

Edmund Burke,  
the Imperatives  
of Empire  
and the American  
Revolution



# Edmund Burke, the Imperatives of Empire and the American Revolution:

An Interpretation

Edited and Introduced by

H. G. Callaway

Cambridge  
Scholars  
Publishing



Edmund Burke, the Imperatives of Empire and the American Revolution:  
An Interpretation

Edited and Introduced by H. G. Callaway

This book first published 2016

Cambridge Scholars Publishing

Lady Stephenson Library, Newcastle upon Tyne, NE6 2PA, UK

British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

Copyright © 2016 by H. G. Callaway

All rights for this book reserved. No part of this book may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the copyright owner.

ISBN (10): 1-4438-9051-0

ISBN (13): 978-1-4438-9051-9

His *Thoughts on the Present Discontents*, his writing and speeches on the conciliation of America, form the main and lasting armory of Liberal opinion throughout the English-speaking world. His *Letters on a Regicide Peace* and *Reflections on the French Revolution*, will continue to furnish Conservatives for all time with the most formidable array of opposing weapons.

Winston Churchill, 1927.

When any community is subordinately connected with another, the great danger of the connection is the extreme pride and self-complacency of the superior, which in all matters of controversy will probably decide in its own favor. It is a powerful corrective to such a very rational cause of fear, if the inferior body can be made to believe, that the party inclination or political views of several in the principal state, will induce them in some degree to counteract this blind and tyrannic partiality. There is no danger that anyone acquiring consideration or power in the presiding state should carry this leaning to the inferior too far. The fault of human nature is not of that sort. Power in whatever hands is rarely guilty of too strict limitations on itself.

Edmund Burke, 1777.

Governments are instituted among men, deriving their just powers from the consent of the governed.

Thomas Jefferson, 1776.



# CONTENTS

PREFACE .....	ix
EDMUND BURKE, THE WHIG ASCENDANCY AND THE FATE OF EMPIRE .....	xiii

## Edmund Burke

THOUGHTS ON THE CAUSE OF THE PRESENT DISCONTENTS .....	1
SPEECH ON AMERICAN TAXATION .....	85
SPEECH ON CONCILIATION WITH THE COLONIES .....	143
LETTER TO THE SHERIFFS OF BRISTOL ON AMERICAN AFFAIRS ....	211

## Thomas Jefferson

A SUMMARY VIEW OF THE RIGHTS OF BRITISH AMERICA .....	255
CHRONOLOGY: BURKE, AMERICA THE TIMES .....	275
BIBLIOGRAPHY .....	283
INDEX .....	297





## PREFACE

This book is a focused study on the thought of Edmund Burke, the fate of commercial-military empire, the Whig ascendancy and the formative period of the modern Anglo-American world. Four classical texts from Burke, closely related to the American crisis of the late eighteenth century are included in the present volume: “Thoughts on the Cause of the Present Discontents;” Burke’s “Speech on American Taxation;” his 1774 “Speech on Conciliation with the Colonies” and his “Letter to the Sheriffs of Bristol on American Affairs” which was written during the American War of Independence. The present texts are based on original printings. Useful contrast is provided by the inclusion of Thomas Jefferson’s 1774 pamphlet, “A Summary View of the Rights of British America.”

The aim of the study is to understand the origin of the historical division of the Anglo-American world in terms of its own specific historical context and the dominant philosophical and political ideas and ideals of those times. Liberty and the development of America came to war with empire. Contrasting the quasi-rationalism of Jefferson’s universalist, enlightenment ideals with Burke’s political values and stance, one may also glimpse something of the more conservative, reformist character of the American “Whig” patriots who often became the Federalists of the early republic.

The American founding chiefly lacked for European Tory values, since establishment aristocrats had little reason to leave old Europe. The British loyalists were chiefly driven out of the country by the American Revolution. Partly in consequence, American conservatives have emphasized national independence, the revolutionary commitment to liberty, the specifics of American history and the need of sufficient federal uniformity to facilitate changing, economic organization of so large a country. They have aimed for a large degree of freedom of action and enterprise, within religious organizations, in business and within institutions of civil society generally—wanting liberty, to prevent fuller national political consolidation on the model of the

ethnically defined European nation-state. However, this “Whig” and reformist tradition stands in perpetual tension with the recent American embrace of our large-scale military establishment and the tendency toward national consolidation via the national and international financial and corporate system. Whether Edmund Burke will count as an appropriate “father” of contemporary American conservatism, largely turns on attitudes toward its own internal tensions.<sup>1</sup>

The value of the present historical reading is partly that it provides a *philosophical* lens contributing to our understanding of the tensions and conflicts of our contemporary, globalizing world and the role of commercial-military configurations within it. To invoke a well known phrase of Jefferson’s, the problem is the paradoxes of an “empire of liberty.” “Imperial over-reach” may threaten liberty both at home and abroad; and this is an effective constraint on the rationalistic tendency of any overall plan of global political and economic organization. Yet, lacking an overall plan or system of organization, how can large-scale politics and globalization be reasonably conducted? This problem is distantly mirrored in Burke’s thought and in Jefferson’s as well. The preservation of liberty and democracy are reasonable conditions on the scope, expansion and depth of interrelation of “empire,” or any similar, continental or globe-straddling political and economic system. Liberty, and national or local self-determination, i.e., our various particularisms, threaten globalization, just as rationalistic, uniformity of globalization, and large-scale militarization at home and abroad, represent a genuine threat to liberty and democracy. In the contemporary context, we will need to ask again about the meaning of “the consent of the governed” in the face of contemporary discontents.

