

Interpretation

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Volume 17 Number 1

- 3 Ernest L. Fortin Thomas Aquinas and the Reform of Christian Education
- 19 Michael Palmer The Citizen Philosopher: Rousseau's Dedicatory Letter to the *Discourse on Inequality*
- 41 David Bolotin The Concerns of Odysseus: An Introduction to the *Odyssey*
- 59 Morton J. Frisch Edmund Burke and the American Constitution
- 69 Mera J. Flaumenhaft Seeing Justice Done: Aeschylus' *Oresteia*
- 111 Roger D. Masters Evolutionary Biology and Naturalism
- 127 Celia McGuinness The *Fundamental Constitutions of Carolina* as a Tool for Lockean Scholarship
- Book Reviews*
- 145 William Mathie *The Rhetoric of Leviathan: Thomas Hobbes and the Politics of Cultural Transformation* by David Johnston
- 152 Chaninah Maschler *Death and the Disinterested Spectator: An Inquiry into the Nature of Philosophy* by Ann Hartle

Interpretation

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Edmund Burke and the American Constitution

MORTON J. FRISCH

Northern Illinois University

It is curious indeed, if not incredible, that Edmund Burke, considered the greatest commentator on constitutions in the eighteenth century, hardly uttered a word and never an opinion on the American Constitution. His correspondence makes no mention of the momentous happenings in America between 1787 and 1789. The nearest Burke came to saying anything about the American Constitution was a remark made in September 1788 to the effect that "America looks as if she were taking something like a form" by ratifying the proposed Constitution (*Correspondence*, V:415), and an admission made in the House of Commons debate on the Quebec Government bill on May 6, 1791 that the Americans were well fitted for a republican government. In all probability, Burke never gave a second thought to the ratification of the American Constitution and, even though he championed the American cause during the American Revolution, he was conspicuously silent about the American regime after its inception in 1789. Burke surely must have been aware that the American regime was making its accommodations with England once its new Constitution was in place, but he never commented on Washington's Proclamation of Neutrality of 1793 relieving this country of obligations incurred under a 1778 treaty with France or even took notice of the Jay Treaty negotiated with his own country in 1794.

In an 1814 letter to Adrian Van Der Kemp, John Adams claimed that, prior to 1786, the organization of free government was a subject little studied by Burke, and that Burke had not taken notice of it until the publication of the first volume of Adams' *Defense of the Constitutions of Government of the United States of America*. But Burke wrote in 1791 that he had "studied the form and spirit of republics very early in life; [that] he [had] studied them with great attention, and with a mind undisturbed by affection or prejudice; [and that he was] convinced that the science of government would be poorly cultivated without this study" (*Works*, IV:109). Moreover, every reader of Burke's *Letter to the Sheriffs of Bristol* written in 1777 will know that he had given much thought to the subject of free government during the period of the American Revolution. It is consequently clear that Burke had studied free government prior to his coming into contact with Adams' treatise. Burke understood the reasoning required for free government and, therefore, can be presumed to have been well qualified to comment on the American Constitution.

David Hume wrote in 1741 that “there is no doubt but a popular government may be imagined more perfect than . . . our present constitution” (Hume, *Essay* 7). Hume might well have settled for moderate monarchy in England, but that would not have precluded his looking for republicanism elsewhere. Burke, following Hume, wrote to Charles-Jean-Francois Depont in November 1789 that he was not so narrow-minded as to be unable to conceive of a constitution other than the British Constitution (presumably a republican one) that could reconcile the opposite principles of energy in government and the liberty of the individual (*Correspondence*, VI:45–46). But combining “the requisite stability and energy in Government with the individual attention to liberty” (and these are Madison’s own words) is precisely what the Constitutional Convention was reputed to have accomplished. *The Federalist Papers* describes the critical task of the Constitutional Convention as rendering republicanism a defensible form of government, as defensible as the British Constitution, by reconciling the contradiction between the demands of energy and liberty. Yet Burke never once mentioned the American Constitution in his writings on the French Revolution, in spite of the fact that he had stated in the House of Commons in 1791 that he believed the Americans were well fitted for a republican government. Whatever else can be said, it seems that Burke took quite seriously the possibility of a republican political order on a par with the British Constitution, vindicating at least in part his apparent indifference toward the American Constitution.

