this really a mob of unprecedented fury and outrage? We must bear in mind the fact that his essay was written in 1790, a period still in the early stages of revolution during which the French king remained untouched. And we should note the fact that although spending a significant portion of the *Reflections* explaining and justifying the achievements of the Glorious Revolution, he entirely overlooks the precedent of the English civil war of the 1640s, a bloody conflict that led to the execution of a king. Ignoring that precedent, he complains

only of the great destruction effected by the French mob and of learning «cast into the mire and trodden down under the hoofs of a swinish multitude»[31].

But Burke's most vehement outrage is reserved for those who have misguided the people: the «literary cabal» that forged a plan «for the destruction of the Christian religion»[32], otherwise referred to as «a cabal calling itself philosophic» which has generated the «true actuating spirit» of the people's actions[33]. These are, at best, «only men of theory», who lack «any practical experience in the state»[34]. A great proportion of the National Assembly may have been lawyers, but they were not jurisconsults experienced in affairs of state. Rather, they were only «the inferior, unlearned, mechanical, merely instrumental members of the profession»[35]. These «could not be expected to bear with moderation … a power which they themselves, more than any others, must be surprised to find in their hands»[36]. These were «men formed to be instruments, not controls»[37]. Once they had acquired the reins of power, their natural tendency was towards centralization and standardization, with the result that «every landmark of the country» was abolished «in favour of a geometrical and arithmetical constitution»[38]. The power of the city of Paris became «one great spring of all their politics»; it became «the centre and focus of jobbing», through which «the leaders of this faction direct, or rather command, the whole legislative and the whole executive government»[39].

Burke maintains that this group – «the politicians of metaphysics» – had «opened schools for sophistry and made establishments for anarchy»[40]. The French nation had thereby been delivered over to anarchy and the tyranny of the multitude. His prediction that such a destruction of constitutional order could lead only to the establishment of a ruthless dictatorship has been widely admired. Whether it is attributable to Burke's practical insight and wisdom in the arts of government or to his thoroughly jaundiced view of the revolution remains an open question.

4. *Revolutions Contrasted*

The French Revolution, Burke contends, arose from a combination of forces: the weakness of the forces of conservation and the strength of those of revolution. But if it was due to the ineptitude of counsellors together with a conspiracy of the professional and intellectual elites, surely a similar argument could be made with respect to the American Revolution. Why did he take a radically different position with respect to these two events?

Burke believed he pursued a consistent line on these revolutions. The explanation he offered in his *Appeal from the New to the Old Whigs* is that he has «always firmly believed that they [the Americans] were purely on the defensive… standing… in the same relation to England as England did to King James the Second in 1688»[41]. In this essay, an attempt to persuade his fellow *Whigs* that they should not be sympathetic to the ideals of the French Revolution, he maintains that the American colonists stood up against encroachments upon their established rights. In France, by contrast, it is «not the people, but the monarch [who] was wholly on the defensive… to preserve some fragments of the royal authority

"The Knight of the woeful countenance going to extirpate the National Assembly": Burke come il Don Quixote della controrivoluzione, *stampa ad opera di Frederick Byron, 1790*

against a determined and desperate body of conspirators, whose object it was… to annihilate the whole of that authority»[42]. In other words, Burke was arguing that the American Revolution had been caused by the British Crown's attempt to subvert the principles of the constitution, whereas the French Revolution was an attempt by the self-styled National Assembly to subvert the principles of the French Constitution. There is something to this claim, but it overlooks the important point that, if this is so clear, one might have expected that, while expressing sympathy for the American cause, Burke would have objected to the natural rights terminology deployed in the American Declaration of Independence.

This point signals a further reason for his contrasting positions on these two revolutionary movements. It might well be the case that it was only by the time of the later revolution that Burke had come to realize the full significance of the American Revolution, that it was not simply a revolution to preserve the common law rights of the freeborn Englishman. Only later did he realize that the American Revolution lit a beacon for the Enlightenment claim that legitimate government must be founded on the natural and inalienable rights of man. Only by 1790 were these implications plain to see.

Burke's essay, it should be stressed, concerns 'the revolution in France' rather than 'the French Revolution'. The revolutionary zeal exhibited by the French was not confined to any particular nation-state: the missionary creed of the Rights of Man was explicitly designed for export. As Thomas Paine proclaimed, America had taken a stand not only for herself but on behalf of the modern world: the American Revolution was the moment and the place «where the principles of universal reformation could begin»[43]. The earlier revolution marks the beginning of the end of regimes of monarchical government based on military objectives[44], and replacement by government «founded on a moral theory, on a system of universal peace, on the indefeasible hereditary Rights of Man»[45]. Whereas monarchical government is founded on hierarchy, the legitimating principle of the newly emerging regimes is that of equality. Government legitimated by divine will or sacred custom was now challenged by government authorized by the consent of free and equal citizens.

