

Burke Between Liberty and Tradition

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Articles

Navigating the waters between liberty and tradition

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Feuding among american conservatives for the title True Conservative is nothing new. Ever since conservatism in America crystallized as a recognizable school in the 1950s, more than a few limited-government conservatives, or libertarians as they have come to be called, and more than a few social conservatives — and their forebears, traditionalist conservatives — have wanted to flee from or banish the other. To be sure, the passion for purity in politics is perennial. But the tension between liberty and tradition inscribed in modern conservatism has exacerbated the stress and strain in the contending conservative camps. Fortunately, a lesson of political moderation is also inscribed in the modern conservative tradition, and nowhere more durably or compellingly than at its beginning.

Moderating the tension between liberty, or doing as you please, and tradition, or doing as has been done in the past, is a hallmark of the speeches and writings of 18th-century British statesman Edmund Burke. While the conservative spirit is enduring and while some have always been more amply endowed with the inclination to preserve inherited ways and others more moved by the impulse to improve or supersede them, the distinctively modern form of conservatism emerged with Burke's 1790 polemic, *Reflections on the Revolution in France*. Writing as a friend of liberty and enlightenment, Burke eloquently exposed the brutality of the revolutionaries' determination, inspired by a perverse understanding of liberty and enlightenment, to transform political life by upending and sweeping away tradition, custom, and the inherited moral order. Burke's conservatism operates within the broad contours of the larger liberal tradition and embraces much of the spirit of the 18th-century Enlightenment. It is distinguished by its determination to moderate the tendencies toward excess that mark both liberty and reason.

Burke's devotion to "a spirit of rational liberty"¹ drives the great reform efforts of his political career: conciliation with America, toleration for Ireland's Catholics, and protection of the interests and rights of the people of India. But even if we had only the *Reflections*, he would still deserve to be counted among our preeminent teachers concerning the balance of principles that favors liberty.

The causes to which Burke dedicated himself, and the well-wrought arguments he summoned in their behalf, teach that the paramount political task is to defend liberty. They also illustrate that while the purpose of politics is not to perfect man, securing the rights shared equally by all depends on tradition, religion, and community cultivating the virtues

that fit citizens for freedom. And they clarify how the rival interests, multiplicity of groups and associations, and competing conceptions of happiness that characterize free societies make accommodation, balance, and calibration indispensable to the conservative mission. Burke's storied career demonstrates that political moderation is not only consistent with but essential to vindicating the principles of liberty.

Liberty and the French Revolution

Burke's *Reflections on the Revolution in France* is the work of a Whig who cherished freedom and, in the name of individual liberty, sought throughout his long parliamentary career, in battles with the Tories as well as with fellow Whigs, to limit the political power of throne and altar. But to limit is not to abolish, and can be consistent with cherishing, as it was in Burke's case. He saw that within proper boundaries, religious faith disciplined and elevated hearts and minds, and monarchy upheld the continuity of tradition, reflected the benefits of hierarchy and order, and provided energy and agility in government. Both institutions, in his assessment, encouraged virtues crucial to liberty's preservation.

Liberty well understood, Burke argued, recognizes the power of self-interest but emphasizes self-restraint.

Whereas for the sake of liberty Burke sought to limit the political power of the monarchy in Great Britain, he defended the throne of Louis XVI in France against what he regarded as the revolutionaries' radical conception of freedom. Burke warned that the French Revolution presented "a great crisis, not of the affairs of France alone, but of all Europe, perhaps of more than Europe." Indeed, he contended that "all circumstances taken together, the French Revolution is the most astonishing that has hitherto happened in the world." The crux of the matter was that the revolutionaries' novel doctrine demanded more than a change of government; it required "a total revolution," one that would break from and cast aside established beliefs, practices, and institutions.

In contrast, Burke championed "a manly, moral, regulated liberty." Liberty well understood, he argued, recognizes the power of self-interest but emphasizes self-restraint. It values calculation, planning, and ambitious state undertakings but attaches great significance to the steady development over centuries of sentiments, manners, and morals. Such liberty depends on a science of government — of constructing, conserving, and reforming the state — that involves "a deep knowledge of human nature and human necessities, and of the things which facilitate or obstruct the various ends which are to be pursued by the mechanism of civil institutions." It recognizes that "the little platoon we belong to in society" — family, religious community, village or town — is the original source of "public affections" and furnishes the schools in which we develop "a love to our country and to mankind." It rejects theoreticians' and intellectuals' definition of "the rights of men," which legitimate license without limits. Instead, liberty well understood affirms "the real rights of men," grounded in the advantages for which civil society was formed, including the right to live under the rule of law; to own

and acquire property and to pass it on to one's children; and generally to live with one's family as one sees fit provided one does not trespass on the rights of others. The primary aim of government, which Burke characterized as "a contrivance of human wisdom to provide for human wants," is to secure these rights. Just where the exercise of freedom passes over into a violation of another's rights and how best to use one's freedom to live well could only be determined by prudent reflection on tradition and custom, because they embodied the nation's accumulated wisdom concerning the organization and conduct of human affairs.