The present editions of the texts from Burke and Jefferson closely follow the originals. The chief difference in the present volume, beyond the specifics of the annotations and the provision of a common

---

1. Burke’s more conservative, as contrasted with his reformist side, teaches a “fear of man” and “a fear of power beyond the limits of human imagination” combined with “an unfathomable instinct for staying close to the source of the fear.” See David Bromwich 2000, “Introduction,” p. 3. Burke is a profound critic of excesses of empire, of rationalistic speculation and of political “innovations,” disconnecting norms of government from societal mores.

chronology, bibliography and an index, is that the eighteenth-century spellings have been modernized and Americanized throughout and contemporary standards of capitalization are introduced along with contemporary orthography. Beyond tracing ideas and connections of interest in the footnotes, definitions for words and concepts are supplied, which the reader may otherwise be inclined to pass over too quickly. This volume will serve many, it is hoped, as a reading and study edition of the texts; and the modernization of the prose spellings, together with the notes, index, and bibliography are designed to assist readers in a deeper understanding of Burke, especially in the context of the American crisis.

The objectives of the volume are broader than merely understanding the thought of Edmund Burke within a specific historical context. The concern with Burke and the American crisis of the late eighteenth century extends beyond the crisis and beyond the history of ideas and the history of political philosophy. Burke is more than a critic of British policy in the American crisis. He is also a defender of English liberty, and an early critic of British colonial policy in India. He was an advocate of Catholic emancipation in Ireland, and he is a famous critic of the radicalism of the French Revolution. No treatment of Burke's thought can completely ignore these broader themes. Beyond understanding Burke in relation to the American crisis, we want to know the relevance of Burke and the American crisis to the wider themes of Burke's thought and to our contemporary problems of a globalizing world in which extended commercial-military configurations and conflicts are a prominent feature. These questions and problems are posed and briefly addressed in my Introduction to the present volume. History, it is said, never repeats itself, exactly, though it tends to "rhyme." In the end, drawing appropriate lessons of history for our own times will be chiefly left to the reader.<sup>2</sup>

---

2. Cf. Gordon Wood 2008, *The Purpose of the Past*, p. 71: "By showing that the best-laid plans of people usually go awry, the study of history tends to dampen youthful enthusiasm and to restrain the can-do, the conquer-the-future spirit that many people have. Historical knowledge takes people off a roller coaster of illusions and disillusion; it levels off emotions and gives people perspective on what is possible and, more often what is not possible."

In exploring Burke's references and authors, I have often found that brief suggestions from various articles in the *Encyclopedia Britannica* proved a useful starting place, and these notes have sometimes survived, as amended or elaborated in the annotations, usually by reformulation or abbreviated or as combined with other materials. The same work proved useful in hunting for Burke's readings and the connected background literature, as detailed in the Bibliography; and this provided a partial check on the annotations. With some few exceptions, definitions have been adapted or checked against the *Merriam Webster Collegiate Dictionary*, eleventh edition, cross-checked and amended on the basis of similar sources. Notes to the text by Burke and Jefferson are identified as such, and all others are supplied by the editor. Cross-reference between annotated names and themes is provided for by the Index.

## EDMUND BURKE, THE WHIG ASCENDANCY AND THE FATE OF EMPIRE

Edmund Burke (1729-1797) supported complaints and protests from America with passion and eloquence before and during the American Revolution, and he offered a sustained criticism of the excesses of British imperial policy. “An Englishman” he said in 1775, in an argument against parliamentary taxation, “is the unfittest person on earth to argue another Englishman into slavery.”<sup>1</sup> Again, in 1777, reacting to the British support for the American war, Burke said, “Liberty” was “in danger of being made unpopular to Englishmen.”<sup>2</sup> He was first of all a liberal, British Whig and a politician of literary-philosophical character, expression and background. Irish born and of Anglican faith, he wrote and spoke in defense of the eighteenth-century Whig ascendancy and English liberty against Tory and Court challenges. To say that he was a *liberal* Whig is to stress his stands of conscience and emphasize the contrast with others, nominally Whigs, inclined to go along with the neo-Tory Court faction around George III. In Burke’s own usage, “liberal” usually means generous.

Burke defends the British constitutional tradition and the constitutional settlement of the Glorious Revolution against later-day “friends of the king.” In doing so, he also developed an elaborate criticism of rationalistic political theorizing as the basis of policy; and among the basics of his thought, this element, along with his criticism of the French Revolution, has encouraged attention to his writings from contemporary political conservatives—in the U.S., Great Britain and elsewhere.

One contemporary British author recently claimed that “among the different Conservative party tribes,” only “the twentieth-century corporatists” will derive “no real sustenance from Burke.” On the same

---

1. Burke 1775, *Conciliation*, below, p. 171.

2. Burke 1777, *Sheriffs of Bristol*, below, p. 253.

page, however, one finds that Burke would reject “key features” of three chief strands of contemporary American conservative thought, including the “free market,” “neo-conservative” and “religious conservative” orientations. The contrast suggests difficulties in comparing the contemporary British and American usage of the word “conservative.”<sup>3</sup> One language, apparently, continues to divide two great peoples.

