



STUDIES IN

Burke
AND HIS TIME

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Burke on the Goodness of Beauty and the Virtue of Taste

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The Un-Burkean Economic Policy of Edmund Burke

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of Constitutional Interpretation*

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SORA SATO, *Edmund Burke as Historian:
War, Order, and Civilisation*

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Editor's Introduction



WHILE DEFENDING A CLIENT ON A CHARGE OF MURDER, Marcus Tullius Cicero was himself accused by the prosecution of inconsistency in the principles upon which he was basing his case. Faced by the evidence of a quotation from a former speech, he observed drily that the “brilliant” orator Marcus Antonius “used to say that his reason for never having written any speech was that, should he have occasion to regret anything he had said, he might be able to deny having said it.”

Wise words in the world of Facebook and the Twitterverse? Or have we become slaves and dupes to *consistency*? Has consistency become a blind measure of character—one more ideological short-cut in this impatient, polarized, restless age? Marcus Antonius’s example certainly went unheeded by Cicero’s eighteenth-century admirer, Edmund Burke, and the charge of inconsistency has, of course, dogged Burke’s stature as a political thinker since before his own death in 1797. How does that same charge play out nowadays, though, at a time of almost complete disenchantment with legislative, executive, and judicial branches of government?

In an article entitled “Consistency in Politics,” Winston Churchill (who considered Burke the “great[est] example in this field”) argued that “[t]he only way a man can remain consistent amid changing circumstances is to change with them while preserving the same dominating purpose.” Here is a smart distillation of the statement with which Burke ended his *Reflections on the Revolution in France*: “I have little to recommend my opinions, but long observation and much impartiality. They come from ... one who wishes to preserve consistency; but who

would preserve consistency by varying his means to secure the unity of his end; and, when the equipoise of the vessel in which he sails, may be endangered by overloading it upon one side, is desirous of carrying the small weight of his reason to that which may preserve its equipoise."

Perhaps, though, there is another perspective on the matter—that those famous Burkean circumstances, which "give in reality to every political principle its distinguishing colour, and discriminating effect," impact our beliefs more than our mind's eye can detect, distracted, as it is, by the color, from the gradual curves and alterations in the thing itself. This *trompe l'œil* is the possibility limned in the words of the poet George Crabbe, a beneficiary of Burke's patronage, with which Churchill chose to end his article:

Minutely trace man's life; year after year,
Through all his days let all his deeds appear,
And then, though some may in that life be strange,
Yet there appears no vast nor sudden change:
The links that bind those various deeds are seen,
And no mysterious void is left between.

The articles in this issue all revisit, from one perspective or another, this familiar but important feature of Burke studies. Martin Nemoianu's illuminating research into the moral dimension of Burke's concept of the beautiful in his *Philosophical Enquiry* recovers the nuance in an early theory of aesthetics that has too often been squeezed into a polarized reading that searches for a neat consistency between the *Philosophical Enquiry* and Burke's later writings. Clarity in understanding Burke's position here, Nemoianu argues, "requires not a partition between beauty and goodness, but, on the aesthetic side, attentiveness to the teleological framework in which Burke's account of beauty is set, and on the moral side, attunement to the virtues and their aesthetic valence." Ralph Ancil's fresh reading of the "Thoughts and Details on Scarcity," Burke's tract on poor relief presented to Pitt the Younger in 1795, complicates our search for consistency in Burke's economic thinking: "Edmund Burke's place in history," Ancil argues, "may in part be due to what appear to be his ambiguities and inconsistencies." As a possible response to the increasingly sclerotic polarization of constitutional

interpretation in the modern United States, John Boersma insightfully folds any apparent ambiguities and inconsistencies into a “Burkean disposition,” where a “politics of prescription” might carve out a “space for nuance” in an increasingly predictable and ideological debate between a dogmatic, text-tethered “originalism” on the one hand and, on the other, an unstable “functionalism” reliant upon abstract speculation or fluid majoritarian consensus.

Also included in this issue is notice of a substantial study of Burke’s writings and thought published in Spain in 2016, which tackles the issue of consistency from a challengingly different direction. The thesis of the book, *Edmund Burke: la solución liberal reformista para la Revolución francesa* [“Edmund Burke: The liberal reformist solution for the French Revolution”], is outlined in a brief notice here by the author, José Ramón García-Hernández, and it provides a fascinating insight into the modern application of Burke’s principles in an environment where the term “conservative” lacks the analytical coordinates that it holds still (though barely) in the Anglophone world. Dr. García-Hernández served in the government of Spanish prime minister Mariano Rajoy between 2012 and 2019 (Rajoy has contributed a foreword to the book), and, as a scholar of the thought of Edmund Burke, possesses a unique position from which to explore Burke’s relevance to the politics of Spain today.

The impact of circumstances on principles also forms a significant feature of two recent studies of Burke reviewed in this issue. P. J. Marshall’s *Edmund Burke and the British Empire in the West Indies* examines, for example, Burke’s attempts to negotiate the clash between the moral evil of slavery and his own practical involvement in, and advocacy of, the expansion of Britain’s Atlantic commercial enterprise; and Sora Sato’s broader survey of *Edmund Burke as Historian* offers ways in which Burke’s researches in history may have informed and shaped his understanding of the interplay of a universal human nature and cultural and institutional diversity across time and space.

IAN CROWE

Notes on Contributors



RALPH E. ANCIL received his doctorate from Michigan State University. He has taught undergraduate and graduate economics and has worked in the public sector in program analysis. He has published numerous articles on economic policy and theory including papers in the *History of Political Economy*, *Modern Age*, and the *Review of Social Economy*. He is now professor emeritus of economics at Geneva College and resides in Pennsylvania.

JOHN BOERSMA is a lecturer at Texas State University. He received his master's degree and J.D. from St. John's University in New York, and his Ph.D. in Political Science from Louisiana State University in 2019. His article "The Accreditation of Religious Law Schools in Canada and the United States" appeared in the *Brigham Young University Law Review* and he is currently working on a manuscript examining the role of friendship in ancient political thought.

VIRGIL MARTIN NEMOIANU is Associate Professor of Philosophy at Loyola Marymount University in Los Angeles. His primary interests are in the history of philosophy and philosophical theology, sometimes (as here) in relation to aesthetics and political philosophy. His work has appeared in such journals as *IPQ*, *British Journal for the History of Philosophy*, and *Philosophy and Literature*.

“But if those statues of Burke are one day no longer to be seen...Humanity will have been thrust into Orwell’s dystopia—into the realm of Chaos and old Night, described by Burke as ‘the antagonist world of madness, discord, vice, confusion, and unavailing sorrow.’”

–Russell Kirk from “Why Edmund Burke Is Studied”

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Burke on the Goodness of Beauty and the Virtue of Taste



VIRGIL MARTIN NEMOIANU

Loyola Marymount University

Despite forming one half of the *Philosophical Enquiry*, Edmund Burke's treatment of beauty has not attracted anything like the scholarly attention lavished on his account of the sublime. This imbalance is, in no small part, a consequence of a story often told about Burke's place in the history of philosophy. According to this tale, Burke's aesthetics is a species of naturalism, combining Lockean and Epicurean elements in its analysis of aesthetic qualities in terms of their physiological and psychological operations. On this basis, it is said, Burke breaks the traditional link between moral and aesthetic worth, a fact alleged to be nowhere more in evidence than in the prominence he gives to the sublime and its painful, terrifying, astonishing effects. Beauty, when it is discussed at all, appears as a specification of the general thesis: Burke rejects the classical relation between beauty and goodness in favor of a mechanistic, efficient-causal picture. And Burkean taste, with its undeniable emphasis on rational judgment and voluntary improvement, is then sidelined as a hasty afterthought that does not quite fit his broader view.

This essay proposes a different reading by identifying providential teleology and not naturalistic efficient causation as the essence of Burke's aesthetics. I begin by showing that, while Burke rejects the view that perfection is the cause of beauty and that beauty and goodness are

identical, the conclusion that he hopes to uncouple or dissociate the two is mistaken: Burke, in fact, maintains that some virtues are beautiful. I then contextualize this position by setting out beauty's place in the broader teleological structure of Burke's aesthetics, according to which, objects of aesthetic worth are defined essentially by their natural capacity to order human beings toward ends constitutive of their flourishing. For Burke, beauty is intelligible only in terms of this capacity to bring about the good of the human being, itself a particular expression of a thoroughgoing providential cosmology.

Restoring the teleological core of Burke's aesthetics allows us to recover the originality and importance of Burkean taste. For Burke, the faculty by which we are affected properly and judge clearly is the crucial point of connection between aesthetic worth and the goodness which is its natural end. Since the cultivation and maintenance of good taste is at least partly under our power, it is appropriate to understand it as a habit or disposition which, when engaged, orders us toward well-being: a virtue. Taste thus becomes for Burke one of the key ways man responds properly to the divinely instituted natural order into which he is set. While goodness does not reduce to beauty on Burke's view, he does hold that all beauty is ordered toward the good and that it is, therefore, always good for us to be sensitive to it. Burke's aesthetics, no less than his later political writings, construes the human being as governed by natural law, grounded in God's providential care for creation.

I.

Midway through the third part of the *Philosophical Enquiry*, Burke considers the propriety of identifying moral virtue with beauty. His assessment is rather less than enthusiastic:

The general application of this quality [beauty] to virtue, has a strong tendency to confound our ideas of things; and it has given rise to an infinite deal of whimsical theory[.]... This loose and inaccurate manner of speaking, has therefore misled us both in the theory of taste and of morals; and induced us

to remove the science of our duties from their proper basis, (our reason, our relations, and our necessities,) to rest it upon foundations altogether visionary and unsubstantial.¹

As has often been remarked, Burke's target in this passage is the moral and aesthetic sense theory proposed by Shaftesbury and developed by Hutcheson.² His skepticism about this theory is frequently read as an effort to uncouple beauty and moral goodness. Daniel O'Neill suggests that Burke's criticism of his philosophical forebears drops out of the *Enquiry's* more general rejection of the relation between beauty and virtue.³ Koen Vermeir and Michael Funk Deckard agree: "In the *Philosophical Enquiry*, Burke rejected the direct connection between beauty and virtue propounded by Shaftesbury and Hutcheson."⁴ Paddy Bullard puts it still more strongly, pointing to III.xi as evidence that "Burke wanted to prove that humans have no immediate impulse towards that which is morally good, because he believed that divine providence has ordered it so that religion (the Bible, the church) chivvies us towards virtue by the carrot of future rewards in heaven, and with the stick of future punishments in hell."⁵ For Bullard, "Burke resists Shaftesbury's assumption that our most important experiences of beauty fall within

-
- 1 III.xi.112. References to the *Philosophical Enquiry* are given by part number, section number, and page number, taken—along with the text itself—from Edmund Burke, *A Philosophical Enquiry into the Origin of our Ideas of the Sublime and Beautiful*, ed. James T. Boulton (Notre Dame: U of Notre Dame P, 1968). References to the "Introduction on Taste" will be indicated by IT, followed by page number in Boulton's edition.
 - 2 See, among many others, Ian Harris's introductory remarks in Edmund Burke, *Pre-Revolutionary Writings*, ed. Ian Harris (Cambridge UP, 1993), xix and 58–61. A reading of the *Philosophical Enquiry* as a response to the moral views of Hutcheson and, especially, Shaftesbury may be found in Paddy Bullard, "Burke's Aesthetic Psychology," in David Dwan and Christopher Insole (eds.), *The Cambridge Companion to Edmund Burke* (Cambridge UP, 2012), 53–66, especially 61–63. A similar interpretation is advanced by Richard Bourke, "Burke, Enlightenment, and Romanticism," in Dwan and Insole (eds.), *Cambridge Companion*, 33–34.
 - 3 Daniel I. O'Neill, *The Burke-Wollstonecraft Debate: Savagery, Civilization, and Democracy* (University Park, PA: Pennsylvania State UP, 2007), 65.
 - 4 Koen Vermeir and Michael Funk Deckard, "Philosophical Enquiries into the Science of Sensibility: An Introductory Essay," in Koen Vermeir and Michael Funk Deckard (eds.), *The Science of Sensibility: Reading Burke's Philosophical Enquiry* (Dordrecht: Springer, 2012), 23.
 - 5 Bullard, "Burke's Aesthetic Psychology," 61.

the sphere of human morals ... The indirect consequences of beauty in the realm of ethics are beyond the scope of his treatise.”⁶

These conclusions have misconstrued Burke’s argument and overstated the nature and scope of his criticism. While Burke denies that goodness and beauty are identical, he does not hold that they are unrelated or even that they share no direct connection. Rather, Burke explicitly affirms the existence of beautiful virtues and maintains, therefore, that some good things are beautiful. This latter position is itself entirely congruent with his commitment to the broader view, implicit in the teleological structure of his aesthetics and the providential cosmology from which it follows, that there is a direct and inseparable connection between beauty and the good of the human being.⁷

To see that this is so, we should begin two sections earlier, at Burke’s criticism of the claim “that *Perfection* is the constituent cause of beauty.”⁸ Though Burke does not explain precisely what he means by the term “perfection,” it seems clear enough that he has in mind a rich and long-established family of classical views on which things are said to be beautiful in virtue of their proper perfection, that is, their participation in being, and for the same reason are said to be good, so that beauty and goodness are thereby identified.⁹

One version of this position dates to Plato, who, as Eric Perl puts it, argues that “the good for anything is the integration, the ‘binding together,’ of many components into one complex whole, and is manifest

6 Ibid., 62.

7 The construal of Burke against which this essay argues is at least as old as Leo Strauss, *Natural Right and History* (Chicago: U of Chicago P, 1953), 312. Strauss’s claims are deftly rebutted by Burleigh Taylor Wilkins, *The Problem of Burke’s Political Philosophy* (Oxford: Clarendon Press, 1967), 119–51. Wilkins’s text is very valuable, but the present essay nevertheless articulates a different understanding of the relationship between goodness and beauty, above all by emphasizing the teleological character of Burke’s conception of aesthetic worth.

8 III.ix.110.

9 James Boulton’s introduction to Burke, *Philosophical Enquiry*, lxiii, locates the object of Burke’s criticism in Shaftesbury, Hutcheson, and Joseph Spence, as well as in Plato’s *Republic* and Aquinas’s *Summa Theologiae*. For an exceptional treatment of beauty’s place in classical metaphysics, see Eric D. Perl, *Thinking Being: Introduction to Metaphysics in the Classical Tradition* (Leiden: Brill, 2014). Particularly useful are his discussions of being as beauty in Plotinus (132–37) and the status of beauty as a transcendental in Aquinas (186–89).

in that whole at once as its beauty, its proportion, and its truth.”¹⁰ The connection is made even more explicit by Plotinus, who unites beauty and goodness in the perfection of God:

For this reason it is right to say that the soul’s becoming something good and beautiful is its being made like to God, because from Him come beauty and all else which falls to the lot of real beings ... so for God the qualities of goodness and beauty are the same, or the realities, the good and beauty.¹¹

Aquinas, in turn, adopts and adapts the Plotinian view, holding that “Beauty and goodness in a thing are identical fundamentally; for they are based upon the same thing, namely, the form; and consequently goodness is praised as beauty,”¹² and also that “[E]verything is called good according to its perfection.”¹³ Perl puts Thomas’s point neatly: “Every being, in that it has some perfection, that is, in that it is a being, is satisfying to apprehend (beautiful), and as such at once intelligible (true) and pleasing or desirable to the cognitive soul (good).”¹⁴ Nearer to Burke, we find Shaftesbury’s version of the same doctrine: “That what is BEAUTIFUL is *harmonious* and *proportionable*; what is harmonious and proportionable, is TRUE; and what is at once both *beautiful* and *true*, is, of consequence, *agreeable* and GOOD.”¹⁵ Elsewhere, Shaftesbury announces boldly that “*Beauty* and *Good* are still the same.”¹⁶

¹⁰ Perl, *Thinking Being*, 56. Perl refers to *Philebus* 64e–65a. Boulton cites *Republic* 400d in Burke, *Philosophical Enquiry*, lxiii n20.

¹¹ *Ennead* I.6.6. The English is taken from Plotinus, *Ennead* I, tr. A. H. Armstrong (Cambridge, Mass.: Loeb/Harvard UP, 1969), 251.

¹² *ST* Ia, q. 5, a. 4, ad 1. Also *ST* Ia IIae, q. 27, a. 1, ad 3. Boulton offers a partial reference to *ST* Ia, q. 5, a. 4 in Burke, *Philosophical Enquiry*, lxiii n21. Quotations from the *Summa* are taken from St. Thomas Aquinas, *The Summa Theologiae of St. Thomas Aquinas*, tr. Fathers of the English Dominican Province, <http://www.newadvent.org/summa/>.

¹³ *ST* Ia, q. 6, a. 3. Also *ST* Ia, q. 5, a. 1, ad. 1 and *ST* Ia, q. 5, a. 3.

¹⁴ Perl, *Thinking Being*, 188.

¹⁵ Anthony Ashley Cooper, third Earl of Shaftesbury, *Characteristicks of Men, Manners, Opinions, Times*, 3 vols., ed. Douglas Den Uyl (Indianapolis: Liberty Fund, 2001), 3:111–12 (*Miscellaneous Reflections* III.2). This passage is cited by both Boulton and Harris: Burke, *Philosophical Enquiry*, lxiii, and Burke, *Pre-Revolutionary Writings*, 59.

¹⁶ Shaftesbury, *Characteristicks*, 2:232. Also 2:223 and 235. All three appear in *Moralists* III.2.

Burke offers two arguments against this view at III.ix. The first is an empirical counterexample. He points out that feminine beauty, a paradigm instance of the quality, is normally characterized by "weakness and imperfection."¹⁷ Softness of voice, delicacy of motion, fragility of form and manner, he claims, are not just frequent accompaniments of female beauty; they are qualities pursued, intentionally, by women seeking to enhance their beauty. "In all this, they are guided by nature. Beauty in distress is much the most affecting beauty."¹⁸ If perfection is the cause of beauty, however, it is hard to see how these various expressions of privation and vulnerability could be beautiful or enhance beauty.

Burke's second argument attacks the *a priori* rationalism of the classical view. If beauty is simply a function of perfection, then it is possible for the experience of beauty to be nothing more than a matter of assenting to what we ought to love, whether or not we are affected by the beautiful object as beautiful. But this is to misunderstand the essential character of aesthetic experience, which requires first-person sensation and involves a direct and immediate approbation of the beautiful object: "Who ever said, we *ought* to love a fine woman, or even any of these beautiful animals, which please us? Here to be affected, there is no need of the concurrence of our will."¹⁹

Also relevant here is Burke's earlier argument against the view that beauty is identical with "*compleat, common form*."²⁰ Even if deformed objects are frequently found ugly and beautiful ones often well formed, it does not follow that the absence of deformity is always accompanied by beauty. Indeed, Burke goes further, prefiguring his remarks about the role of fragility and weakness in feminine beauty, and proposes that, at least in some classes of objects, "beauty frequently exists without" formal wholeness or completeness.²¹

Burke, therefore, rejects the view that perfection is the cause of beauty. Since this view is normally taken to entail the identity of goodness and beauty, it seems fair to conclude that he also rejects the identification of those two qualities. Goodness and beauty are not the same.

¹⁷ III.ix.IIO.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ III.v.IO2. This point is noted by Boulton in Burke, *Philosophical Enquiry*, lxv.

²¹ III.v.IO4.

Nothing in Burke's argument here, however, commits him to the more sweeping claims that goodness and beauty are unrelated, that beauty is not good, or that what is good cannot be beautiful. Indeed, in the very next section, we find Burke affirming the existence of virtues rightly called beautiful, "which engage our hearts, which impress us with a sense of loveliness." These "softer virtues" include "easiness of temper, compassion, kindness and liberality."²² Burke does not hold, therefore, that goodness and beauty share no connection. Rather, he affirms the more modest claim that goodness and beauty are not identical. Some virtues are, indeed, beautiful, but not all: "virtues which cause admiration, and are of the sublimer kind, produce terror rather than love" and include "fortitude, justice, wisdom, and the like."²³ Put simply, not all goodness is beauty: some virtues are beautiful; others are sublime.²⁴

As with virtues, so too with moral character: Burke distinguishes between sublime persons of "shining qualities [and] ... strong virtues," who occasion admiration, reverence, respect, and even fear, and the morally beautiful, possessed of the "soft green of the soul," entering "the hearts of most people" as "companions of their softer hours, and their reliefs from care and anxiety," who are more familiar, lovable, and companionable.²⁵ This distinction between sublimity and beauty in moral character is illustrated historically, in Cato and Caesar, as rendered by Sallust in the *Bellum Catilinae*, and more immediately in the everyday life of the family (as it is or ought to be), where the sublime authority of the father stands beside the beautiful "fondness and indulgence" of the mother.²⁶

It may well be that the beautiful virtues are "inferior in dignity" to their sublime counterparts and "are of less immediate and momentous

22 III.x.IIO–II. Timothy Costelloe suggests that, "far from inspiring beauty," even the softer virtues "are connected with ideas of preventing danger, punishment, and trouble of various kinds." See Timothy M. Costelloe, *The British Aesthetic Tradition: From Shaftesbury to Wittgenstein* (Cambridge: Cambridge UP, 2013), 73. Costelloe has misread Burke here, who relates "dangers, punishments, and troubles" to the sublime "great virtues," and contrasts these with the beautiful virtues which "turn on reliefs, gratifications, and indulgences; and are therefore more lovely."

23 III.x.IIO.

24 There may, of course, be still other virtues besides, though Burke makes no indication of that here.

25 III.x.III.

26 Ibid.

concern to society.”²⁷ This would follow straightforwardly from the fact that the passions caused by sublimity, formed out of pain, are by nature stronger and more affecting than those caused by beauty and formed out of pleasure.²⁸ Still, the beautiful virtues, and the characters constituted by them, are taken by Burke to be genuinely and unambiguously good. Moreover, the relation between goodness and beauty here is not incidental. The beautiful virtues are beautiful as virtues and not in some other way. Kindness is beautiful—causative of love—as a quality of character which, when exhibited properly, is a natural object of moral approbation.²⁹ To be sure, since not all virtues are beautiful, virtue as such cannot be the cause of beauty. But, again, that establishes only that goodness and beauty are not identical on Burke’s view. He does hold, quite plainly, that some subset of the virtues is beautiful and, therefore, that there is a direct connection between goodness and beauty.

Returning, then, to III.xi, we are better situated to see Burke’s answer to the title of that section: “How far the idea of BEAUTY may be applied to VIRTUE.” Beauty may *to some extent* be predicated of virtue, because some virtue is beautiful. Burke’s criticism in this section is reserved for those who would make a “general application” of beauty to virtue, that is, an identification of the two, inhibiting thereby clear thinking about both aesthetic and moral matters.³⁰ Clarity here requires not a partition between beauty and goodness, but, on the aesthetic side, attentiveness to the teleological framework in which Burke’s account of beauty is set, and on the moral side, attunement to the virtues and their aesthetic valence. The remainder of the essay addresses each in turn.

²⁷ Ibid.

²⁸ I.vi.38, I.vii.39, I.xviii.51.

²⁹ Burke’s definition of beauty as the quality of objects by which they are causative of love can be found at III.i.91 and also I.xviii.51. It is treated in much more detail below. That the virtues must be exhibited properly to merit the fullest approbation is suggested in II.v.66–67, where Burke points out that the amiability of dogs often evokes not only praise but also contempt. This is not because what is beautiful, and hence loveable, is essentially worthy of contempt but because it is not proper that a naturally strong creature should be gentle and mild, and this mitigates both our moral and our aesthetic approbation of dogs.

³⁰ III.xi.112.

II.

Burke's aesthetics begins with the objective nature of things, taking aesthetic qualities to be immediately present in the objects themselves. Beauty is a "quality or ... qualities in bodies."³¹ Sublimity, likewise, is a quality "in *nature*."³² What defines these qualities, however, is their capacity to cause—"mechanically"³³ or efficiently—particular sorts of passions in a healthy, properly situated observer. Beauty is predicated of objects as they produce passions founded on pleasure, love above all.³⁴ Sublimity is the quality of objects by which they produce passions founded on pain, particularly various modifications of terror, such as astonishment, admiration, reverence, and respect.³⁵

Unlike Locke, who takes pleasure and pain to be relative, mutually dependant, and reciprocally related, with the increase of one equivalent to a diminution of the other, Burke argues that these two simple ideas are distinct and independent.³⁶ Accordingly, the passions founded on pleasure and pain are specified by distinct ends at which they aim:

³¹ III.i.91.

³² II.i.57. Costelloe proposes that "sublime" and "beautiful" name ideas, though he notes that "Burke never says so explicitly." See Costelloe, *British Aesthetic Tradition*, 71. The title of Burke's *Enquiry* does refer to "our Ideas of the Sublime and Beautiful," and Burke sometimes speaks of ideas of beauty (e.g., III.v.103, III.xvi.116, III.xxv.123) and of sublimity (e.g., II.ii.57, II.xv.81). Since Burke is explicit that "sublime" and "beautiful" name qualities of objects, however, it is more plausible to read such references as picking out ideas *of* qualities in objects. See, for example, III.ii.94, where the "quality of beauty" is said to be found in "things," and "our idea of beauty" is said to result (if it does) from the sensible characteristics of those things.

³³ III.xii.112.

³⁴ Once more, see III.i.91 and I.xviii.51.

³⁵ See I.vii.39, I.xviii.51, II.i.57–II.ii.57–58.

³⁶ I.ii.32–I.v.38. Burke himself calls out Locke's *Essay*, bk. II, ch. xx, sec. 16, as the object of his criticism. The Lockean picture of the relation between pleasure and pain is foundational to the system of value in Benthamite and Millian ethics. See Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, ed. J. H. Burns and H. L. A. Hart (Oxford: Clarendon Press, 1970), 12, 34, 40, and 144 (I.3, I.5, III.1, IV.8, XII.5) and J. S. Mill, *Utilitarianism*, ed. George Sher (Indianapolis: Hackett, 2001), 7. A version of the view adopted by Locke was already understood in classical antiquity to be enshrined at the heart of Epicureanism. See Cicero, *De Finibus Bonorum et Malorum*, tr. H. Rackham (Cambridge, MA: Loeb/Harvard UP, 1931), 40–45 (I.xi). As Peter Stanlis observes astutely, Burke's detailed rejection of Locke on this point is a decisive counterargument to attempts at painting him with utilitarian stripes: Peter J. Stanlis, *Edmund Burke and the Natural Law* (Ann Arbor,

Most of the ideas which are capable of making a powerful impression on the mind, whether simply of pain or pleasure, or of the modifications of those, may be reduced very nearly to these two heads, *self-preservation* and *society*; to the ends of one or the other of which all our passions are calculated to answer.³⁷

The final cause of the painful passions brought about by the sublime is self-preservation, while the "second head to which the passions are referred with relation to their final cause, is society."³⁸ On Burke's view, the essential nature of the passions is given by their inherent end-directedness. The passions exist by nature—which is to say, as we shall see, by providential design—for the sake of ordering human beings toward self-preservation on the one hand and society on the other.³⁹

Seen from one side, self-preservation and society are, indeed, distinct ends, a point which follows from Burke's separation between pain and pleasure. If pain and pleasure are "each of a positive nature, and by no means necessarily dependent on each other for their existence,"⁴⁰ the distinction between them will repeat at the level of the passions formed out of them and again in the ends for which those passions are fitted up. The *Philosophical Enquiry*, which is principally concerned with identifying and explaining two categories of aesthetic value, usually emphasizes the difference between those categories, likewise founded on the difference between the pleasure and pain they cause as qualities of objects. Nevertheless, Burke also points to the convergence of the ends of self-preservation and society. In his explanation of the "final cause of the difference between the passions belonging to SELF-PRESERVATION, and those which regard the SOCIETY of the SEXES,"⁴¹ he argues

MI: U of Michigan P, 1958), 170–76. A catalogue of utilitarian renderings of Burke is compiled by O'Neill, *Burke–Wollstonecraft Debate*, 51 n1.