Prudence, Burke famously observed, is "the god of this lower world."² It carefully considers circumstances, which "give in reality to every political principle its distinguishing color and discriminating effect," and which "render every civil and political scheme beneficial or noxious to mankind."³ Prudence serves political moderation by mediating between principle and practice. It guides the reconciliation of liberty with the requirements of tradition, order, and virtue by taking the measure of all and, to the extent possible in the fluid and murky world of politics, issuing in judgments and actions that give each its due.

According to Burke, the French revolutionaries were immoderate in the extreme. By overthrowing monarchy and religion, they aimed to achieve emancipation from not merely a specific tradition or custom but the very authority of tradition and custom. Their goal, unreasonable in the extreme, was to establish an empire built on abstract reason alone. Prudent application of principle to circumstance would be unnecessary. Instead, they would mold circumstances to comply with pure reason's demands. Marching under the banner of "the rights of man," they set out to deduce the structure of a society of free and equal citizens without regard to the beliefs and practices, the passions and interests, the attachments and associations that fashion character and form conduct. Rather than counting on education grounded in history, literature, and the sciences to discipline and elevate a recalcitrant human nature, the revolutionaries sought to remake human nature and society to fit reason's supposed revelations about citizens' true wants and needs, rights, and obligations. The realization of the revolutionaries' ambitions, Burke immediately discerned, would depend on the ruthless resort to violence. Anticipating not only Robespierre and the Reign of Terror but 20th-century totalitarianism, Burke presciently argued that the determination to use the power of the state to create a new humanity would bring about the dehumanization of man.

The quarrel between Burke and the French revolutionaries comes down not to whether liberty is good or is even the leading purpose of politics — Burke thought it was both — but to the material and moral conditions and the political institutions most conducive to securing, preserving, and extending it. The French revolutionaries put their faith in government's ability to set the people free by developing institutions that satisfy citizens' sensibilities by aggressively transforming them. In contrast, Burke emphasized the moral and political benefits that flow to liberty from the time-tested beliefs, practices, and institutions beyond government's immediate purview that structure social life and cultivate manners and morals. The progressive side of the liberal tradition, the roots of which extend back to the French Revolution, tends to view traditional understandings of order and virtue as obstacles to

freedom. In contrast, the conservative side of the liberal tradition, in the spirit of Burke, sees in them pillars of freedom and seeks to conserve the nongovernmental institutions — the family, religious faith, the voluntary associations of civil society — that sustain them.

Notwithstanding the veneration of the past and the excoriation of revolutionary innovation to which he gave expression in the *Reflections*, Burke was no reactionary, dogmatically clinging to the old and rejecting the new. He observed in the *Reflections* that because circumstances are constantly changing, “a state without the means of some change is without the means of its conservation.” Of course, the change in question must be prudent, wisely adapting enduring principles to the ordinary vicissitudes of politics. In extraordinary times, states must adjust to substantial shifts in circumstances, sentiment, and practice.

Prudent change depends on combining and reconciling “the two principles of conservation and correction.” The balancing of a conserving that is mindful of the need to correct and a correcting that proceeds with an eye to what deserves to be conserved is, in a free society, not an unwelcome political necessity. Such prudence is inseparable from respect for tradition and custom, because tradition and custom typically present not a clear-cut path but a “choice of inheritance.” Since the right choice about tradition must be freely and reasonably made, and since the reasonable use of freedom depends on the virtues nourished by tradition, liberty and tradition are mutually dependent.

This mutual dependence provides an opening to moderate the claims of liberty and tradition which, in a free society, frequently pull in opposing directions. To justly moderate, or harmonize, the competing claims of liberty and tradition, one must respect necessity without thoughtlessly acquiescing to what only appears necessary, and compromise in behalf of principle rather than compromise principle. Political moderation should not be confused with the absence of strong passion. It requires restraining the desire to vindicate immediately and completely a single principle and instead working to vindicate the whole family of rival and worthy principles on which the conservation and correction of liberty depends. As Burke’s career as a reformer vividly demonstrates, political moderation is propelled by a passion to strike the most reasonable balance among worthy but incomplete ends for the sake of liberty. Political moderation is a crucial part of the government of the self on which self-government in a free society depends.

Liberty and reform

The need for prudent reform to meet the changing requirements of liberty was the dominant theme of Burke’s nearly 30-year political career in Great Britain’s Parliament in the late 1700s. Britain then governed the largest empire the world had ever seen. The empire was distinguished not only by its reach but by the principle of liberty in which it was rooted. Burke believed that to conserve the empire, Britain had to recognize the convergence between its obligation to respect liberty and its interest in doing so — a convergence that held

not only at home but in all its far-flung possessions and undertakings. Even when it meant differing from his constituents — and in his greatest moments Burke championed causes that many of his constituents strongly opposed — he ardently defended liberty’s imperatives.