The difficulty also tends to highlight the political moderation in Burke’s positions, including his doubts on the domination of commercial interests over the constraints of constitutional polity, objections to aggressive policies of military-commercial empire and his resistance to puritanical dissent. One might infer, overall, that the three strands of contemporary American conservative thought stand in some need of Burkean moderation.<sup>4</sup> Undoubted is that President Theodore Roosevelt was an admirer of Edmund Burke, but then, so was President Woodrow Wilson.<sup>5</sup>

Burke is small inspiration on the left to radical democrats or rationalistic political theorists. Karl Marx for example wrote of him in insulting terms; Burke’s political admirers and critics have often divided over his criticism of the French Revolution.<sup>6</sup> He has been claimed for the liberals, or an inspiration to political liberalism, though historically, prominent Whigs and liberals also divide regarding Burke’s criticism of the French Revolution. William Gladstone, the nineteenth-century paradigm of the British Liberal party regarded Burke very highly;<sup>7</sup> and Gladstone accepted a Burkean view of the

- 
3. Jesse Norman 2013, *Edmund Burke, Philosopher, Politician, Prophet*, p. 283. Contrast Linda C. Raeder 1997, “The Liberalism/Conservatism of Edmund Burke and F.A. Hayek,” who argues for a close relationship between the political thought of Burke and F. A. Hayek. For Hayek, however, Burke, stands among the greatest “liberals.” See Hayek 1960, *Constitution of Liberty*, p. 407.
  4. Regarding “political moderation,” see Peter Berkowitz 2013, *Constitutional Conservatism*, p. 10: “Burke’s storied career demonstrates that political moderation is not only consistent with but essential to vindicating the principles of liberty.”
  5. See Drew Maciag 2013, *Edmund Burke in America*, Chapters 7 and 8.
  6. Cf. William Hazlitt 1817, “The Character of Mr. Burke,” for an early, critical view of Burke.
  7. See Norman 2013, *Edmund Burke*, p.174. Cf. John Morley 1903, *Life of*

French Revolution. One might think, then, that Burke is a kind of classical liberal, but though there are resemblances, to characterize Burke as a “liberal” is anachronistic—and to that extent misleading. Burke was a British Whig, which is a pre-liberal political creed. Burke would no doubt reject the notion that any society can be organized on the basis of economic considerations alone.

Defending liberty or constitutional principle, or when criticizing oppression, Burke is an inspiration to many liberals; defending tradition, authority, morality or religion, he inspires the more conservative. “No one can read the Burke of Liberty and the Burke of Authority,” wrote Winston Churchill, “without feeling that here was the same man pursuing the same ends, seeking the same ideals of society and government, and defending them from assaults, now from one extreme, now from the other.”<sup>8</sup> Seeing unity in Burke’s thought, early and late, appears to suit conservative political thought.

Burke defends principled party affiliation, in contrast with fluctuating, careerist affiliations focused on advancement and office. His general aims are evident in his 1770 pamphlet, *Thoughts on the Cause of the Present Discontents*, a manifesto for the Rockingham Whigs—his party in the British Parliament. For Burke, legitimate party must be distinguished from mere faction or “cabal” in terms of the common principles of the members and the rejection of arbitrary favoritism; party unity does require occasional conformity. Still, a candidate for office based on favoritism, ignoring personal character and public standing, any public figure “whose whole importance has begun with his office, and is sure to end with it” is a person who “ought never to be suffered by a controlling Parliament to continue in any of those situations which confer the lead and direction of all our public affairs; because such a man *has no connection with the interest of the people*.”<sup>9</sup> The point leads to reflections on Burke’s conception of political repre-

---

*Gladstone*, Vol. III. p. 280. In a speech in the Commons in 1882, Gladstone said, “Mr. Burke, among ten thousand things he said which should be eternally remembered, said that ‘In politics the space afforded to abstract reasoning is extremely small’.”

8. Cf. Winston Churchill 1927, “Consistency in Politics,” reprinted in Churchill 1932/2009, *Thoughts and Adventures*, see pp. 36-37.

9. Burke 1770, *Discontents*, below, p. 34.

sensation. Favoritism in selection of office holders and partiality in administration undermine representative government.

The eighteenth-century expansion of the British empire brought threats to liberty in Great Britain, and because of this, and from his concern for the integrity of the British empire, Burke took up the cause of America, too. The American Revolution and the subsequent constitutional settlement of 1789, in turn, can be fairly viewed as North American, republican extensions or developments of the Whig ascendancy. Consulting Burke and Jefferson, facilitates finer awareness of the Whig elements.

Among prominent and well known contrasts between the political views of Edmund Burke and Thomas Jefferson considered in this book, poignant commonalities also arise; and accepting the usual view that the American Revolution was more conservative than the French Revolution,<sup>10</sup> we come to see central themes from Burke, Jefferson and the leaders of the American Revolution as liberal-Whig themes: including limitation of the powers of the executive, representative, constitutional government, opposition to oppression generally and to large standing armies in times of peace, developments toward federalism and the ideal of liberty under law. The American Revolution and the subsequent settlement of 1789 were a republican and Whig-inspired transformation of the political constitution of British North America, instituting a political division of the English-speaking world, directed against forms of imperial over-reach which threatened the accomplishments of the Whig ascendancy dating from the Glorious Revolution of 1688-1689.<sup>11</sup> Burke's conservative emphasis upon

---

10. Cf. Gordon Wood 1993, *The Radicalism of the American Revolution*, p. 5. "If we measure the radicalism of revolutions by the degree of social misery or economic deprivation suffered, or by the number of people killed or the manor houses burned, then this conventional emphasis on the conservatism of the American Revolution becomes true enough." Wood, however, rightly emphasizes democratic and egalitarian social changes which arose in America as a result of the Revolution.