37 I.vi.38.

38 I.xviii.51.

39 That Burke understands the passions in terms of their final causes has been almost entirely overlooked by the commentators, including those sympathetic to teleological metaphysics. Two significant exceptions are Costelloe, *British Aesthetic Tradition*, 71, who registers the point in passing, and F. P. Lock, *Edmund Burke: Volume I, 1730–1784* (Oxford: Clarendon Press, 1998), 98, who links it nicely to Burke's theological commitments.

40 I.ii.32.

41 I.ix.41.

that neither end is a final, self-sufficient, exclusive good. Rather, each is good inasmuch as it is properly moderated by being ordered toward the perfection of human nature. This argument is repeated in Burke's discussion of "SOCIETY and SOLITUDE," where we are reminded that our involvement or otherwise in general society is a good to the extent to which it is conformable to "the purposes of our being."⁴² Once more, society turns out to be a proximate end, answerable to the higher and more comprehensive end of human flourishing as such.⁴³

In sum, aesthetic qualities in objects are defined by their capacity to cause certain passions in observers. These passions are specified by the ends to which they are ordered. These particular ends are themselves made intelligible by the overarching end of human flourishing, that is, the preservation and perfection of the human being, at which they are aimed. From top to bottom, therefore, the structure of Burke's aesthetics is teleological: objects of aesthetic worth are defined essentially by their natural capacity to order human beings toward ends constitutive of their flourishing. Even the efficient-causal relation between the aesthetic qualities of objects and the passions they bring about bears the stamp of this teleology. Beauty and sublimity do operate mechanically on the observer, but, as Burke puts it repeatedly, using language he reserves elsewhere for picking out teleology, they are "fitted" to do so.⁴⁴ To say that some object of experience is aesthetically valuable, then, is to say that it is aimed at the preservation or cultivation of human nature. In this way, all aesthetic value is directly linked to moral value, even if not all moral value is reducible to aesthetic value.

Recasting this summary in terms of beauty specifically, we see that beautiful objects are those that orient us, by means of the love they cause, toward society, that is, toward union with the object loved as beautiful, a union which is or can be some part of human well-being. Burke distinguishes two sorts of society. The "society of the *sexes*" is

⁴² I.xi.43.

⁴³ Indeed, if there were no ultimate convergence of this sort between the ends of sublimity and beauty, and we were only ever left with "an eternal distinction between them," (III.xxvii.124) there would be no grounds for treating the two qualities side by side at all. I am indebted to Raciél Cuevas for this point.

⁴⁴ See, for example, I.vii.39, III.iii.95, III.xxv.123, III.xxvi.123. For Burke's teleological understanding of the term "fitted," see III.vi.104–07. That aesthetic qualities come to be so "fitted" is an expression of Burke's providential cosmology—see V.i.163—of which, more below.

the natural relation between man and woman, ordered toward procreation and family.⁴⁵ Whereas healthy male lust, a passion found, *mutatis mutandis*, in males of every species according to Burke, is directed at the female of the species generally, love, which “contains a mixture of lust” and is accompanied by related passions of “tenderness and affection,” is aimed at *this* woman as beautiful.⁴⁶ In Burke’s words, “Men are carried to the sex in general, as it is the sex, and by the common law of nature; but they are attached to particulars by personal *beauty*.”⁴⁷ Beauty here cannot be understood apart from the end for which it is designed: the society of the sexes, expressed in the union of this particular man with this particular woman, which “answers the purposes of propagation” and is ordered toward the wider good of human flourishing as the “great purpose” of “the generation of mankind.”⁴⁸

“*General society*” or “great society” picks out the relation between human beings and their fellows, taking the form of “[g]ood company, lively conversations, and the endearments of friendship,” and extends to other animals and nature at large.⁴⁹ Though the first impulse toward society may derive, in part, from a desire to avoid “the pain of absolute solitude,” it is love which directs us toward our “*particular society*” as beautiful.⁵⁰ The pattern here follows the one established by Burke in his discussion of society of the sexes: a lower motive (lust, fear) draws our attention toward society in the abstract, but love aims us at the concrete, particular end in which our good resides. There is, of course, much to be said about the intricate ways in which the social passions related to love and caused by beauty—sympathy, imitation, and ambition—serve to bond us with our fellows, forging “the great chain of society” and so “bringing our nature towards its perfection.”⁵¹ For present purposes,

45 I.viii.40.

46 I.xviii.51 and I.x.43.

47 I.x.42.

48 I.viii.40 and I.ix.41.

49 I.viii.40, I.xviii.51, and I.xi.43.

50 I.xi.43. It is hard not to think here of Burke’s later remark that “To make us love our country, our country ought to be lovely.” Edmund Burke, *Reflections on the Revolution in France*, ed. J. C. D. Clark (Stanford: Stanford UP, 2001), 241.

51 I.xii.44 and I.xvii.50. Burke’s discussion of these social passions runs from I.xii.44 to I.xvii.51. Vermeir and Funk Deckard argue that sympathy is the foundation of Burke’s ethics and that attention to his treatment of it shows that he “replaces

however, it is enough to see, once again, that beauty is the cause of the love that presses us on toward society and thence the perfection proper to our kind. Beauty is defined in terms of that love and cannot be understood without reference to love's final cause and its place in the economy of human well-being. Put simply, for Burke, all beauty is inseparably connected to goodness.⁵²

This conclusion should not be found at all surprising. As Christopher Insole has shown, Burke, throughout his mature career, "attaches himself to a conception of natural law as constituted by the teleological structure of a divinely framed universe, in conformity to which human beings need to orient themselves."⁵³ This attachment is no less con-

Shaftesbury's and Hutcheson's morality of beauty with an ethics of the sublime." See Vermeir and Funk Deckard, "Philosophical Enquiries," in Vermeir and Funk Deckard (eds.), *Science of Sensibility*, 26. Luke Gibbons also emphasizes the sublime character of sympathy: Luke Gibbons, *Edmund Burke and Ireland* (Cambridge: Cambridge UP, 2003), 108–11. While it is unquestionably true that our sympathetic attachments may, on some occasions, cause us to be affected by pain, I agree with Richard Bourke that, for both textual reasons and reasons of philosophical consistency and coherence, the Burkean social passion of sympathy ought to be understood as a particular form of love, caused by beauty, rather than a sublime passion. See Richard Bourke, "Pity and Fear: Providential Sociability in Burke's Philosophical Enquiry," in Vermeir and Funk Deckard (eds.), *Science of Sensibility*, 154. Gibbons allows that most commentators take sympathy to be an effect of beauty and cites Wilkins: see Gibbons, *Edmund Burke and Ireland*, 108–09.

52 Vermeir and Funk Deckard contend that "Burke did not consider the beautiful to necessarily be good," and that this partly accounts for his "disconnecting beauty and virtue" and substituting "an 'ethics' of the sublime." See Vermeir and Funk Deckard, "Philosophical Enquiries," in Vermeir and Funk Deckard (eds.), *Science of Sensibility*, 24. They support their view by reference to the fourth part of the *Enquiry*, where Burke explains that physical relaxation, an effect of beauty and an efficient cause of love (IV.xix.149–51), is "productive of many inconveniencies" and can lead to "Melancholy, dejection, despair, and often self-murder," tendencies which are to be corrected by "exercise or labour," goods born of sublimity (IV.vi.134–35). Ruling out the interpretation that Burke means to say beauty is bad and to be avoided (which would leave us in the awkward position of concluding that he disapproves of sleeping at IV.xx.151), it seems more natural to read the account of relaxation here as illustrating that goodness is not reducible to beauty—that is, once more, that beauty is not identical with goodness.

53 Christopher J. Insole, "Burke and the Natural Law," in Dwan and Insole (eds.), *Cambridge Companion*, 121. See also Christopher J. Insole, "Two Conceptions of Liberalism: Theology, Creation, and Politics in the Thought of Immanuel Kant and Edmund Burke," *Journal of Religious Ethics* 36 (2008): 447–89. A careful examination of the place of teleology in Burke's thought (though, like Insole, without consideration of the *Philosophical Enquiry*) is offered by Joseph L. Pappin III, *The*

spicuous in the more youthful work of the *Philosophical Enquiry*. Burke is quite plain that human beings are placed in a universe created and providentially designed by God and that this creation, its wisdom, and its goodness can, at least in part, be discerned and understood through careful study and contemplation:

The more accurately we search into the human mind, the stronger traces we every where find of his wisdom who made it. If a discourse on the use of the parts of the body may be considered as an hymn to the Creator; the use of the passions, which are the organs of the mind, cannot be barren of praise to him, nor unproductive to ourselves of that noble and uncommon union of science and admiration, which a contemplation of the works of infinite wisdom alone can afford to a rational mind; whilst referring to him whatever we find of right, or good, or fair in ourselves, discovering his strength and wisdom even in our own weakness and imperfection, honouring them where we discover them clearly, and adoring their profundity where we are lost in our search, we may be inquisitive without impertinence, and elevated without pride; we may be admitted, if I may dare to say so, into the counsels of the Almighty by a consideration of his works.⁵⁴

If the wisdom and goodness of the created order is evident in the nature of the passions, it must also be present in the objects which cause those passions and are defined by that causation: "NATURAL objects affect

Metaphysics of Edmund Burke (New York: Fordham UP, 1993), 139–49. Pappin is heir to a long-standing interpretive line which construes Burke in broadly Thomistic terms. The classic statements are Stanlis, *Burke and the Natural Law*, Francis P. Canavan, S.J., *The Political Reason of Edmund Burke* (Durham: Duke UP, 1960), and Wilkins, *Problem of Burke's Political Philosophy*. Rodney Kilcup gives a superb and even inspiring explanation of Burke's providential cosmology and the way in which human nature emerges from it as the standard of goodness, though he supposes, puzzlingly, that this view is in tension with traditional natural law. See Rodney W. Kilcup, "Reason and the Basis of Morality in Burke," *Journal of the History of Philosophy* 17 (1979): 271–84, at 280–83. For an interpretation of the *Philosophical Enquiry* as essentially structured by a providential theology, see F. P. Lock, "The Politics of Burke's Enquiry," in Vermeir and Funk Deckard (eds.), *Science of Sensibility*, especially 134–37, and also Lock, *Edmund Burke*, 1:97–100.

54 L.xix.52–53.

us, by the laws of that connexion, which Providence has established between certain motions and configurations of bodies, and certain consequent feelings in our minds.”⁵⁵ For Burke, the passions are the “instruments used by providence” to link natural objects to “the purposes of our being” and, thereby, bring “our nature towards its perfection.”⁵⁶

To be sure, finite beings are, by their very finitude, limited in their grasp of the nature and the workings of the divine intellect and will. Burke concedes that it is beyond his capacity to explain why, for example, swans have been created beautiful and, so, lovable, while pelicans have not: “I see no greater reason for a connection between man and several animals who are attired in so engaging a manner, than between him and some others who entirely want this attraction.”⁵⁷ Far from casting doubt on the causal relation between beauty and goodness, this concession, in fact, presupposes the providential teleology of the universe: “But it is probable, that providence did not make even this distinction, but with a view to some great end, though we cannot perceive distinctly what it is, as his wisdom is not our wisdom, nor our ways his ways.”⁵⁸ We would not even be able to register our perplexity over why *this* object is beautiful, why *these* characteristics of a body regularly produce love, why *this* passion, rather than some other, reliably aims us at society, or, indeed, why we have been made such that *these* sorts of societies conduce to our good, unless we already accepted that these relations are so and that, all together, they constitute a “great chain of causes ... linking one another even to the throne of God himself.”⁵⁹ Burke’s account of the teleologi-

55 V.i.163.

56 I.xvi.49 and I.xvii.50.

57 I.x.43.

58 Ibid.

59 IV.i.129. This section repeats the argument of I.x.43, now with respect to causal interaction generally. Kilcup cites the former passage in support of the claim that Burke holds all final causation to be inaccessible to reason. See Kilcup, “Reason and the Basis of Morality,” 275, and also O’Neill, *Burke-Wollstonecraft Debate*, 57–58. But unless Burke means to contradict his explicit arguments about final causation in Part I (and to violate his hermeneutic request at I.xix.54 “that no part of this discourse may be judged of by itself and independently of the rest”), the Kilcup–O’Neill reading must be mistaken. Burke’s skepticism in these sections is not about the knowability of final causes but about the capacity of reason to settle why divine design runs thus and not otherwise, i.e., the sufficient reason of the actual

cal arc connecting between beauty and goodness is, then, perfectly comprehensible as a specific expression of his broader religious cosmology.

III.

As we have seen, Burke understands beauty in terms of its embeddedness in a teleological framework that runs from the objective properties of things, through to their passional effects on human beings, the final causes of those passions, and the contribution of those proximate ends to the more complete and unifying end of the wholeness and health of the human being. To say that an object is beautiful is to say that it is fitted up to cause love in observers and to aim them, by means of that love, at the good of society, an essential component of their flourishing. This framework Burke lauds as a particular manifestation of divine wisdom and goodness, that is, of God's providential care, reflected in the natural order.

However, the capacity of a beautiful object to initiate this causal sequence (temporally, if not ontologically) does not guarantee the realization of the ends to which it is linked. Beauty will inspire love in an observer only if that observer is healthy and properly oriented toward the object exhibiting it. The causal efficacy of the beautiful object depends upon the readiness of the subject to be affected aesthetically. In more Burkean terms, love, which is the judgment of beauty, awaits the observer's taste.

Burke defines taste as "that faculty, or those faculties of the mind which are affected with, or which form a judgment of the works of the imagination and the elegant arts."⁶⁰ Though this definition seems to suggest that taste concerns artifacts exclusively, Burke's analysis immediately widens focus to external objects in general, including natural ones. This is because the imagination never creates out of nothing but "can only vary the disposition of those ideas which it has received from the senses."⁶¹ Accordingly, the beauty of an artistic creation depends upon the beauty in the properties of the natural objects inspiring it, together with the added pleasure derived from the resemblance between

and knowable causal order of the world. A similar point is made, in response to Strauss, by Wilkins, *Problem of Burke's Political Philosophy*, 124–27.

60 IT 13.

61 IT 17.

the artwork and whatever original objects of experience it copies. One section further on in the *Philosophical Enquiry*, Burke makes the point more bluntly: “But art can never give the rules that make an art.”⁶² The “true standard of the arts,” that is, the true measure of an imaginative work’s aesthetic value, is not derived from the work itself or from the dialectical exchanges of artists, poets, and critics, but from “the most common ... [and] the meanest things in nature.”⁶³ If taste is the faculty by which we are affected by and judge of artifacts, it is only because it is first the faculty by which we are affected by and judge of the beauty or otherwise of natural objects.

The better part of Burke’s treatment of taste is devoted to the argument that the faculties which compose it—sensibility (including both the senses and the imagination) and judgment—operate according to uniform principles and, therefore, that the faculty of taste considered as such is the same in all.⁶⁴ Like causes affect human beings in like ways. Nevertheless, Burke holds that there are significant differences in the degree to which human beings are affected by beautiful and sublime objects, arising from the relative strength or weakness of an observer’s native sensibility and judgment: “From a defect in the former of these qualities, arises a want of Taste; a weakness in the latter, constitutes a wrong or a bad one.”⁶⁵

Both lack of taste and bad taste may, in some cases, be traceable to physiological defects: weak eyes and bad ears or else congenital simple-mindedness. Burke’s explanation of the failures of taste, however, underscores voluntary rather than accidental causes. Want of taste is often found, he points out, in those who have been formed—by nature or by upbringing—listless and torpid in their passional responses or who, alternately, have vitiated their senses and their sensibility through over-indulgence in sensual pleasures, through avaricious fixations of desire, or through the tidal violence of obsessive preoccupation with fame. In cases like these, whether by excess or deficiency of voluntary action, the

62 I.xix.54.

63 Ibid.

64 IT 23. Costelloe, *British Aesthetic Tradition*, 76–78. provides a sound overview of Burke on the standard of taste and does an excellent job situating Burke’s account in the wider eighteenth-century debate.

65 IT 23–24.

senses and the passions attached to them, have been so stretched or contracted that they have lost their healthy function and crippled the faculty of taste. Similarly, wrong taste most commonly arises, on Burke's view, not from natural weakness but, rather, from bad training and a host of intellectual vices—"ignorance, inattention, prejudice, rashness, levity, obstinacy"⁶⁶—that grow up like weeds under such indiscipline.

Here, at the end of the "Introduction on Taste," we find Burke's account turning from an explanation of the formal likeness of taste and the uniform operation of its component faculties in all human beings toward an understanding of taste as a personal quality which may be better or worse from individual to individual and may be cultivated and improved through voluntary action. In the first place, this may be achieved through the maintenance and refinement of sensibility, but Burke points out that, while healthy sensibility is necessary for good taste—"if the mind has no bent to the pleasures of the imagination, it will never apply itself sufficiently ... to acquire a competent knowledge"—it is not sufficient: "But, though a degree of sensibility is requisite to form a good judgment, yet a good judgment does not necessarily arise from a quick sensibility of pleasure."⁶⁷ A sharp and ready sensibility, by itself, may be very powerfully affected by novel and unfamiliar works and, unable to contextualize them by strength of judgment, magnify their value, as teenagers are wont to exaggerate the worth of "trifling and contemptible" pieces which loom large against the narrow horizons of their youth.⁶⁸ Stepping over the hurdle of sufficiency requires not only vigorous sensibility but also the improvement of judgment, here understood as "the reasoning faculty," "by extending our knowledge, by a steady attention to our object, and by frequent exercise."⁶⁹ What results is the integration of reason into a fluid and intuitive aesthetic response:

They who have not taken these methods, if their Taste decides quickly, it is always uncertainly ... But they who have cultivated that species of knowledge which makes the object of Taste, by degrees and habitually attain not only a soundness,

⁶⁶ IT 24.

⁶⁷ IT 24–25.

⁶⁸ IT 25.

⁶⁹ IT 23 and 26.

but a readiness of judgment, as men do by the same methods on all other occasions. At first they are obliged to spell, but at last they read with ease and with celerity.⁷⁰

In the moment of aesthetic experience, objects of beauty or sublimity indeed operate “mechanically upon the human mind,”⁷¹ and the resultant judgment of love or astonishment, as it may be, is spontaneous and immediate, without the interposition of “the languid and precarious operation of our reason ... [or] even the will.”⁷² The ease and celerity of aesthetic experience and judgment, however, is made possible by the faculty of taste and becomes still easier and swifter (and more certain) as that complex faculty is strengthened through training, both rational and sensitive, that occurs indirectly, outside the moment itself.

Seen all together, Burkean taste seems to take on the shape of a virtue. Certainly, it carries many of the marks traditionally indicative of virtue.⁷³ It is a quality of character, partly under our indirect voluntary control, developed through practice, study, and habituation. At the level of sensibility, its realization involves striking a mean between extremes (in this case, of torpor and dissipation). Most importantly, the improvement of taste, that is, the refinement of our capacity to be affected properly by and to judge clearly of beautiful and sublime objects, serves to harmonize the human being with the natural world in such a way as to be ordered toward ends—society and self-preservation—essential to human flourishing.

Christopher Insole argues that the conception of the virtues in Burke’s later writings is Aristotelian and derives from his Christianized Aristotelian and Ciceronian teleological understanding of the universe.⁷⁴ As Insole sets out the relation:

70 IT 26. Burke’s insistence here on the role of rational judgment in taste reveals the crudeness of the opposition between taste and reason set up by Canavan, *Political Reason*, 41. Canavan’s view of Burke on taste is criticized ably by Wilkins, *Problem of Burke’s Political Philosophy*, 144 n1, though, by my lights, Wilkins’s own account too sharply separates sensibility and judgment: *ibid.*, 142–44.

71 III.xii.112.

72 III.vii.107. See also III.ii.92.

73 For example, Aristotle, *Nicomachean Ethics*, 1102a5–1109b30 (I.13–II.9). An admirably clear and concise modern account can be found in David S. Oderberg, *Moral Theory: A Non-Consequentialist Approach* (Oxford: Blackwell, 2000), 45–53.

74 Insole, “Burke and the Natural Law,” in Dwan and Insole (eds.), *Cambridge Companion*, 121–22. Also Insole, “Two Conceptions of Liberalism,” 453, which links

Within the Aristotelian tradition, virtues are construed as those habits or dispositions by which we stretch out to our perfection: a perfection that is oriented to an objective conception of what constitutes human flourishing within a wider order. When natural law is constituted by a teleological conception of the universe, with an objective conception of human perfection, reflection on virtues can be an intrinsic part of reflection on natural law.⁷⁵

We have seen already that Burke understands beauty (and, *mutatis mutandis*, sublimity) precisely in terms of this divinely ordained teleological order. It is entirely appropriate, then, to see the faculty by which the human being renders himself receptive to beauty and sublimity, locating himself in the wider order of what is and so stretching out to his proper perfection, as a virtue. Taste engaged is the activity of the human being, indirectly voluntary and partly rational, that links the aesthetic worth of things to the fulfillment of human nature, functioning as both a means to the human good and a constitutive part of that good.

None of this implies that, for Burke, taste is the only way, the best way, or even the most common way by which we are oriented toward the good.⁷⁶ For some, any sensitivity, beyond the most basic and ineradicable, to the beautiful and sublime in nature may remain elusive, and for many, the greater part of direction toward the ends of society and self-preservation will likely come by such avenues as the Church, the institutions of society, and the inherited traditions of culture—avenues which, in any case, remain essential for shaping the manner of our directedness

Burke to St. Thomas on this point.

⁷⁵ Insole, "Burke and the Natural Law," 121.

⁷⁶ Insole (ibid., 121–22) identifies the centrality of the virtue of prudence, as does Kilcup, "Reason and the Basis of Morality," 271 and 279, who also highlights the role of instinct and common sense. Vermeir and Funk Deckard follow O'Neill and Harris in identifying religion as the ground of Burkean morality. See Vermeir and Funk Deckard, "Philosophical Enquiries," in Vermeir and Funk Deckard (eds.), *Science of Sensibility*, 23, O'Neill, *Burke–Wollstonecraft Debate*, 65, and Burke, *Pre-Revolutionary Writings*, 59. Bullard, "Burke's Aesthetic Psychology," 61, further points to the established Church. Bourke argues that taste may play, at most, a supporting and never a foundational role in morality for Burke. See Bourke, "Burke, Enlightenment, and Romanticism," in Dwan and Insole (eds.), *Cambridge Companion*, 33–34, and Bourke, "Pity and Fear," in Vermeir and Funk Deckard (eds.), *Science of Sensibility*, 157.

toward society and self-preservation. Still, to whatever degree one is able to actualize it, taste holds an interesting and important place in the schedule of the virtues. For it is not only a disposition by which we are urged on to family and friendship and warned off danger and death. Taste also plays a significant evaluative role in our moral lives.

Recall that, for Burke, many of the most important virtues have a distinctive aesthetic value: “easiness of temper, compassion, kindness, and liberality” are beautiful virtues, while “fortitude, justice, wisdom, and the like” are called sublime.⁷⁷ More generally, Burke groups the “amiable social virtues” and the “domestic virtues” with beauty and classes “the politic and military virtues” under sublimity.⁷⁸ Good taste will not tell us why fortitude is morally fitting and timidity is not or how to resolve thorny conflicts between motherly indulgence and fatherly authority. For both the ground of morality and adverbial guidance in the apt expression of moral behavior, we must have recourse to “our reason, our relations, and our necessities,”⁷⁹ and not singly, as isolated individuals, but as members of “a partnership ... between those who are living, those who are dead, and those who are to be born.”⁸⁰ Nevertheless, if it is right that the virtues have an aesthetic valence, Burke’s account implies that a properly cultivated taste would serve us as a ready and reliable means of evaluating character.⁸¹ A refined sensitivity to beauty would allow us to discern the leavening touches of gentleness and liberality in the gruff and the taciturn. A well-calibrated responsiveness to the sublime would prime us to intuit the difference between rigorous justice, which is owed admiration and respect, and grim severity, which is rightly greeted with uneasiness and defiance. Taste, then, would not be just one more virtue alongside the others but a virtue by which we may assess and respond to other virtues. In the swift current of daily life, we are only seldom afforded the expansive luxury to reason from first principles or reflect

77 III.x.110–11.

78 IV.xxiv.158.

79 III.xi.112.

80 Burke, *Reflections*, 261.

81 A similar point is suggested in Richard Bourke, *Empire and Revolution: The Political Life of Edmund Burke* (Princeton: Princeton UP, 2015) 143, 156, and especially 159, where Bourke also notes that the role of taste in the judgment of morals served, for Burke, “to illustrate the wisdom of providence.” I am grateful to an anonymous referee for drawing my attention to this text.

upon historical precedent. More often, experience calls us to sudden judgment and action. Here, the fluid intuitions of aesthetic taste, honed in study, attentiveness, and frequent exercise, deliver precisely what the “languid and precarious operation”⁸² of discursive rationality cannot: a natural capacity for sizing up our fellows, their actions, and the situations they create, all in the rush and push of an instant.

Commentators have tended toward a shrugging dismissiveness about Burke’s analysis of taste. Paul Guyer judges it “the least original part of Burke’s work” and considers Burke’s arguments about the improvement of taste simply a paler and less convincing repetition of Hume.⁸³ Boulton, likewise, thinks it “foolish to claim that Burke made a major contribution to the discussion on taste” and finds his introduction “lacking in profundity of argument.”⁸⁴ These assessments, however, are coupled with and seem to arise from interpretations of Burke’s aesthetics that miss its teleological structure. Boulton regards Burke’s account of beauty as restricted “wholly to qualities of objects which act mechanically through the senses,” “no more than a thorough-going application to aesthetics of the empirical philosophy so popular at the time,” and he concludes that “Burke’s theory of beauty is, intrinsically, of slight importance.”⁸⁵ For Guyer, likewise, Burke’s aesthetics “explain[s] our response to the sublime and beautiful in entirely naturalistic terms without the intervention of any grand ideas of order, fitness, or their source.” Indeed, Burke’s “naturalistic aesthetics” should be seen as “a rejection of the ... Christian tradition,” prefiguring (the avowedly anti-teleological) Nietzsche, “whose ‘Apollonian’ and ‘Dionysian’ drives are but Burke’s beautiful and sublime in mythological dress.”⁸⁶ As for the explicitly religious dimension of the system, “Burke’s appeals to ‘providence’ in the *Enquiry* seem an entirely conventional background for his primary interest in the psychology and physiology of aesthetic experience.”⁸⁷

82 III.vii.107.

83 See his introduction to Edmund Burke, *A Philosophical Enquiry into the Origin of Our Ideas of the Sublime and Beautiful*, ed. Paul Guyer (Oxford: Oxford UP, 2015), xxviii.

84 See the introduction to Boulton’s edition of Burke, *Philosophical Enquiry*, xxxviii–xxxix.

85 Ibid., lxv, lx, and lxxvi.

86 Guyer in his edition of Burke, *Philosophical Enquiry*, xiii.

87 Ibid., xiii n13.

The interpretation of Burke we have pursued here, however, equips us to resist these conclusions. Both Burke's catalogue of the sensible appearances of sublime and beautiful objects in parts two and three as well as his description of their efficient causal operation in part four are set inside a teleological framework that binds the objects of aesthetic value to the perfection of human nature and defines them in those terms. The catalogue and the description are coherent only within that broader and more basic framework. The sensible characteristics of sublime and beautiful things cannot themselves specify what is meant by sublimity and beauty, for no one of them is necessary or sufficient for aesthetic worth. They are but the frequently observed accompaniments of what aesthetically valuable things are: objects that order human beings toward two of the ends constitutive of their flourishing. Likewise, the physiological account of the efficient causal powers of sublime and beautiful objects does not itself pick out those qualities but, in fact, presupposes that readers already know what it is for an object to be sublime or beautiful. As a description of what sublime and beautiful objects do to the human body, it stands or falls ultimately on the basis of how well it coheres with the definition of sublimity and beauty, a definition which must already be given on other grounds. For Burke, those grounds are the final causal chain linking sublimity and beauty to human flourishing.