The three main principles underpinning this 'universal reformation' are that

the individual possesses inherent natural rights, that the office of government is instituted to ensure the maintenance and full enjoyment of these rights, and that the best method of safeguarding these rights in the civil state is through the device of a written constitution specifying the fundamental terms of the bargain between rulers and ruled. «Man did not enter into society to become *worse* than he was before, nor to have fewer rights than he had before», argues Paine, «but to have those rights better secured»[46]. The modern regime of government Paine proclaims is firmly founded on the 'rights of man'.

The explanation for Burke's shrill assessment of the situation in France in 1790 is more clearly revealed by the full title to his essay: *Reflections on the Revolution in France, and on the proceedings in certain societies in London relative to that event*. Burke's oratory is directed primarily to the British. In part it is addressed to the governing class, as a warning on the consequences of an utter failure of statecraft. But primarily it is aimed at the agitators at home. This is most clearly signalled at the end of *Reflections*. The improvements achieved by the French National Assembly, he claimed, «are superficial, their errors fundamental»[47]. Rather than taking models from them for the improvement of our own constitution, we should be recommending to our neighbours the example of the British constitution. «Standing on the firm ground of the British constitution, let us be satisfied to admire, rather than attempt to follow their desperate flights, the aeronauts of France»[48].

Burke later referred to the French Revolution as the world's first «total revolution». As he notes in his *Letters on a Regicide Peace*, «France, on her new system, means to form a universal empire, by producing a universal revolution»[49]. Consequently, Britain was not at war «with an ordinary community which is hostile or friendly as passion or as interest may veer about; not with a State that makes war through wantonness, and abandons it through lassitude». Rather, we «are at war with a system, which by its essence is inimical to all other Governments». We are, in short, at war «with an armed doctrine»[50]. He claims, further, that if a war to prevent Louis XIV from imposing his religion was just, similarly «a war to prevent the murderers of Louis XVI from imposing their irreligion upon us is just; a war to prevent the operation of a system… is a just war»[51]. His opposition to the French Revolution is an opposition to a fanatical sect spouting a revolutionary doctrine. Only in later life did he come to realize that, far from being simply a dispute over the common law inheritance, the American Revolution could also be counted as the first wave of a new type of political doctrine.

5. *Law*

Government rests ultimately on the consent of the people, and for Burke so too does law. The people are presumed to consent to the laws laid down by the legislature, but they cannot be assumed to consent to laws that do not operate for the overall good. This much Burke makes clear in his views on Ireland. To contend otherwise is to connive in oppression. His argument is underpinned by natural law doctrine. The laws enacted by legislatures are, in the final

analysis, declaratory: they must ultimately be seen to be devised with the object of promoting human flourishing. The office of government exists to secure and conserve these human values.

Burke's convictions about the foundation of lawful authority are most clearly revealed in his speech on the impeachment of Warren Hastings over his conduct of government in India in his role as Governor-General of Bengal. Burke here argues that the natural rights of a people are universal and not subject to geography[52]. All law and all sovereignty is derived from God: «if the laws of every nation, from the most simple and social of the most barbarous people, up to the wisest and most salutary laws of the most refined and enlightened societies, from the Divine laws handed down to us in Holy Writ, down to the meanest forms of earthly institution, were attentively examined, they would be found to breathe but one spirit, one principle, equal distributive justice between man and man, and the protection of one individual from the encroachments of the rest»[53]. It is only on the basis of this universal principle that sovereignty itself is established.

The universal and natural foundation of law that he expounds in his arguments with respect to Irish and American affairs are in his speech on the Hastings impeachment explicitly tied to the authority of a divine creator. Burke here draws his speech to a close by pleading with the Lords to impeach Hastings «in the name and by virtue of those eternal laws of justice which he has violated». «I impeach him», he states, «in the name of human nature itself, which he has cruelly outraged, injured, and oppressed, in both sexes, in every age, rank, situations, and condition of life»[54].

Can these beliefs be reconciled with his views on the prescriptive authority of government and of the primary importance of prudence in politics? A strict natural rights doctrine would maintain that any claim to legal title must have some foundation in right and a possession acquired through force or fraud could never be valid. Yet Burke's position is more ambiguous and nuanced. He maintains that «Time» must be permitted to «draw his oblivious veil over the unpleasant modes by which lordships and demesnes have been acquired in theirs, and in almost all other countries upon earth»[55]. He accepts in effect that an original evil is transformed into good by virtue of a higher natural necessity – the need for order and the security of the state and its citizens. Burke considered it «prudent to relativize at least part of what classical and Christian natural-law theory had held to be absolute and immutable»[56].