Even before the French Revolution, in counseling reconciliation with America in 1775, Burke praised the Americans for having formed governments (referring to their Committees of Correspondence) without their being “transmitted through any of the ordinary artificial media of a positive constitution. It was not a manufacture ready formed,” he said, “and transmitted to them in that condition from England” (*Works*, II:129). Burke chose to investigate constitutions by looking almost exclusively at the French and British constitutions, and the high point of his argument was that “made” constitutions are radically inferior to unplanned ones. In his writings on the French Revolution, Burke favored the constitution that was formed on no regular plan and that had no unity of design, but that came into being “in a great length of time, and by a great variety of accidents,” the unintended outcome of accidental causation (*Works*, V:373). He seemed to have believed that accidents that occur over a period of time bring about, by their combined effect, something that is superior to anything that reason would have been able to accomplish.

Burke argued that an accidental becoming guarantees a type of perfection superior to that resulting from a planned order because it is in agreement with freedom or individuality. What the French revolutionary theorists did was to make a planned regime, and every interference with the individual that would necessarily result constitutes a threat to freedom and, therewith, to a free society. We are entitled to surmise, therefore, that Burke’s lack of enthusiasm for or lack of interest in the American Constitution has something to do with its

planned character. It cannot be denied that the American Constitution was established by conscious construction, but it was not, as has been suggested, constructed on a mechanistic Newtonian model (Hofstadter, 1948, 8). The Articles of Confederation served as a point of departure for the Convention's deliberations inasmuch as the delegates' instructions were to revise that constitution. That they decided not to follow those instructions shows how important their previous experience under the Articles was in moving them in new directions—directions that ironically pointed them backward toward monarchical power. What presented itself as independent, energetic executive power in the American Constitution was simply transformed monarchical power, that is, the integration of monarchical power within the republican framework. It took considerable reflection on their own previous experience under the Articles for the leading framers to recognize that the strength and independence of a monarchy would need to be integrated within the republican framework if republicanism was to survive as a viable constitution of government.

In Burke's view, the coming into being of a sound political order was based on a process, not on abstract doctrines or theories. He denied, therefore, that theory is sufficient to guide practice and, even more, asserted that the intrusion of theory into practice tends to mislead or even corrupt practice. Witness the French revolutionary constitution. If one were to speculate as to why Burke did not attach much importance to the American Constitution, one might conjecture that he regarded it, understandably, as only a blueprint and thus would have had little reason to give much thought to a constitution that was no more than a scheme on paper. He noted that a "constitution on paper is one thing, and in fact and experience is another" (*Works*, VII:77). Therefore, the American Constitution, at the time of its inception, had to be conceived of as essentially incomplete. But however indifferent to the American Constitution Burke may be thought to be, he surely would have recommended that a pristine constitution should be fitted to a country rather than making a country conform to the theory of the constitution, which recommendation is consistent with what happened in America during the period of the completion of the founding.

Burke's obtrusive silence concerning the American Constitution is enigmatic when one takes into account his astuteness as an observer of contemporary affairs and his previous interest in American affairs. His preoccupation with the French Revolution is clearly not a sufficient explanation for that silence. Burke's animus against "made" constitutions may explain his reluctance to speak about the American Constitution or even account for his lack of enthusiasm for that constitution, but it did not rule out a recognition on his part of the possibility of a republican order on a par with the British Constitution.

Burke seems to have been a passive witness to the appearance of the American Constitution. He preferred to concentrate on the French Revolution and its revolutionary constitution, realizing the extent to which the doctrinaire tendencies inherent in the French Revolution were responsible for the level of political

fanaticism in France. This intrusion of theory into practice—that is, the appearance of a revolution of doctrine and theoretic dogma—kept his attention focused on the French Revolution. His *Reflections on the Revolution in France* takes on the character of a theoretical critique of political doctrinarism. The American Constitution, on the other hand, presented no possible threat to individual freedom and provided ample safeguards for property.