The teleological link between aesthetic worth and goodness, then, is not an indirect by-product but the very essence of Burke's aesthetics, the point upon which all else hangs. Once we have seen this, we will also be in a better position to understand the value and interest of Burkean taste. Set inside the teleology of nature, taste becomes a quality of character by which the beautiful and sublime things of the world realize their bond to goodness, and the intentional cultivation of taste becomes a principal means by which we participate in the natural order and integrate ourselves into it, perfecting our own being thereby. As this teleology is an expression of providence, the cultivation of taste is nothing less than a form of reverence for and cooperation with the law of God in nature.

For Burke, the relation between beauty and goodness thus rests on the providential teleology of nature and the place of human action, in

the form of taste, within it. Though there is more to goodness than beauty, all beauty aims at the good, and it is, therefore, always good for us to be sensitive to it.⁸⁸

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The Un-Burkean Economic Policy of Edmund Burke



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*The mistakes which have been made in putting economic policies
into effect have their roots, as always, in theoretical errors.*

Wilhelm Roepke, *The Social Crisis of Our Time*

Edmund Burke is well known for his critical writings on the French Revolution and his advocacy of historical precedent, custom, and prescription. He is also famous for his reluctance to base public policy on his or anyone else's private stock of reason. Abstract theory and the metaphysical dissection of society were for him anathema. Numerous writers from the political right and left have attempted to interpret him and the applicability of his thought to current political and cultural issues. Views range from seeing Burke as a conservative, as a liberal, and as ambivalent. On the conservative side, Russell Kirk, among other things, emphasizes Burke's view of the corporate nature of society and the collective wisdom of the nation, the "wisdom of the species," the "wisdom above reflection."¹ Peter Stanlis stresses the Christian under-

I The author is most grateful to Mrs. Annette Kirk and the Russell Kirk Center for the use of Dr. Kirk's library in the preparation of this manuscript. An earlier version of the article appeared on *The Imaginative Conservative* website in 2019.

standing of natural law as the dominant theme in his interpretation of Burke. From the left, C. B. Macpherson sees Burke as justifying the exploitation of workers to preserve the ruling class.

Views also vary as to Burke's consistency and, on that score, according to Frank Pagano, "The predominant view of Burke runs in cycles."² His reliance on history and precedent and his preference for historical example and his aversion to rationalistic social theory appear to be inconsistent with some of his statements of economic policy. This is especially true in his "Thoughts and Details on Scarcity" (November 1795), a memorandum to William Pitt, with an eye to eventual publication which the executors of his estate did publish after his death. In the paper, Burke rejects in vigorous terms based on classical economic theory any role for the government to assist agricultural workers. That is the problem to be examined below, along with some additional, related issues about Burke's thinking.

I. Stating the Problem

On May 6, 1795, at the Pelican Inn, magistrates in Speenhamland, Berkshire, met in response to the distress of laborers resulting from poor harvests and recommended that local governments be allowed to supplement their wages when they fell below the subsistence level. Edmund Burke was sharply critical of this proposal and expressed himself on the matter in his "Thoughts and Details on Scarcity." The reasons he gave for rejecting their proposal may be divided into the empirical and the theoretical. Among the former arguments he claims the laborers' diet had improved in recent decades, that a redistribution of wealth from the rich to the poor would make little difference, and that existence of full-time able-bodied workers and various groups of part-time day laborers would make wage adjustments difficult, as would the conditions of various types of farming. He also goes into detail on the recent harvests and claims they had not been that bad while admitting that the quantity, especially in wheat and barley, had been somewhat reduced. Overall, we see that Burke is mainly

2 Edmund Burke, *A Vindication of Natural Society*, ed. Frank N. Pagano (Indianapolis: Liberty Fund, 1982), xii, n3.

concerned with the plight of the farmer, not so much that of the laborer who, when he does come to consider him, is doing pretty well. He believes that “even under all the hardships of the last year, the labouring people did, either out of their direct gains, or from charity, ... in fact, fare better than they did in seasons of common plenty, fifty or sixty years ago.”³ Among the theoretical arguments are his well-known statements that labor is a commodity like any other and its wage rate, or price of labor, is wholly determined by the workings of supply and demand, and that the interests of the farmer and the laborer are the same.

More broadly, and more importantly, the problem is one of consistency, with which scholars have long wrestled. The view taken here is that Burke’s most familiar position, the one found in the *Reflections*, is consistent with his other policy statements; and his lesser known position about economic policy is also consistent with respect to other economic policy statements. But the two positions are not consistent with each other. And the last paper on economic policy, “Thoughts and Details on Scarcity,” is especially shrill in its arguments, unlike the moderate and balanced tone in so many of his other speeches and writings. Nor is it consistent with his contemporaries, Adam Smith and Arthur Young.

2. *The Burkean Argument*

The issue at the time was one of a supply shortage arising primarily from bad harvests and perhaps to some extent from the war against France, which particularly adversely affected agricultural workers. The question was how provisions were to be increased. Redistribution from the rich to the poor was one possibility, but Burke dismissed this with the argument that such a redistribution would hardly improve the lot of the poor. There simply wasn’t enough to go around. But he also addressed three additional, though overlapping, concerns that imply a redistribution: (1) the price of labor, which was set in the market; (2) government intervention in the labor market, which was as futile as it was unnecessary; (3) the necessary harmony of interests between contracting parties.

3 Edmund Burke, *The Writings and Speeches of Edmund Burke*, ed. Paul Langford *et al.* (Oxford: Oxford UP, 1981–2015), 9:122.

Concerning, first, the price of labor, Burke's views on the nature of labor are very definite. He writes: "Labour is a commodity like every other, and rises or falls according to the demand." This, he says, is "in the nature of things." He adds that "the labour ... shall be sufficient to pay to the employer a profit on his capital, and a compensation for his risk; in a word, that the labour shall produce an advantage equal to the payment." Anything less than this, that is, any redistribution from the employer to the worker, amounts to a "direct *tax*" and "if the amount of that tax be left to the will and pleasure of another, it is an *arbitrary tax*"⁴ (original emphasis). There shall be no diminution of employer profits.

There are also hierarchical relations in the agricultural endeavor which Burke describes in Aristotelian terms. First are the mute instruments such as carts, ploughs, spades, etc.; then there are the semivocal instruments such as the working stock of cattle; and lastly comes the vocal instrument, the labor of man. These are, of course, directed by the entrepreneurial farmer who is like a "thinking and presiding principle to the labourer." Furthermore, "[a]n attempt to break this chain of subordination in any part is equally absurd."⁵ This he says is the natural and just order. He restates this later, saying:

And, first, I premise that labour is, as I have already intimated, a commodity, and as such, an article of trade. If I am right in this notion, then labour must be subject to all the laws and principles of trade, and not to regulations foreign to them, and that may be totally inconsistent with those principles and those laws. When any commodity is carried to market, it is not the necessity of the vendor, but the necessity of the purchaser that raises the price. The extreme want of the seller has rather (by the nature of things with which we shall in vain contend) the direct contrary operation ... The impossibility of the subsistence of a man, who carries his labour to a market, is totally beside the question, in this way of viewing it. The only question is, what is it worth to the buyer?⁶

4 Ibid., 122-23.

5 Ibid., 125.

6 Ibid., 126.

But, as a factual point, Burke claims the price of labor has actually kept up with the price of provisions anyway. While there is no *direct* relation of the wage rate with the prices of provisions, there is an indirect relation, in “the nature of things” as he puts it, that has provided workers with their necessities. “Wages have been twice raised in my time; and they bear a full proportion, or even a greater than formerly, to the medium of provision during the last bad cycle of twenty years. They bear a full proportion to the result of their labour.”⁷

But still—and here we come to the second concern, government intervention—what if that market price did not keep up with the price of provisions so that agricultural workers couldn’t provide for their subsistence? Shouldn’t the government intervene to help them then? Burke’s answer is a clear “no” based on the simple principle that, “To provide for us in our necessities is not in the power of Government. It would be a vain presumption in statesmen to think they can do it. The people maintain them, and not they the people.”⁸ More specifically, he says that forcing the wage beyond the market price would result either in a diminished demand or an increase in the price of provisions, thus hurting the workers still more.⁹ Even worse, such blind interventions would actually lead to a series of additional blunders, each subsequent intervention trying to make good the unintended but bad consequences of the original intervention. All efforts to help in this situation are for one reason or another, then, fruitless. Speaking in the context of establishing granaries in England, he went so far as to claim: “The moment that Government appears at market, all the principles of market will be subverted.”¹⁰

7 Ibid., 123. Real wages may not, however, have actually risen during this time period. According to Gregory Clark, real wages fell in the quinquennia 1790–94 and again in the period 1795–99. (See reference below, Table 9 and Figure 3.) Overall, his analysis “suggests that real agricultural wages showed little long term movement in the 180 years from 1670 to 1850.” He concludes that “real wages of male farm workers ... increased little if at all in the Industrial Revolution.” There were, however, “modest increases in real earnings for land and capital owners in the years 1670 to 1850.” See Gregory Clark, “Farm Wages and Living Standards in the Industrial Revolution: England, 1670–1850” at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.521.1268&rep=rep1&type=pdf>.

8 Ibid., 120.

9 Ibid., 123.

10 Ibid., 135.

Clumsy interventions by government are also likely to make the already delicate existence of the farmer still worse. The farmer's life is precarious and his profits are much smaller than is commonly thought. "The trade," Burke says, "is a very poor trade; it is subject to great risks and losses." The farmer, after unremitting parsimony and taking on extra employment upon his death, barely breaks even.¹¹ It is also the larger farmer, 1200 acres, who "cannot proceed, with any degree of safety and effect, with smaller capital than ten thousand pounds; and ... cannot, in the ordinary course of culture, make more upon that great capital of ten thousand pounds, than twelve hundred a year." The "weaker capitals" are sensitive to small errors which weaken them still further.¹² The upshot for this, then, is clear: any intervention by government that would raise the costs of farming would be deleterious.

Burke believes these cycles of dearth and plenty are too complex for any policy intervention to be reasonable; so he admonishes policy makers

manfully to resist the very first idea, speculative or practical, that it is within the competence of Government, taken as Government, or even of the rich, as rich, to supply to the poor, those necessities which it has pleased the Divine Providence for a while to with-hold from them. We, the people, ought to be made sensible, that it is not in breaking the laws of commerce, which are the laws of nature, and consequently the laws of God, that we are to place our hope of softening the divine displeasure to remove any calamity under which we suffer, or which hangs over us.¹³

He does, however, allow for a slim theoretical possibility of intervention, but only if lawmakers have the "exactest detail of circumstances, guided by the surest general principles that are necessary to direct experiment and enquiry, in order again from those details to elicit principles, firm and luminous general principles, to direct a practical legislative proceeding."¹⁴

¹¹ Ibid., 130.

¹² Ibid., 131.

¹³ Ibid., 137.

¹⁴ Ibid., 124.

Ultimately, Burke fears that the British government is about to fall into the error of the French government. Some day, what we presently see in France, will happen here in England. The French are guilty of a “restless desire of governing too much.” His opinion is against “an overdoing of any sort of administration,” especially as it relates to the “subsistence of the people.”¹⁵ But if wages fall below the subsistence level, what then?

Whenever it happens that a man can claim nothing according to the rules of commerce, and the principles of justice, he passes out of that department, and comes within the jurisdiction of mercy. In that province the magistrate has nothing at all to do: his interference is a violation of the property which it is his office to protect. Without all doubt, charity to the poor is a direct and obligatory duty upon all Christians, next in order after the payment of debts, full as strong, and by nature made infinitely more delightful to us ... But the manner, mode, time, choice of objects, and proportion, are left to private discretion; and perhaps, for that very reason it is performed with the greater satisfaction, because the discharge of it has more the appearance of freedom; recommending us besides very specially to the divine favour, as the exercise of a virtue most suitable to a being sensible of it's own infirmity.¹⁶

Burke speaks of those who work “from dawn to dark in the innumerable servile, degrading, unseemly, unmanly, and often most unwholesome and pestiferous occupations, to which by the social oeconomy so many wretches are inevitably doomed.” He would be willing to intervene to rescue those poor workers, “[i]f it were not generally pernicious to disturb the natural course of things, and to impede, in any degree, the great wheel of circulation which is turned by the strangely directed labour of these unhappy people.”¹⁷

¹⁵ Ibid., 144–45.

¹⁶ Ibid., 129.

¹⁷ Edmund Burke, *Reflections on the Revolution in France*, ed. J.C.D. Clark (Stanford: Stanford UP, 2001), 332.

For property to be acquired, concentrated, and made productive, there must be a firm arrangement whereby the lower classes serve the upper classes, however difficult that may be for the former:

The means of acquisition are prior in time and in arrangement. Good order is the foundation of all good things. To be enabled to acquire, the people, without being servile, must be tractable and obedient. The magistrate must have his reverence, the laws their authority. The body of the people must not find the principles of natural subordination by art rooted out of their minds. They must respect that property of which they cannot partake. They must labour to obtain what by labour can be obtained; and when they find, as they commonly do, the success disproportioned to the endeavour, they must be taught their consolation in the final proportions of eternal justice. Of this consolation, whoever deprives them, deadens their industry, and strikes at the root of all acquisition as of all conservation.¹⁸

In short, the well-ordered economy requires submission to law and government but with no expectation of the latter's intervention to alleviate the poor and miserable; they must, instead, rely on spiritual consolation.

However, Burke does not quite let matters rest there. He also recommends the help of strong drink. "Ardent spirit," he says, "is a great medicine.... [I]t is a medicine for the mind. Under the pressure of the cares and sorrows of our mortal condition, men have at all times, and in all countries, called in some physical aid to their moral consolations,—wine, beer, opium, brandy, or tobacco."¹⁹ This, then, along with private charity and the consolations of religion, completes his triad of help for workers to which government can add nothing beneficial.

The third concern is that of harmony of interests. Here, Burke advances the view that contracts are a reflection of actual harmony between the farmer and his laborers. He makes the theoretical argument that there exists a general, unspoken understanding between the two groups prior to any specific contract. It is "an implied contract," he writes, that is "much stronger than any instrument or article of agree-

¹⁸ Ibid., 411.

¹⁹ Burke, *Writings and Speeches*, 9:141–42.

ment, between the labourer in any occupation and his employer.” He asks rhetorically whether or not “it is better to leave all dealing, in which there is no force or fraud, collusion or combination” to the parties of the contract rather than to those who have little knowledge or interest in the matter. Judges exist to enforce contracts, not to protect one party against another, provided, among other things, that no force or fraud has actually been involved.²⁰

Burke then makes it clear that those who advocate for the intervention at hand suppose, or pretend, that the farmer and the workers have opposing interests. This he emphatically denies. The specific contracts in question involve no significant conflicts between the parties:

I deny that it is in this case, as in any other of necessary implication, that contracting parties should originally have had different interests. By accident it may be so undoubtedly at the outset; but then the contract is of the nature of a compromise; and compromise is founded on circumstances that suppose it the interest of the parties to be reconciled in some medium. The principle of compromise adopted, of consequence the interests cease to be different.²¹

He then emphasizes the point: “But in the case of the farmer and the labourer, their interests are always the same, and it is absolutely impossible that their free contracts can be onerous to either party.”²²

More still, when it comes to the farmer, even avarice is acceptable because the market will transmute it into a public virtue. “But if the farmer is excessively avaricious?—why so much the better—the more he desires to increase his gains, the more interested is he in the good condition of those, upon whose labour his gains must principally depend.”²³ Yes, and that contract is to do justice:

It is therefore the first and fundamental interest of the labourer, that the farmer should have a full incoming profit on the product of his labour. The proposition is self-evident, and nothing

²⁰ Ibid., 123.

²¹ Ibid., 124.

²² Ibid., 124–25.

²³ Ibid., 126.

but the malignity, perverseness, and ill-governed passions of mankind, and particularly the envy they bear to each other's prosperity, could prevent their seeing and acknowledging it, with thankfulness to the benign and wise disposer of all things, who obliges men, whether they will or not, in pursuing their own selfish interests, to connect the general good with their own individual success.²⁴

There is actually no need for government corrections of market actions because, through the implied and explicit contracts, a necessary harmony of interests always results.

3. *Evaluation and Critique*

We will look at each of these arguments in their turn to evaluate them against the background of Burke's own statements made elsewhere, and against some contemporary views.

Concerning the price of labor, while he is primarily concerned with the difficulties and risks that affect the property of the farmer, Burke might have taken a page from the work of his contemporary about the difficulties and risks facing the *worker* and *his* property. As Adam Smith writes:

The property which every man has in his own labour, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of a poor man lies in the strength and dexterity of his hands; and to hinder him from employing this strength and dexterity in what manner he thinks proper without injury to his neighbour, is a plain violation of this most sacred property.²⁵

When Burke regards labor as a commodity like any other, he argues that the setting of the wage rate through supply and demand considerations is not only the proper way for the rate to be set but that this commercial law is a law of God. Putting it in this epideictic manner forecloses dis-

²⁴ Ibid., 125.

²⁵ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, ed. R. H. Campbell *et al.* (Indianapolis: Liberty Fund, 1981), 138.

cussion since one cannot disagree with deity. But it is possible to point out that the connection between deity and the wage rate may not be that tight. There is enough room in the course of individual and collective action to allow for other concerns or for modification of the results of the market price of labor.

Indeed, the market in Smith's view does not determine wages in such a very precise, inflexible manner but is heavily influenced with the personal judgement of the employers who have the power to implement those judgments. In Smith's words: "The price of labour, it must be observed, cannot be ascertained very accurately any where, different prices being often paid at the same place and for the same sort of labour, not only according to the different abilities of the workmen, but according to the *easiness* or *hardness* of the masters"²⁶ (emphasis added).

Good wages also increase productivity, as Smith says:

The liberal reward of labour, as it encourages the propagation, so it increases the industry of the common people. The wages of labour are the encouragement of industry, which, like every other human quality, improves in proportion to the encouragement it receives. A *plentiful* subsistence increases the bodily strength of the labourer, and the comfortable hope of bettering his condition, and of ending his days perhaps in ease and plenty, animates him to exert that strength to the utmost. Where wages are high, accordingly, we shall always find the workmen more active, diligent, and expeditious, than where they are low²⁷ (emphasis added).

But Smith also has a more congenial view of the worker and what he ought to have from his efforts when he writes:

Servants, labourers and workmen of different kinds, make up the far greater part of every great political society. But what improves the circumstances of the greater part can never be regarded as an inconveniency to the whole. No society can surely be flourishing and happy, of which the far greater part

²⁶ Ibid., 95.

²⁷ Ibid., 99.

of the members are poor and miserable. It is but *equity*, besides, that they who feed, cloath and lodge the whole body of the people, should have such a share of the produce of their own labour as to be themselves tolerably well fed, clothed and lodged²⁸ (emphasis added).

That equity or justice enters in here reflects Smith's concern that the market economy's beneficial results are achieved only where justice is satisfied. And that opens the door to judgments by the courts and policies of parliament.

Yet perhaps more basic than any other point is Burke's assumption that labor is a commodity like any other and subject to the rules of commerce as much as trade and manufacturing are. This is arguably a false view of agriculture and its labor. Wilhelm Roepke explains that "agriculture is that part of the national economic system to which the principles of a free market economy could always be applied only with broad reservations, the peculiar conditions obtaining here having always confronted economic policy with special problems which could not be left to solve themselves." Of those special problems agricultural labor is most significant because for various reasons it is "a particular labor problem which makes it difficult for it to compete with industry in the labor market under the same conditions." It has always been questionable how well it fits into the capitalist system and has therefore occupied a special position requiring special economic policies.²⁹ But while he is willing to differentiate between laborers based on gender and age and claiming there can be no adequate policy to cover such differences, Burke was unable to see the yet larger difference between agricultural labor and that of trades and manufacturing. Indeed, for him, it was a commodity like any other.

On the matter of government intervention, one might have expected, with Burke's dominant view emphasizing respect for history, custom, prejudice, and precedent, a reluctance to abandon laws whose principle demonstrated those otherwise admired ancient or mediaeval ideals of just price, fair wage, honest manufacture, and reasonable profit.³⁰ These

²⁸ Ibid., 96.

²⁹ Wilhelm Roepke, *The Social Crisis of Our Time* (New Brunswick: Transaction Publishers, 1942), 205, 245.

³⁰ William Holdsworth, *A History of English Law* (London: Methuen & Co., 1938), 478.

principles were the basis for market interventions. Although the laws that embodied them were hardly perfect, there were periodic efforts to adjust them to new conditions. Certainly, with the commercial and technical changes that affected economy and society in the sixteenth century, some new institutional arrangements were needed. The same altered conditions which made the form of the older regulations obsolete also made the older form of giving, private charity, unsuitable. It had long proved to be inadequate for modern unemployment situations. As Joseph Schumpeter points out: "Everywhere the swelling numbers of destitute beggars and vagrants outgrew the possibilities of private charity and everywhere public organization of relief had to take its place. In England, earlier measures were systematized by the Elizabethan Poor Law of 1601, which definitely established the compulsory poor rate on a permanent basis."³¹ The compulsory poor rate was a bounty or subsidy to supplement market established wage rates from parish taxes. There was ample precedent and historical track record to suggest that perhaps the "wisdom of the species" over the past 200 years had something to it, even if it needed to be improved to meet new conditions.

Many of the older laws regulating the wage rate, number of apprentices, and other aspects of economic life including laws on engrossing, forestalling, and regrating were not enforced in Smith's day.³² However, abuses continued to occur under the new type of economic organization of nascent capitalism and under the influence of the doctrine of *laissez faire*. "That influence," says Holdsworth, "prevented Parliament from appreciating the fact that, in addition to the merely negative policy of repealing the old regulations, a positive policy was needed which would have adapted the spirit of the old regulations to the new industrial conditions."³³

These problems were not confined to England. Burke, as an avid and perceptive follower of events on the Continent, could have taken a cue from what was going on in Germany, a country he was watching for other reasons relating to the French Revolution. Again, Schumpeter points this out: "In Germany, *das Armenwesen* [the laboring poor] naturally became a standard subject within the 'cameralist' [economic] literature. German

³¹ Joseph Schumpeter, *History of Economic Analysis* (Oxford: Oxford UP, 1954), 271.

³² Holdsworth, *History of English Law*, 466–67; Smith, *Wealth of Nations*, 157.

³³ Holdsworth, *History of English Law*, 498.

governments accepted the state's responsibility for employment and maintenance as a matter of course. The same principle was repeatedly asserted in England, for example, by the Berkshire magistrates in 1795."³⁴

In particular the work of a German administrator, Johann Georg Heinrich von Justi, may have proven instructive insofar as he was able to combine the new insights of classical economic theory with common sense arrangements for supporting a market economy. He was an active public administrator who still saw the logic in the argument that the market coordinated economic activity and that it could therefore run on its own, so to speak. But this was within limits. Justi recognized the potential for market failures and provided for such cases in his planning. He was concerned with:

particular difficulties in which private initiative fails or would have failed under the conditions of the German industry of his time. His laissez-faire was a laissez-faire plus watchfulness, his private-enterprise economy a machine that was logically automatic but exposed to breakdowns and hitches which his government was to stand ready to mend. For instance, he accepted as a matter of course that the introduction of labour-saving machinery would cause unemployment: but this was no argument against the mechanization of production because, also as a matter of course, his government would find equally good employment for the unemployed.³⁵

Schumpeter concludes that Justi's vision of economic policy was "laissez-faire with the nonsense left out."³⁶

However, in England the nonsense was left in, blinding lawmakers not only to workers' problems but to the consequences of capitalism and industrialization. The "greater freedom allowed to masters, and to some extent to men, led inevitably to combinations of masters and men, whose aims and activities tended to prevent the regular functioning of the industrial machine, to cause breaches of the laws which regulated industry, and even to threaten the peace of the state."³⁷ But the laws

³⁴ Schumpeter, *Economic Analysis*, 272.

³⁵ *Ibid.*, 172.

³⁶ *Ibid.*

³⁷ Holdsworth, *History of English Law*, 474.

against combinations favored the masters over the workers. "None of the statutes passed during the eighteenth century to suppress combinations of men penalized directly a combination of masters."³⁸ This bias was continued with the passage of the Combination Acts of 1799 and 1800. Workers' protection and legitimate pathways to redress their grievances continued to be reduced as both the courts and parliament gradually ceased to perform their traditional regulating function in these matters. They failed to respond to the workers' appeals so that the combinations of workers not only gained strength but demanded radical and even revolutionary reforms. "The result was that disputes between masters and men were withdrawn from the arbitrament of the law, and left to be decided by the effective forces at the disposal of the contending parties."³⁹ Ultimately, workers were "obliged to combine in self-defence, so that Parliament had done exactly what Adam Smith had said that it ought not to do; it had rendered these combinations necessary."⁴⁰

In this context, Burke himself exhibits a blindness when he argues that any one government intervention perverts all principles of the market and requires continuous subsequent corrections. He is committing what might be called the "fallacy of indivisibility." What is wrong with this argument is the failure to recognize, as Roepke points out, that there can be *compatible* interventions. These latter are based on the same principles as the liberal economist recognizes and uses to make his assessments. The market digests price changes well, and endless interventions are not required.⁴¹ A subsidy to farm workers' wages, which the bounty was, does not freeze the price mechanism. And this is what modern economists often recommend instead of, say, a minimum wage. Burke does admit that when it comes to these matters there are often exceptions: "Nothing, certainly, can be laid down on the subject that will not admit of exceptions, many permanent, some occasional."⁴² But when it comes to the actual possibility of such exceptional intervention, he does not really believe in it. After pointing out the different kinds of labor obtaining in agriculture, he says "laws prescribing, or magistrates

³⁸ Ibid., 488.

³⁹ Ibid., 499–500.

⁴⁰ Ibid., 491.

⁴¹ Roepke, *Social Crisis*, 159–63.

⁴² Burke, *Writings and Speeches*, 9:143.

exercising, a very stiff, and often inapplicable rule, or a blind and rash discretion, never can provide the just proportions between earning and salary on the one hand, and nutriment on the other.”⁴³ Clearly, his operational arguments are without exception in the case at hand.

Burke’s inflexible adherence to the abstract propositions of classical economics is uncharacteristic of his usual emphasis on circumstances and particulars and variability. His famous example comes to mind that abstract principles are like a light beam which, when it passes through a medium, is bent and refracted; the various complex circumstances adjust and redirect policy applications of various principles but do not vitiate them. The circumstantial forms may vary while the principles remain the same. Burke would have done better to apply this view in his thoughts and details on scarcity as he did in other economic policy recommendations.

Of course, the question of government intervention itself depends on whether there is a substantial harmony of interests among the various economic participants. Regarding such harmony of interests, Smith expressed his doubts as he thought about the three different social orders of his day: the first order, landlords, the second, workers, and the third, employers. There was no perfect harmony of interests: “The interest of the second order, that of those who live by wages, is as strictly connected with the interest of the society as that of the first [landlords].” But he says of employers that their interest “has not the same connection with the general interest of the society as that of the other two.”⁴⁴ And also, speaking of merchants and manufacturers in regard to international trade, Smith writes: “Their interest is, in this respect, directly opposite to that of the great body of the people.”⁴⁵ In fact he had earlier stated his famous dictum:

People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the publick, or in some contrivance to raise prices. It is impossible indeed to prevent such meetings, by any law which either could be executed, or would be consistent with liberty and justice. But though the law cannot hinder people of the same trade from sometimes assembling together, it

⁴³ Ibid., 128.

⁴⁴ Smith, *Wealth of Nations*, 266.

⁴⁵ Ibid., 494.

ought to do nothing to facilitate such assemblies; much less to render them necessary.⁴⁶

Smith likewise does not see that contracts are quite so equitable as Burke does. He writes:

What are the common wages of labour depends every where upon the contract usually made between those two parties, whose interests are by no means the same. The workmen desire to get as much, the masters to give as little as possible. The former are disposed to combine in order to raise, the latter in order to lower the wages of labour.

It is not, however, difficult to foresee which of the two parties must, upon all ordinary occasions, have the advantage in the dispute, and *force* the other into a compliance with their terms. The masters, being fewer in number, can combine much more easily; and the law, besides, authorises, or at least does not prohibit their combinations, while it prohibits those of the workmen. We have no acts of parliament against combining to lower the price of work; but many against combining to raise it⁴⁷ (emphasis added).