In *The Great Melody*, a magisterial study of Burke’s life and ideas, Conor Cruise O’Brien adopted as his epigraph lines from Yeats’s “The Seven Sages”:

American Colonies, Ireland, France, and India
Harried, and Burke’s great melody against it.⁴

Yeats’s lines, O’Brien showed, capture the unifying spirit of Burke’s political labors, which involved steady opposition to that abuse of power that consisted in the disregard by government of the fundamental requirements of liberty. As a member of Parliament, Burke supported American self-government, toleration for Ireland’s Catholics, and ending Warren Hastings’s corrupt and cruel administration of India. These reforms may seem at odds with Burke’s ferocious criticism of the French revolutionaries. But both reflect the balance of principles, interests, and goods that underwrite liberty’s conservation and direct its correction.

Burke’s reform efforts rested on the conviction that what a legislator particularly owed his constituents was sound judgment. In November 1774, in a speech to his supporters upon his election to Parliament from Bristol, then England’s second largest city, Burke sought to dispel the popular misconception that representatives must obey their constituents’ explicit instructions and mandates.⁵ Representatives are obliged to vigorously advance their constituents’ interests, he readily acknowledged, but they are not obliged to accept their constituents’ understanding of those interests or their constituents’ opinions about the policies that would best advance them. Speaking with a high sense of purpose and uncommon frankness to those returning him to London, Burke explained that

it ought to be the happiness and glory of a representative to live in the strictest union, the closest correspondence, and the most unreserved communication with his constituents. Their wishes ought to have great weight with him; their opinions high respect; their business unremitted attention. It is his duty to sacrifice his repose, his pleasure, his satisfactions, to theirs — and above all, ever, and in all cases, to prefer their interest to his own.

But, his unbiased opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living. These he does not derive from your pleasure — no, nor from the law and the Constitution. They are a trust from Providence, for the abuse of which he is deeply answerable. Your representative owes you, not his industry only, but his judgment, and he betrays, instead of serving you, if he sacrifices it to your opinion.

The representative’s responsibility to provide sound judgment stems not only from moral and religious duty but also from the division of labor in which modern representative self-government is grounded. It is the representative who is immersed in the issues of the day. It

is the representative who has the opportunity to debate the fine points of legislation and to deliberate. And it is the representative who, from the perspective of the capital city, can look out beyond local purposes and prejudices to consider the long-term consequences of policy and the general good of the whole nation.

The sound judgment that Burke champions differs greatly from the “public reason” from which today’s professors of political theory and law purport to derive law and public policy. “Public reason” and its operation in “deliberative democracy” describe not the reason that citizens and public officials actually exercise, but rather a system of assumptions about human beings and a hierarchy of moral values that they ideally should accept. When applied to the issues of the day, the professors’ theories invariably yield results that correspond to progressive policy preferences.⁶ In contrast, Burke argued that sound judgment grows out of practice, is rooted in the rich soil of moral and political life, and balances conservation and correction.

Keenly appreciative of the interests, institutions, and powers that representatives must reconcile, Burke urged his Bristol constituents to keep in mind that their bustling port city

is but a part of a rich commercial nation, the interests of which are various, multiform, and intricate. We are members for that great nation, which, however, is itself but part of a great empire, extended by our virtue and our fortune to the farthest limits of the East and of the West. All these wide-spread interests must be considered — must be compared — must be reconciled, if possible. We are members for a free country; and surely we all know that the machine of a free constitution is no simple thing, but as intricate and as delicate as it is valuable. We are members in a great and ancient monarchy; and we must preserve religiously the true, legal rights of the sovereign, which form the keystone that binds together the noble and well-constructed arch of our empire and our Constitution. A constitution made up of balanced powers must ever be a critical thing.

With the controversial positions he advocated for America, Ireland, and India, Burke sought to honor the representative’s duty to preserve the balance under Britain’s constitutional government crucial to liberty.

Burke delivered his “Speech on Conciliation with the Colonies” in the House of Commons on March 22, 1775.⁷ This was ten years to the day after Parliament passed the Stamp Act, which increased taxes on the American colonists while rejecting their demands for representation. And it was less than a month before the battles of Lexington and Concord would ignite the Revolutionary War, a dire outcome against which Burke had warned of for many years. With tensions mounting, Burke insisted on the need to formulate policy with a view to actual circumstances at home and in the colonies. He urged that deliberations should proceed on the basis of an appreciation of common interests and “not according to our own imaginations, not according to abstract ideas of right, by no means according to mere general

theories of government, the resort to which appears to me, in our present situation, no better than arrant trifling.” The most important circumstance was the deeply rooted devotion to freedom Britain shared with America.