Prudence, we might recall, is «not only the first in rank of the virtues political and moral, but… the director, the regulator, and standard of them all»[57]. This suggests that principle must remain subservient to prudence. But Burke recognizes that «without the guide and light of sound, well-understood principles, all reasonings in politics, as in everything else, would be only a confused jumble of particular facts and details, without the means of drawing out any sort of theoretical or practical conclusion»[58]. There is, then, a crucial ambiguity in his thought on law and authority. Burke refuses to make a purely conventionalist or historicist argument and inveighs principles in aid of his position, but he is, in the end, unable to offer anything other than a rhetorical account of the basis of his universal principles.

Conclusion

Burke distills his political jurisprudence from a variety of sources. Most fundamentally, he regards society as an organic unity, maintaining that this sense of unity has through time shaped the distinctive character and situation of a people. He accepts the power of reason, but only when it works within this historical frame. And he rejects altogether the type of metaphysical reason exhibited in natural rights doctrines. «Nothing universal», he suggests, «can be rationally affirmed on any moral, or any political subject». The lines of morality in the sphere of the political «admit of exceptions» and «demand modifications». For this reason, prudence is the highest virtue in political jurisprudence[59]. Prudence – *artifices officiorum* – «requires a very solid and discriminating judgment, great modesty and caution, and much sobriety of mind in the handling». It can be reckoned only in the context of a particular situation, «else there is a danger that it may totally subvert those offices which it is its object only to methodize and reconcile»[60].

If there is consistency in Burke's method, there nonetheless remains a deep-seated tension in his political orientation between conservatism and liberalism. In one interpretation, he is the defender of the old order of nobility, of the 'age of chivalry', and of necessity of retaining 'the decent drapery of life' that bolsters the hierarchical ordering of society through the power of myth and superstition. Yet there is also considerable ambivalence in Burke's view of the historical role of the bourgeoisie, and this reveals a liberalism that comes to the fore primarily in his writings on political economy. This is illustrated by his attack on the East India Company's regime in India, where he defends the emerging liberal values of a disciplined, rational commercialism against the vices of monopolistic abuse.

These tensions in Burke's writing reflect the tensions within modern liberalism itself. Burke was conflicted because he could see that the movement of progressive societies was not simply a movement from status to contract. Contractual relations could work well only when commercial principles were set to work within a social order founded on status and hierarchy. The political pact invoked by liberal theorists on a principle of equality for the purpose of creating an image of unity also establishes a system of government founded on hierarchy. Burke recognized that this pact is not created at some mythical constitutional moment: it is intergenerational. In doing so, he exposed a profound, if rather ambivalent, principle: political equality would become acceptable to liberals only once it is set to work within a status-derived social order.

[1] See E. Burke, *Thoughts on the Cause of the Present Discontents*, in P. Langford (ed.), *The Writings and Speeches of Edmund Burke*, vol. II: *Party, Parliament and the American Crisis, 1776-1774*, Oxford, Clarendon Press, 1981, pp. 241-323, at pp. 262-3, pp. 299-300.

[2] E. Burke, *An Appeal from the New to the Old Whigs*, J.M. Robson ed., Indianapolis, Bobbs-Merrill, 1962, p. 59.

[3] J. Morley, *Edmund Burke: A Historical Study*, London, Macmillan, 1879.

[4] See, eg, Burke, *Speech on American Taxation, 19 April 1774*, in *The Writings and Speeches of Edmund Burke*, vol. II cit., pp. 406-501 at p. 458: «I do not enter into these metaphysical distinctions; I hate the very sound of them».

[5] See, eg, E. Burke, *Speech on Fox's India Bill, 1 December 1783*, in P. Langford (ed.), *The Writings and Speeches of Edmund Burke*, vol. V: *India: Madras and Bengal 1774-1785*, Oxford, Clarendon Press, 1981, pp. 378-451 at p. 385: «all political power which is set over men… being wholly artificial, and for so much a derogation from the natural equality of mankind at large, ought to be some way or other exercised ultimately for their benefit».

[6] Burke, *An Appeal from the New to the Old Whigs*, cit., p. 99.

[7] E. Burke, *Heads for Consideration on the Present State of Affairs, November 1792*, in L.G. Mitchell (ed.), *The Writings and Speeches of Edmund Burke*, vol. VIII: *The French Revolution 1790-1794*, Oxford, Oxford University Press, 1998, pp. 386-402, at p. 402.

[8] Burke, *An Appeal from the New to the Old Whigs*, cit., p. 134.

[9] *Ibidem*.

[10] E. Burke, *Reflections on the Revolution in France* (1790), London, Penguin, 1968, p. 106.