The workmen, says Smith, are under the compulsion of “submitting for the sake of present subsistence” while, all things considered, “masters must generally have the advantage.”⁴⁸ To call an agreement under these circumstances a “reconciliation” surely leaves something to be desired. To parallel Burke’s wording, the more it is theoretically correct, the more it is existentially false.

4. Virtue, Vice, and Market Price

One would think that, in a Burkean view, the harmony in the market is not automatic but is cultivated in proportion to the amount of virtue inculcated in the respective economic actors which, even then, would

⁴⁶ Ibid., 145.

⁴⁷ Ibid., 83–84.

⁴⁸ Ibid., 85.

not be perfect. So, the interests of scheming politicians affect the quality of nominally good-sounding policy proposals so that the public interest is not necessarily well served. As Burke says in his letter (November, 1789) to Charles-Jean-François Depont, a member of the French National Assembly, before the publication of his *Reflections*:

Never wholly separate in your Mind the merits of any Political Question from the Men who are concerned in it. You will be told, that if a measure is good, what have you [to] do with the Character and views of those who bring it forward. But designing Men never separate their Plans from their Interests; and if You assist them in their Schemes, You will find the pretended good in the end thrown aside or perverted, and the interested object alone compassed ...⁴⁹

Though the “interests” Burke has in mind here are those of evil men, it is easily applied to other interests, though noble and good in themselves, which may also cloud or distort the goodness of any policy proposal, including Burke’s own passionate hatred of the French Revolution. He goes on to admonish Depont:

That you ought not to be so fond of any Political Object, as not to think the means of compassing it a serious consideration ... All I recommend is, that whenever the sacrifice of any subordinate point of Morality, or of honour, or even of common liberal sentiment and feeling is called for, one ought to be tolerably sure, that the object is worth it. *Nothing is good, but in proportion, and with Reference.*⁵⁰ (Emphasis added.)

We can read Burke’s further admonition with a view to economic theory:

There is, by the essential fundamental Constitution of things a radical infirmity in all human contrivances, and the weakness is often so attached to the very perfection of our political Mechanism, that some defect in it, something that stops short of its principle, something that controls, that mitigates, that

⁴⁹ Edmund Burke, *The Correspondence of Edmund Burke*, ed. Thomas Copeland *et al.* (Cambridge and Chicago: Cambridge UP and U of Chicago P, 1967), 6:47.

⁵⁰ *Ibid.*

moderates it, becomes a necessary corrective to the Evils that the Theoretick Perfection would produce.... Prudence ... will lead us rather to acquiesce in some qualified plan that does not come up to the full perfection of the abstract Idea, than to push for the more perfect, which cannot be attain'd without tearing to pieces the whole contexture of the Commonwealth, and creating an heart-ache in a thousand worthy bosoms. In that case combining the means and end, the less perfect is the more desirable....But allow it in any degree probable, that theoretick and practical Perfection may differ, that an object pure and absolute may not be so good as one lower'd, mixed, and qualified, then, what we abate in our demand in favour of moderation and Justice and tenderness to Individuals, would be neither more nor less than a real improvement which a wise Legislator would make if he had no collateral Motive whatsoever, and only look'd in the formation of his Scheme, to its own independent Ends and purposes. Would it then be right to make way, thro' Temerity and Crime, to a form of things, which when obtained, evident Reason, perhaps imperious Necessity would compel us to alter, with the disgrace of inconsistency in our Conduct, and of want of foresight in our designs.⁵¹

Burke here illustrates his famous perspective of prudence in practical politics, arguing that a narrowly understood improvement might produce more problems than it solves. Those infirmities which prevent it from achieving actual perfection are to be preferred because such a mixed and qualified approach of the whole is better overall. Or, in the familiar aphorism, he does not want the perfect to be the enemy of the good and in this life the good is the best that can be achieved. Of course, this, too, amounts to a theory of practical politics, but by "theory" here he means an inflexible policy ideal limited to one issue or institution abstracted from the rest of society. In modern economic talk we are maximizing or minimizing targeted effects; we are striving for objectives under various constraints. Policy goals always have trade-offs. This is his "proportionate" good.

⁵¹ Ibid., 48–49.

But this applies to Burke's own use of classical economic theory in his "Thoughts": the theoretical perfection of the market may not be desirable in the context of an actually existing society's circumstances, where prudence and compromise should qualify the application of theory. Calculating various advantages under the rule of the virtue of prudence, however, is not enough. In such prudential calculations we can take a page from Ruskin. In fact, human actions, he says, are not intended to be balanced by expediency at all, but by justice.⁵² He includes affection under the concept of "justice," which is essentially the Christian doctrine of "love thy neighbor."

With that in the scales of human action, the fact that employer and employees may have opposing interests does not necessarily mean they are antagonistic to one another. The worker must not demand a wage so high as to drive the employer out of business entirely by reducing his profits. But the employer must not lower wages so low as to cause misery amongst his workers. A willingness to practice justice, which includes the "affection" owed to one another, is one of the moral prerequisites for coming to the market and which is necessary for making the free market work.⁵³ In such a context prudence and compromise conduce to justice.

As noted above, Burke says that avarice will lead to a harmonious outcome because of a harmony of interests; that is, it is in the interests of the farmer to see to it that his workers are well taken care of. Avarice, then, can do what Smith's equity, or Ruskin's justice, can do. It mimics this virtue, just as Burke said that vanity can, upon occasion, mimic the vices, and some pedestrian virtues can be imitated by the worst of the vices.⁵⁴ The market, in other words, substitutes for virtue; the base metal of private vice can be transmuted into the gold of public benefits in the manner of Bernard de Mandeville's famous *Fable of the Bees*. For

52 John Ruskin, *The Seven Lamps of Architecture* (Boston: Dana Estes, ND), 152. Though writing in the mid-nineteenth century, Ruskin is relevant here because his view is more in line with traditional Christian thought, the kind one would have expected Burke, with his knowledge of medieval, especially Thomistic, thought to voice even in this case of economic policy.

53 Roepke, *Social Crisis*, 51-53.

54 Edmund Burke, *Further Reflections on the Revolution in France*, ed. Daniel E. Ritchie (Indianapolis: Liberty Fund, 1992), 48; Burke, *Writings and Speeches*, 3:484.

Adam Smith this is “wholly pernicious” because it “seems to take away altogether the distinction between vice and virtue.”⁵⁵

For Ruskin, such virtue imitation would not be successful once workers saw it as such. As soon as this was perceived as serving the interests of avarice, it would not have the same motive power as sincerity and justice (affection). Mimicked virtue loses its strength. He explains that: “[T]he affections only become a true motive power when they ignore every other motive and condition of political economy. Treat the servant kindly, with the idea of turning his gratitude to account, and you will get, as you deserve, no gratitude, nor any value for your kindness; but treat him kindly without any other economical purpose, and all economical purposes will be answered; in this, as in all other matters, whosoever will save his life shall lose it, and whoso loses it shall find it.”⁵⁶

Nor was this view the one Edmund Burke himself usually took. For example, in the trial of Warren Hastings he says: “I shall first shew that Mr. Hastings’s crimes had root in that which is the root of all evil, I mean avarice; that avarice and rapacity were the groundwork and foundation of all his other vicious system.”⁵⁷ Likewise, in his plan for economical reform he places a “fair” profit in opposition to avarice: “An honorable and fair profit is the best security against avarice and rapacity.”⁵⁸ More generally, Burke links virtue to liberty saying that liberty cannot exist without order; that it is something which “not only exists along with order and virtue, but which cannot exist at all without them.” And he points out that in addition to the British constitution, the source of British power is its commerce which “cannot exist, no more than your liberty, without a connection with many virtues.”⁵⁹ Elsewhere he states: “All who have ever written on government, are unanimous, that among a people generally corrupt, liberty cannot long exist.”⁶⁰ And, finally: “[W]henever a separation is made between Liberty and Justice, neither is, in my opinion, safe.”⁶¹

55 Adam Smith, *The Theory of Moral Sentiments* (New York: Augustus M. Kelley, 1966), 451, 452–60. See also Maurice Dobb, *Theories of Value and Distribution Since Adam Smith* (Cambridge: Cambridge UP, 1973), 38; and Schumpeter, *Economic Analysis*, 184.

56 Ruskin, *Seven Lamps*, 154.

57 Burke, *Writings and Speeches*, 6:371.

58 *Ibid.*, 3:531.

59 *Ibid.*, 3:59.

60 *Ibid.*, 3:327.

61 Burke, *Correspondence*, 6:42.

So, although we must then take his statements in the “Thoughts” entirely literally, they do not represent him in his highest and best view.

That view often draws on the past, on the wisdom of our ancestors. In mediaeval thought, especially, much attention was given to how prices were formed and whether they were just or not. The price of labor, as George O’Brien explains, as it reflected a common (market) estimate (Burke’s emphasis on supply and demand), was thought to serve as a “proximate practical criterion” and as a first approximation of the just price. Though this common estimate (current market price) was used between contracting parties, it was not one from which there could be no appeal: it “ceases to be the final test of the just price when the contracting parties know or believe that the common estimation has erred ... it was in no sense a final and irrefutable criterion.” Though a legally set price, too, was eventually thought of as part of the just price, it was one which “supposes some objective basis—in other words, it rather declares than constitutes the just price.”⁶² John Baldwin, a standard authority on the subject, also points out that the “common estimate” of the just price was not a fixed point but admitted of some variation. It was, rather, “a rough estimation which could vary a little in each direction without violating the equality of justice.”⁶³

Furthermore, in Thomistic thought, according to Baldwin, the market price could be superseded under certain conditions. In Aquinas’s three different elements of price, the third element was the sale of a good according to its secondary qualities. In this case, “the activity of sale is not considered according to the *goods* which are exchanged but according to the *people* who do the exchanging.” That is to say, consideration is given to positions of advantage or disadvantage. For such reasons, when the contracting parties know or believe the current price is in error, the price can be changed: “The just price must consider not only the *normal fair value of the goods*, but also the *special personal conditions* of individual buyers and sellers”⁶⁴ (emphasis added).

62 George O’Brien, *An Essay on Mediaeval Economic Teaching* (Batoche Books, 2001), 133, 134, 135–36.

63 John W. Baldwin, “Medieval Theories of Price,” in *Transactions of the American Philosophical Society* 49 [1959], pt. 4, 78.

64 *Ibid.*, 79.

In the traditional view, dealing with the *people*, and not the goods, is also key to grasping not merely price adjustments for commutative justice in cases of individual advantages or disadvantages, but also in the broader sense of distributive justice. Baldwin implicitly indicates this when pointing out that, in the consideration of just wages, Aquinas believed one should include “the condition of the person, the occupation, the labor, and the customs of the land.”⁶⁵ In fact, in the traditional view distributive justice required an evaluation of social worth and paved the way for commutative justice. Worland summarizes the argument explicitly:

If the civil community were nothing more than a business venture organized for the sake of acquiring wealth, the *dignitas* of a person and his share in common goods would depend upon his contribution to production. But wealth is not the highest good, and the civil community is not organized for the sake of wealth. Rather the true purpose or final cause of the civil community is *felicitas*, the good life for its members. And in such a community, organized for the sake of the true good, *dignitas* would be judged, not in terms of contribution to production, but in terms of contribution to the common life of virtue. Thus whereas it may be appropriate to distribute goods in proportion to productivity in a private business venture ... to apply the same rule of distribution in civil society would imply failure to take account of the true purpose of civil life.⁶⁶

“Nothing more than a business venture” sounds much like Burke’s famous statement in the *Reflections* that in society “the state ought not to be considered as nothing better than a partnership agreement in a trade of pepper and coffee, callico or tobacco, or some other such low concern.” Instead, it is “a partnership in every virtue” and is a part of a higher community. Precisely. And that is why Worland underscores the principle that, “The exchange of goods—governed by commutative justice which requires exchange at the *just price*—thus presupposes the anterior establishment of

⁶⁵ Ibid., 66.

⁶⁶ Stephen Worland, 1977 “Justum pretium: one more round in an ‘endless series’,” *History of Political Economy* 9, no. 4:514.

an equitable distribution of resources.”⁶⁷ That there should be no ambiguity here, Worland applies this principle specifically to wage-earners: “If they were charged with a particular social function—such as the support of a family—then Aquinas’s analysis indicates that they would be entitled in distributive justice to a share of society’s property income sufficient to permit them to perform such a function.”⁶⁸ In other words, distributive justice impacts commutative justice when the social obligation of the worker becomes a need felt in the market and thus affects the current price. Thus, when Burke says, as quoted above, that “[t]he impossibility of the subsistence of a man who carries his labour to a market is totally beside the question,” he is out of step with both Thomistic thought and his own sense of the “partnership in every virtue.” Rather, one would have expected him to argue along more or less these same (Thomistic) lines, for he, like Aquinas, wanted to conserve the structure of society. That could not occur if the workers of an important sector of the economy were to labor for “unjust” wages. No matter what economic theory said the nominal price of labor should be, one would have thought Burke more willing to pardon something to the spirit of justice.

That spirit was actually reflected in Smith’s view of positive law and his secularized version of natural law. “In Smith’s eyes,” explain the editors of Smith’s great work, “a fundamental pre-condition of social order was a system of positive law, embodying our conception of those rules of conduct which relate to justice.” In support of this, they cite Smith’s *Theory of Moral Sentiments*: “Justice ... is the main pillar that upholds the whole edifice [of social order]. If it is removed, the great, the immense fabric of human society ... must in a moment crumble into atoms.”⁶⁹ Roger Backhouse similarly summarizes Smith’s views on this: “Ideas of justice derived in this way [from Smith’s philosophy of “sympathy”] formed the basis for both law and individual behaviour. It was only within such a framework of justice that Smith claimed beneficent effects for the pursuit of self-interest. For him self-interest was a self-interest permeated with ideas of justice.”⁷⁰

67 Ibid., 520. And see Burke, *Reflections*, 261.

68 Ibid., 521.

69 Smith, *Wealth of Nations*, 10.

70 Roger Backhouse, *A History of Modern Economic Analysis* (Oxford: Basil Blackwell, 1985), 14.

In his correspondence to Harford, Cowles and Co. (May 2, 1778), Burke expresses views very much like these as he addresses the firm's concern about policies relating to Irish trade:

I know, that it is but too natural for us to see our own *certain* ruin, in the *possible* prosperity of other people. It is hard to persuade us, that every thing which is *got* by another is not *taken* from ourselves. But it is fit, that we should get the better of these Suggestions, which come from what is not the best and soundest part of our Nature; and that we should form to ourselves a way of thinking, more rational, more just, and more religious. Trade is not a limited thing; as if the objects of mutual demand and consumption, could not stretch beyond the bounds of our Jealousies. God has given the Earth to the Children of Man; and he has undoubtedly, in giving it to them, given them what is abundantly sufficient for all their Exigencies; not a scanty, but a most liberal provision for them all. The Author of our Nature has written it strongly in that Nature, and has promulgated the same Law in his written Word, that Man shall eat his Bread by his Labour; and I am persuaded, that no man, and no combination of Men, for their own Ideas of their particular profit, can, without great impiety, undertake to say, that he *shall not* do so; that they have no sort of right, either to prevent the Labour, or to withhold the Bread⁷¹ (original emphasis).

So, it is easy to see that, according to this standard, a combination of employers formed to withhold a suitable subsistence wage for their own idea of profit would be unjust and impious for, by withholding it, they would be withholding the bread. Such a wage does not necessarily constitute a taking away from the employer, for profit is what remains after costs have been paid. The issue quickly involves more than commutative justice, the market price of labor, and instead expands to the issue of distributive justice, that is, the entire system of allocating rewards and costs.

Earlier, in his letter to Sir Charles Bingham, Burke, in the context of another policy concerning Ireland, writes that, "It little becomes the

71 Burke, *Correspondence*, 3:442.

feeble to be unjust. Justice is the shield of the weak.”⁷² Here, the weak do not fall out of the department of justice and into that of mercy, but must rely on justice, that is, a system of laws that embodies justice so that their grievances can be redressed. How can this be reconciled with his earlier statement that laborers must depend on mercy to make up for deficiency of wages? If such a wage rate is just, how is justice the shield of the weak and feeble?

5. *Enclosures and Proletarianization*

One possible shield would have been a better way of handling enclosures so that workers retained a measure of economic independence. But, as Russell Kirk points out, Burke had little to say on the matter, referring to his “silence upon the decay of British rural society.” This was politically as well as economically important, since conservatism’s most loyal adherents came from the country. “Even while Burke was defending the stolidity of cattle under the English oaks,” writes Kirk, “wholesale enclosures, the source of much of the Whig magnates’ power, were decimating the body of yeomen, cotters, rural dwellers of every humble description; as the free peasantry shrank in numbers, the political influence of landowners was certain to dwindle. ‘To what ultimate extent it may be wise, or practicable, to push inclosures of common and waste lands,’ wrote Burke, ‘may be a question of doubt, in some points of view; but no person thinks them already carried to excess.’ His misgivings went no farther.”⁷³

Though the enclosure movement brought improvements in the management of land which helped increase productivity, it was implemented in such a way as to favor large land holdings at the expense of smaller proprietors. The latter’s social and economic importance was neglected. Had Burke listened to his contemporary, Adam Smith, he might have had material to provoke further misgivings. In Smith’s view, “A small proprietor, however, who knows every part of his little terri-

⁷² Ibid., 2:480.

⁷³ Russell Kirk, *The Conservative Mind from Burke to Eliot*, 7th ed. (Chicago: Regnery, 1978), 21–22.

tory, who views it with all the affection which property, especially small property, naturally inspires, and who upon that account takes pleasure not only in cultivating but in adorning it, is generally of all improvers the most industrious, the most intelligent, and the most successful.”⁷⁴ Likewise, Burke’s friend Arthur Young recognized problems in the manner in which Enclosure Acts were implemented. The poor, he came to realize, were grossly injured in this process, with only a nominal compensation. He had “stumbled on the discovery that in those parishes where the cottagers had been able to keep together a tiny patch of property, they had shown a Spartan determination to refuse the refuge of the Poor Law.” Holdsworth adds: “It is significant that the statute of Elizabeth, which provided that a cottage must have four acres of land attached to it, fell into disuse and was repealed in 1775.”⁷⁵ Yet in 1800, to relieve the poverty caused by the Enclosure Acts, and sounding very much like Aristotle, Young recommended that 20 million pounds be spent to set up half a million families “with cottages and allotments.”⁷⁶ Unfortunately, his efforts to expose the injustices of the process and suggestions for improvement were rejected.⁷⁷

But at the time enclosures were a part of the historical trend that contributed to the establishment of capitalism. “The breaking up of the medieval world,” economic historian Joseph Schumpeter writes, “attended as it was by social upheavals, is in itself sufficient to account for the widespread suffering and destruction we observe. The agrarian revolution not only destroyed environments that might have sheltered fugitives from distressed areas but also caused the landless proletariat to increase more rapidly than did the effective demand for labour.”⁷⁸ However, some countries had better foresight in this regard: “In some continental countries, especially in Germany, protection of the peasant holding was an important safeguard against pauperization of the industrial workers.”⁷⁹

⁷⁴ Smith, *Wealth of Nations*, 423.

⁷⁵ Holdsworth, *History of English Law*, 456, 457.

⁷⁶ Arthur Young, 1790. *Travels in France and Italy During the Years 1787, 1788, and 1789*, 3rd ed. (London: J. M. Dent & Sons, Ltd., 1790), xvii–xviii.

⁷⁷ Holdsworth, *History of English Law*, 457.

⁷⁸ Schumpeter, *Economic Analysis*, 270.

⁷⁹ *Ibid.*, 272.

More than the English proprietor's "Spartan determination" was undermined. By the time the Corn Laws were repealed in 1846 and free trade restored, England was not able to perform economically as well as was expected. This was due to the erosion of the healthy socio-economic structure of the peasant class,⁸⁰ whereas in France, Napoleon, heir of the French Revolution, illustrated the same sentiment according to Emil Ludwig: "What do I care for the opinion of the drawing-rooms and the babblers! I recognize only one opinion, that of the peasants! Certain it is that the peasants are his most faithful supporters, mainly because he rescued their lands from the dangers threatened by the revolution."⁸¹

And this recognition of the important role of small landed proprietors continued throughout the nineteenth century, especially on the continent, as W. E. H. Lecky observed at the close of that century: "The best security of the industrial fabric is to be found in the wide division and diffusion of property, which softens the lines of class demarcation, and gives the great masses of the people a close and evident interest in the security of property, the maintenance of contracts, the credit and well-being of the State. In all the more civilised countries this process is steadily going on. Among the great countries of the Continent, France holds the first place in wealth, skill, industry, and thrift, and the peasant-proprietor system attracts to the land a far larger proportion of working men's savings than in England." He adds: "Such facts clearly prove the fallacy of the sharp distinction that is commonly drawn between the capitalist and the working population, and each generation brings them more closely together by increasing vastly the realized and fructifying property of the wage-earning classes. This is the best of all guarantees against revolu-

80 Wilhelm Roepke, *Against the Tide* (Chicago: Regnery, 1969), 107; also, *Social Crisis*, 201-13.

81 Emil Ludwig, *Napoleon* (New York: Pocket Books, 1953), 353. Vincent Cronin similarly writes that Napoleon's energy called forth a corresponding energy from his people so that when the Allies invaded France in 1814, bands of "blue overalls" attacked enemy convoys and detachments. "In the Vosges these bands of farmers almost completely wiped out two regiments of Russians. In Eprenay the villagers, led by their mayor Jean Moët, opened the champagne cellars, fêted Napoleon and his troops with magnums of champagne, then fought shoulder to shoulder with them, their only weapons pitchforks and scythes." Vincent Cronin, *Napoleon Bonaparte, An Intimate Biography* (New York: William Morrow & Co., 1972), 360.

tionary projects.”⁸² If Burke were worried that, in the words of Polybius’s Scipio, “the day will come” when England, too, would suffer the fate of the French, he could not have done better than to undertake appropriate intervention to see that small, landed proprietorships flourished.

6. *The Ruling Group and the Concentration of Property*

However, Burke did just the opposite because he failed to distinguish between a healthy, functioning hierarchy and an exploitative elite. The healthy part of the French social structure had become corrupted by its feudal elements into a degenerate ruling class. But this is not what Burke saw. In his mind, the ruling class and large landed estates naturally went together and provided a wholesome social safeguard. And this has been true since ancient times. He refers to Aristotle as one “who observes that the agricultural class of all others is the least inclined to sedition.” So also in England, the “landed interest” has been that class which “has, at all times, been in close connexion and union with the other great interests of the country, [and which] has been spontaneously allowed to lead and direct, and moderate all the rest”; whereas, the French have made war for the “destruction of the landed proprietors (i.e., the nobility) as well as the priests and kings.” In fact, the French Revolution was dangerous precisely because it was “a war against landed property.”⁸³

Clearly, for Burke, “landed property” is not the small peasant proprietorships which Aristotle refers to that have a significant share in government, and a wide distribution of productive property, essential to the “best kind of democracy.”⁸⁴ Instead, his view of distributive justice

82 William Edward Hartpole Lecky, *Democracy and Liberty*, (Indianapolis: Liberty Fund, 1981), 2:398–99.

83 Burke, *Writings and Speeches*, 9:374–75.

84 *Politics*, 1318b 6–1319a 19. Aristotle says the democracy he has in mind is the best because the people are drawn from a certain class; he explains: “Some of the ancient laws of most states were, all of them, useful with a view to making the people husbandmen. They provided that no one should possess more than a certain quantity of land, or that, or if he did, the land should not be within a certain distance from the town or the acropolis. Formerly within many states there was a law forbidding anyone to sell his original allotment of land. There was a similar law attributed to Oxylyus, which is to the effect that there should be a certain portion of every man’s land on which he could not borrow money. A useful corrective to the evil of which I

entails an elite endowed with large concentrations of land and largely inherited duties and privileges. He does allow this class to assimilate those of merit and talent from other classes, but he is at pains to avoid giving too much influence to the shallow and untutored who had not the leisure, education, and experience to hold those larger views of society which made a real legislator possible. Predominantly, it is those who are distinguished by property and birth who rightly rule. This combination is also necessary to pit the sycophants and admirers of power against the speculations of short-sighted philosophy. This is the "balanced" result which corresponds to the agglomeration of capital (land) as essential to liberty and sound government. "Nothing is a due and adequate representation of a state," says Burke,

that does not represent its ability, as well as its property. But as ability is a vigorous and active principle, and as property is sluggish, inert, and timid, it never can be safe from the invasions of ability, unless it be, *out of all proportion*, predominant in the representation. It must be represented too in *great masses of accumulation*, or it is not rightly protected. The characteristic essence of property, formed out of the combined principles of its acquisition and conservation, is to be *unequal* (emphasis added).

In fact, concentration of property acts as a "rampart" for the lesser properties which cannot serve as a defense of property per se because they are diffused. It is almost as if in Burke's mind large agglomerations of land ownership have a hortatory effect because, being easily seen, they impress the people with respect for property. Masses of accumulation by the few, preferably those of distinguished hereditary property and hereditary birth, are also vital for sound government. Such a group is the house of peers which is, in the last event, "the sole judge of all property in all its subdivisions." Such a "preference ... is neither unnatural, nor unjust,

am speaking would be the law of the Aphytaeans, who, although they are numerous, and do not possess much land, are all of them husbandmen. For their properties are reckoned in the census; not entire, but only in such small portions that even the poor may have more than the amount required." The more familiar reference comes earlier where he says that democracies are safer and more permanent than oligarchies when they are composed of a large middle class of citizens who have a "moderate and sufficient property" (1295b 25-1296a 13).

nor impolitic." Of course, in France such a situation no longer obtains. Unlike England, "[t]he property of [revolutionary] France does not govern it." Property is destroyed and "rational liberty has no existence."⁸⁵ In the National Assembly there "was scarcely to be perceived the slightest traces of what we call the natural landed interest of the country."⁸⁶

Here, Burke again implicitly uses the argument from indivisibility regarding property in the same way he used it for market interventions. As C. B. Macpherson summarized, Burke believed "an attack on *any* established system of property was a threat to *every* kind of property."⁸⁷ Once the French Assembly attacked the property of the clergy, they could not stop. "If prescription [the long possession and usage of property] be once shaken," says Burke, "no species of property is secure.... [T]hey have at length ventured completely to subvert all property of all descriptions throughout the extent of a great kingdom."⁸⁸

What Burke saw in France was that the "princes of the blood, who, by the oldest usages ... held large landed estates," had now been "deprived of their possessions, and in lieu of their stable independent property, reduced to the hope of some precarious, charitable pension, at the pleasure of an assembly."⁸⁹ Compare this with the fate of agricultural workers who, if their subsistence wages became insufficient, were, according to Burke, to have no public support but were to rely solely on private charity—along with the consolations of religion and ardent spirits. Taking away the property of labor or of cottagers is not an objectionable confiscation ... but taking away from a large landed estate is.

Favoring such estates is also consistent with Burke's support of primogeniture which, he says, "without question has a tendency, and I think a most happy tendency, to preserve a character of consequence, weight, and prevalent influence over others in the whole body of the landed interest."⁹⁰ Influence and weight over others indeed is the key not only in the landed interest but in the nation. For Adam Smith, an opponent of primogeniture and its corresponding institution of entails, it origi-

85 Burke, *Reflections*, 207–09.

86 Ibid., 198.

87 C. B. Macpherson, *Burke* (New York: Hill and Wang, 1980), 66.

88 Burke, *Reflections*, 322–23.

89 Ibid.

90 Burke, *Writings and Speeches*, 4:433.

nated "when land was considered as the means, not of subsistence merely, but of power and protection," and therefore, "it was thought better that it should descend undivided to one." The security of the landed estate "depended upon its greatness," he writes and in the view of its adherents, "[t]o divide it was to ruin it ..." He goes on to relate this to the institution of the inherited monarchy, the power and protection of which must also descend undivided to one, the two institutions often going together.⁹¹ And finally, primogeniture, in his view, hindered "the multiplication of small proprietors"⁹² who were, as mentioned above, the best improvers of the land. Burke and Smith, then, agree that the concentration of land secures power for the few, but disagree about its goodness.