This shared interest in freedom was crucially connected to their shared interest in prosperity. Over the previous 70 years, England’s trade with the colonies had increased “no less than twelve-fold,” and commerce with America had come to constitute more than one-third of England’s total worldwide trade. America’s rise and the resulting benefits to Britain were due in considerable part to London’s hands-off policy: “through a wise and salutary neglect, a generous nature has been suffered to take her own way to perfection.” Burke argued for maintaining this hands-off policy. He viewed American exuberance, even American obstreperousness, with generosity: “I pardon something to the spirit of liberty.”

To preserve the colonies’ vital place in the empire given the violence breaking out across the Atlantic would require “prudent management.” Force was to be avoided since it weakened — when it did not ruin — the object it subdued. It would be particularly counterproductive in dealing with America because liberty was the colonists’ lifeblood and the decisive factor in their vital contribution to the empire. Indeed, Burke asserted, “a love of freedom is the predominating feature which marks and distinguishes” the American character.

America’s “fierce spirit of liberty,” which only increased as the colonies grew and prospered, arose from several sources.

America’s “fierce spirit of liberty,” which only increased with the growth in the colonies’ size and prosperity, arose from several sources. As descendants of Englishmen, Americans inherited the English notion that liberty depended on the right, exercised through representatives, to have a say in the taxes imposed upon them. The high degree of participation in the popular governments they established throughout the colonies further heightened Americans’ passion for liberty. Their Protestantism, which had “sprung up in direct opposition to all the ordinary powers of the world,” inclined Americans to make strong claims on behalf of “natural liberty.” In the south, the institution of slavery paradoxically amplified slave owners’ attachment to freedom by reinforcing their identification of it with nobility and high station. Throughout the land, avid reading and study, especially of law, increased Americans’ sensitivity to abuses of power and honed their arguments on liberty’s behalf. And finally, the 3,000 miles of ocean separating America from Parliament thwarted responsible oversight by London and weakened the colonists’ willingness to submit to the central government’s authority.

These powerful and diverse sources nourishing the spirit of freedom in America, according to Burke, made it all but inevitable that arguments marshaled in London against colonists’ demands for greater representation — including those arguments with respectable grounds in traditional British understandings and practice — were bound to fall on deaf ears in America. Consequently, Britain had three choices: to remove the immediate cause of the

dispute; to prosecute defiant Americans as criminals; or to recognize American demands for representation as unavoidable and reasonable in the circumstances and devise ways to satisfy them.

To attempt to remove the immediate cause, which was rooted in the colonists' love of liberty, would be worse than useless, contended Burke, since it would enrage the colonists and deprive England of America's bounty.

Prosecuting the colonists for acts of resistance was no more advisable. Taking a hard line was inconsistent with administering an empire which, grounded as it was in liberty, must allow for challenges to government policy. Crushing the colonists' resistance to authority would "teach them that the government against which a claim of liberty is tantamount to high treason is a government to which submission is equivalent to slavery."

The prudent option was for Britain to accommodate American demands for greater self-government. Thus Burke favored granting the colonists limited representation in Parliament on questions of taxation, though not as a matter of right. With the question of right, he wished "to have nothing at all to do." The legal question, for Burke, counted as "less than nothing." Rather, "the question with me is, not whether you have a right to render your people miserable; but whether it is not your interest to make them happy." Statesmanship went well beyond questions of strict legality, and it took into account much more than crude calculations of utility. "I am not determining a point of law," Burke declared. "I am restoring tranquility: and the general character and situation of a people must determine what sort of government is fitted for them." Appreciation of the spirit of liberty common to America and Britain prescribed granting the colonists a measure of representation. And a measure of representation advanced a surpassing British interest, which was "to admit the people of our colonies into an interest in the Constitution."

Such a policy involved a substantial concession. But it was a concession rooted, Burke asserted, in principles favoring the fortification of liberty and representative government that had consistently informed British government policy. Conciliation itself was "the ancient constitutional policy of this kingdom." It reflected the very nature of politics:

All government, indeed every human benefit and enjoyment, every virtue and every prudent act, is founded on compromise and barter. We balance inconveniences; we give and take; we remit some rights, that we may enjoy others; and we choose rather to be happy citizens than subtle disputants.

In Burke's estimation, the balance of inconveniences involved in conciliation with America amounted to a particularly good deal for Britain. By allowing English liberties to flourish in the colonies, Britain would encourage the spirit of liberty that made both Britain and America prosperous, reinforce the spirit of liberty at home, and conserve English dominion on a long-term basis since liberty was also a dictate of justice.