11. Cf. Stephen Conway 2013, *A Short History of the American Revolution*, pp. 32-33. With mention of the colonists "continuing adherence to seventeenth-century English political culture," Conway writes: "In a real sense, the American Revolution was,—or at least started as—a conservative defense of the status quo against British innovations."



values embodied in living moral and cultural traditions as the basis of reform may be fairly criticized for its excessive veneration of antiquated aristocratic elements and for excessive emphasis on social hierarchy and subordination in the United Kingdom, but it is still a particular, attenuated, or more conservative, version of the Jeffersonian thesis that “governments are instituted among men, deriving their just powers from the consent of the governed.”

Burke writes below that “The people of a free commonwealth,” who have “taken such care that their laws should be the result of general consent,”<sup>12</sup> should not be indifferent to the character of the executive. Or, more explicitly, arguing against the Irish “Popery laws,” he holds that the “remote and efficient cause” of the law “is the consent of the people, either actual or implied; and such consent is absolutely essential to its validity.”<sup>13</sup> Fundamentally, it is public acceptance, affection and loyalty which anchor the law; and “the people never rises to attack from envy, but from impatience of suffering.”<sup>14</sup> Burke and Jefferson disagree on the precise role and character of consent, but they agree on a crucial relation of consent and representation to law and government. “The temper and character which prevail in our colonies,” Burke said, “are, I am afraid, unalterable by any human art.”<sup>15</sup> The temper and character of the Americans differed from that of the English or the Irish and from Burke’s own, but he argues that if Britain was to retain the North American colonies, its imperial role must be to govern in accordance with the general character, prevailing attitudes and moral temper of the American people. In an important sense, early and late, he elaborates similar themes regarding the British role in Ireland and India and regarding the influence of the ideals of the French Revolution in British politics. The great failure of empire is its failure to sustain free government. The liberties of the cosmopolitan center are eventually threatened by the absence of free government in the colonial periphery.

---

12. Burke 1770, *Discontents*, below, p. 32.

13. Burke 1765, “Tract on the Popery Laws,” in *The Portable Edmund Burke*, p. 296. Burke’s “Tract” was not published until much later.

14. Burke 1770, *Discontents*, quoting the duke of Sully, below, p. 6.

15. Burke 1775, *Conciliation*, below, p. 171.

## 1. Background of the American crisis

Looking to the writings of America's founders regarding Edmund Burke, one might easily suspect that no significant positive relationship exists between their political thought and Burke's. This is something of an illusion though, heavily colored by America's alliance with France in the War for Independence and Burke's strenuous reaction against the French Revolution. Thomas Paine and Joseph Priestly, among others, wrote in criticism of Burke on the French Revolution, and Thomas Jefferson, James Madison, John Adams<sup>16</sup> and others followed the debate. Initial American reaction to the French Revolution was almost unanimously positive. The marquis de Lafayette, a hero of the American Revolution, in command of the Paris National Guard, sent the key to the Bastille to President Washington as a token of thanks for what he had learned in America.<sup>17</sup> Even where there were early doubts about the revolution in France such as those of John Adams, it was less important for American foreign policy how France was ruled than that the U.S. avoid open conflict with France. Situated on the far side of Great Britain, with a long history of geopolitical competitions, France was the natural geo-political ally of the prevalently Anglophobic early American republic.

When American doubts about the French Revolution did eventually develop, the issue tended to divide the Federalists from the Jeffersonian Republicans with the Jeffersonian Republicans continuing in greater sympathy with France. American criticism eventually focused on the absence of a stable democratic settlement including conserva-

---

16. Jefferson was present in Paris, as the American minister, and took part in the early stages of the French Revolution. James Madison wrote to Jefferson, in his letter of May 12, 1791, that in Burke's *Reflections on the Revolution in France*, the American Revolution and democratic governments "come in for a large share of the scurrility lavished on those of France." Though an early critic of the French Revolution, in his letter to Thomas Jefferson, dated December 25, 1813, John Adams wrote that he was glad that Burke and Dr. Johnson had lived, though they were "superstitious slaves or self-deceiving hypocrites both." Adams, known for his more Anglophile sentiments, famously had it engraved on his tombstone that acting as President in 1800, he had prevented war with France.

17. See Gordon Wood 2009, *Empire of Liberty*, p. 174.

tive elements, comparable to that of the English constitutional settlement in 1689 or that of the Americans in 1789. Americans nonetheless continued in deep sympathy with the initial rejection of French absolutism. When war broke out between Great Britain and Revolutionary France, President Washington insisted on American neutrality, while Burke eventually advocated war against French radicalism. Americans of opposing political camps, such as Jefferson, and Alexander Hamilton, agreed on the need for neutrality in the wars of the French Revolution and the early Napoleonic era.<sup>18</sup> Since Burke was unsympathetic to radicalism and rationalism in the French Enlightenment, detested the French Revolution and was a defender of limited monarchy, skeptical of the general applicability of radical democratic and republican ideals, how could his political thought have any significance for the American founders? Though he does not unalterably oppose republican forms, Burke never made direct comments on the American constitution of 1789.<sup>19</sup> In spite of that, there is significant kinship between Burke and the more conservative American patriots.