Not only is Burke at pains to preserve precisely those feudal qualities in the ruling elite which are antithetical to the socially responsible market system (concentration of land), but he relies on the same principles in trade, the most fundamental of which is promotion of monopolies. "I hear that middle men," he writes, "are accused of monopoly. Without question, the monopoly of authority is, in every instance and in every degree, an evil; but the monopoly of capital is the contrary. It is a great benefit, and a benefit particularly to the poor." He then offers what may be called a theory of "subsistence profits," to wit, that a tradesman could not live off of 100 pounds of capital at 10 percent profit a year, but he could do very nicely at 10,000 pounds at 5 percent. He says earlier that, "[t]he more largely they [middlemen] deal, the better for both the farmer and the consumer."⁹³ Perhaps in his mind the middleman who acquires such a monopoly demonstrates those talents which eventually fit him for promotion into the ruling class.

But Adam Smith held a different view of the matter. While allowing for exceptions, Smith believed that in ordinary cases monopolies were inefficient, badly managed, and wasteful of their investments, especially in distant countries where colonial monopolies were a drain on the economy.⁹⁴ (Burke's friend, Arthur Young, had a similar view.⁹⁵) To maintain them, monopolists tried to get the legislature to impose Draconian laws

⁹¹ Smith, *Wealth of Nations*, 383.

⁹² Ibid., 423.

⁹³ Burke, *Writings and Speeches*, 9:132-33.

⁹⁴ Smith, *Wealth of Nations*, 163-64, 628-34, 755.

⁹⁵ Young, *Travels*, 212.

for “their own absurd and oppressive monopolies.”⁹⁶ Obviously, for Smith, if monopolies were to be done away with, the fresh ruling class members of merit and accomplishment would have to be drawn from elsewhere.

Perhaps we can do no better in summarizing the problem than by referring to German economist Wilhelm Roepke: “This feudal-absolutist heritage,” he writes, “finds its most striking expression in the immense accretions of capital and economic positions of power which endow capitalism with that plutocratic trait which clings to it in our imagination and has given it a false start from the very beginning.” Feudal land holdings and monopolies are two major examples. This heritage was also responsible for turning capitalism into wrong directions resulting in the “corresponding agglomeration of enterprises and factories” and thus, among other things, paving the way to further monopolism. The abnormal concentration of capital was one side of the coin; the other was the spread of proletarianism.⁹⁷ In Roepke’s view, Burke, among many others, suffered from an acute form of historical/social blindness.⁹⁸ And the final result of this blindness was that, in a sad irony, Burke contributed to the proletarianization in England which, if anything, helped produce the very “revolutionary” results he so feared: the egalitarianism, the secularism, the entire leveling tendency which is evidenced in the nineteenth and twentieth centuries of Great Britain.

Conclusion

Edmund Burke’s place in history may in part be due to what appear to be his ambiguities and inconsistencies. While it would be wrong to overstate this, his memorandum “Thoughts and Details on Scarcity” is

96 Smith, *Wealth of Nations*, 648. Despite his pro-market theme, Smith is hardly an apostle of the modern nineteenth-century economy. See Donald Winch’s *Adam Smith’s Politics: An Essay in Historiographic Revision* (1978). Mark Blaug summarizes Winch’s view, saying that he [Winch] “objects to the current tendency to treat Smith as a forerunner of modern libertarianism and insists on treating him as an eighteenth-century thinker in his own right, who worked with the concepts and language of that century: Smith’s values were pre-capitalist, pre-industrial and pre-democratic.” Mark Blaug, *Economic Theory in Retrospect*, 4th ed. (Cambridge: Cambridge UP, 1985), 65.

97 Roepke, *Social Crisis*, 115, 116; cf. 144–45.

98 Ibid., 43, 51–53.

his most complete view of economic theory and policy. It is not ambiguous but clear and firm, and, as argued here, is inconsistent with his better insights elsewhere. He allowed his fear of the French Revolution to cloud his judgement of a fitting response to the needs of agricultural workers. The subtlety which is evidenced in his other writings is missing. In the course of his memorandum, though, he reveals views which, taken in the context of his other statements, give a fuller picture of his political/social framework. An elite possessed of large landed estates, paternalistically ruling over the lower classes, was to be preserved against the onslaught of French revolutionary ideas. In the course of this argument, classical economic theory was enlisted and interpreted with a rigidity suitable to this purpose. Alternative contemporary possibilities that were available to him he either neglected or rejected. He was blind to the dangers of monopoly and concentration of economic power, to the possible ways of intervening that conform to the character of a market economy, to the need to preserve economic independence through the widespread possession of economically productive assets which, at the time, meant land, to the fruitful history of the English tradition whose relevant policies were amenable to reform and improvement to suit new conditions but were, instead, dismissed wholesale in the name, ostensibly, of an abstract economic theory. Bredvold and Ross comment of Burke: "In his mortal combat, he was sometimes ungenerous and he sometimes exaggerated. He saw some things badly. He thought the French Revolution an enemy of property, for it confiscated the property of aristocrats, yet in fact it gave property into the hands of those whose grip was most relentless."⁹⁹ How much better it would have been had he worked for economic policies that assured property, as well as fair wages, for the English worker.

Perhaps in the end Fanny Burney, English authoress and bluestocking, should have the last word. "How can man," she says of Edmund Burke, "with all his inequalities, be so little resembling to himself at different periods as this man? He is in all ways a prodigy,—in fascinating talents and incomprehensible inconsistencies."¹⁰⁰

99 Louis I. Bredvold and Ralph G. Ross, eds., *The Philosophy of Edmund Burke: A Selection from His Speeches and Writings* (Ann Arbor: U of Michigan P, 1960), 2.

100 Isaac Kramnick, ed., *Edmund Burke* (Englewood Cliffs, N.J.: Prentice-Hall, 1974), 110.

Toward a Burkean Theory of Constitutional Interpretation



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Arguments over the interpretation of the American Constitution began nearly the moment it was conceived. Vague provisions, adopted as compromises so as to ensure the Constitution's ratification, soon precipitated political battles regarding the textual interpretation of those provisions. Most of these battles have focused on the perennial challenge of achieving a balance between continuity and change. While continuity in constitutional interpretation serves the goals of societal stability and constraint of government action, change ensures that the government is able to respond to exigent circumstances. The Constitution's framers saw both as essential to the proper functioning of the Republic, although they sought the balance in different ways. For example, Thomas Jefferson believed that each generation should be allowed to formulate a new constitution, ensuring that no generation would be ruled by the tyranny of the past.¹ In contrast, John Adams opposed the dictation of policy by the vagaries of the people, arguing that America has a "government of laws, and not of men."²

1 Thomas Jefferson, "Letter to James Madison, September 6, 1789," in *The Papers of Thomas Jefferson*, ed. J. P. Boyd et al. (Princeton: Princeton UP, 1950), 392–97.

2 Novanglus [John Adams], "Addressed to the Inhabitants of the Colony of Massachusetts Bay, Mar. 6, 1775," in *Novanglus and Massachusettensis* (Boston: Hews and Goss, 1819), 78–94.

As the Republic grew, these two strands ossified into two juxtaposing traditions. On the one hand, originalists such as Judge Thomas Cooley see the “meaning of the constitution” to have been “fixed when it [was] adopted.”³ On the other hand, functionalists such as Oliver Wendell Holmes have argued that because the Constitution is both words and a “constituent act,” it has “called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters.”⁴ The implications of these two traditions could scarcely be more different from one another. An originalist interpretation of the Constitution, with its goal of preserving the understanding of the Constitution as it existed in 1787, will normally act as a conservative force in American politics. The functionalist approach, in contrast, will be amenable to change and, depending on the judge, may even act as a catalyst for such change, leading it to be associated with progressive politics.

The different implications of the two approaches to constitutional interpretation, combined with the momentous impact that Supreme Court decisions have come to have on legislative policy, make it no surprise that the adherents of these two approaches have generally chosen one or the other based on political preferences. The result is that the Supreme Court has become an increasingly polarized institution. This is perhaps most visible in the judicial nomination and confirmation process, where emphasis is placed on a judicial nominee’s political ideology.⁵ As Richard Hansen has documented, this emphasis on political ideology is reflected also in judicial decisions, with the Supreme Court often dividing along ideological lines in high-profile and politically contentious cases.⁶ The result is that constitutional interpretation has become circumspect, with many Americans viewing it as a political process in which judicial decisions are used to advance a political cause.

3 Thomas M. Cooley, *A Treatise on Constitutional Limitations* (Boston: Little Brown, 1868), 55.

4 *Missouri v. Holland*, 252 U.S. 416, 433 (1920).

5 For example, Richard Posner points out that in his confirmation hearing for the position of Chief Justice, John Roberts received not a single question that was “designed to test his legal acumen,” while the majority of the questions were designed to uncover his political ideology. *How Judges Think* (Cambridge, MA: Harvard UP, 2008), 278.

6 Richard L. Hansen, “Polarization and the Judiciary,” *Annual Review of Political Science* 22 (2019): 261–76.

In this article, I propose that both these schools of constitutional interpretation have a partial affinity with the political thought of Edmund Burke, the Irish statesman of the Whig party in eighteenth-century England. I further argue that an interpretative approach that entails a more holistic incorporation of Burke's political thought would provide a third approach to constitutional interpretation. I contend that this third approach, which I term "the Burkean disposition," is able to navigate the forces of continuity and change in a way that avoids politicizing the judicial branch. While it may seem odd to compare theories of constitutional interpretation with the thought of an individual who denigrated theorizing, practiced politics in a country with no written constitution, and was himself antipathetic to written constitutions, Edmund Burke lived through a period rife with the specter of revolution and wrestled with the practical realities of continuity and change in a concrete manner. I will begin by briefly elucidating the central tenets of originalism and functionalism, the existing schools of constitutional interpretation. By way of a comparison of these schools of interpretation with the political thought of Edmund Burke, I hope to expose the limits of the current approaches to constitutional interpretation, while describing what a "Burkean disposition" to constitutional interpretation would entail. Last, I will analyze Supreme Court jurisprudence with respect to the Due Process Clause of the Fourteenth Amendment—a clause that has been the source of vast legal and societal changes—to explain concretely the way in which the Burkean disposition can navigate the forces of continuity and change in constitutional interpretation.

1. Originalism and Functionalism

Originalism, as noted, is a school of constitutional interpretation that favors stability and continuity over flexibility and change. This school of interpretation includes a variety of subsets, all of which differ from one another as to the specific element that governs the authoritative meaning of a constitutional term.⁷ For example, original intentions originalism

⁷ Lorianne Updike Toler, Carl J. Cecere, and Don Willett, "Pre-originalism," *Harvard Journal of Law and Public Policy* 36, no. 1 (2013): 290–98.

holds that the intentions of the framers of the Constitution ought to be dispositive when interpreting the Constitution. In contrast, original meanings originalism views the inquiry into the subjective intentions of the framers as suspect and holds instead that the public understanding of the Constitution at the time of its adoption should control the meaning of a constitutional phrase.⁸ Despite the various types of originalism that exist, Lawrence Solum notes that all forms of originalism have two theses in common: the fixation thesis and the contribution thesis.⁹

The fixation thesis holds that the meaning of the Constitution was “fixed or determined at the time each provision of the constitution was framed and ratified.”¹⁰ Thus, all originalists look to “the period that starts with the opening of the Philadelphia Convention and ends when the ratification process was completed” to determine the meaning of a constitutional provision.¹¹ Of course, as Solum notes, the fixation thesis establishes only the *semantic* content of the Constitution; it does not establish the extent to which the semantic content ought to influence the legal content, and originalist schools of thought vary in their belief as to the extent to which the semantic content of a constitutional provision ought to influence the legal content of that provision.¹² Originalists on one end of a spectrum will view the semantic content as having a strong constraining force on a judge’s interpretation of the legal content.¹³ However, originalists on the other end of the spectrum may adopt what Justice Scalia has dubbed “faint-hearted originalism,” which requires judges to “consider [semantic content] as one important factor in the determination of constitutional doctrine, but allow [it] to be balanced with a variety of other considerations.”¹⁴ Despite this variation, all originalists ascribe to what Solum calls the contribution thesis, which holds that the “original meaning [of the Constitution] ought to play an important and substan-

8 Vasan Kesavan and Michael Stokes Paulsen, “The Interpretive Force of the Constitution’s Secret Drafting History,” *Georgetown Law Journal* 91 no. 6 (2003): 1137.

9 Lawrence B. Solum, “What is Originalism? The Evolution of Contemporary Originalist Theory,” *Georgetown University Law Center Working Paper* (2011): 33.

10 *Ibid.*, 29.

11 *Ibid.*

12 *Ibid.*, 30.

13 *Ibid.*, 31.

14 *Ibid.*

tial role in the determination of constitutional doctrine.”¹⁵ Thus, while some originalists see the fixation thesis as the paramount constraining force in constitutional interpretation, and others see it as being balanced with other considerations, all originalists agree that the fixation thesis ought to have some impact on constitutional interpretation.

Functionalism, also known as “living constitutionalism” is similar to originalism in that it can be described more accurately as a family of constitutional interpretation covering a broad spectrum of related theories than as a theory of interpretation in its own right. In contrast to originalism, however, functionalism favors the forces of change over those of continuity. Justice Brennan, perhaps the most prominent expositor of functionalism, offers this succinct formulation of the theory:

An approach to interpreting the [Constitution] must account for the existence of the substantive value choices and must accept the ambiguity inherent in the effort to apply them to modern circumstances. The Framers discerned fundamental principles through struggles against particular malefactions of the Crown: the struggle shapes the particular contours of the articulated principles. But our acceptance of the fundamental principles has not and should not bind us to those precise, at times anachronistic contours.¹⁶

Justice Brennan makes clear that a functionalist interpretation seeks to adapt the principles of the Constitution to make them amenable to the circumstances and values of the time period of the interpreter. Such an approach ensures that the Constitution does not visit “anachronistic contours” on the public and instead ensures the Constitution’s utility.

The varieties of functionalism can be pared down to two main theories: abstractionism and developmentalism. Abstractionism is the approach by which judges seek to abstract general principles from the semantic content of the Constitution and interpret those general prin-

¹⁵ Ibid., 32.

¹⁶ William J. Brennan Jr., “Address to the Text and Teaching Symposium, Georgetown University,” in *The Great Debate: Interpreting Our Written Constitution*, ed. Paul G. Cassel (Washington DC: The Federalist Society, 1986), 16–17.

ciples in light of contemporary circumstances and values.¹⁷ The goal is an “open constitution” under which all conceptual interpretations of a constitutional provision can potentially be realized through the abstraction of a number of principles or values, to which I will refer as “master values.” Under such a theory of constitutional interpretation, change is given preference over continuity as the semantic content of the Constitution is seen to have little constraining power.

The master values chosen by abstractionist theorists are usually values that were invoked by the Founding Fathers in response to certain British practices. Freedom and equality, in particular, are values that were used frequently by the Founding Fathers to justify their Declaration of Independence and are now used by abstractionist theorists in support of the interpretation of certain constitutional provisions.¹⁸ When used by the founders, however, these terms usually referenced particular situations and concrete practices. For example, the value of freedom, which the founders inherited from the British, “celebrated the rule of law, the right to live under legislation to which one’s community had consented, restraints on the arbitrary exercise of political authority, and rights like trial by jury enshrined in the common law.”¹⁹ Thus, when invoking the value of freedom in justifying their Declaration of Independence, the founders were referencing specific, concrete freedoms, which were being infringed upon by the British government. Abstractionists, like originalists, are able to invoke the authority of the founders due to their focus on the general principles espoused by the founders. However, unlike originalists, abstractionists are not constrained by the semantic content of the constitutional text and are able to arrive at decisions they see as politically palatable and useful.

Developmentalism differs from abstractionism in that it does not seek to interpret the Constitution in light of certain principles or background rights, but instead broadens “the interpretive arena to include broader historical events, such as informal practices, usages, and politi-

¹⁷ Walter F. Murphy, James E. Fleming, Sotirios A. Barber, and Stephen Macedo, *American Constitutional Interpretation*, 3rd ed. (New York: Foundation Press, 2003), 399.

¹⁸ *Ibid.*, 399–400.

¹⁹ Eric Foner, *The Story of American Freedom* (New York: Norton, 1998), 5.

cal culture.”²⁰ In his article, “The Notion of a Living Constitution,” Justice Rehnquist provides an example:

A brief ... [was] filed in a United States District Court on behalf of state prisoners asserting that the conditions of their confinement offended the United States Constitution. The brief urged ... [the] Court, as the voice and conscience of contemporary society, as the measure of the modern conception of human dignity, [to] declare that the [named prison] and all it represents offends the Constitution of the United States and will not be tolerated.²¹

As Rehnquist’s example displays, a developmentalist approach does not see the understanding of a constitutional clause as authoritative or dispositive on the basis of age or established use, but rather on the grounds of its congruence with progress.

Both abstractionism and developmentalism seek to interpret constitutional provisions in light of contemporary understandings and practices. While abstractionism limits a constitutional interpreter’s ability to impose such contemporary understandings and practices onto a constitutional provision by insisting on the requirement of a general principle or “background right” to justify such an imposition, developmentalism requires no such general principle or background right. Nonetheless, contemporary views and convictions play a prominent role in both these theories. Thus, these two functionalist schools of interpretation differ in degree, rather than in kind.

2. The Burkean Disposition

How would Edmund Burke approach the difficulties presented by a written constitution? Burke’s political thought, which Russell Kirk has termed the “politics of prescription,”²² seeks to maintain stability and

²⁰ Murphy *et al.*, 410.

²¹ William H. Rehnquist, “The Notion of a Living Constitution,” *Harvard Journal of Law and Public Policy* 29, no. 2 (2006): 403.

²² Russell Kirk, *The Conservative Mind From Burke to Eliot*, 7th revised ed. (Washington DC: Regnery Publishing, 1985), 12.

continuity (the goals of originalism) while still allowing for some measure of change or reform (the goal of functionalism). This politics of prescription, which is a constant theme in Burke's writings, is likely to be better effectuated by an unwritten constitution than by a written one. Indeed, as we have seen, a written constitution suffers from two distinct drawbacks. First, as originalism makes clear, a written constitution can serve to sanction the ossification of political judgements; this can render the Constitution incapable of responding to exigencies and seal it off from a process of organic development. Second, as the functionalist approach reveals, a written constitution relies to a certain degree on abstractions, making it susceptible to interpretations that fail to respect inherited tradition. It is for these reasons that Burke attacks the written French constitution as a "monstrous thing."²³ Nevertheless, while an unwritten constitution is more amenable to Burke's politics of prescription, I hope to show through an analysis of his political thought, that it is possible to formulate a Burkean disposition that approaches the interpretation of a written constitution in a way that achieves the goals of Burke's politics of prescription. As will be made clear, this disposition provides a via media between the rigidity associated with originalism and the excessive fluidity of functionalism by mandating that constitutional provisions be interpreted with an eye toward the country's traditions.

Burke's politics of prescription is grounded in his understanding of human nature. In discerning human nature, Burke does not follow the trajectory of abstract natural rights theorists by reducing humanity to its pre-political state and building a political philosophy based on this pre-political state. In fact, Burke explicitly rejects such an approach, writing that "[t]here is a secret veil to be drawn over the beginnings of all government."²⁴ He therefore develops his politics of prescription from historical observation. History, Burke concludes, has largely proven man to be a civilized, political being, albeit with a capacity for savagery.²⁵ This

23 Edmund Burke, *The Writings and Speeches of Edmund Burke*, ed. Paul Langford et al. (Oxford: Oxford UP, 1981–2015), 4:381.

24 Burke, *Writings and Speeches*, 6:316–17.

25 Burke's perspective on the human capacity for savagery is well documented in his "Speech on the Acts of Uniformity." In the Speech, Burke recounts the "ill-considered attempt" made by King Charles I to establish the platform of the government and the rites of the Church of England in Scotland against the will of the Scot-

belief in human ambiguity—that is, people are civilized beings while also having a capacity for savagery—prompted him to be chiefly concerned with maintaining human beings in a civilized, political state and preventing them from descending into the savagery and anarchy for which they have the capacity. As Augustine Birrell writes, “Burke, as he regarded humanity swarming like bees into and out of their hives of industry, is ever asking himself, How are these men to be saved from anarchy?”²⁶

Burke rejected unaided reason as the answer to this question. He applied to almost every situation he encountered the following principle: “[P]olitics ought to be adjusted, not to human reasonings, but to human nature; of which reason is but a part, and by no means the greatest part.”²⁷ Burke’s belief that the “stock [of reason] in each man is small,” combined with the complexity of legal and political affairs, led him to conclude that “in politics the most fallacious of all things [is] geometrical demonstration.”²⁸

This almost anti-intellectual strain in Burke’s thought is coupled with his belief that history and tradition are more useful guiding principles in the administration of society than an abstract concept of natural law or universal right.²⁹ Indeed, Burke emphasizes that the particular conditions

tish. This attempt, notes Burke, “excited a most mutinous spirit in that country.” Edmund Burke, “Speech on the Acts of Uniformity,” in *The Portable Edmund Burke*, ed. Isaac Kramnick (London: Penguin Books, 1999), 101. On this basis, Edward Payne concludes that Burke’s understanding of human beings as political and civilized, as well as his “familiarity with the idea of a nation of human savages rising in revolt against law, religion, and social order,” are outgrowths of his keen historical observations. Edward Payne, “Introduction,” in *Select Works of Edmund Burke*, ed. Francis J. Canavan, 4 vols. (Indianapolis: Liberty Fund, 1999), 2:13.

26 Augustine Birrell, “Edmund Burke,” in *Masterpieces of Eloquence*, ed. Albert J. Beveridge et al., 25 vols. (New York: Collier, 1905) 25:10685.

27 Edmund Burke, “Observations on a Late Publication Entitled ‘The Present State of the Nation,’” in Kramnick (ed.), *The Portable Edmund Burke*, 253.

28 Edmund Burke, *Reflections on the Revolution in France*, ed. J. C. D. Clark (Stanford: Stanford UP, 2001), 346.

29 Burke’s emphasis on the benefits of his historical approach has led to no small amount of debate as to whether he adheres to any form of natural right or whether he espouses a form of cultural relativism. For example, Harold J. Laski sees Burke as, at bottom, “a utilitarian who was convinced that what was old was valuable by the mere fact of its arrival at maturity.” *Political Thought in England* (London, 1920), 155–56. In contrast, Peter J. Stanlis documents the many instances in which Burke appeals to natural law and concludes that Burke saw the world through “the right reason of Natural Law.” *Edmund Burke and the Natural Law* (Ann Arbor: U of

of a society's history should inform its civil institutions. For example, in discussing the governance of the British Empire, Burke states:

I never was wild enough to conceive, that one method would serve for the whole; I could never conceive that the natives of *Hindustan* and those of *Virginia* could be ordered in the same manner.... I was persuaded that Government was a practical thing, made for the happiness of mankind, and not to furnish out a spectacle of uniformity, to gratify the schemes of visionary politicians.³⁰

According to Burke, there is no uniform method of governance applicable to all people that can be discovered from the laws of nature. Instead, as Joseph Baldacchino has noted, "Burke believed strongly that political constitutions and the details of government should differ in accordance with the 'character and circumstances' of various peoples."³¹

As a result of the limits of reason in establishing government, Burke believed that the primary tools man has available to maintain order are experience and tradition. In his view, it is prescription, or the civil society that has been handed down by tradition, that keeps man in his civilized, political state and prevents him from descending into anarchy. Thus, civil society and all that it entails—customs, habits, and prejudices—is an "institution of beneficence" "made for the advantage of man."³² Burke's understanding of human nature as requiring inherited practice and prejudice caused him to view society as a partnership "between those who are living, those who are dead, and those who are to be born."³³ Under such a partnership, those who have gone before leave behind certain practices, prejudices, and institutions for the living. In

Michigan P, 1958), 84. Francis Canavan makes the case that it is possible to reconcile Burke's emphasis on history with his belief in an intelligible natural order by recourse to Burke's belief in a providential God directing the course of history. See *Edmund Burke: Prescription and Providence* (Durham, NC: Carolina Academic Press, 1987), 155–58.

30 Burke, *Writings and Speeches*, 3:316–17.

31 Joseph Baldacchino, "The Value-Centered Historicism of Edmund Burke," *Modern Age* 27, no. 2 (Spring, 1983): 141.

32 Burke, *Reflections*, 217.

33 *Ibid.*, 261.

turn, the living have a duty to preserve these practices, prejudices, and institutions for future generations.

Burke's insistence on the necessity of prescription naturally runs into difficulties when confronted with inevitable political, social, and technological change. However, rather than seeking to avoid change, Burke writes that it is necessary to "obey the great law of change," for if a society disregards the law of change, it is disregarding "the most powerful law of nature."³⁴ Ignoring such a law is problematic, and Burke concludes that "[a] state without the means of some change is without the means of its conservation."³⁵ These statements regarding change appear to place certain limitations or conditions on Burke's preference for prescription. How does Burke's recognition of the inevitability of change figure in his politics of prescription? According to Burke, the two are not completely contradictory:

It is far from impossible to reconcile, if we do not suffer ourselves to be entangled in the mazes of metaphysic sophistry, the use both of a fixed rule and an occasional deviation; the sacredness of an hereditary principle of succession in our government, with a power of change in its application in cases of extreme emergency.³⁶

For Burke, the politics of prescription can encompass change and reform so long as it is done with humility and reverence for what has gone before.

Burke's politics of prescription does not fit comfortably in either the originalist or functionalist approaches to constitutional interpretation. Indeed, both approaches to constitutional interpretation satisfy only portions of Burke's politics. While originalism's emphasis on continuity is compatible with Burke's politics of prescription, the static understanding of the Constitution mandated by originalism seems to be irreconcilable with his insistence on the necessity for reform. Similarly, while the functionalist approach satisfies Burke's recognition of the necessity of change, it does so in a way that fails to respect the past. Perhaps the

³⁴ Burke, *Writings and Speeches*, 9:634.

³⁵ Burke, *Reflections*, 170.

³⁶ *Ibid.*, 169.

primary reason it is difficult to ally Burke with either school of thought is that he wrote in reaction to specific events and avoided engaging in speculative theory. Indeed, according to Burke, “[c]ircumstances ... give in reality to every political principle its distinguishing colour, and discriminating effect. The circumstances are what render every civil and political scheme beneficial or noxious to mankind.”³⁷

While this may be a commendable approach to politics, it has left many of his interpreters flummoxed at the paradoxes that inevitably result. The question Burke’s approach poses for constitutional theorists is: Where does this leave us? If Burke denigrated theory, how can we look to him as a guide in formulating a theory of constitutional interpretation? The answer is that Burke cannot help us formulate such a theory, if by theory we mean a system into which one can input variables and from which one may receive expected results. Burke’s attention to nuance and circumstance simply does not permit for such an approach. However, as David Dwan has noted, “even when attending to Burke at his most contextual—when he is responding to crises and at times fast-moving events in Ireland, America, and India—we find a cluster of common concerns and a pattern of analysis.”³⁸ As a result, while it is not possible to derive an entire theory of constitutional interpretation from Burke’s writings, it is possible to discern a Burkean *disposition* towards constitutional interpretation. At its basis, this disposition is an appreciation of the benefits derived from custom or tradition. As we shall see, this disposition simultaneously includes the recognition that reform is sometimes necessary; and, to ensure that this reform is channeled in an appropriate manner that does not result in societal upheaval, the Burkean disposition entails a commitment to gradual reform.

In the American constitutional context, this Burkean disposition entails respect for American customs and traditions. This respect alone, however, does not distinguish a Burkean disposition from the theories of constitutional interpretation already discussed, as those theories can

³⁷ Ibid., 151.