Five years later, in his 1780 speech at the Bristol Guildhall which marked the close of his career representing Bristol, Burke offered a trenchant defense of a bill intended to ease the significant disabilities England's Penal Laws had imposed on Irish Catholics.⁸ This was a delicate matter for Burke. His father, Richard Burke, was a Protestant who, a few years before Edmund was born in 1729, almost certainly had converted from Catholicism so he could practice law. Burke's mother Mary Nagle was a Catholic, as was Burke's wife of 40 years, Jane. Throughout his career, Burke was highly circumspect about his Catholic connections even as his political enemies regularly attacked him as a Catholic sympathizer, a damaging charge in 18th-century British politics. Along with his support for free trade with Ireland and for easing penalties for debtors, Burke's vigorous advocacy of toleration of Catholics in Ireland caused the loss of his Bristol seat (he went on to represent Malton, a less powerful position). As O'Brien observed in *The Great Melody*, Burke's defense of the rights of Catholics is all the more poignant for the personal interests it implicated and all the more impressive for the political costs it exacted.

According to Burke, his critics believed that tolerance in Ireland recklessly pushed the demand for justice beyond what his constituents and Britain more generally could bear. In reply, he argued that the reforms he sought reflected the imperatives of liberty in light of the realities of British politics.

The long view, Burke held, was relevant to the determination of the proper public policy concerning the freedom of those who belonged to the minority faith. Appealing to his constituents' majority Protestant faith, Burke pointed out that the principle of toleration has roots in the Reformation, "one of the greatest periods of human improvement." Nevertheless, pockets of intolerance in violation of Protestant principles of liberty persisted in Ireland long after the Reformation, not least in the form of the harsh restrictions imposed upon Catholics. In 1699, the Penal Laws made it a crime punishable by imprisonment to say Catholic Mass or to teach Catholicism. The Penal Laws also required Catholics to renounce their faith or forfeit their land, and set severe limits on professional advancement — such as those faced by Burke's father.

One did not have to rely only on distinctively Protestant principles, however, to condemn the wrongs inflicted on Catholics by the Penal Laws. Universal principles, Burke asserted, also condemned them. The Penal Laws attacked human nature, crippling in their targets "the rights and feelings of humanity." They had a "tendency to degrade and abase mankind, and to deprive them of that assured and liberal state of mind which alone can make us what we ought to be." So terrible was the indignity that Burke would have rather

put a man to immediate death for opinions I disliked, and so to get rid of the man and his opinions at once, than to fret him with a feverish being, tainted with the jail-distemper of a contagious servitude, to keep him above ground an animated mass of putrefaction, corrupted himself, and corrupting all about him.

The repeal of the Penal Laws was necessitated both by the religious principles held by the vast majority of Britons and by the common humanity all men shared.

Other considerations, grounded in the events of the day, also counseled reform. With toleration gaining ground throughout Europe — in Holland, Germany, Sweden, and France — British toleration of Catholics would lend support abroad to Protestant claims to toleration in Catholic countries. And as Catholics were Britain's best manufacturers, toleration advanced British commercial interests.

But if toleration was so important, other critics asked, why did Burke support a bill that provided only partial relief from the Penal Laws rather than their outright repeal? Because, answered Burke, prudence so counseled. While outright repeal was not politically attainable, partial relief would provide a "progressive experience." By means of incremental steps, "the people would grow reconciled to toleration, when they should find, by the effects, that justice was not so irreconcilable an enemy to convenience as they had imagined."

Still others objected that Parliament was acting with undue haste. Burke retorted that Parliament was proceeding too slowly, taking 80 years to undertake the repair of laws that never should have been implemented. And to those who insisted monarchs posed the true threat to freedom, Burke responded that freedom was threatened from many quarters. It could be imperiled just as much by the "strongest faction," the tyranny of the majority, and indeed by the rage to rule over others that sometimes wears the mask of freedom:

It is but too true, that the love, and even the very idea, of genuine liberty is extremely rare. It is but too true that there are many whose whole scheme of freedom is made up of pride, perverseness, and insolence. They feel themselves in a state of thralldom, they imagine that their souls are cooped and cabined in, unless they have some man or some body of men dependent on their mercy.

Because liberty is subject to abuse in many ways and the true love of liberty is rare, the people's will must be "confined within the limits of justice," which impose toleration as a defining feature of a free society.

In his 1783 speech on Fox's East India Bill, Burke once again pressed for reforms based on the conviction that honoring the claims of liberty abroad made liberty at home more secure.⁹ Attacking what he believed to be Britain's gross malfeasance in India, the speech was a high point of the cause to which he devoted the greater part of the final decade of his parliamentary career. To his many critics, it seemed that he was consumed with the issue. In fact, Burke went to great lengths to bring to justice Warren Hastings, the first governor-general of Bengal, who effectively ruled India from 1773 until 1775. Burke led the 1787 impeachment of Hastings in the House of Commons and the eight-year prosecution of Hastings at the Bar of the House of Lords, which ended in acquittal in 1795. Even still, Burke's early entry into the controversy in his speech in support of Charles James Fox's East

India Bill — Fox was leader of the Whigs but Burke conceived and drafted the bill — is a model of reasoned political analysis and advocacy. It is notable, as was Burke's call for conciliation with America and his insistence on tolerance for Ireland's Catholics, for arguing that Britain's interest in liberty and the morality of liberty converged, and therefore that reform was simultaneously demanded "by humanity, by justice, and by every principle of true policy."