[11] Ivi, pp. 194-195.

[12] See J. Conniff, *Edmund Burke's Reflections on the Coming Revolution in Ireland*, in «Journal of the History of Ideas», n. 47, 1986, pp. 37-59.

[13] Burke, *Thoughts on the Present Discontents*, cit., p. 255.

[14] See R.M. Hutchins, *The Theory of the State: Edmund Burke*, in «Review of Politics», n. 5, 1943, pp. 139-155, at p. 142.

[15] E. Burke, *Speech on Conciliation with America, 22 March 1775*, in W.M. Elofson, J.A. Woods (eds.), *The Writings and Speeches of Edmund Burke*, vol. III: *Party, Parliament, and the American War 1774-1780*, Oxford, Clarendon Press, 1996, pp. 106-169, at p. 119.

[16] Ivi, p. 135.

[17] D. Armitage, *Edmund Burke and Reason of State*, in «Journal of the History of Ideas», n. 61, 2000, pp. 617-634; W.H. Greenleaf, *Burke and State Necessity: The Case of Warren Hastings*, in R. Schnur (hrsg.), *Staatsräson: Studien zur Geschichte eines politischen Begriffs*, Berlin, Duncker & Humblot, 1975, pp. 549-567.

[18] Burke, *Reflections* cit., p. 101.

[19] Ivi, pp. 101-102.

[20] Ivi, p. 106.

[21] Ivi, p. 110.

[22] Ivi, p. 112.

[23] Ivi, p. 113.

[24] Ivi, p. 116.

[25] Ivi, pp. 116-117.

[26] Burke, *Speech on Conciliation with America, 22 March 1775*, cit., p. 120; Burke, *Thoughts on the Present Discontents*, cit., at pp. 252-253.

[27] Burke, *Reflections* cit., p. 125.

[28] Ivi, p. 126.

[29] Ivi, p. 125, p. 126.

[30] Ivi, p. 127.

[31] Ivi, p. 173. Conor Cruise O'Brien, Burke's editor, notes, however, that Burke's opponents were quick to quote him as referring to '*the* swinish multitude'. The indefinite article is important since Burke may have been referring to a specific event: ivi, p. 385, n. 66.

[32] Ivi, p. 211.

[33] Ivi, p. 185.

[34] Ivi, p. 128.

[35] Ivi, p. 130.

[36] *Ibidem*.

[37] Ivi, p. 132.

[38] Ivi, p. 144.

[39] Ivi, p. 314.

[40] Ivi, p. 348.

[41] Burke, *An Appeal from the New to the Old Whigs*, cit., p. 39.

[42] Ivi, pp. 41-42.

[43] Th. Paine, *Rights of Man* (1791-1792), in Mark Philp (ed.), *Rights of Man, Common Sense and other Political Writings*, Oxford, Oxford University Press, 1995, pp. 83-331, at p. 210.

[44] Of monarchical government, Paine noted: «War is their trade, plunder and revenue their objects», ivi, p. 212.

[45] Ivi, p. 213.

[46] Ivi, p. 119.

[47] Burke, *Reflections* cit., p. 375.

[48] Ivi, p. 376.

[49] E. Burke, *Third Letter on a Regicide Peace*, in *Selected Works of Edmund Burke*, vol. III: *Letters on a Regicide Peace*, Indianapolis, Liberty Fund, 1999, pp. 191-306, at p. 248.

[50] Burke, *First Letter on a Regicide Peace*, in *Selected Works*, cit., pp. 59-152, at p. 76.

[51] Ivi, p. 122.

[52] E. Burke, *Speech on the Opening of Impeachment, 15-19 February, 1788*, in P.J. Marshall (ed.), *The Writings and Speeches of Edmund Burke*, vol. VI: *India*, Oxford, Clarendon Press, 1991, pp. 264-471, at p. 353.

[53] Ivi, pp. 363-364.

[54] Ivi, p. 459.

[55] Letter to Richard Burke, post 19 February 1792' in R.B. McDowell (ed.), *The Writings and Speeches of Edmund Burke*, vol. IX: *The Revolutionary War 1794-97 and Ireland*, Oxford, Clarendon Press, 1991, pp. 640-658 at p. 653.

[56] R.W. Kilcup, *Burke's Historicism*, in «Journal of Modern History», n. 49, 1977, pp. 394-410, at p. 401.

[57] Burke, *An Appeal from the New to the Old Whigs*, cit., p. 20.

[58] Cited in D. Herzog, *Puzzling through Burke*, in «Political Theory», n. 19, 1991, pp. 336-363, at p. 345.

[59] Burke, *An Appeal from the New to the Old Whigs*, cit., p. 20.

[60] Ivi, p. 99.