In his *Reflections on the Revolution in France*, Burke observed that the formation of a free constitution requires the tempering together of the “opposite elements of liberty and restraint in one consistent work” (*Works*, III:560). He referred to the capacity of the British Constitution (a free but not a republican constitution) to unite or conciliate the elements of energy in government and the liberty of the individual through the mutual control of the various parts of the system, thus achieving a perfect balance between liberty and power. But though it might appear that he was recommending the British Constitution as a model constitution, Burke made it clear that his view of that constitution as second to none did not mean that he was recommending it for others to servilely copy. Rather he intended the theory drawn from it to illustrate the principles of a constitution already made; he was not recommending the copying of its structure.

The formation of free constitutions was a matter of continuing concern for the theorists of the seventeenth and eighteenth centuries. John Locke had a hand in writing *The Fundamental Constitutions of Carolina*, while John Milton had written a treatise entitled *The Readie and Easie Way to Establish a Free Commonwealth* and James Harrington a treatise entitled *Ways and Means whereby an Equal Commonwealth may be Suddenly Introduced*, treating the subject as a purely theoretical theme. Hume had written that “the subject [of establishing a new system of government] is surely the most worthy curiosity of any the wit of man can possibly devise. And who knows, if this controversy were fixed by the universal consent of the wise and the learned, but, in some future age, an opportunity might be afforded of reducing theory to practice, either by a dissolution of some old government, or by the combination of men to form a new one in some distant part of the world?” (Hume, Essay 16). It would be no exaggeration to say that the American Constitution constituted that reduction of theory to practice that Hume had envisioned, but Burke appeared less sanguine than Hume about the construction of new constitutions. He asserted that “the science of constructing a commonwealth, or renovating, or reforming it, is, like every other experimental science, not to be taught a priori. Nor is it a short experience that can instruct us in that practical science. . . . The science of government being, therefore, so practical in itself, and intended for such practical purposes, . . . it is with infinite caution that any man ought to venture upon pulling down an edifice which has answered in any tolerable degree for ages the common purposes of society, or on building it up again without having models and patterns of approved utility before his eyes”

(*Works*, III:311–12). More than that, Burke would say, there is no readie and easie way to form a free commonwealth.

Burke was acutely aware of the difficulties inherent in the formation of free constitutions, but allowed for the possibility that a republican government might succeed in America. He had emphasized in 1777 the importance of colonial assemblies in making the Americans accustomed to popular government. It is from this circumstance that he was later able to say (in 1791) that the Americans were well fitted for a republican government. He cautioned at the same time, however, that neither the British nor the French could be brought into the pure republican form with safety, and that further republican elements that might be introduced into their regimes would need to be built upon monarchy as their essential basis. Burke considered monarchy as the “essential basis” of the other parts of the mixed constitution, and “by the energy of that mainspring alone,” he asserted, “those republican parts must be set in motion” (*Works*, IV:109–10). But what he meant by monarchy was, practically speaking, monarchical power, the powers traditionally associated with the monarch, powers that Hamilton described, from a somewhat different point of view, as energetic executive power. Burke unambiguously stated that “the office of execution is an office of exertion. It is not from impotence that we are to expect the tasks of power” (*Works*, III:398). He had learned well, within the range of his experience, the critical role of monarchical power in the effective functioning of a mixed constitution (or at least the need for a substitute for monarchical power in the case of France, since it was already a *de facto* republic).

Burke could not explain what was wrong with the French revolutionary constitution without giving some thought to the reform or regeneration of that constitution and, accordingly, comes close to recommending the formation of a “political executive magistracy . . . environed with dignity, authority and consideration” as a substitute for monarchical power (*Works*, III:497–98). He observed that the first executive officer under the French revolutionary constitution was no more than “a machine, without any sort of deliberative discretion in any one act of his function,” and “without power of originating any process, without power of suspension, mitigation, or pardon” (*Works*, III:497). The republicanism Burke had in mind for France seemed to assume “some sober and sensible sort of republic, in which there was no mention at all of a king, but which held out some reasonable security to property, life, and personal freedom” (*Works*, IV:414). We are thus presented with a Burke who was flexible about the possibility of republicanism. Just as Hume had said that a popular government might be imagined more perfect than the British Constitution, so Burke admitted that he could conceive of a constitution other than the British that could reconcile the opposite principles of energy in government and the liberty of the individual. The very least that can be said is that Burke, as a consequence of the influence of Hume’s political principles, was able to entertain the possibility of a stable free government outside the rubric of the mixed

regime, but he left open the question of the viability of the American Constitution.