³⁸ David Dwan, “Introduction: Philosophy in Action,” in *The Cambridge Companion to Edmund Burke*, ed. David Dwan and Christopher J. Insole (Cambridge: Cambridge UP, 2012), 10–11.

also entail some sort of respect for the past.³⁹ The respect for the past entailed by a Burkean disposition differs from other theories of constitutional interpretation in that it looks to the entirety of the nation's history—as well as to America's colonial history—to determine constitutional meaning. Approaching constitutional interpretation in this way suggests that the Burkean disposition to constitutional interpretation is marked by four characteristics: (1) an emphasis on rights that pre-date the Constitution; (2) belief in the need for judicial humility; (3) respect for precedent; and (4) an understanding of the judicial branch as a counter-majoritarian institution.

The Burkean disposition's characteristic mark of looking to the entirety of American history, including its colonial history, is based upon an understanding that the Founding Fathers did not see the Constitution as *creating* fundamental rights, but rather as *protecting* pre-existing rights.⁴⁰ The American founders inherited the notion of pre-existing rights from the English Whigs (of whom Burke was one). In response to royal absolutism in the seventeenth century, the Whigs argued that the Crown was limited in its power by the "ancient constitution," "which was defined by custom and had existed (in the Whig legal imagination) from time immemorial."⁴¹ For both Burke and the American colonists, law derived its authority not from the will of the sovereign but from ancient customs, which reflected the wisdom of the generations.⁴²

39 For example, originalism seeks to lock in the meaning of constitutional terms at the time of the founding. Similarly, Bruce Ackerman's theory of constitutionalism, which is a variant of functionalism, seeks to determine the meaning of constitutional terms by "important moments" of the nation's history. Bruce A. Ackerman, "Revolution on a Human Scale," *Yale Law Journal* vol. 108, no. 8 (1999): 2279–349.

40 Michael W. McConnell, "Tradition and Constitutionalism Before the Constitution," *University of Illinois Law Review* 1998, no. 1 (1998): 196. James Stoner explains that when the colonists "reformed themselves into states, they all adopted, often by statute or constitutional provision, the common law as the basis of their jurisprudence." *Common Law Liberty: Rethinking American Constitutionalism* (Lawrence: UP of Kansas, 2003), 14.

41 McConnell, "Tradition and Constitutionalism," 176–77.

42 *Ibid.*, 178. Burke's deference to established customs is closely tied to his belief in the importance of humanity's cultural dimension. As Uday Singh Mehta notes, Burke conceives "social order [to be] a prerequisite for individual liberty." *Liberalism and Empire: A Study in Nineteenth Century British Liberal Thought* (Chicago: U of Chicago P, 1999), 174. Building on Mehta's comments, Daniel O'Neill and Margaret Kohn note that for Burke the building blocks of a well-ordered society are "a spirit of reli-

By looking to ancient custom, both Burke and the American colonists were partaking in a form of political thought that first developed in the sixteenth century. This form of political thought involved intensive historical thinking and has been described by John Pocock as

the attempt to settle fundamental political questions, notably those involving law, right and sovereignty, by appeal not directly to abstract political concepts, but to the existing ‘municipal’ laws of the country concerned and to the concepts of custom, prescription and authority that underlay them, as well as to the reverence which they enjoyed by reason of their antiquity.⁴³

Pocock goes on to trace this method of political thought from the time of Edward Coke to Edmund Burke.⁴⁴ Thus, the first characteristic of the Burkean disposition mandates that when interpreting the provisions of the Constitution, the interpreter should look not only to the text of the Constitution but also to the entirety of the nation’s history to determine whether a custom or tradition has continuously existed from the colonial period, through the founding, until the present age. The existence of such a custom or tradition will be strong, presumptive evidence of the existence of a constitutionally guaranteed right.

The belief that ancient customs are the product of the collective wisdom of previous generations is closely tied to the Burkean disposition’s second characteristic: belief in judicial humility. Burke believed that the wisdom of the generations, inherent in ancient customs handed down from generation to generation, resulted from “accumulations and refinements of experience” and are superior to reason and philosophi-

gion” and an “aristocracy.” They conclude that Burke’s conception of a well-ordered society helps to explain his different reactions to British imperialism in India and in North America. While India had a culture suffused with a religion and a natural aristocracy, the same conditions did not hold in North America. “A Tale of Two Indias: Burke and Mill on Empire and Slavery in the West Indies and America,” *Political Theory* 34, no. 2 (2006): 192–228. Burke’s understanding of culture may go some way to explaining why he was solicitous of the rights and liberties of the American colonists, but nowhere speaks of the established customs of the Native Americans.

43 J. G. A. Pocock, *The Ancient Constitution and Feudalism: A Study of English Historical Thought in the Seventeenth Century*, 2nd ed. (Cambridge: Cambridge UP, 1987), 17.

44 Ibid., 18.

cal reflection.⁴⁵ David Bromwich explains how Burke's preference for experience over reason and philosophical reflection is a result of his understanding of human society as being at least partially artificial:

[Burke] thinks of nature as a tendency always modified by human adaptation; 'artificial,' in his usage, can never be assumed to be a pejorative epithet. Indeed, society is artificial, not natural, once it has adapted itself to changing mores and once morality is understood as a structure of greater complexity than a chain of answers to questions put by reason.⁴⁶

Because human beings are societal—civilized beings who are born into a specific time and place—they inherit a particular culture and can be described as cultural beings. Interpreting Burke, Anthony Kronman argues that the cultural dimension of humanity is what makes us distinctively human.⁴⁷

Burke's commitment to the cultural and conventional dimension of man becomes clear when one contrasts his critique of the metaphysical exposition of rights in France's *Declaration of the Rights of Man* with his praise for rights that are based on prescription. The rights set forth in the *Declaration*, argues Burke, are abstractions that are based on "such a pedantic abuse of elementary principles as would have disgraced boys at school."⁴⁸ In contrast, the English, he asserts, claim their franchises "not on abstract principles 'as the rights of men,' but as the rights of Englishmen, and as a patrimony derived from their forefathers."⁴⁹ As William

⁴⁵ Ibid., 35.

⁴⁶ David Bromwich, *The Intellectual Life of Edmund Burke: From the Sublime and the Beautiful to American Independence* (Cambridge, MA: Harvard UP, 2014), 46.

⁴⁷ Anthony T. Kronman, "Precedent and Tradition," *Yale Law Journal* 99 (1990): 1029, 1051. The extent to which Burke views humans as being primarily or exclusively cultural beings has been the source of some debate. Some view Burke's rejection of the abstract rationalism of the social contract theories of Hobbes and Locke as evidence that he paves the way for the emergence of the "Romantic" era and its concomitant commitment to the partial conventionality of rights. See Charles Edwyn Vaughn, *The Romantic Revolt*, 3 vols. (Edinburgh: William Blackwood and Sons, 1907), 3:131. Others, such as Peter Stanlis, contend that while Burke certainly rejected abstract logic, he also rejected the "intuitive moral sensibility preached by Rousseau" and other Romantics. *Edmund Burke and the Natural Law*, 184.

⁴⁸ Burke, *Writings and Speeches*, 4:289.

⁴⁹ Burke, *Reflections*, 183.

Byrne notes, Burke “is generally most comfortable with rights that have become established through long practice,” as these conventional rights “have acquired relatively precise meanings which are broadly accepted” in particular communities.⁵⁰ For Burke, the inheritance of “the artifacts that together constitute the world of culture,” along with the ability to preserve that culture for succeeding generations, plays a significant role in differentiating humans from animals, who live lives unconnected to their ancestors or their descendants.⁵¹

Given human beings’ status as cultural beings, Burke viewed all of humanity as faced with a choice: it can take up the mantle left by its ancestors and join in the common enterprise of culture, or it can choose to spurn the accomplishments of its forebears and chart its own course. If a generation chooses the latter and “chang[es] the state as often, and as much, and in as many ways as there are floating fancies or fashions,” writes Burke, “the whole chain and continuity of the commonwealth would be broken. No one generation could link with the other. Men would become little better than the flies of a summer.”⁵² Thus, for Burke, participation in the eternal partnership of culture elevates human beings above the beasts. It is for this reason that he holds respect for inherited customs as more consonant with human nature and as more likely to lead to a stable and just society than abstract philosophical reasoning.

While Burke’s insistence on the superiority of ancient customs over abstract philosophy comprised part of his attack on the *philosophes* of the French Revolution, as we shall see, this belief has implications for judicial decision-making. Indeed, Burke’s writings suggest a judicial disposition of humility. Richard Bourke points out that Burke was well acquainted with the common law and that this familiarity committed him to the idea “that the rationality of a legal system transcended the abstract grasp of an individual’s natural reason.”⁵³ Thus, according to a Burkean disposition, a judge should presume that the application of ancient customs, rather than the judge’s own moral and philosophic abstractions, will cor-

50 William F. Byrne, “Burke’s Higher Romanticism: Politics and the Sublime,” *Humanitas* 19, no. 1/2 (2006): 32.

51 Kronman, “Precedent and Tradition,” 1051.

52 Burke, *Reflections*, 259.

53 Richard Bourke, *Empire and Revolution: The Political Life of Edmund Burke* (Princeton: Princeton UP, 2015), 78.

rectly decide a case.⁵⁴ As Sir Edward Coke notes, “No man ought to take upon him to be wiser than the laws” that “have been by the wisdom of the most excellent men, in many successions of ages, by long and continual experience, (the trial of right and truth) fined and refined.”⁵⁵

To be sure, as noted above, Burke was well aware that change or reform may at times be necessary, and he believed it possible to reconcile his commitment to inherited customs with the need for occasional societal changes in cases of extreme emergency.⁵⁶ However, for Burke, it was crucial that the “emergency” not be used to justify wholesale change, as this might endanger the stability and continuity of society. Therefore, when faced with some political practice or situation in need of reform, a judge disposed to the Burkean approach will seek to enact societal transition in a circumscribed and gradual manner so as not to cause societal upheaval.⁵⁷ Even in times of emergency, change ought “to be confined to the peccant part only; to the part which produced the necessary deviation; and even then it is to be effected without a decomposition of the whole civil and political mass, for the purpose of originating a new civil order....”⁵⁸ Any reform ought narrowly to be tailored and effectuated with the aim of making it congruent with the rest of society.

Burke’s attack on philosophical abstraction as well as his recognition of the occasional need for societal change have implications for constitutional interpretation. These implications can be derived from

54 Bourke traces Burke’s “presumption’ in favour of the rationality of the common law” to the writings of Sir Matthew Hale and connects this presumption to his skepticism of a natural reason “abstracted from the kind of practical context to which the educated intellect of the professional lawyer was committed.” *Ibid.*, 79.

55 Calvin’s Case, 77 Eng. Rep. at 381; quoted in McConnell, “Tradition and Constitutionalism,” 179.

56 See above, n36.

57 An example of the way in which Burke managed to couple his reformist tendencies with his concern for maintaining stability and order can be seen in his letter to Henry Dundas, in which he explains his *Sketch of a Negro Code*, which was a piece of legislation drafted—but never introduced—by Burke that sought the gradual elimination of the slave trade. He explains that while he believed the slave trade to be an evil and wished for its “utter abolition,” he thought the best practical route to end the slave trade and set the British empire on the course toward emancipation was a program of gradual abolition. Edmund Burke, *The Correspondence of Edmund Burke*, ed. Thomas Copeland *et al.* (Cambridge and Chicago: Cambridge UP and U of Chicago P, 1967), 7:122–25.

58 Burke, *Reflections*, 170.

his remarks on the violence done to language by philosophical abstraction. In *Burke and the Fall of Language*, Steven Blakemore notes that Burke abhorred not only the overturning of the existing social order, but also the revolution's subversion of language, which paved the way for the overthrow of the *ancien régime*.⁵⁹ Language was the tool of choice for prominent intellectuals and writers in planting "subversive seeds ... in the French mind."⁶⁰ Burke, Blakemore argues, "documents ... the transvaluation of specific words that are torn from their historical context and then emptied of their accumulated cultural meaning by a linguistic violence which then stamps these words with the revolutionary signet of its artificially imposed meaning."⁶¹ In support of this contention, Blakemore shows Burke's reaction to the new meaning of the word "ascendancy" in his *Letter to Richard Burke, Esq.*:

The poor word *ascendancy*, so soft and melodious in its sound, so lenitive and emollient in its first usage, is now employed to cover to the world the most rigid, and perhaps not the most wise, of all plans of policy ... The old words are as fit to be set to music as the new; but use has long since affixed to them their true signification, and they sound, as the other will, harshly and odiously to the moral and intelligent ears of mankind.⁶²

Words, which have been given meaning through the force of history, are being given new meaning through the French revolutionary mindset so as to deceive the people. Burke sees the goal of these "literary caballers" to be the association of new concepts with familiar words so that the people, who are favorably predisposed to these familiar words, will likewise have a favorable disposition to the new meanings attached to

59 Steven Blakemore, *Burke and the Fall of Language: The French Revolution as Linguistic Event* (Hanover, NH: UP of New England, 1988), 90–91.

60 Ibid., 99.

61 Blakemore contends that Burke believed that the effort to subvert language was a calculated effort by revolutionaries. Blakemore writes that a whole arsenal of political words such as "*nature, liberty, freedom, property, the people, natural law and natural rights*," which had previously enjoyed a general consensus in Europe as to their meaning, were being stripped of their traditional, prescriptive, meanings, and were being utilized to promote a radically different way of life. Ibid., 100.

62 Ibid., 101.

those same words.⁶³ Thus, while Burke recognized that change was an inevitable part of life, he saw subversion of the language through which Europeans had learned to communicate with one another as radical and disrespectful of the manners and customs they had inherited.⁶⁴

Burke's commentary on philosophical abstraction and the violence it does to language suggests that, while words may acquire new meaning through history, language is not *infinitely* malleable. Semantic meaning may change, but such change ought to occur in an organic and incremental fashion that respects that which has preceded it. Thus, when faced with an issue of constitutional interpretation, a judge ought to engage the text with humility. Rather than employ philosophical specu-

63 An example of Burke's belief that the revolutionaries sought to subvert language can be seen in the introductory pages of his *Reflections*, in which he decries a political sermon given by Dr. Price, a "man much connected with literary caballers." Burke lambastes Dr. Price for "phillipiz[ing] and chaunt[ing] his prophetic song in exact unison with [the] designs" of the prominent intellectuals, writers, and literary caballers who have subverted the common language of Europe. Burke focuses, in particular, on Dr. Price's contention that the king of Great Britain "is almost the *only* lawful king in the world because [he is] the *only* one who owes his crown to *the choice of his people*." Burke argues that this statement is meant to soothe the British government "with a reservation in its favour, to which it has no claim," seeing as the king "most certainly does not owe his high office to any form of popular election," while at the same time "the ears of [the] congregations would be gradually habituated to [such a statement], as if it were a first principle admitted without dispute." Burke sees Dr. Price's use of language as a way of subverting and inculcating notions into people's minds so as to deprive the British government of "the security, which it has in common with all governments, so far as opinion is security." Burke continues with his critique of those who abuse language, by haranguing politicians who, "when they come to be examined upon the plain meaning of their words and the direct tendency of their doctrines, [use] equivocations and slippery constructions." Burke, *Reflections*, 155–61.

64 Burke's distinction between radical change that is disrespectful of the past and change that is based upon the principle of reverence to antiquity is made apparent when one compares his denunciation of the French Revolution with his sympathetic response to the grievances of the American colonists. Burke notes that, in contrast to the French Revolutionaries' subversion of language, the grievances expressed by the colonists were articulated in the same language spoken by the generations preceding them. According to Burke, the American colonists' desire to reform their current situation could be justified because it was articulated in the same language that had governed pre-existing social relations. The colonists' desire for freedom was respectful of that which they "possessed as an inheritance from [their] forefathers." Russell Kirk, "A Revolution Not Made but Prevented," *Modern Age* 29 (1985): 295–96.

lation to abstract a textual provision from its historical usage and ascribe new meaning to that provision, a judge ought to respect the received meaning of the text. For Burke, change in the interpretation of constitutional provisions should generally be effected slowly and with an eye to antiquity so as to maintain the latent wisdom that prevails in the provisions and practices that have been handed down.

The notion of judicial humility, in turn, lays the foundation for the Burkean disposition's third characteristic: respect for legal precedent. Rather than deciding each case anew, a judge with a Burkean disposition will look to cases sufficiently similar to the one currently being decided and will rely on the wisdom inhering in those decisions. As Kronman notes, it is often argued that precedent has preeminence for two reasons:

The first is that respect for past decisions is desirable to the extent that it increases the sum of social welfare (by enhancing the law's predictability, economizing judicial resources, strengthening the prestige of legal institutions, etc.) ... The second claim is that like cases must be treated alike if a legal system is to be even minimally fair, so that when a case is like some other in all relevant respects except for the fact that it happens to arise at a later moment in time, the later case must be decided in the same way as the earlier one.⁶⁵

The two reasons commonly cited in defense of precedent are thus utilitarian and deontological. While Kronman does not disagree that these may be valid reasons for adhering to precedent, he suggests that Burke may provide a third, less-cited reason: precedent is authoritative because it takes into account our cultural inheritance, which we are called upon to preserve for future generations.

As a result of the importance of precedent, *stare decisis*—the legal principle by which judges are obliged to respect precedent established by prior decisions—necessarily plays a significant role in jurisprudence marked by a Burkean disposition. Indeed, *stare decisis* is an important component of a Burkean approach to constitutional interpretation, and, as a result, legal precedent ought to be viewed as *presumptively* binding.

65 Kronman, "Precedent and Tradition," 1038–39.

However, precedent is not necessarily *conclusively* binding. As Frederick Schauer points out:

The historical treatment of X as Y could be said to provide a reason for treating X as Y now. There might be other reasons for treating X as Y. More importantly, there might also be reasons for treating X as not-Y, or as Z. To say that precedent provides a reason for deciding in a particular way is not to say that following precedent is what we should always do, all things considered.⁶⁶

This understanding of precedent as merely presumptively binding is especially relevant for a Burkean approach in a situation in which a particular line of precedent is at odds with the greater tradition and history of the nation. In such a scenario, it may be the case that, despite the presumption that precedent receives, the greater tradition and history of the nation will be dispositive.⁶⁷ *Stare decisis* requires more than adherence to the last case decided in a particular area of law.

The belief that precedent is presumptively binding may put a court with a Burkean disposition at odds with public sentiment. It is easy to envisage a scenario in which a majority of the public, either insistent on change or intractably opposed to necessary reform, would be at loggerheads with a court operating in accordance with a Burkean disposition. Such a situation should not be surprising given Burke's belief that society's leaders should be members of a natural aristocracy. Burke, like many eighteenth-century thinkers, saw every society as needing a natural aristocracy whose role it is to lead, guide, and govern society:

To be bred in a place of estimation; ... [t]o be habituated to the censorial inspection of the public eye; ... [t]o have leisure to read, to reflect, to converse ... [t]hese are the circumstances

⁶⁶ Frederick Schauer, "Precedent," *Stanford Law Review* 39 (1987): 692.

⁶⁷ Justice Frankfurter provides a succinct formulation of the *stare decisis* principle in *Helvering v. Hallock*: "Stare decisis is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable, when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience." *Helvering v. Hallock*, 309 U.S. 106, 119 (1940).

of men, that form what I should call a *natural* aristocracy, without which there is no nation.⁶⁸

Ernest Young rightly notes that Burke's insistence upon a societal need for a natural aristocracy brought up in such manner as to develop wisdom and prudence stems from distrust in the sufficiency of institutional checks and balances to guide society in a virtuous manner. Interpreting Burke, Young argues that "we must concentrate power in the hands of a relatively few individuals who are either bred or carefully selected to be more virtuous than the population at large."⁶⁹ If the members of the Supreme Court do, in fact, represent the natural aristocracy and have been "bred in a place of estimation," it is not unlikely that their wisdom and prudence may at times dictate something other than what the majority of the people desire.

While some might decry such a court's deference to tradition rather than to the desires of the people, in the American context such a scenario might suggest that the court is fulfilling its counter-majoritarian function, the fourth characteristic of the Burkean disposition to constitutional interpretation. Indeed, according to Alexander Hamilton, the unelected and politically insulated nature of the judiciary ensures that it "is an excellent barrier ... to the encroachments and oppressions of the representative body."⁷⁰ As a result, judges are uniquely positioned to discern the traditions of the nation without fear of reprisal. Rather than capitulating to the perennial "floating fancies or fashions" of the people,⁷¹ a court disposed to the Burkean approach is able to make use of the wisdom and prudence of its members to ensure the continuity of the nation's culture.

A Burkean disposition to constitutional interpretation thus includes four characteristics: (1) a respect for pre-existing rights; (2) judicial humility; (3) respect for precedent; and (4) an understanding of the court as a counter-majoritarian institution. These four characteristics

68 Burke, *Writings and Speeches*, 4:448–49.

69 Ernest Young, "Rediscovering Conservatism: Burkean Political Theory and Constitutional Interpretation," *North Carolina Law Review* 72 (1994): 658.

70 Alexander Hamilton, "Federalist #78," *The Federalist Papers*, ed. Clinton Rossiter (New York: Signet Classics, 2003), 464.

71 Burke, *Reflections*, 259.

make clear where Burke's political thought stands in relation to the current schools of constitutional interpretation. Specifically, the four characteristics imply a complex approach to constitutional interpretation that does not fit comfortably in either the originalist or the functionalist school of interpretation, as both these schools fail to incorporate the totality of Burke's thought.

At first glance, one might consider Burke to be an originalist. His emphasis on the importance of the historical meaning of words seems to comport with the originalist commitment to the contribution thesis, which, as noted above, holds that the "original meaning [of the Constitution] ought to play an important and substantial role in the determination of constitutional doctrine."⁷² However, originalism's commitment to the fixation thesis, which holds that the meaning of a constitutional provision is set in stone at the time of its adoption, would seem to be incompatible with Burke's recognition that states require the means for adaptation if they are to survive. Furthermore, Burke affirms the idea that words obtain meaning through historical usage and can therefore develop in meaning. Thus, originalism is only partially compatible with Burke's political thought as it fails to incorporate Burke's insistence on the necessity of change.

Burke's political thought is also incompatible with the functionalist schools of constitutional interpretation. Abstractionism, which seeks to interpret the constitution in light of certain abstract, general principles, is incompatible with Burke's politics of prescription as it has the effect of destroying the historically acquired meaning of constitutional provisions in order to inscribe them with *new* meanings. Burke would view such a repudiation of an inherited past as the destruction of "the whole chain and continuity of the commonwealth" that links generations together.⁷³ Thus, while abstractionism provides an avenue for change, it does so in a manner that is insufficiently respectful of tradition.

The functionalist school of constitutional interpretation known as developmentalism also initially appears to be compatible with Burke's thought, given that it enlarges "the interpretive arena to include broader historical events, such as informal practices, usages, and political cul-

⁷² Solum, "What is Originalism?" 32.

⁷³ Burke, *Reflections*, 259.

ture.”⁷⁴ This approach, like abstractionism, avoids a stagnant approach to constitutional interpretation and accords with Burke’s belief in the necessity of change. However, as noted above, developmentalism does not view the understanding of a constitutional provision as authoritative on the basis of age or established use, but rather on the grounds of its congruence with progress. Such a presumption in favor of progress over tradition or custom is contrary to Burke’s political thought.⁷⁵ While change may be necessary, Burke always holds a presumption in favor of tradition, and, when faced with the prospect of inevitable change, the Burkean disposition seeks to channel the forces of change in a way that best protects tradition.

Together, the four characteristics of the Burkean disposition allow for an approach to constitutional interpretation that satisfies continuity and change without sacrificing the one for the other. Indeed, the Burkean disposition is not marked by an inflexible application of the original meaning of the Constitution to whatever constitutional issues might arise. At the same time, it does not jettison the traditional understanding of the Constitution in response to every political whim. Rather, the Burkean disposition provides the flexibility needed to respond to exigent circumstances, while maintaining the continuity that the Constitution affords.

3. *The Burkean Disposition in Practice*

The Due Process Clause of the Fourteenth Amendment, which was ratified in 1870 in response to the Civil War, serves as a useful constitutional provision by which to analyze concretely the manner in which the Burkean disposition may navigate the forces of continuity and change. The Due Process Clause guarantees that no state shall “deprive any person of life, liberty, or property, without due process of law.”⁷⁶ Largely in response to the Supreme Court’s interpretation of this clause,

⁷⁴ Murphy et al., *American Constitutional Interpretation*, 410.

⁷⁵ Burke writes in his *Reflections* that “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.” Burke, *Reflections*, 220.

⁷⁶ U.S. Const. amend. XIV.

American society's conception of individual rights and state regulatory powers underwent a substantial change in the latter half of the twentieth century.⁷⁷ As individuals have challenged various state regulations as comprising interference with their liberty interests under the Due Process Clause, the sphere of individual constitutional rights has grown at the expense of state regulatory powers. Given its history, it is clear that the Due Process Clause can act as a catalyst for societal change that threatens the traditions of the nation, resulting in the loss of a way of life.⁷⁸ At the same time, however, by guaranteeing the protection of individual liberty, the Due Process Clause can also serve to protect the traditions of the nation by acting as a powerful bulwark against state encroachments on traditional rights and freedoms that may not be explicitly stated in the text of the Constitution.⁷⁹ The potential of the Due Process Clause to act as a force for both continuity and change suggests that it merits considerable attention from those approaching constitutional interpretation with a Burkean disposition.

Upon ratification, it was not immediately clear to what extent the Civil War Amendments would alter American society; nor was it clear what role the Due Process Clause would play in this process. In the *Slaughter-house Cases*,⁸⁰ the first case to reach the Supreme Court in which Fourteenth Amendment rights were invoked, it did not seem that the Due Process Clause would have a substantial impact on Amer-

77 Joseph P. Viteritti, "Reading Zelman: The Triumph of Pluralism and its Effects on Liberty, Equality, and Choice," *Southern California Law Review* 76 (2003): 1141.

78 The Due Process Clause has been cited as the basis for a host of court cases that have fundamentally altered the moral fabric and traditions of the nation. See for example, *Roe v. Wade*, 410 U.S. 113 (1973); *Casey v. Planned Parenthood*, 505 U.S. 833 (1992); *Lawrence v. Texas*, 539 U.S. 558. Joshua Hawley makes the case that all of these decisions, beginning with *Roe v. Wade*, supply the liberty component of the Due Process Clause with "substantive content drawn from the ethic of authenticity." Joshua D. Hawley, "The Intellectual Origins of (Modern) Substantive Due Process," *Texas Law Review* 93 (2014): 336. An approach that defines fundamental rights in light of the principle of authenticity will broaden the number of claims protected by the Fourteenth Amendment, limiting the realm in which society may regulate. This will necessarily have the effect of altering the nation's traditions and culture.

79 See, for example, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). Both cases found that parents and guardians have a right under the liberty component of the Due Process Clause to direct the upbringing and education of children.

80 *Slaughterhouse Cases*, 83 U.S. (16 Wall.) 36 (1872).

ican society. In the *Slaughter-house Cases*, plaintiffs claimed that a state statute aimed at regulating the slaughterhouse operations in the city of New Orleans had the effect of depriving them of their ability to practice their trade as butchers. The plaintiffs contended that this statute violated the Privileges and Immunities Clause and the Due Process Clause of the Fourteenth Amendment. The Court focused primarily on the plaintiffs' claims under the Privileges and Immunities Clause, while dismissing their Due Process claims rather summarily, stating, "Under no construction of [the Due Process Clause] that we have ever seen, or any that we deem admissible, can the [regulation] be held to be a deprivation of property within the meaning of that provision."⁸¹ The Court's sclerotic interpretation of the Due Process Clause signaled that the clause would not likely be a vehicle by which individuals could challenge state action.

In fact, the use of the Due Process Clause as a means of protection against arbitrary state action was not formulated as a coherent doctrine until 1880, in the case of *Mugler v. Kansas*.⁸² In *Mugler*, Kansas had passed a regulation prohibiting the manufacture and sale of intoxicating liquors in the state. Peter Mugler, who owned a brewery in the City of Salina, Kansas, was indicted under the statute. In defense, Mugler maintained that the Fourteenth Amendment prevented the legislature from "prohibit[ing] any citizen from manufacturing ... any article of food or drink not endangering or affecting the rights of others."⁸³ In effect, Mugler contended that the Kansas statute violated the liberty guaranteed him by the Due Process Clause to brew whatever he might choose, so long as his actions did not endanger the rights of others.