Americans had further grounds for skepticism of Burke. The First Continental Congress had rejected the British “Declaratory Act” (1766), in its pre-revolutionary protest to London: the claim that Parliament was entitled to legislate for the colonies “in all cases whatsoever.” Burke, in contrast, though opposing taxation of the colonies and advocating conciliation, supported the Declaratory Act early on,

---

18. Cf. George C. Herring 2008, *From Colony to Superpower, U.S. Foreign Relations since 1776*, p. 68.

19. However, see Burke 1790/1986, O’Brien ed., *Reflections on the Revolution in France*, p. 297. Criticizing the decentralized character of the constitutional plan of the French National Assembly, and seeing the local governments as a “variety of [independent] republics,” Burke comments that “such governments ...do exist in the world, though in forms infinitely more suitable to the local and habitual circumstance of their people.” One might think of the U.S. in anti-federalist lights, or of the cantons of Switzerland. The French plan lacked the strong executive of the U.S. constitution—which point engendered Federalist doubts. In general terms, however, Burke wrote that “I reprobate no form of government merely upon abstract principles” (p. 228). Republics are sometimes viable. He clearly thinks pure democracy unsuited to France. Cf. Morton J. Frisch 1989, “Edmund Burke and the American Constitution.”

apparently suppressing his private doubts on the need and advisability of it. Without it or something similar, there would be no empire.

To get a broader, more adequate overview of the relationship of the American founding to Whig doctrines, one needs first to recall that only a few years before the break with Great Britain, colonial Americans had been fighting French forces, alongside the British, in the French and Indian War (1754-1763)—the North American theater of the nearly world-wide conflict of the Seven Years' War (1756-1763). The city of Pittsburgh is named for the British Prime Minister, William Pitt (Lord Chatham) who conducted British strategy in the Seven Years' War, in alliance with Prussia, against the French and their European allies. George Washington, leading Virginia militia under General Braddock in 1754, fought the French and Indians in Western Pennsylvania. Fighting took place not only in North America and on the European continent, but also between British and French forces in India. France and Great Britain deployed armies to southern India, where the French were largely defeated in 1761. The war included British occupation of Manila in the Philippines and Havana, Cuba. In the Treaty of Paris (1763) ending the war, Great Britain gained a vast colonial territory in North America and further territory in the Caribbean and Asia.

The British victory in the Seven Years' War was the outcome of world-wide competitions for colonies and commercial markets. The victory created the first British empire, and George III. reigned over a total land mass larger than the Roman empire. Pitt's strategy had been to avoid the trap of sending large armies to continental Europe, to instead subsidize Prussian arms on the continent, and to concentrate on British military capabilities via its naval forces. The resulting empire in North America included coastal additions in Nova Scotia and Newfoundland, and French-speaking Quebec, but also large areas of Canada and the present-day U.S., West of the Appalachian Mountains and North and South of the Great Lakes—the entire eastern half of the continent.

What had been a series of coastal, commercially oriented colonies of a maritime empire, including the claims of the Hudson's Bay Company, New England, New York, Pennsylvania, Virginia and,

South through the Carolinas to coastal Georgia, had now become a vast *inland* empire. The commercial and colonial competition between Great Britain and France had culminated in a great clash of arms; and at the end of the war, Britain found itself in possession of a *continental* empire in North America which she was at pains to effectively control and defend. Though the British had avoided sending large armies to continental Europe, they subsequently maintained armies and empire of great expense in North America.

How could a sea-going, commercial power effectively control this great *inland* expanse, half a continent east of the Mississippi river, without changing its own traditional military and social-political character? The problem was a challenge to the Whig ascendancy and its parliamentary, representational limitations on the executive in particular. How was it possible to combine English liberty with a vast, heterogeneous empire? The question would go unanswered, in significant degree, even after the American Revolution.<sup>20</sup> It was partly a question of what kind of country America was to become, and this question was further reflected in the intensive political conflicts of the early republic: the centralizing, finance and commercially oriented Federalists vs. the de-centralizing, agriculturally oriented anti-federalists and Jeffersonian Republicans.<sup>21</sup> Early on, given the large-scale expansion of the British empire in the wake of the Seven Years' War, a great debate on sovereignty, empire and representation came to the fore.

---

20. The question contributes, e.g., to the historical significance of the War of 1812—from which the second American party-system would eventually arise. After President Jefferson's acquisition of the Louisiana territory in 1803, the physical size of the United States doubled, and internal settlement and development became a political imperative—in some contrast with the traditional, transatlantic, international and commercial interests of the Federalists. The outcome of the War of 1812 effectively destroyed the Federalist party.

21. The question persists, e.g., in contemporary debates concerning the powers of the President and the federal government, the scale of our military establishment and foreign wars, and the role of globalizing trade vs. local control and the development or continuation of domestic manufacturing.

## 2. The great Anglo-American debate

Edmund Burke first came into Parliament in 1765 after the British victory in the Seven Years' War. George III. had ascended to the British throne 5 years before at the age of just 22. Burke, as a member of Parliament and a chief speaker and advocate for the Rockingham Whigs, addressed the problems of his country and his times. The Rockingham administration repealed the Stamp Act which had so aggrieved colonial Americans. The prior government led by George Grenville had enacted the tax to raise revenues from America to help pay the costs of the war and of the North American possessions.

The Declaration of the Stamp Act Congress, of 19 October 1765, stated in no uncertain terms that it is "essential to the freedom of a people, and the undoubted right of Englishmen, that no taxes should be imposed on them, but with their own consent, given personally, or by their representatives." Representatives of 9 North American colonies had assembled and conferred in New York, and they declared that the Stamp Act and related legislation from London had a "manifest tendency to subvert the rights and liberties of the colonists;" and that "it is unreasonable and inconsistent with the principles and spirit of the British constitution, for the people of Great Britain to grant to his Majesty the property of the colonists."<sup>22</sup> The British monarch made no reply.