It should be recognized that the American Constitution was a contrivance of reason, a condensed, systematic, and abstract document. It would be misleading to suggest that the American Constitution was a regenerated constitution, some variation of the New York state constitution. By his silence about the constitution of a regime he had formerly almost singularly defended, Burke reveals a measured caution, for his principles would hardly have permitted him to make pronouncements on a document that had not yet met the test of experience. Thus follows his statement: “[In] the fabrication of a new commonwealth . . . I will not take their *promise* rather than the *performance* of the Constitution” (*Works*, VII:98). Yet it seems impossible to suppose that Burke could understand the American Constitution as a “made” constitution in the sense in which he described the French revolutionary constitution as a “made” constitution. It is extremely unlikely that Burke would have accused the Americans of not taking their previous experience into account in the process of their constitution making as the French reformers had done, since the Americans had their state constitutions very much in mind in the act of constituting or reconstituting their frame of government.

Burke did not believe that it was possible to define precisely in advance how an abstract plan of government would work in practice. The most remarkable attribute of *The Federalist Papers* is that they evaluate a constitution, by way of defending it, before that constitution becomes an actual working document, an evaluation that subsequently has assumed the status of a commentary. But Hamilton, whose conceptualization made *The Federalist Papers* possible, was well aware of the limitations of “speculative parchment provisions.” He was mindful that, when the Constitution was submitted to the test of practice, many things would have to be worked out that could not be accounted for in the original document, but this awareness did not prevent him from discussing the theoretical merits of a plan whose principles he perceived to have been sanctioned by experience. Hamilton saw the need to infuse republicanism with excellences learned from monarchy, without departing from republicanism, by the creation of an executive with certain of the characteristics or characteristic powers of a monarch. By way of contrast, the French Constituent Assembly, finishing the work of reconstructing their regime in 1791, was unalterably opposed to the creation of a strong and independent executive. Lord Acton observed that the French Constitution of 1789–91 had failed because it carried the reaction against monarchical power so far as to paralyze the executive. Burke had been brought face to face in 1789 with a republic that had been formed with no executive and therewith no real government.

We are indebted to Burke for the recovery of the distinction between theory and practice that had been obfuscated by the doctrinaire theorists of the French Revolution. Burke had learned from Aristotle that practice must be understood

on its own terms and that the sphere of politics is relatively self-contained, but he opposed Aristotle in arguing that practice is more fundamental than theory insofar as the construction of constitutions is concerned. Burke's admiration for Aristotle did not prevent him from questioning the ultimate superiority of theory and, with it, the conscious construction of constitutions. Burke maintained that theories of government cannot be known independently of their construction and that, by inference, the theories are not prior to the construction. He made much of the fact that speculative men have taken theories that they have derived from a government and then supposed that the government was made from those theories. It would appear that Burke believed that sound regimes are not constituted by thought but come into being without guiding reflection, by slow growth rather than by conscious making.