In response, the Court agreed with Mugler that the legislative branch cannot regulate actions that are "purely and exclusively private," but it noted that the legislative branch has wide discretion in determining whether an action is purely private or has injurious social effects.⁸⁴ On its own, this judgement simply reiterates the traditional understanding that state legislatures have the power to regulate in the interests of

⁸¹ Ibid., 81.

⁸² *Mugler v. Kansas*, 123 U.S. 623 (1887).

⁸³ Ibid., 660.

⁸⁴ Ibid., 660-61.

the public. However, the Court continued, noting that the legislature's discretion in this regard is subject to judicial review, and in order to determine the constitutionality of the statute, the Court would inquire into the reasons articulated by the legislature in support of the statute to discern whether or not the legislature acted arbitrarily. In its holding, the Court articulated what would come to be known as the rational basis test to determine whether a state had abused its discretion in enacting a regulation that infringes upon an individual's due process rights:

If ... a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution.⁸⁵

Under the *Mugler* analysis, there is a presumption in favor of the constitutionality of any given state action; so long as the statute is rationally related to the end to which it is directed, the statute will not be found to violate an individual's due process rights. In the *Mugler* case, the Court found that there was no reason to believe that the Kansas statute prohibiting the manufacture or sale of intoxicating liquors did not have a substantial relation to the public health, public morals, and public safety of the citizens of Kansas, and so it denied *Mugler's* claim.⁸⁶

The interpretation of the Due Process Clause continued to evolve, however, and in the notorious case of *Lochner v. New York* the Court subtly adjusted the mechanics of the *Mugler* analysis.⁸⁷ In the *Lochner* case, Joseph Lochner, who owned a bakery in Utica, New York, was indicted for violating a provision of New York's labor law that limited the number of hours an employee could work in a bakery to sixty hours per week. Mr. Lochner brought suit, arguing that the provision interfered with his fundamental liberty rights under the Due Process Clause. The Supreme Court agreed with Mr. Lochner, finding that the legislation "interferes with the right of contract between the employer and employees concern-

⁸⁵ Ibid., 661.

⁸⁶ Ibid., 662.

⁸⁷ *Lochner v. New York*, 198 U.S. 45 (1905).

ing the number of hours in which the latter may labor.”⁸⁸ Building on previous case law, the Court stated that the right to contract, including “the right to purchase or to sell labor,” is protected by the liberty guarantee of the Due Process Clause of the Constitution.⁸⁹

Just as it had done in *Mugler*, the Court recognized that the fundamental rights protected by the Due Process Clause are not absolute. However, in the present case it struck down New York’s regulation because, according to the Court, “there is no reasonable ground for interfering with the liberty of person or the right of free contract by determining the hours of labor in the occupation of a baker.”⁹⁰ The Court went on to assert that New York’s regulation had no relation to “the safety, the morals, [or] the welfare of the public,” and that it was only remotely related to public health.⁹¹

The Court’s decision is notable in that it modified the analysis adopted in the *Mugler* case. While it recognized that New York’s statute was “remotely related” to the issue of public health, and that New York had a “rational basis” for the statute, the Court stated that this was insufficient. Instead, it held that “before an act can be held to be valid which interferes with the general right of an individual to be free in his person and in his power to contract in relation to his own labor,” it must have a “direct relation, as a means to an end, and the end itself must be appropriate and legitimate.”⁹² Under the new test articulated by the Court, if state legislation action infringes upon a fundamental right, it will be upheld only if it has a “direct relation” to the public purpose for which the legislation was passed, not if it simply has a “real” connection to that public purpose. Thus, *Lochner* shifted the presumption of favorability from the constitutionality of state action to individual liberty—specifically, liberty of contract. While *Lochner*’s presumption in favor of the liberty of contract was eventually overturned in *West Coast Hotel v. Parrish*, in response to pressure from President Roosevelt,⁹³ the notion

88 Ibid., 53.

89 Ibid.

90 Ibid., 45.

91 Ibid., 57.

92 Ibid., 57–58.

93 *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937). The Supreme Court’s jurisprudence proved an obstacle to President Roosevelt’s New Deal program. In a series of five-

that certain rights are fundamental—and thus guarantee a presumption of favorability—remains a significant part of modern due process jurisprudence. Under the current formulation of the Due Process Clause, if an interest or liberty is deemed sufficiently fundamental, the government will be forbidden from regulating in such a way as to “to infringe [on that liberty] unless the infringement is narrowly tailored to serve a compelling state interest.”⁹⁴

The modern interpretation of the Due Process Clause impacts the forces of change and continuity in American society. The presumption in favor of fundamental rights means that any legislation interfering with such a right will likely fail to pass constitutional muster. As a result, the Due Process Clause can act both as an important means of maintaining continuity and as a catalyst for change. On the one hand, it can maintain continuity by protecting liberties that have traditionally been safeguarded and cherished. For example, in *Meyer v. Nebraska*, the Court articulated some of the traditional rights protected by the liberty guarantee of the Due Process Clause. Liberty, argued the Court,

denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.⁹⁵

Interpreted in such a manner, the Due Process Clause maintains rights that have long been recognized as necessary for a free society, even

to-four decisions, the Supreme Court held multiple pieces of legislation championed by Roosevelt to be unconstitutional. See, e.g., *Schechter Poultry Corp. v. United States* 295 U.S. 495 (1935); *Morehead v. New York ex rel. Tipaldo* 298 U.S. 587 (1936). In response, President Roosevelt famously threatened to add six justices to the Supreme Court, prompting Justice Owen Roberts, who had previously voted with the majority in impeding the New Deal, to begin voting with the majority. *West Coast Hotel* was the first case in which Justice Roberts began to vote with the minority, thereby fundamentally altering the court’s Due Process Clause jurisprudence.

⁹⁴ Ryan C. Williams, “The One and Only Substantive Due Process Clause,” *Yale Law Journal* 120 (2010): 427.

⁹⁵ *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

though they are not explicitly enumerated in the Constitution. On the other hand, the Due Process Clause can also act as a catalyst for change by deeming rights to be fundamental that are at odds with America's history and tradition. This is particularly so when courts have recourse to grand, abstract notions when determining whether a right is fundamental, as such interpretations lend themselves to radical change. For example, in *Planned Parenthood v. Casey*, the Court famously interpreted the liberty guarantee of the Due Process Clause as "the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life."⁹⁶ The appeal to such a wide-ranging definition of the term "liberty" provides little to no limit on what can be included within it and can possibly extend the protection afforded by the Due Process Clause to rights that are not grounded in the history and tradition of the nation. The effect has been to render the Due Process Clause a vehicle by which to effect radical societal change.

The radical change and lack of humility that have on occasion manifested themselves in modern due process jurisprudence are, of course, contrary to the Burkean disposition.⁹⁷ The Burkean disposition—which seeks to maintain judicial humility, while at the same time allowing for change—suggests that change should ordinarily occur incrementally and in accordance with the history and tradition of the nation. Incremental change in the context of judicial decision-making mandates that judicial decisions be both "shallow" and "narrow."⁹⁸ A shallow decision, according to Cass Sunstein, is one that is "incompletely theorized" and seeks to leave foundational, philosophically ambitious issues undecided.⁹⁹ A narrow decision, as opposed to a wide decision, "aspires

96 *Planned Parenthood v. Casey*, 505 U.S. 833, 851 (1992).

97 The Court has extended the protection of the Due Process Clause to include a number of rights that are arguably not grounded in the history and tradition of the nation, including the right to abortion (*Planned Parenthood v. Casey*, 851 [defining liberty as "the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life"]), the right to intimate homosexual conduct (*Lawrence v. Texas* 539 U.S. 448, 562 [2003] [defining liberty as not merely the protection from unwarranted government intrusions into a dwelling or other private places, but as presuming "an autonomy of the self"]), and the right to homosexual marriage (*Hodges v. Obergefell*, 576 U.S. ____ , No. 14-556, slip op. at 18 [2015] [rejecting the idea that rights "be defined in a most circumscribed manner"]).

98 Cass R. Sunstein, "Burkean Minimalism," *Michigan Law Review* 105 (2006): 407.

99 *Ibid.*

to resolve the absolute minimum necessary to dispose of the case, and leaves undecided hypothetical, or future cases.”¹⁰⁰ The additional benefit of a narrow decision is that it takes into account Burke’s admonition that the “stock [of reason] in each man is small.”¹⁰¹ No matter how astute, innovative judicial decisions nearly always have unwanted and unintended consequences. Narrow decisions seek to ensure that these unwanted and unintended consequences are minimized. While such an approach necessarily prevents the courts from enacting wide-ranging, perhaps at times salutary policy changes, this limitation ensures that in the American context, the Court fulfills its role in disposing of “cases and controversies,” while leaving policy proposals to the legislative branch. Of course, a Burkean disposition to the problems posed by innovation is not satisfied with simply endorsing incrementalism, as it does not ensure continuity, but merely ensures that change occurs slowly. Loss of tradition or custom, even if occurring incrementally, still entails loss. Thus, a Burkean disposition also requires that change be undertaken in a manner that accords with the history and tradition of the nation as much as is possible.

The innovative manner in which the Due Process Clause has at times been applied presents challenges to a Burkean-disposed interpreter. However, the Due Process Clause can be interpreted in a manner that ensures that innovation is channeled so as to be made compatible with American tradition and history. Indeed, the fundamental interest test, which holds that certain rights are fundamental and guaranteed a presumption of favorability, is not necessarily at odds with a Burkean approach to constitutional interpretation. In his dissent in *Poe v. Ullman*, Justice Harlan provided a rubric to prevent the Due Process Clause from becoming an uninhibited rights progenitor.¹⁰² Justice Harlan’s rubric both recognizes the inevitability of change and seeks to maintain continuity in the American tradition. Harlan comments:

If the supplying of content to [substantive due process] has of necessity been a rational process, it certainly has not been one

¹⁰⁰ Marc O. DeGirolami, *The Tragedy of Religious Freedom* (Cambridge, MA: Harvard UP, 2003), 109.

¹⁰¹ Burke, *Reflections*, 251.

¹⁰² *Poe v. Ullman*, 367 U.S. 497 (1961).

where judges have felt free to roam where unguided speculation might take them. The balance of which I speak is the balance struck by this country, having regard to what history teaches are the traditions from which it developed as well as the traditions from which it broke. That tradition is a living thing.¹⁰³

Harlan's understanding of the Due Process Clause allows for change, while respecting the past. Rather than advocating an apodictic approach that would limit due process rights to those present in the Bill of Rights or to those protected at the time of the Fourteenth Amendment's ratification, Harlan favors an approach that provides an avenue for change, while restricting that change to accord with the living traditions of the nation.

One can see all the hallmarks of a Burkean approach in Harlan's explication of the Due Process Clause. Harlan's distrust of formulaic understandings of the clause is strikingly similar to Burke's belief "that in politics, the most fallacious of all things [is] geometrical demonstration."¹⁰⁴ Both Harlan and Burke channel distrust of abstract speculative reason. Similarly, Harlan's appeal to tradition mirrors the way the Burkean disposition favors ancient customs and precedent. It makes clear that history and tradition, rather than the vicissitudes of public sentiment, are dispositive of whether any given right is fundamental. Thus, Harlan's understanding of the Due Process Clause comports with the Burkean disposition's emphasis on pre-existing rights and precedent, its notion of judicial humility, and its understanding of the Court as a counter-majoritarian institution.

The Supreme Court's decision in *Washington v. Glucksberg*, a case dealing with the controversial notion of a due process right to assisted suicide, can be seen as emblematic of the Burkean disposition.¹⁰⁵ The controversial nature of the case illustrates how the Burkean disposition can help frame a jurisprudence that has the potential to be viewed less as an exercise of politics by other means, and more as the dispassionate, prudent disposing of constitutional controversies. In *Glucksberg*, four doctors challenged the constitutionality of a Washington law prohibiting

¹⁰³ Ibid., 542.

¹⁰⁴ Burke, *Reflections*, 346.

¹⁰⁵ *Washington v. Glucksberg*, 521 U.S. 702 (1997).

assisted suicide.¹⁰⁶ These doctors argued that this provision violated their liberty interest under the Due Process Clause of the Fourteenth Amendment. In holding that the statute did not violate a fundamental liberty interest, the Court engaged in reasoning evincing a Burkean disposition.

The Court analyzed the issue of whether the “Due Process Clause includes a right to commit suicide”¹⁰⁷ by determining whether such a right exists in light of “our Nation’s history, legal traditions, and practices.”¹⁰⁸ Notably, the Court did not restrict its analysis to any particular time period. Rather, in accordance with a Burkean disposition, it looked to the entirety of American history, and beyond, to English common-law jurisprudence. The Court noted that Sir William Blackstone, who authored the *Commentaries on the Laws of England*, “referred to suicide as ‘self murder’” and ranked it “among the highest crimes,” and that the American Colonies “continued to condemn [suicide] as a grave public wrong.”¹⁰⁹ The Court then looked to the practice of the state legislatures after the Founding and noted that by the time the Fourteenth Amendment was ratified, assisting suicide was a crime in most states. Finally, the Court noted that at the present time no “proposals to legalize assisted-suicide have been ... enacted.”¹¹⁰ In summary, the Court stated, “we are confronted with a consistent and almost universal tradition that has long rejected the asserted right and continues explicitly to reject it today.”¹¹¹ As such, the Court concluded there was no fundamental liberty interest to commit suicide.

Closely connected with the Supreme Court’s analysis of history and tradition is its exercise of judicial humility and respect for precedent. This can be seen most clearly in the Court’s treatment of *Cruzan v. Missouri Department of Health*, a case that the petitioners framed as precedent for the right to die.¹¹² The Court took the petitioners’ contention seriously and analyzed the issue in *Glucksberg* in light of *Cruzan*. However, recognizing that the Due Process Clause can lend itself to becoming a vehicle

106 Ibid., 707.

107 Ibid., 722.

108 Ibid., 710.

109 Ibid., 712–14.

110 Ibid., 716.

111 Ibid., 723.

112 *Cruzan v. Missouri Department of Health*, 497 U.S. 261 (1990).

for unrestricted change, the Court rejected the notion that *Cruzan* was necessarily dispositive of *Glucksberg*. Indeed, the Court noted that it has “always been reluctant to expand the concept of substantive due process because guideposts for responsible decision-making in this uncharted area are scarce and open-ended.”¹¹³ As a result, rather than interpreting *Cruzan* in an abstract manner, the Court, exercising judicial humility, interpreted *Cruzan* in a way that resulted in a shallow and a narrow holding in *Glucksberg*. The Court’s holding can be seen as shallow as it left foundational issues undecided and avoided abstract, philosophical reasoning. To be sure, the Court acknowledged that *Cruzan* stands for the proposition that “competent, dying persons have the right to direct the removal of life-sustaining medical treatment.”¹¹⁴ However, the Court went on to state:

The right assumed in *Cruzan* ... was not simply deduced from abstract concepts of personal autonomy. Given the common-law rule that forced medication was a battery, and the long legal tradition protecting the decision to refuse unwanted medical treatment, our assumption was entirely consistent with this Nation’s history and constitutional traditions.¹¹⁵

Thus, while the Court took precedent seriously, it chose to interpret such precedent in a manner that avoids abstract philosophical reasoning regarding the right to commit suicide.

Similarly, the Court delivered a narrow opinion and, in fact, set the stage for future narrow opinions by requiring “a ‘careful description’ of the asserted fundamental liberty interest” in substantive due process cases.¹¹⁶ The Court pointed again to the *Cruzan* precedent, noting it to be emblematic of a substantive due process case in which the fundamental liberty interest was carefully formulated. The Court stated, “Although *Cruzan* ... is often described as a ‘right to die’ case, we were, in fact, more precise: We assumed that the Constitution granted competent persons a ‘constitutionally protected right to refuse lifesaving hydration and nutri-

¹¹³ *Washington v. Glucksberg*, 720.

¹¹⁴ *Ibid.*, 725.

¹¹⁵ *Ibid.*

¹¹⁶ McConnell, “The Right to Die and the Jurisprudence of Tradition,” *Utah Law Review* 1997 (1997) 671.

tion.”¹¹⁷ Building on this approach, the Court rejected the manner in which the Court of Appeals had framed the issue. The Court of Appeals had stated that “properly analyzed, the first issue to be resolved is whether there is a liberty interest in determining the time and manner of one’s death” or, “is there a right to die?”¹¹⁸ Recognizing that such broadly formulated abstractions can have broad, unintended consequences, the Court instead stated that “the question before us is whether the ‘liberty’ specially protected by the Due Process Clause includes a right to commit suicide which itself includes a right to assistance in doing so.”¹¹⁹ By describing the liberty interest with specificity, the Court ensured that any change resulting from its decision would be limited.

Last, in accordance with the Burkean disposition, the Court in *Glucksberg* recognized its role as a counter-majoritarian institution. Michael McConnell has argued that the Court’s “historical inquiry all the way to the present” suggests that “even a traditional norm could come to violate substantive due process if it is subsequently abandoned or rejected by a new stable consensus.”¹²⁰ Under such an analysis, the Court did not act as a counter-majoritarian institution but instead decided to wait for a “stable consensus” to emerge before affirming the majoritarian consensus. However, while it is true that the Court’s historical inquiry includes existing practices and attitudes, it is not clear this inclusion mandates that a stable consensus is dispositive in determining whether a traditional norm has come to violate the Due Process Clause. In fact, the Court’s opinion seems to suggest the opposite. The Court noted:

Attitudes toward suicide itself have changed ... but our laws have consistently condemned, and continue to prohibit, assisting suicide. Despite changes in medical technology and notwithstanding an increased emphasis on the importance of end-of-life decision making, we have not retreated from this prohibition.¹²¹

¹¹⁷ *Washington v. Glucksberg*, supra, note 72, 722–23.

¹¹⁸ *Ibid.*, 722.

¹¹⁹ *Ibid.*, 723.

¹²⁰ McConnell, “The Right to Die,” 671.

¹²¹ *Washington v. Glucksberg*, supra, note 72, 719.

Despite the fact that societal changes indicate an emerging, new, stable consensus, the Court refused to find a right to assisted suicide under the rubric of the Fourteenth Amendment. The Court seems to prize history and tradition over and above democratic consensus, suggesting that it operated in a distinctly counter-majoritarian fashion.

In *Washington v. Glucksberg*, it is possible to discern all the hallmarks of the Burkean disposition towards constitutional interpretation. By analyzing the question of whether there is a constitutional due process right to assisted suicide in light of the entirety of the nation's history and traditions, the Court avoided the problems that attend the originalist approach to constitutional interpretation. The Court did not seek to limit the rights afforded by the Fourteenth Amendment to those that accord with the original public understanding of the provision or with the original intentions of those who drafted and ratified the provision. Rather, it recognized that history and tradition are living things and attempted to discern whether the right to assisted suicide properly accords with America's history and tradition. At the same time, the Court avoided the problems associated with a functionalist approach to constitutional interpretation. The Court neither interpreted the Fourteenth Amendment in light of abstract principles nor deferred to majority public sentiment in determining whether the Fourteenth Amendment guarantees the right at issue. Instead, the Court framed the right with particularity and looked to the entirety of the nation's history to determine whether that right is consistent with the nation's traditions. The Court's Burkean disposition in *Washington v. Glucksberg* provided the means to interpret the ambiguous Due Process Clause in a manner that avoids both the rigidity of originalism and functionalism's lack of restraint.

Conclusion

Many Americans today see the practice of constitutional interpretation as circumspect. Indeed, the idea of judges acting as unbiased decision makers is for many a risible proposition as the judicial branch is seen as merely another arena in which to wage political battles. Because judi-

cial opinions are arrived at with the help of theories of constitutional interpretation, the theories themselves have come to be viewed as weapons: those favoring conservative policies ordinarily have an affinity for originalism as it ensures stability and continuity, while those favoring progressive policies usually prefer functionalism as it enables change and flexibility. However, both approaches to constitutional interpretation have limitations that cause them to contribute to the polarization of politics and the politicization of the judicial branch. While originalism ensures continuity, it fails to allow for the reform that is necessary for the survival of a state. In contrast, functionalism allows for such change, but it accommodates this change either by abstract speculation or by interpreting the Constitution in light of majoritarian consensus. Functionalism thus fails to constrain judges, giving them wide latitude in constitutional interpretation, thereby satisfying the goals of change and flexibility at the expense of continuity and stability.

In an important sense, Burke's politics of prescription is incompatible with existing approaches to constitutional interpretation simply because his politics of prescription is not a complete theory. Burke wrote in response to specific situations and always emphasized the contextual nature of his writings. As a result, it is impossible to deduce a comprehensive approach to constitutional interpretation based on his politics of prescription; applying the characteristics of the Burkean disposition does not necessarily guarantee a particular result. In fact, it was the abstract, theoretical approach to politics that Burke was known for criticizing. He continuously sought to incorporate the particular and circumstantial aspects of political problems when seeking to diagnose them. The Burkean disposition's relatively imprecise manner has the potential to lead to somewhat underwhelming results and, therefore, will likely leave frustrated those who seek certainty. However, given the polarized manner in which politics is currently practiced, the Burkean disposition's imprecision may be exactly what the judicial branch needs in order to avoid devolving into simply another arena for the waging of political battles. The Burkean disposition provides a space for the nuance that is necessary to navigate the forces of continuity and change, space that is notably lacking in today's climate of overheated rhetoric.

Edmund Burke's Whig Response

TO THE EIGHTEENTH-CENTURY CRISIS OF LEGITIMACY



JOSÉ RAMÓN GARCÍA-HERNÁNDEZ

JOSÉ RAMÓN GARCÍA-HERNÁNDEZ'S SUBSTANTIAL AND SIGNIFICANT BOOK, Edmund Burke: la solución liberal reformista para la Revolución francesa, was published in 2016 and remains the only work of its kind available in Spanish today. The author studied Burke's political thought at the Complutense University of Madrid. He is a career diplomat and politician, serving as a member of the Spanish Parliament. While Dr. García-Hernández's book has not yet been published in English translation, it holds great interest for the Anglophone reader in the shift in terminology applied to Burke's principles across the entirety of his career—reminding us that the political categories we use to make sense of Burke's thought are themselves impacted by specific times and distinct national histories. Below, García-Hernández outlines the key features of his argument and their implications for our continuing efforts to situate Burke's legacy in the evolving political circumstances and lexicon of the twenty-first century.

“EDMUND BURKE is both the greatest and the most underrated political thinker of the past 300 years.” We could not agree more with this judgment by Jesse Norman in his book *Edmund Burke: The First Conservative*. Very few political statesmen have achieved Burke's enormous impact both in politics and in history over the last few centuries. And yet Burke remains unfairly unknown to a wider public. What is more, the vast majority who have heard of his name tend to think of him as a conservative, if not a liberal-conservative.¹

I Regarding the use of the term “liberal” in this article: Burke was a prominent Whig, which we describe in Spanish as “liberal” in the sense that both Hayek and Milton

The object of my study is to investigate the unresolved controversy about Burke's political stance and his liberal answer to the crisis of political legitimacy in the eighteenth century. A common opinion among academics is that, prior to his masterpiece, the *Reflections on the Revolution in France*, Burke was an outstanding and prominent Whig, a champion of liberty, justice, and good governance, guardian of liberal virtues, natural law, human rights, and religion, a defender of political representation, and a committed proponent and shaper of the Marquis of Rockingham's policies for curbing corruption and court influence in Parliament; but that then something changed in his Whig understanding when he wrote the *Reflections*. For the mainstream of politicians and academicians, he became, unexpectedly, a conservative Tory.

The reality, in fact, is quite different. The *Reflections* is but a condensed liberal work, a book published hurriedly under the pressure of the astonishing circumstances and dramatic changes which the French Revolution brought in its wake. The book contains an intense and comprehensive justification of the traditions underpinning Western civilization, and of the British Constitution that was menaced by the terrible threat posed by the French Revolution. Burke had to adopt "thunder and earthquake," in his own words, in order not to repeat the mistakes, dressed up as "prudence," by which the Rockingham Whigs lost purchase over the controversy of the American Colonies. In quoting Isaiah, he was emphasizing that, if this battle for civilization against the "metaphysicians" were to be lost, it could signal the end for civilization itself. For us, the *Reflections* is a perfect abridgment of his outstanding liberal principles, expressed with consistency through his previous works, which are uniformly considered Whig, and in his subsequent works, particularly his *Appeal from the New to the Old Whigs*.

The *Reflections* has been widely considered a conservative text, and Burke, therefore, a conservative. This is mainly owing to four factors that, taken in isolation, are actually alien both to the book and to the author. The first factor stems from the acute political dispute that ended in the splitting of the Whigs following the destabilizing effects of the French Revolution on British politics. Charles Fox, maintaining leadership of the

Friedman understood that term. This is far from the meaning of the word "liberal" appropriated by the Anglo-Saxon Left in recent years.

Whigs, expelled Burke from "official" Whiggism and made of Burke an immediate and covetable political prey for Pitt the Younger and the Tories.

The second factor relates to the political use of "Burkeanism" by nineteenth-century Tories keen to occupy space towards the centre of the spectrum once the radicals had made their appearance. Abruptly, Burke becomes the father of conservatism in the United Kingdom for the new Tory party and for politicians such as Peel and Disraeli.

The third factor is connected to the growing interest in Burke's political thought during the Cold War. To Russell Kirk, Burke was the father of the only intellectual system capable of fighting consistently against the neophytes and "revolutionaries of all times"—that is to say, against "the armed doctrine" that the Jacobins tried to impose by violence. The new conservative movement of the United States needed that political arsenal in order to combat the revolutionary threat of the Soviet Union.

The fourth factor derives from the third: the Structuralist, Marxist, and Anglo-Saxon Left, the *soi-disant* "liberals" of the post-war West, maneuvered to neutralize Burke on their right by labelling him a "conservative," or someone unable to understand the changes of the new era and, even worse, unable consequently to offer a plausible explanation of the phenomena of modern reality. To them, Burke was inconsistent, irrelevant, and over-praised by his followers.

To confuse things further, Friedrich Hayek argues that Burke is considered a conservative because the "tradition of liberty" is explained and analysed on the premises of the French, not the English, tradition. While the English tradition rests on an empiricist foundation, the French tradition is speculative and rationalist and tries to explain British institutions from the perspective of state organization. Thus, analyses of "liberty" have drawn their coordinates from thinkers such as Rousseau, Condorcet, Godwin, Priestley, Price, and Paine, who have displaced the British tradition linked to such names as Montesquieu, Constant, Tocqueville, Hume, Adam Smith, Ferguson, Tucker, Burke, and Paley. Hayek's insight has been reinforced by the fact that the birth of conservatism itself coincided with the French Revolution, and that, until the rise of socialism, the term contrasted to "liberal" was, invariably, "conservative."

In order to show that Burke provides a consistent liberal answer to the crisis of political legitimacy in the eighteenth century, we might

compare all of Burke's works previous to the *Reflections*, gathering them under three main themes: the defence of the English constitution, mainly in the quest for conciliation with the colonies; the fight to curb arbitrary power expressed in Burke's conception of "party" in politics and in his pursuit of "economical reform" of the civil list; the much broader defence of "civilization" which embraces both the Hastings impeachment and his works in the 1790s on the French Revolution. From all this we arrive at an unexpected proposition: without the campaign to impeach Warren Hastings, which took him nearly twenty years to accomplish, the *Reflections* would have never seen the light of day. Burke's struggle to protect civilization and the English constitution in the ultimate battle with Jacobinism was forged earlier, against similar sycophants and lovers of arbitrary power in India.

The conclusion is emphatic: Burke is a Whig for all seasons. Through a meticulous comparison of his earlier writings it can be shown that the *Reflections* is emphatically a Whig work. Many of the paragraphs of those previous works are reproduced, many times literally, verbatim, in the *Reflections*, revealing it as a liberal condensation of his preceding political philosophy, full of rhetoric and metaphors, full of force and compelling appeals, full of the best Whig politics of all times.