Britain's interest in robust commerce with India, Burke argued, was inseparable from "the interest and well-being of the people of India." But the English East India Company — established in 1600 by Queen Elizabeth I to promote trade — had gravely abused its power and ruthlessly exploited its prerogatives. It trampled on native-born Indians' rights and enervated the country. And in the process, the East India Company eroded British morals and undermined Britain's national interest. Consequently, Burke believed that restoring Indians' liberty was a requirement of British self-government: "every means effectual to preserve India from oppression is a guard to preserve the British Constitution from its worst corruption."

The bill Burke championed aimed to alter the charter that established the East India Company's status as a private company governing India. It would give Parliament responsibility for overseeing the company. Burke's refutation of the charge that the reform represented an "attack on the chartered rights of men" is of special interest because of its account of the political significance of natural rights and because of the analysis it leads to on the circumstances that justify fundamental alteration of an established institution of government.

Burke contended that by invoking the East India Company's chartered rights to prevent government intervention, opponents of reform confused the rights created by government with the universal rights governments are established to secure:

The rights of men — that is to say, the natural rights of mankind — 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. If these natural rights are further affirmed and declared by express covenants, if they are clearly defined and secured against chicane, against power and authority, by written instruments and positive engagements, they are in a 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.

Very much in keeping with the larger liberal tradition, Burke held that to be most politically effective, natural rights, which preexist and set standards for political life, require translation through legal codes into concrete guarantees.

What are properly called “the chartered rights of men” are those natural rights that are explicitly affirmed in fundamental legal documents. The Magna Carta, “a charter to restrain power, and to destroy monopoly,” was for Burke an outstanding example. In contrast, “The East India charter is a charter to establish monopoly and to create power.” It worked to “suspend the natural rights of mankind at large,” allowing the company to administer, as if it were a state power, an enormous territory vital to the commercial interests of Britain as well as to manage “the lives and fortunes of thirty millions of their fellow-creatures.” However, the political power to rule over another is not a natural right. To the contrary, it is “wholly artificial, and for so much a derogation from the natural equality of mankind at large, ought to be some way or other exercised ultimately for their benefit.”

The East India Company had enjoyed a trust. By betraying the lawful purposes that brought it into being, the company had nullified the trust. In view of the company’s “plenitude of despotism, tyranny, and corruption,” Burke argued that Parliament was obliged to reassert its responsibility for the equitable and efficient administration of India, to provide “a real chartered security for the rights of men” that the company had “cruelly violated.”

Burke recognized that the revision of the East India Company’s charter he sought was drastic. He justified the drastic reform on the grounds that the East India Company had long persisted in drastic abuses. But the reform, he emphasized, was in no way based on an “a priori” argument against endowing a private company with the political power to administer a vast nation:

With my particular ideas and sentiments, I cannot go that way to work. I feel an insuperable reluctance in giving my hand to destroy any established institution of government, upon a theory, however plausible it may be.

Furthermore, no established institution of government should be repudiated for the mere existence of abuses in the exercise of its powers, because “there are, and must be, abuses in all governments.”

Because of the wisdom embodied in established institutions, Burke held that sweeping change should be contemplated only as a last resort to protect the most basic individual rights and vital national interests.¹⁰ Accordingly, fundamental alteration of any established institution of government would have to meet exacting criteria:

1st, The object affected by the abuse should be great and important. 2nd, The abuse affecting this great object ought to be a great abuse. 3d, It ought to be habitual, and not accidental. 4th, It ought to be utterly incurable in the body as it now stands constituted.

And the evidence concerning the object, greatness, regularity, and implacableness of the abuse must be as clear as “the light of the sun.” The bulk of Burke’s speech on Fox’s East India Bill delves into the nitty-gritty of the British administration of India, supplying ample

evidence demonstrating that the conduct of the East India Company under the direction of Governor-General Hastings represented an extreme abuse of power that obliged Parliament to implement far-reaching reforms.

Burke's arguments in behalf of reform of British policy toward India are of a piece with those he puts forward in behalf of reform of British policy toward America and Ireland. They reflect the exacting standard of statesmanship devoted to liberty he espoused in the *Reflections*:

A disposition to preserve, and an ability to improve, taken together, would be my standard of a statesman. Everything else is vulgar in the conception, perilous in the execution.

And by this exacting standard, Burke's arguments in the name of liberty in favor of reform are of a piece with his arguments in the name of liberty against the revolution in France.