No one doubted that Parliament in London had long legislated for the American colonies, but the justice of what eventually became the revolutionary slogan "No taxation without representation," was not simply a matter of legal precedents. Burke did not doubt the right of Parliament to tax the colonies, yet he appeals to justice, equity and wisdom in arguing against taxing America for revenue. The taxes were imposed with the aim of paying down huge debts incurred for the British forces which fought in the Seven Years' War and to pay for

---

22. "Declaration of the Stamp Act Congress," in Brunn, E. and J. Crosby 1999, *Our Nation's Archive*, pp. 109-110. Cf. James Otis 1764, *The Rights of the British Colonies Asserted and Proved*, p. 55: "The supreme power cannot take from any man any part of his property without his consent in person or by representation."

administration and defense of the expanded British empire.<sup>23</sup> In America, the new taxes were widely viewed as onerous and intrusive impositions.

Justice, according to Burke, requires honor to the deserving, especially in view of their positive qualities; and the colonies had themselves raised money and borrowed to “grant” support to the Crown in the French and Indian War. Parliament, Burke says, “is never to intrude into the place of the others [the colonial assemblies], whilst they are equal to the common ends of their institution.”<sup>24</sup> If the colonies had paid for their own defense, why impose taxes from London? Justice was partly a matter of the mutual recognition due to the various legislative bodies within the British empire, according to Burke. Justice is not simply “what a lawyer tells me I *may* do,” but instead a matter of “what humanity, reason, and justice tell me I *ought* to do.”<sup>25</sup> For Burke, it belongs to justice of legislative procedure that law should be made with an eye to preserving English liberty, and this implied due attention to rights of representation. Part of the difficulty, though, was that both Tory Britain and the Britain of Whig ascendancy, after the Glorious Revolution of 1688-1689, held to a doctrine of unitary sovereignty.

The idea was that either the king, or “the king in Parliament” must have an exclusive and singular sovereignty. Someone must have the final say. The idea had partly developed as the English resisted papal authority in the Reformation and contested the influence of its powerful Catholic neighbors in Europe: France, Spain and Austria. A final, indivisible, supreme lawmaking power was also a matter of effective and efficient government and law. In the thinking of the Whigs, the power of Parliament was a crucial weapon against excesses of royal power and prerogative. The doctrine that Englishmen could not be taxed without consent of their representatives was a deeply held Whig principle, justifying the powers of Parliament. Thoughtful British Whigs and American colonists alike sought constitutional reforms.

---

23. See the quotation from the preamble to the Townshend duties, Burke 1774, *American Taxation*, below, p. 90.

24. Burke 1774, *American Taxation*, below, p. 139.

25. Burke 1775, *Conciliation*, below p 177.

Lord Chatham, William Pitt the elder, among many others, supported the repeal of the Stamp Act, allying with Burke and the Rockingham Whigs in Parliament. Chatham struggled with the reconciliation of empire and English liberty and argued that the colonies could not be taxed without their consent.<sup>26</sup>

The American protests and proposals were not without precedent. The colonies had long taxed and legislated for themselves. They had voted funds to support British and colonial forces. But how could sovereign legislative power be divided? The colonies came to resist taxation imposed from London. If “No taxation without representation” was valid and binding, then either Parliament in London would have to admit American representatives (this was generally regarded as impractical), or it would have to give up on taxing the colonies. What was to be the relationship between Parliament and the American colonial legislatures? Similar anomalies had existed within the British dominions—e.g., the comparative independence of Scotland (though sharing the same monarch with England) before the Act of Union.

James I. (1566-1625) was King of Scotland (1567-1625) as James VI, and became King of England in 1603; and thereafter he called himself “King of Great Britain.” But the union of Scotland and England into the United Kingdom, and unification of the parliaments, did not take place until 1707. Before the Act of Union, a Scottish Parliament operated separately. (To this day Scotland has its own distinctive laws in contrast to those of England and Wales.) This was an important model and precedent for the British empire in the American colonies. Might the American colonies share the same Sovereign and yet retain full legislative authority over their own affairs?

The precedents of British constitutional history were not entirely clear and univocal. On the one hand, the British generally held to the

---

26. Cf. Alison LaCroix 2010, *The Ideological Origins of American Federalism*, pp. 41-44, regarding Chatham’s views in 1766, and the consequences of the larger debate. Cf. also Bernard Bailyn 1974, *The Ordeal of Thomas Hutchinson*, p. 310. Chatham, long out of government in early 1775, proposed reconciliation with the colonies in the House of Lords based on withdraw of British troops, restriction of parliamentary powers of American taxation, recognition of the legality of America’s Continental Congress and repeal of all the measure of Parliament under American protest back to 1763.



doctrine of the unitary sovereignty of the king in Parliament, and on the other, the colonists considered the possibility of a single king reigning over diverse dominions each with their own separate legislature.<sup>27</sup> The parliamentary claim, in the Declaratory Act of 1766, of power to tax and to bind the colonies “in all cases whatsoever,” was, in the words of American historian Samuel Eliot Morison, “an almost word-for-word copy of the Irish Declaratory Act of 1719 which held Ireland in bondage.”<sup>28</sup> There was good reason for the colonies to reject the Declaratory Act, since they entertained no political union with Great Britain on the model of England’s union with Scotland in 1707, and they sought no representation in Parliament. As things stood, the colonists were represented only in their own legislatures. By standard Whig doctrine, only their own legislatures could impose taxes—or any law. Yet how could the British empire exist without unifying law?<sup>29</sup>

Some role of Parliament in legislating for the colonies, or the empire in general, was widely accepted by the colonists, early on, even as they resisted the imposition of the Stamp Act and later measures from London. Theorist, pamphleteers and protesters attempted to distinguish what could be properly legislated from London in terms of the general vs. the domestic, external vs. internal (to the colonies), or along the lines of the regulation of trade vs. the aim of raising revenue. The same distinctions feature in parliamentary debates of the time.