Hamilton's view of the formation of a well-constructed constitution was described in the opening number of *The Federalist* as a process intimately related to conscious reflection and reasoned choice in contradistinction to accident and force. He further stated in the ninth number of those essays that "the new science of politics" had contributed substantially to the reasonableness of the constitution-making process, but he never thought for a moment that unassisted reason could produce a well-constructed constitution. Hamilton had simply assumed that, by virtue of "the new science of politics," the excellences of republican government could be retained and its imperfections lessened or avoided. A substantial portion of *The Federalist* deals with the defects of the Articles of Confederation and completes that critique with an explanation of how the proposed Constitution would remedy those defects. Burke, on the other hand, was certain that the best constitution comes into being only through continuous accommodations to changing circumstances, slowly, not to say imperceptively. Yet by openly stating that the Americans were well fitted for a republican government as late as 1791, he implicitly admitted that republicanism (and even a consciously created republicanism) was working itself out in America. It was indeed easy for him to see that the Americans were well fitted for a republican government by virtue of their previous experience with colonial assemblies, but he does not say a word about the American Constitution. Burke unfolds the consequences of his examination of the French Revolution in his discussion of the formation of free constitutions and, as it turns out, the American Constitution, at least in its conception, satisfies the Burkean requirements of a free constitution in that it reconciles the principles of energy in government and the freedom of the individual. It is therefore possible to say that his reference to "the sound constitution of a republic," in his *Reflections on the Revolution in France*, could reasonably apply to the American Constitution, whether that was in Burke's mind or not (Works, III, 397).

Burke recognized the impermanence of all regimes and constitutions and therefore remarked that a state without the means of some change is without the means of its conservation. But he was convinced that prudence rather than

wisdom was the controlling virtue in the conservation of constitutions or in what is required to make a constitution effective. He was more definite than Aristotle in asserting that “wisdom is not the most severe corrector of folly” in political matters, for wisdom admits of no compromise whereas the essence of politics is compromise (*Works*, III:443). Burke stressed in all his political writings that prudence is the adaptive political virtue, the director, the regulator, the standard of all political practice, for “human affairs are susceptible of infinite modifications, and combinations wholly new and unlooked-for” (*Works*, IV:469). His approach to the renovation of constitutions emphasized adaptation (making accommodations to practical political necessities) rather than regime change, which perhaps accounts for his apparent indifference to the American Constitution. Thus Burke allowed the ratification of the American Constitution to pass with hardly a mention of what has turned out to be the most significant regime transformation in modern times, but understandably he could not be sure how a constitution would turn out in advance of its promulgation.

There was a presumption in the eighteenth century that the best constitution is the work of theoreticians and theories. Hume thought it to “be advantageous to know what [constitution] is most perfect in the kind, that we may be able to bring any real constitution or form of government as near it as possible, by such gentle alterations and innovations as may not give too great disturbance to society” (Essay 16). Burke conceded that theory has some relevance for practice in that it marks out the proper ends of government, but he manifestly subordinates theory to practice insofar as the construction and renovation of constitutions are concerned. Practice has to do with exceptions, modifications, balances, compromises, and mixtures that become necessary correctives to the excesses that theoretic perfection can produce. In the last analysis, Burke was certain that freedom in society is best provided for by an unstructured constitution that lacks unity of design. He rejected unity of design, planning, conscious making because he believed that the emphasis on plan or design in the construction of constitutions was a serious threat to freedom. Foremost in Burke’s mind was the constitution whose end was freedom.

Hume wrote in 1775 that he was “an American in [his] principles,” but the same could not be said about Burke even though Burke was a great supporter of the American cause during the revolution (Hume 1932, II:303). Burke regarded the unstructured British Constitution as the model constitution whereas the American Constitution with its foundations in “the new science of politics” was never in his focus. The whole organization of government, from Burke’s point of view, must be “a consideration of convenience” and can never be “the effect of a single instantaneous regulation” (*Works*, III:311; IV:50). The emphasis in the American Constitution rested mainly on creating and delimiting offices and authorities and delegating to them written grants of power. It had too much of a planned character to suit the practical bent of Burke’s thought.

It was by means of “the new science of politics” that Hamilton claimed that

the proposed constitution was able to transcend traditional republicanism in the direction of a perfected republican constitution, but Burke had serious doubts whether freedom in society was “a thing which lies in the depths of abstruse science” (*Works*, II:229). “The legislators who framed the ancient republics knew that their business was too arduous to be accomplished with no better apparatus than the metaphysics of an undergraduate and the mathematics of an exciseman” (*Works*, III:476). Burke would not have been impressed by Hamilton’s contention that republicanism becomes transformed or perfected by virtue of “the new science of politics.” The very best speculative projects, he would say, are contaminated by their own abstractness. There was not the slightest doubt in Burke’s mind that true theories are inherent in the actual constitution rather than existing independent of their construction.

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