My own approach to this research has been based upon a conception of politics that is Ciceronian and fully shared by Burke. Politics is the perfect translation of ethics. The burden of all politicians of all times is therefore not only social, nor economic, not even constitutional, but ethical. Human error is more critical in politics precisely because it brings in its wake evil and the destruction of virtue, rendering justice impossible. This, indeed, is the root of Burke's inconvenience to both conservatives and socialists: to the former, because his main object was to reform, not to preserve; to the latter, because he did not look to plan great systems of government but to strengthen the law. It is not easy to be a friend of many, nor an enemy of many; but that is what it is to be a *Whig* in Hayek's terms, and it is only fair to his colossal political stature to describe Edmund Burke as such.

Book Reviews



P. J. Marshall, *Edmund Burke and the British Empire in the West Indies: Wealth, Power, and Slavery*. Oxford University Press, 2019.

It is appropriate that an historian such as P. J. Marshall, rather than a political theorist, would aspire to explore Edmund Burke's engagement with the British West Indies. The existing corpus of Burke's writings and speeches offers limited philosophical commentary on the region compared with his widely known reflections on America and India. Nevertheless, Burke immersed himself in many practical political and administrative activities regarding Britain's sugar islands, including those that involved Richard, his brother, and William, his close friend (and perhaps distant cousin), which suggests that a study of Burke and the British West Indies is long overdue.

Marshall addresses this subject with impressive rigor in his most recent book. A distinguished historian of the British Empire, Marshall blends his skill of pen and sharp eye for neglected archival material to draw a fascinating and complex portrait of Burke's participation in West Indian affairs. Because much of Burke's involvement in the British West Indies was expressed not in the form of silver-tongued speeches and extended writings but in administrative tasks and business transactions, a project such as this one poses great difficulty: the author must exercise exceeding discretion and care when collecting and fitting together the many scattered pieces of Burke's political and private life relating

to West Indian politics—a private letter, a fleeting remark, an oblique reference—into a picture of coherence.

Marshall successfully meets this challenge. Before proceeding, however, one must be aware that although the title of this book is *Edmund Burke and the British Empire in the West Indies*, Edmund does not play a prominent role in its historical narrative for the first hundred pages or so. The book prior to Burke's major involvement in the story includes much interesting material, but the bulk of these sections is driven by Richard's and William's activities in the British West Indies. Edmund certainly makes a noticeable appearance in these earlier chapters, yet the areas in which he emerges as the protagonist occur in later discussions on the Free Port Act of 1766 and the British slave trade, among various topics Marshall surveys in the latter half of the volume.

Nevertheless, these earlier chapters uncover intriguing material on Richard's and William's political and private lives and the means by which Edmund provided support in various capacities for their undertakings on Britain's sugar islands following the Seven Years War, such as those regarding legal disputes over land, land speculation, commercial interests, and their responsibilities as public officers. In one of the most interesting episodes discussed in the first three chapters, Marshall describes how Edmund was heavily involved in Richard's attempt in the early 1770s to receive government approval of his land purchases from Red Caribs, an indigenous people of St. Vincent, for the purpose of reselling the property for profit. As Marshall explains, Edmund drafted a memorial in defense of Richard's land claims that was sent to the Treasury. Edmund also composed a memorandum addressing objections to Richard's purchases that most likely informed Richard's legal arguments. Typical of Edmund's knack for connecting practical politics with broader political principles, these writings touched upon subjects such as the rights to landed property and the law of nations. Marshall rightly—and wryly—observes in this context that Edmund “was constitutionally incapable of drafting a document for almost any purpose without entering into issues of principle” (79).

Therefore, although such examples show Edmund to be a supporting character, rather than protagonist, early in the book, they nevertheless yield comments and insights that would come to settle as guiding

themes of his political thought throughout his parliamentary career. For example, Edmund argued that Red Caribs' property rights received legal protection from the common law of England and by the law of nature by virtue of their status as British subjects (after the British had annexed St. Vincent). Marshall includes a compelling passage Edmund wrote in his aforementioned memorandum that rejected the Lockean view that the right to property derived from the activity of cultivation, holding instead that general occupancy conferred a title to property. (One also discerns in this passage a hint of Burke's notion of prescription.)

Marshall further explains how Burke's conception of property rights in the context of Anglo-Carib relations cast light on his imperial political thought. Much as he would expound later in his writings on America and India, Burke recognized in this memorandum the rich variety of peoples and cultures that managed the earth. "All people Employ Lands according to their own Ideas of Law," Burke noted (91). Imperial governance thus demanded that the superintending power respect and protect the existing customs and traditions of their subjects.

Additional themes surface in the initial chapters that are overlooked at times in the study of Burke. First, Marshall appropriately underscores Burke's interest in trade and commerce, considerations of great importance for someone involved in West Indian affairs.¹ Second, while Burke has acquired a well-earned reputation for his flair of tongue, we must remember that he was also a practical political agent acting in the heated tribunal of everyday politics. As Marshall persuasively demonstrates, Burke was rigorous in his administrative and political responsibilities regarding, among many seemingly mundane tasks, drafting memoranda and petitions, lobbying government, and placating the West Indian lobby. Marshall's account shows that Burke was not simply a philosopher-statesman matching principles to means, but also a man of business who was as keen on gritty detail as he was on shiny rhetoric.

Prior to Chapter 4, when Burke begins to emerge fully as the leading character of the book, Marshall includes a useful description of the underappreciated importance of the British West Indies to the political and economic interests of Britain proper. The sugar islands were a

¹ See my book on Burke's economic thought, *Commerce and Manners in Edmund Burke's Political Economy* (Cambridge UP, 2020), chapters 6 and 7.

lucrative source of wealth: they supplied the financial means (through duty receipts) for Britain to wage war; served as a destination for ambitious Britons seeking to strike a fortune and better their condition; and provided the land and resources necessary to sustain the slave trade and slave labor. Marshall cleverly compares the region's merchants and planters to bankers in 2008: not particularly estimable people as individuals but "far too big to be allowed to fail" as a collective entity (100).

Against this backdrop, Marshall describes Burke's influential role in helping craft the Free Port Act of 1766, which created six new free trade ports in the British West Indies. Although the act has attracted some recent interest in Burke scholarship and has received prior attention from Frances Armytage and Paul Langford,² Marshall provides a fresh examination of Burke's involvement in drafting and helping organize support for the legislation. This rendering displays Burke's commitment to advancing the commercial and manufacturing interests of British merchants as a leading member of the Rockingham Whigs. It also illustrates the finesse with which he deftly navigated the clashing loyalties of practical politics, channeling the sentiment of the West Indian and mercantile lobbies into a credible plan of commercial policy. In addition, Marshall takes note of the connections Burke forged with individual merchants who held a stake in the legislation, further demonstrating his heightened attraction to the sparkle of commerce.

Marshall draws out Burke's fascination with trade further by examining his speeches in 1781 on the British plunder of St. Eustatius, a Dutch island that served as a cosmopolitan entrepôt in the West Indies. Burke believed that the island stood as an exemplar of free and neutral trade, and that an attack on it would disrupt the flow of commerce and be a self-defeating endeavor. Following Admiral Sir George Rodney's reckless confiscation of property on the island, Burke leveled a vicious attack

2 See Frances Armytage, *The Free Port System in the British West Indies: A Study in Commercial Policy, 1766–1822* (London: Longmans, Green and Co., 1953); and Paul Langford, *The First Rockingham Administration 1765–1766* (London: Oxford UP, 1973). See also Richard Bourke, *Empire and Revolution: The Political Life of Edmund Burke* (Princeton, NJ: Princeton UP, 2015), 309–14; and Gregory M. Collins, "Edmund Burke on the Question of Commercial Intercourse in the Eighteenth Century," *Review of Politics* 79 (2017): 579–82.

on him for treating his victims—including the Jewish people, who held property on the island—with wanton disregard for their humanity.

Yet Burke's interest in the island, which was initially prompted by the West Indian influence in British politics, transcended economic considerations. As Marshall writes, the island "had for him become a crime for which expiation must be made to restore the national honour, and the principles of the law of nations, defining the obligations of rulers and imposing limits to the barbarity of warfare, had to be established and vindicated" (153). Conquerors held the moral responsibility to treat the conquered with care, a principle that governed Burke's imperial political thought throughout his entire life.

The most intriguing sections of *Edmund Burke and the British Empire in the West Indies* occur in the later chapters, which confront the subjects of slavery and abolition. Prior to these chapters, Marshall touches upon slavery in a number of contexts. In a discussion on Richard's tenure as a customs officer in Grenada, Marshall offers intriguing information of Richard's employment of a number of slaves at the customs house. In addition, he observes astutely that the Free Port Act, in effect, had encouraged the continued trafficking of African slaves, and that supporters of the trade had construed the legislation as strengthening the notion that slaves could be legally regarded as merchandise.

And it is this matter, slavery, that should generate the most attention from Burke scholars and historians of slavery and abolition. Due credit should first be given to a number of scholars, including Robert W. Smith, Nina Rodgers, and Christopher Leslie Brown, who have done impressive work on the subject.³ Marshall's comprehensive account builds upon these efforts by shedding new light on the evolution of Burke's views on slavery that both deepens our appreciation for his attempts at slave reform

3 See Robert W. Smith, "Edmund Burke's Negro Code," *History Today* 26 (1976): 715–23; and Nina Rodgers, "Edmund Burke and the Abolition of the Slave Trade," in Allan Blackstock and Eoin Magennis, eds., *Politics and Political Culture in Britain and Ireland 1750–1850: Essays in Tribute to Peter Jupp* (Belfast: Ulster Historical Foundation, 2007), 91–106. Consult Christopher Leslie Brown, *Moral Capital: Foundations of British Abolitionism* (Chapel Hill, NC: The University of North Carolina Press, 2006) for an historical account of various British plans for abolition, including Burke's *Sketch of a Negro Code*, in the eighteenth century. See also Gregory M. Collins, "Edmund Burke on Slavery and the Slave Trade," *Slavery & Abolition* 40 (2019): 494–521.

and exposes the tension in Burke's political thought and political life between advocating for social change and preserving social order. "As one who sought to guide policy and opinion towards moral ends, his aversion to slavery and to the trade in slaves was unequivocal," Marshall rightly observes. "... Yet as a practical politician striving to promote national prosperity and to serve major economic interests, Burke was drawn into giving support to measures to facilitate trading in slaves" (155–56).

Marshall begins filling in this portrait by noting Burke's opposition to a measure from the Jamaica assembly that imposed a new duty on imported slaves. Speaking before the Board of Trade in 1775, Burke conveyed the apprehensions of British merchants—notably those from London, Liverpool, and Bristol—who maintained that the duty exacerbated the costs of the slave trade and undermined British commercial interests. Marshall writes that Burke may have experienced a sense of anxiety over his remonstrance, however, given both his awareness of the moral repugnance of the trade and his belief in the authority of colonial legislatures to regulate their internal affairs.⁴

Edmund Burke and the British Empire in the West Indies also provides compelling material on Burke's interest in the African Company, which Marshall traces back to at least 1772, two years prior to the start of Burke's service as elected representative to Bristol. Marshall recounts Burke's stern opposition to William Meredith's bill of 1772 that called for tightening voting requirements for merchants who voted for members of the African Company. Burke objected to the measure on constitutional and economic grounds, arguing that it would arbitrarily usurp the property rights of voters who had obtained their voting rights in a legal manner, upset the balance of government, and encourage a rise in the costs of the slave trade.⁵

Marshall's discussion of Burke's involvement in debates over the African Company throughout the 1770s communicates at least three motifs of his political life and thought. First, Burke's resistance to parliamentary attempts to meddle in the company's affairs reflected his

4 See also P. T. Underdown, "Edmund Burke, the Commissary of His Bristol Constituents, 1774–1780," *English Historical Review* 73 (1958): 252–69.

5 For Burke's views on the African Company and on Africa as a whole, consult Benedict Der, "Edmund Burke and Africa, 1772–1792," *Transactions of the Historical Society of Ghana* 11 (1970): 9–26.

vigorous stand against the British government's efforts to intervene in East India Company affairs (prior to the 1780s), which he made on similar constitutional and economic grounds. Second, Burke's involvement magnified the inner tension in his mind between supporting a commercial institution that trafficked slaves and his moral opposition to the slave trade. Third, it illustrated both Burke's efforts to advance the economic interests of traders and such traders' recognition of his exertions on behalf of commercial enterprise.

In addition, Marshall shows how Burke's interest in African Company affairs was motivated by private considerations as well as political principle. While a number of commentators have previously noted Burke's antipathy to Meredith's measure,⁶ Marshall adds a further dimension to understanding this episode by discussing his intriguing relationship with John Bourke, an influential West Indian merchant—and possibly a distant relative of Burke—who was a member of the London committee of the company. "[I]t seems likely that Burke felt that he had a compelling obligation to use his debating skills in the House of Commons to protect a man to whom he was closely attached," Marshall writes (169). It would be wrong to impute wholly subjective motives behind Burke's interest in the African Company, but it would also be ignorant to dismiss his private connections (including, we should add, Richard and William) that may have further stirred Burke's involvement in the affairs of the institution.

It is this second theme, the stubborn conflict between Burke's political activities and his moral objection to the slave trade and slavery, that drives the final two chapters of the book. These chapters include Marshall's most detailed examination of Burke's views and political activities regarding the trade, as exemplified by the famous *Sketch of a Negro Code*, which Burke drafted around 1780. The general circumstances surrounding the Code, as well as the scheme's content, are familiar to Burke scholars: amid parliamentary debates over abolishing the slave trade in 1792, Burke sent a letter, along with the Code, to Henry Dundas urging gradual reform of the trade, noting that he had first written the plan "near twelve years ago" (181). Burke had previously supported immediate

6 See Der, "Edmund Burke and Africa," 9–15; and Collins, "Edmund Burke on Slavery and the Slave Trade," 5–6.

abolition in the late 1780s. Concerned about the increasingly “popular spirit” advocating for immediate abolition in the early 1790s and spreading revolutionary sentiments in the French West Indies, however, Burke modified his position by reviving his earlier preference for gradual reform, as indicated by his decision to send the letter and the Code to Dundas (202–12).

The plan itself imposed a series of stringent regulations on the slave trade, including laws mandating inspections of ships and restricting the number of slaves who could be transported on them. The Code also put forward provisions that granted the enslaved particular legal rights and opportunities to acquire property, receive instruction in the Christian religion, and strengthen their family ties. Departing from his general view that colonial governments should have the authority to regulate their own internal affairs, Burke’s plan would have required great expansion of metropolitan power to implement and enforce it successfully.

Marshall offers a number of novel insights into the historical context of Burke’s Code. First, he pushes back against one lingering presumption about the composition of the plan: rather than believing that Burke felt freed to write the Code after ending his service to Bristol, Marshall posits that Burke enjoyed a moment of leisure, following his economical reform proposals, to collate his knowledge about West Indian slavery and the transatlantic slave trade into a plan for reform. Second, Marshall reasonably speculates that Burke’s support for immediate abolition in the late 1780s was influenced in no small part by Charles James Fox’s fervid abolitionist sentiments.

Third, Marshall presents the most intricate description to date of the various manuscripts and historical evolution of the Code. The version published in Oxford University Press’s *The Writings and Speeches of Edmund Burke* is the more widely known and most complete available draft, yet there were at least two additional manuscripts of the plan that reflected Burke’s modifications of the scheme from 1780 to the mid-1790s. One of these plans was found in the papers of Thomas Pelham and includes a number of additional remarks and notes on slavery that can presumably be attributed to Burke. According to Pelham, for example, Burke believed that, “Possibly the depraved state of the Negroes and other considerations might render it very difficult to put them on the

footing of apprentices, but I shou'd like to look to such a state for them" (194–95). Such comments signify some of the most novel and tantalizing material in the book.

Fourth, Marshall compares Burke's views on African slaves with his opinions of Indian natives, both of which groups Burke believed had suffered severe oppression under the rule of the British. Nevertheless, Marshall concludes that Burke's observations on enslaved Africans prior to parliamentary debates over abolition in the late 1780s were not marked by the same measure of sympathy that he displayed toward Indians—not to mention toward Catholics, Jews, and even Americans. There appears "to be no record of his singling out Africans as objects of his particular compassion" before the 1788 parliamentary debates on abolition, he writes (199). It is true that Burke held views of Africans not unlike those of abolitionists. Yet "whereas men like Granville Sharp, [Thomas] Clarkson, or [William] Wilberforce could feel an empathy towards Africans," Marshall writes, "even if they could only conceive them in their own patronising terms, that drove them to demand immediate and radical action, capacious as his sympathies for all kinds of suffering undoubtedly were, what Burke felt about Africans seems to have fallen short of that. He pitied Africans, even if he could not esteem them" (200).

Such comments raise the perennial question of whether we should indict certain thinkers and statesman of the past as villains for being complicit in the practice of slavery. Marshall is careful to avoid such a temptation in regard to Burke. He notes on multiple occasions Burke's moral opposition to the institution. Moreover, as he observes, if Burke deserves harsh criticism for accepting the premise that the inescapable centrality of West Indian plantations to the British economy warranted (temporary) acceptance of slavery, then "nearly all men engaged in public affairs in his time must also be condemned" (227). But Marshall also readily acknowledges Burke's legislative activities that served to support—or at least not discourage—the slave trade, such as the Free Port Act of 1766, his resistance to the Jamaican duty in 1775, and his objection to immediate abolition in the 1790s.

Given these considerations, Marshall's overall account of Burke's political life and thought on the question of slavery ultimately portrays Burke in a moderately negative light. Marshall acknowledges his pre-

scient belief that substantive slave reform could be brought about most effectively by the enhancement of metropolitan authority rather than by immediate abolition. Still, he maintains that Burke's reputation "seems vulnerable" on the matter because of his aforementioned political activities that promoted the slave trade (227).

In this discussion, Marshall underscores his prior comments about the noticeable gap between Burke's expressions of sympathy toward Indians and those toward Africans. "The overall conclusion of such comparisons is inescapable: Burke campaigned against the abuses of empire in India with far fewer reservations than he showed towards the plight of Africans caught up in the trade and enslaved in the West Indies," he states (228). Marshall concludes by suggesting that Burke's recognition of the primacy of slave labor to the British West Indian economy—and hence to the British Empire—shaped his judgment that any attempts at substantive reform were constrained by unavoidable limitations.

Throughout these final two chapters and the conclusion, Marshall clarifies important distinctions between Burke's embrace of gradual reform and other MPs' and antislavery activists' endorsement of immediate abolition. Yet I would have liked reading more about how Burke's belief in gradual reform distinguished his views from the ameliorative persuasions of West Indian planters who retained support for slavery. Both recognized—at least in theory—the merit of incremental measures to alleviate the brutal conditions of slave labor, but Burke was quite aware that slaveowners and West Indian colonial assemblies were prone to carrying out lukewarm reform efforts in pursuit of this goal.⁷

I would have also enjoyed more direct engagement with the highly charged thesis of Daniel I. O'Neill in his recent book *Edmund Burke and the Conservative Logic of Empire*.⁸ O'Neill suggests that Burke held underlying racial prejudices toward slaves and non-European peoples that rationalized his "conservative" defense of the British Empire, contending that such beliefs reinforced crude European stereotypes and assumptions about the civilizing effects of religion and European civi-

7 See Christa Dierksheide, *Amelioration and Empire: Progress and Slavery in the Plantation Americas* (Charlottesville: U of Virginia P, 2014).

8 Daniel I. O'Neill, *Edmund Burke and the Conservative Logic of Empire* (Oakland: U of California P, 2016).

lization on natives. Marshall is careful not to go this far, for he paints a more nuanced and historically informed portrait of Burke that illustrates the complex difficulties in eradicating a social evil that was replete with so many powerful and vested interests beyond the control of one man.

In the end, *Edmund Burke and the British Empire in the West Indies* provides the most comprehensive historical portrait to date of Burke's views on slavery and of his wider participation in the politics of the British West Indies. Whereas Burke's attitudes toward the American and Indian colonies are by now familiar to Burke readers and the informed public, Marshall's book has unlocked a new trove of material and insights that will sharpen our understanding of his engagement with Britain's Caribbean possessions. Much as Burke could not detach politics from principle in his reflections on the Anglo-American and Anglo-Indian imperial relationships, he could not divorce the quotidian from the ethical in his involvement with Britain's sugar islands, brimming with all their commercial potential and moral ambiguities.

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Sora Sato, *Edmund Burke as Historian: War, Order, and Civilisation*. Palgrave Macmillan, 2018.

Edmund Burke was an historian of the Enlightenment. As such, Sora Sato argues, while he held distinctive views on certain issues, his overall approach to history was not much different from that of other famous historians of his age. This might seem a foregone conclusion for a book entitled *Edmund Burke as Historian*, but, as the author notes in the introduction, rarely has Burke's work being studied in the context of eighteenth-century historiography (a field that has often been neglected), or indeed pursued beyond his more general ideas on history. For all the scholarly debates that have long surrounded his persona and his writings, Burke has been traditionally portrayed in one or other of two ways: as a politician or as a political philosopher, the father of modern conservatism.

Sora Sato places his work firmly within this smartly identified gap. Engaging with and building upon the scholarship of authors such as J. G. A. Pocock, J. C. D. Clark and Karen O'Brien, Sato's book is not an explicit reframing of the canonical Burke as an historian, but rather represents a shift in the framework of analysis of his body of works and thought. Instead, Sato argues that, as a member of parliament, political philosopher, literary reviewer, political commentator and, generally, as an eighteenth-century intellectual keenly engaged with the issues of his time, Burke's ideas on history, even when they were not the main subject, provided a constant undercurrent in his writings. Sato's Burke is a Burke who saw his convulsed present through the lens of the past. At

times, that *longue durée* view provided him with a framework to explain his present, as was the case with his analysis of Ireland's constitutional relationship with England. On other occasions, however, Burke turned to the past in search of rhetorical weight and the authority of distance, with a clear political outcome in mind, such as with his outline of the history of India employed during the impeachment process of Warren Hastings, the first Governor-General of Bengal.

In Sato's own words, *Edmund Burke as Historian* has two key objectives: first, to "put forward a more comprehensive analysis of Burke's views on history by exploring both his general account of historical process and his specific thoughts on national and regional histories"; second, to situate Burke's "historical thought in the context of the history of historiography" (8). The internal division of the book in geographically-focused chapters is particularly helpful in fulfilling that first objective, as it gives readers a clear outline of Burke's worldview. From a wide variety of primary sources, including speeches, personal correspondence, manuscripts, published works, and parliamentary records, Sato reconstructs chronologically Burke's narratives on English, Irish, European, and American history, as well as a fragmentary one on Asian-Muslim nations. In so doing, the author not only identifies the regions, nations and periods that interested Burke, which is illuminating in itself, but he also makes it easier to identify the common threads in Burke's historical writing.

From his views on the Norman invasion of Ireland to Columbus in America and the presence of the East India Company in Asia, we can identify two crucial and not necessarily antagonistic concepts underpinning Burke's philosophy of history: historical continuity and historical change—or, more specifically, constitutional continuity and political adaptation. Progress, one of the operative words of the eighteenth century, emerges within a political system that balances the two, thus finding harmony between the particular character of a nation and the inevitable changes that the passage of time brings with it. What is more, the constitutional system itself is the result of that inter-generational contract that is history at its simplest, the prime example being the contract that had resulted from the Revolution of 1688–89 in England, the best, according to Sato's Burke, that existed by the late eighteenth century. Furthermore, for Burke, this is also why the French Revolution

posed such a critical threat to the European political system; it was a subversion of the natural contract of the French as its tenets were not rooted in the past experiences of the nation but on abstract ideology, making it closer to a call for religious reformation rooted in proselytism than to any previous political revolution. The revolutionaries, Burke could conclude, might no longer be considered French.

Sato's Burke is highly consistent in his emphasis upon the empirical foundations of history, the trial and error nature of a process that never ends and never quite repeats itself, but which, in its uniqueness, allows societies to aspire to perfectibility without losing the stability of their own political systems under the right circumstances and leadership. This, Sato points out, is why Burke "did not believe that any single institution could apply best to every country and region" (245). The other critical pillar in Burke's historical thought, according to Sato, is "his belief in the growth of a great variety of ancient manners and institutions" (246). The constitutional system of Great Britain might have been the best there was by the late eighteenth century, but that did not necessarily translate into the best system for every nation or, indeed, set a standard to which they all should aspire within a stadial developmental model. What is more, according to Burke's historical analysis, even in his own time the British constitutional system had not properly adapted to places where he thought it might benefit society, such as North America and Ireland. For Sato's Burke, the Penal Laws and the restrictions to trade that parliament had imposed on Ireland went against the very nature of the Glorious Revolution of 1688–89 and against the commercial humanism embedded in it. Moreover, the actions and reforms that the East India Company had introduced in Asia under Warren Hastings created unprecedented disruption in the region, subverting the ancient constitution of India that had been forged throughout the course of its particular historical experience.

It is perhaps in the analysis of these overarching themes that we encounter some of the limitations of Sato's examination, as the geography-based chapter division favors regionally focused narrative over any comparative analysis of the cohering themes implicit in the book's thesis. Similarly, while Sato is careful when weighing the consistencies and discrepancies of Burke's thought, Burke's own evolution is some-

how diluted by the predominance that the book's structure gives to the different regions and countries. Paradoxically, the result is that Burke's political development is engulfed by the narratives that he produced.

Overall, Sato's study is successful in grounding long-discussed concepts of Burke's social and political thought—from his ideas on conquest and chivalry to free trade and ancient constitutionalism in the larger historiographical debates of the Enlightenment, and doing so in a way that opens up new avenues for research. Among these avenues is one that Sato describes as the ultimate focus of the book: Burke's idea of philosophical history. While Sato's piece provides us with Burke's historical narratives for different nations and regions, though, the nature and the purposes of these narratives are never explored in detail. It is not until we reach the book's conclusion that Sato offers a fleshed-out definition of philosophical history as "the relationship between his [Burke's] historical vision and his generalised ideas about politics, society and civilisations" (242). He further adds that Burke's historical writings were not only philosophical, but also "practical" and, at times, "scientific" (241). As Mary Poovey and other scholars of the history of scientific thought have shown, the moral philosophy of the Enlightenment, in which history writing was included, was heavily influenced by developments in natural philosophy.¹ In particular, during the eighteenth century moral philosophers in the British Isles were acutely concerned with issues of impartiality and methodology. After all, they aimed to uncover from the available historical data those "generalised ideas" on society and politics. When discussing Burke's views on Irish history and his relationship with Irish revisionist historians, Sato notes how central to the debate was the question of impartial writing. We are told that Burke wished for an impartial history of Ireland, yet we are not told what Burke considered impartial history, nor what constituted accurate historical evidence, or his general criteria for writing a good history. This gap is all the more important given the practical dimension of the discipline. As Sato writes, Burke held historical figures such as Agricola, Columbus and Lord Baltimore as examples of good leadership. The practical and the philosophical aspects of history cannot be separated, just as political

¹ Mary Poovey, *A History of the Modern Fact: Problems of Knowledge in the Sciences of Wealth and Society* (Chicago: U of Chicago P, 1998).

and social concepts of the period cannot be fully understood without their historical basis. History, by the late eighteenth century, was a discipline that inferred general concepts from past experiences following a particular method, and it did so with practical as well as academic purposes. To fully comprehend the narratives that Burke produced, we need to understand by what method he produced them and why he did it. Otherwise, we know what Burke wrote as an historian, but we will only have a partial picture of what type of historian he was.

Edmund Burke was an eighteenth-century politician, political philosopher, commentator and critic. He was also an historian, and one who followed closely and absorbed some of the central debates of a convulsive era. Similar to Iain McDaniel's recent study on Adam Ferguson, Sora Sato's book is part of a new trend in eighteenth-century studies that looks back at pivotal figures of the period beyond their canonical images and famous texts to rediscover forgotten aspects of their *oeuvres* that may not easily fit into our current definitions of academic disciplines.² As such, it is a fine addition to a vibrant discipline and to Burkean studies as a whole.

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² Iain McDaniel, *Adam Ferguson in the Scottish Enlightenment: The Roman Past and Europe's future* (Cambridge & London: Harvard UP, 2013)

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