Liberty and political moderation

The need in free societies to combine and reconcile the principles of conservation and correction imposes formidable demands on the people and on office holders. To be sure, under government of all sorts, policy and law must constantly be adjusted, balanced, and calibrated in light of changing circumstances. But liberty guarantees that circumstances will always be changing, and in fact liberty tends to accelerate the pace of change. One manifestation of the larger challenge is the famous tension between conservatism and capitalism: Capitalism's constant quest for newer and better products and techniques of production to achieve ever greater profits, and the affluence and luxury that free markets bring, demote tradition, disrupt order, and weaken the virtues of mind and character — such as self-restraint, industriousness, and thrift — that support free markets and free political institutions.

The larger challenge is rooted in the passions. Liberty excites the human love of novelty — for how can I be free if I must submit to the same old routines? And it goads the human love of dominion — for how can I be free if others defy my will? By simultaneously encouraging an aversion to authority and a desire for mastery, freedom also tends to provoke a backlash against freedom. The result in free societies is the generation of extreme and conflicting types: radicals who seek to extend government's rule over others in the name of equality while freeing themselves from rules, and reactionaries who strive to reinstate traditional forms of authority, not only on themselves but on the rest of society. Liberty unrestrained and undisciplined fosters immoderation. Consequently, a government devoted to conserving and correcting freedom will require particular prudence in the art of balancing, or political moderation.¹¹

The virtue of political moderation is often mistaken for a compromise with virtue, a softening of belief, a diluting of passion, a weakening of will, even an outright vice. But those are examples not of political moderation but of the failure to achieve it. Moderation in politics is not a retreat from the fullness of life but an embrace of it. Political moderation is called into

action by the awareness of the variety of enduring moral and political principles; the substantial limits on what we can know and how effectively and justly we can act; the range of legitimate individual interests; the multiplicity of valuable human undertakings and ends; and the quest to discern a common good in light of which we can make moral distinctions and establish political priorities.¹² Political moderation underlies self-government understood as the individual's mastery of his own conduct and understood as a free people's rule over itself.

Nevertheless, the virtue of political moderation will always serve as an inviting target for demagogues who seek to exploit the passion for purity in politics. In the *Reflections*, Burke warned that one who supports “a scheme of liberty soberly limited” is likely to be accused of lacking “fidelity to his cause.” The purists’ attack on the appeal to reason and the exercise of restraint in behalf of freedom will not end there:

Moderation will be stigmatized as the virtue of cowards, and compromise as the prudence of traitors, — until, in hopes of preserving the credit which may enable him to temper and moderate on some occasions, the popular leader is obliged to become active in propagating doctrines and establishing powers that will afterwards defeat any sober purpose at which he ultimately might have aimed.

Because of the perennial need to stand firmly against the common slander that political moderation is a feeble disguise for weak-kneed betrayal of principle, political moderation is inseparable from political courage.

Since Burke's devotion to political moderation was hardly evident to all observers in his time and would have been disputed by many, he was compelled to clarify his beliefs about it. In the final paragraph of the *Reflections*, written 25 years after he was first elected to Parliament and four years before his retirement, Burke declared that he had been one “almost the whole of whose public exertion has been a struggle for the liberty of others.” Aware that his attack on the French Revolution gave rise to the appearance of inconsistency, he made sense of the seeming contradictions by explaining the underlying reality. Invoking a classical image, he characterized his words and actions as those of a statesman

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 reasons to that which may preserve its equipoise.

To conserve liberty at a time when the French revolutionaries made extravagant claims on its behalf, Burke fervently championed the claims of tradition, order, and virtue. And when his countrymen failed to grasp its imperatives in their affairs abroad in America, Ireland, and India, he passionately urged reforms that enlarged liberty's sphere.

The conservative side of the larger liberal tradition displays variations on the political moderation contained in Burke's insistence on the importance of combining and reconciling the principles of conservation and correction. In 1776 in *The Wealth of Nations*, Burke's contemporary Adam Smith examined the mutual dependence of economic life and virtue. Smith saw that the market economy, which brought prosperity and nourished political liberty, both rewarded moral virtues — rationality, industry, ingenuity, and self-discipline — and corrupted workers' character by condemning them to monotonous labor. He therefore insisted on the need for government to take action by, for example, providing education for workers and limiting the workplace demands imposed on them by manufacturers. In *Democracy in America*, the first volume of which appeared in 1835 and the second in 1840, Alexis de Tocqueville argued that in the modern era democracy had become necessary and just and that while it fostered a certain simplicity and straightforwardness in manners it also encouraged selfishness, envy, immediate gratification, and lazy acceptance of state authority. To secure liberty, which he believed essential for a well-lived life, it would be necessary to preserve within democracy those nongovernmental institutions — family, religious faith, and civic associations of many sorts — that counteracted democracy's deleterious tendencies. Family, faith, and civic associations taught moral virtue, connected individuals to higher purposes, and broadened their appreciation of their self-interest to include their debts to forebears, bonds to fellow citizens, and obligations to future generations. John Stuart Mill, an admirer of Tocqueville whose voluminous writings feature conspicuously conservative and progressive dimensions, made the case in 1859 in *On Liberty* that liberty served "the permanent interests of man as a progressive being." At the same time, he distinguished between the use and abuse of freedom; defended a rigorous education continuing through university and combining science and humanities to equip individuals for freedom's opportunities and demands; and favored political institutions that, while grounded in the consent of the governed, were designed to improve the likelihood that elections would bring individuals of outstanding moral and intellectual virtue to public office.