Burke in particular was extremely skeptical of applying the abstract doctrine of unitary sovereignty to justify taxation of the colonies, and he favored a more practical approach to government. Burke regarded his arguments for conciliation with the colonies as wise and appropriate “arguments of states and kingdoms.”<sup>30</sup> Abstract

---

27. See Jefferson 1774, *Rights of British America*, below, p. 255.

28. Morison, S. E. 1972, *The Oxford History of the American People*, vol. I., p. 254. Cf. Jefferson 1774, *Rights of British America*, p. 257, below, which suggests the renegotiation of the British acts of Navigation which were fundamental in America’s colonial status.

29. Cf. Gordon Wood 2004, *The Americanization of Benjamin Franklin*, p. 120. The British claims for “parliamentary sovereignty,” viz., the claim that “there must exist in each state one final, indivisible, supreme lawmaking power,” however plausible to British Whigs, “would ultimately destroy the empire.”

30. Burke 1774, *American Taxation*, below, p. 137.

theory, in contrast, was out of place, “Leave the rest to the schools” he argued, “for there only they may be discussed with safety”:

But if, intemperately, unwisely, fatally, you sophisticate and poison the very source of government, by urging subtle deductions, and consequences odious to those you govern, from the unlimited and illimitable nature of supreme sovereignty, you will teach them by these means to call that sovereignty itself in question. When you drive him hard, the boar will surely turn upon the hunters. If that sovereignty and their freedom cannot be reconciled, which will they take? They will cast your sovereignty in your face. Nobody will be argued into slavery.<sup>31</sup>

This kind of argument stands close to the root of Burke’s political anti-rationalism. He had little use for abstract theoretical doctrines of sovereignty directly applied to policy decisions. Customary methods of government, long established, and enjoying the consent of the governed, have presumptive force over abstract principle. Genuine values are, after all, embodied in living traditions of distinctive peoples, and such matters of the heart are not easily altered. The specific living traditions of life and values must be understood by the practicing politician. This kind of political knowledge arises from long experience, is very difficult to formalize in theoretical terms, and cannot easily be learned from books. Political virtue, we might say, arises in activities of government among those who study and observe the character and temperament of the public. The point can be taken to express an Aristotelian conception of the limited precision and exactitude possible in morals and in normative political knowledge. “Aristotle, the great master of reasoning, cautions us,” says Burke, “and with great weight and propriety, against this species of delusive geometrical accuracy in moral arguments as the most fallacious of all sophistry.”<sup>32</sup> But, it was not that Burke thought that Parliament could play no role in governing the empire.

The colonies were generally convinced that they had a right (either as a matter of natural rights or on grounds of the rights of Englishmen),

---

31. *Ibid.*, pp. 137-138.

32. Burke 1775, *Conciliation*, below, pp. 200-201.

to legislate for themselves at home concerning matters which most directly affected them. Some of Burke's skepticism concerning "abstract rights" is relevant here. He is sometimes cautious about rights, though he often invokes them in a great variety of contexts. That Burke took natural, human rights seriously is evident in his "Speech on Mr. Fox's East India Bill," given in the House of Commons, in December of 1783. "The rights of men, that is to say, the natural rights of mankind," according to Burke, "are indeed sacred things; and if any public measure is proved mischievously to affect them, the objection ought to be fatal to that measure, even if no charter at all could be set up against it," Burke continues:

If these natural rights are further affirmed and declared by express covenants, if they are clearly defined and secure against chicane, against power, and authority, by written instruments and positive engagements, they are in still better condition: they partake not only of the sanctity of the object so secured, but of that solemn public faith itself, which secures an object of such importance. Indeed this formal recognition, by the sovereign power of an original right in the subject, can never be subverted, but by rooting up the holding radical principles of government, and even of society itself. The charters, which we call by distinction great, are public instruments of this nature; I mean the charters of king John and king Henry III. The things secured by these instruments may, without any deceitful ambiguity, be very fitly called the chartered rights of men.<sup>33</sup>

Here, subsequent to the battle of Yorktown (1781) and the Treaty of Paris, ending the American war (September 1783), Burke appears to see the principles of the American revolution, arising from British history, and he aims for renewed application to the affairs of India.

Earlier on, in deference to British sovereignty, Burke had spoken of "the privileges of the Americans," for example, in contrast to "Mr. Grenville" the "tolerably zealous and very judicious advocate for the sovereignty of Parliament."<sup>34</sup> Burke's contrast between "rights" and "privileges" aimed at reconciliation of parliamentary and colonial

---

33. Burke 1783, "Speech on Mr. Fox's East India Bill," pp. 5-6; Burke 2000, Bromwich ed, pp. 289-290.

34. Burke 1775, *Conciliation*, below, p. 199.

powers of legislation. But whether a matter of rights or privileges, the explicit doctrine arose, in various formulations, that it was possible to divide legislative powers among multiple legislative bodies, conceived either as parallel and equal (akin to anti-federalist views) or as existing in a hierarchy of legislatures. The British Whig view of the needed direction of reform initially favored a hierarchy of legislative powers, preserving a final say for the imperial Parliament.<sup>35</sup> An analogous idea is reflected in James Madison's proposal, at the Constitutional Convention of 1787, that the U.S. Congress should have the power to veto state law.<sup>36</sup>

Claims for the unlimited power of Parliament were often met with contrasting ideals of English liberty, including the limitations imposed by the *Magna Charta*, which English parliamentarians and political thinkers had used, over centuries, in their fight against unlimited royal power. A right to representation in legislative bodies, having the power of the purse, was part of this heritage; and for the Americans, there were no plausible substitutes for their own legislatures. Since the same American theorist and pamphleteers predominately confessed loyalty to the king and/or the mother country, a two-tiered conception of divided legislative power frequently resulted. The constitutional debate, first arising within the expanded British empire, stands at the root of American federalism. In a similar way, the American Bill of Rights, the first 10 amendments to the constitution of 1789, limited the powers of the federal government in support of the rights of the people and the powers of the states.