If a liberal in the large sense is one who believes that the aim of politics is to secure liberty, then Smith, Tocqueville, and Mill are, like Burke, exemplary members of the liberal tradition. Because of their common appreciation that free societies expose individuals to influences that corrode moral and political order and enervate the virtues on which liberty depends, they belong on the conservative side of the liberal tradition. Because of their shared understanding that limits must be imposed on government to protect individual liberty, but that those limits must not sap the energy or impair the authority government needs to secure liberty, their account of self-government emphasizes striking a balance between competing and essential principles. Their political moderation is a reflection of their passion for freedom and their reasoned understanding of the complex conditions that sustain it. The *Federalist*, the masterpiece of American political thought, embraces the conservative brand of liberal self-government they epitomize and constitutionalizes it.

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¹ Edmund Burke, Reflections on the Revolution in France, in *The Works of the Right Honourable Edmund Burke III* (John C. Nimmo, 1887), 235, available at <http://www.gutenberg.org/files/15679/15679-h/15679-h.htm#REFLECTIONS> (this and subsequent links accessed November 1, 2012).

² Edmund Burke, "Letter to the Sheriffs of the City of Bristol, on the Affairs of America," in *The Works of the Right Honourable Edmund Burke II* (John C. Nimmo, 1887), 226, available at http://www.gutenberg.org/files/15198/15198-h/15198-h.htm#SHERIFFS_OF_THE_CITY_OF_BRISTOL.

³ Reflections on the Revolution in France, 239–240.

⁴ Conor Cruise O'Brien, *The Great Melody: A Thematic Biography of Edmund Burke* (University of Chicago Press, 1992).

⁵ Edmund Burke, "Speech to the Electors of Bristol, on his being declared by the Sheriffs duly elected one of the Representatives in Parliament for that City," *The Works of the Right Honourable Edmund Burke II* (John C. Nimmo, 1887), 89, available at http://www.gutenberg.org/files/15198/15198-h/15198-h.htm#ELECTORS_OF_BRISTOL. See also Burke, "Speech at the Guildhall in Bristol, Previous to the Late Election in that City" (1780), *ibid.*, 382, available at http://www.gutenberg.org/files/15198/15198-h/15198-h.htm#GUILDHALL_IN_BRISTOL. Fourteen years later, James Madison similarly argued that the institution of representation, while rooted in the people's will, works to refine that will and bring it in line with the people's reason. See James Madison, Federalist Nos. 10, 49, 51, in Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers*, ed. Clinton Rossiter, Introduction and Notes by Charles R. Kesler (Signet Classic, 2003).

⁶ For an elaboration of these criticisms, see Peter Berkowitz, "The Ambiguities of Rawls's Influence," *Perspectives on Politics* 4:1 (March 2006), available at <http://www.peterberkowitz.com/theambiguitiesofrawlsinfluence.pdf>; and Berkowitz, "The Debating Society," *The New Republic* (Nov. 26, 1996), available at <http://www.peterberkowitz.com/debatingsociety.htm>.

⁷ Edmund Burke, "Speech on Conciliation with the Colonies," *The Works of the Right Honourable Edmund Burke, II* (John C. Nimmo, 1887), available at <http://www.gutenberg.org/files/15198/15198-h/15198-h.htm#CONCILIATION>.

h.htm#conciliation_with_the_colonies.

⁸ Edmund Burke, “Speech at the Guildhall in Bristol, Previous to the Late Election in that City,” *The Works of the Right Honourable Edmund Burke II* (John C. Nimmo, 1887), p. 366, available at http://www.gutenberg.org/files/15198/15198-h/15198-h.htm#guildhall_in_bristol.

⁹ Edmund Burke, “Speech on Mr. Fox’s East India Bill,” *The Works of the Right Honourable Edmund Burke II* (John C. Nimmo, 1887), available at http://www.gutenberg.org/files/15198/15198-h/15198-h.htm#east_india_bill.

¹⁰ Or, as he argues in distinguishing the English Revolution of 1688 from the French Revolution, sweeping change should be in response to “a grave and overruling necessity” and should be undertaken “with infinite reluctance, as under that most rigorous of all laws.” See *Reflections on the Revolution in France*, 267; see also 311–312.

¹¹ For further reflections on the paradox of freedom see Peter Berkowitz, “The Liberal Spirit in America,” *Policy Review* 120 (Aug. & Sept. 2003), available at <http://www.hoover.org/publications/policy-review/article/7229>.

¹² See Harry M. Clor, *On Moderation: Defending an Ancient Virtue in a Modern World* (Baylor University Press, 2008).