---

35. Cf. Burke 1774, *American Taxation*, below, p. 139: "The Parliament of Great Britain sits at the head of her extensive empire in two capacities: one as the local legislature of this island, providing for all things at home, immediately, and by no other instrument than the executive power. The other, and I think her nobler capacity, is what I call her *imperial character*; in which, as from the throne of heaven, she superintends all the several inferior legislatures, and guides, and controls them all without annihilating any."

36. Madison's proposal, part of the "Virginia plan," was rejected, and the courts came to play a chief role in mediating between federal and state law. See James Madison 1966, *Notes of Debates of the Federal Convention of 1787*, pp. 88-92; 304-305.

While authorities in London and the royal Governors in America could hardly deny the existence of the colonial legislatures, they tended to view them as strictly subsidiary to the power of Parliament. The legislatures were frequently dissolved, and this evoked much protest in turn. For example, the New York Assembly was suspended, by act of Parliament, as of October 1767, on grounds of its failure to support British troops in Albany and New York City (in accordance with the Quartering Act of 1765). The Assembly was forbidden “to pass or make any bill, order, resolution, or votes, ... of any kind, for any other purpose whatsoever; ...”.<sup>37</sup> This was a serious affront to American sensibilities.<sup>38</sup> Edmund Burke would become parliamentary agent for the colony of New York in 1771.

The distinction we presently hold between political constitutions and corporate charters was not nearly so clear at the time, and the power of Parliament to grant, modify or revoke colonial charters was not widely doubted in London.<sup>39</sup> The British typically thought of the colonial charters in somewhat the way we think of the incorporation of cities or firms. The American states have the power to charter cities and towns and to grant corporate status to firms; and also the power to intervene or regulate—especially if the subsidiary bodies fail in their tasks or exceed their authority—by the light of old or new state laws. But a similar view of the colonial charters and legislatures, as purely subsidiary, did not sit well with doctrines of rights and representation

---

37. See the “New York Suspending Act of July 2, 1767,” 7 George III. C 59, in MacDonald, W. ed. 1918, *Documentary Source Book of American History, 1606-1913*, p. 142.

38. See Jefferson 1774, *Rights of British America*, below, p. 262: “One free and independent legislature hereby takes upon itself to suspend the powers of another, ... ; thus exhibiting a phenomenon unknown in nature, the creator and creature of its own power. Not only the principles of common sense, but the common feelings of human nature, must be surrendered up before his Majesty’s subjects here can be persuaded to believe that they hold their political existence at the will of a British Parliament.”

39. Cf. Burke 1777, *Sheriffs of Bristol*, below, p. 244: “At the first designation of these [colonial] assemblies, they were probably not intended for anything more (nor perhaps did they think themselves much higher), than the municipal corporations within this island, to which some at present love to compare them. But nothing in progression can rest on its original plan.”

which had developed in the English-speaking world over centuries in opposition to arbitrary royal power. These traditional doctrines came to renewed expression in the colonies in the 1760s and 1770s.

### 3. Burke and the political values of the American founding

Edmund Burke was a defender of the British empire, though a critic of its excesses. What moral and philosophical stance, what political philosophy, what philosophy of government could reconcile these two, apparently contradictory positions? “What is to become of the Declaratory Act asserting the entirety of British legislative authority,” Burke asks, in his 1774 speech on American taxation, “if we abandon the practice of taxation?”<sup>40</sup> Part of the answer to this question comes in observing that Burke accepted not only the Declaratory Act, but also the much older Acts of Navigation, first formulated in 1651 in an act passed by the Parliament of the Commonwealth under Oliver Cromwell. “This principle of commercial monopoly,” says Burke, runs through “no less than twenty-nine acts of Parliament.”<sup>41</sup> It may appear, then, that Burke merely recommends a return to the tried and trusted, customary means of dealing with the colonies and that the conciliatory repeal of American revenue taxes follows from the preference for policies old and established. While that is true, it is not the entire story.

Burke did not view the commercial monopoly of the British colonial system as an unmixed blessing. On the contrary, he says, “I think it, if uncompensated, to be a condition of as rigorous servitude as men can be subject to. But America bore it from the fundamental Act of Navigation until 1764. Why?”<sup>42</sup> Answering this question, Burke indicates the general character of his attachment to established policy. The Americans had accepted the established system. “The Act of Navigation attended the colonies from their infancy, grew with their growth, and strengthened with their strength. They were confirmed in obedi-

---

40. See Burke 1774, *American Taxation*, below, p. 139. Eventually, in April of 1778, Burke would vote for the repeal of the Declaratory Act, and only days later he called for recognition of American Independence. Cf. Jennifer Pitts 2012, “Burke and the Ends of Empire,” p. 150.

41. Burke 1774, *American Taxation*, below, p. 104.

42. Burke 1774, *American Taxation*, below, p. 106.