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# Burke, Rights of Man and the Magna Carta

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It would be utterly unfair not to think of Burke as a parliamentarian who fought against authoritarianism. In fact, although Burke was accused of criticizing the rights of man, namely in the aftermath of his diatribe against the French Revolution, his entire parliamentary life and the great causes in which he was involved were fights for the rights of the most disadvantaged and against various types of authoritarianism. This is so in his defence of Catholic rights in his native Ireland; in his defence of the right of American colonists not to be taxed without being represented; in his impeachment of the first Governor General of Bengal, whom he accuses of exercising arbitrary power and tyranny towards the Indian people; and also in his fight against slavery through the elaboration of the Sketch of a Negro Code, the British version of the Code Noir.

Burke's statements on Warren Hastings' impeachment are, in a way, an illustration of the meaning of his entire political career:

“He cannot have absolute power by succession; he cannot have it by compact; for the people cannot covenant themselves out of their duty to their rights. If any, by conquest, by compact, or by succession, exercise power which, for the good of mankind, ought never to exist, those who gave that power and those who receive it, are alike criminal. And there is no man that is not bound to resist it, and who ought not so to do: Nothing but the fear of greater mischief, and the apprehension of absolute destruction, can justify men in the usurpation or endurance of it (...).” Burke (1816), Impeachment, February 16, 1788, *Speeches IV*, p. 358.

Resist authoritarianism is not something that one could choose not to do. In fact, the above quotation clearly states that consent to an authoritarian government and administering it are equally criminal, and that both the ruler and the people governed in such a way are required to rectify their ways, because both are disrespectful of human dignity. Burke's entire political career can be summed up in this duty to fight authoritarianism.

In view of his effort to correct disrespect for people's rights in Ireland, America or India, one might think that Burke was a critic of the British Empire. In fact, it is quite the opposite. He so valued the principles of liberty present in British institutions and principles of governance that he believed that being a subject of the King of England was a privilege – on condition, however, that the king did not forget that he should rule the Empire according to English principles, albeit respecting the liberties and idiosyncrasies of the people he administered. That he should rule in the spirit of English liberties and not by the letter of the law that proclaimed his abstract right of governing and taxing as a ruling power.

In fact, it is this same appeal to rule in the spirit of English liberties and not by the letter of the law, which leads Burke to appeal to moderation when discussing the situation of Catholics in Ireland with Sir Hercules Langrishe. Burke rightly observes that the Irish were in the position of belonging to a State while not being citizens of that State; but, while he does not approve of Ireland being ruled in this way, he does not encourage challenging the government in this particular case, because he feels that the situation of Ireland would be much worse if it ceased to be under English administration. In fact, when one thinks of the State as supreme government, not everyone belongs to the governing elite, and this is even its most common form and an acceptable mode of government, when it is kept within limits that respect the rights of the ruled.

In the dispute between England and the American colonists, Burke's initial struggle was aimed at getting the Crown to recover its primitive and fruitful relationship with the colonies, rejecting its abstract right to tax America. The colonists' refusal to being taxed without being

represented was based on principles of liberty that they had learned from England.

He felt that binding the peoples of America to the enjoyment of their rights under the protection of the British Crown was a mild tie that would prove as strong as iron chains and could guarantee the continuity of the British Empire. For the colonists, to claim freedom was to claim a fundamental right. Thus, if England endorsed the defence of the rights of colonists, this prudent measure would in the end justify British presence in America. The upholding of the same freedoms the English enjoyed in the motherland – freedoms inherited from Magna Carta – in the colonies would strengthen ties between England and the colonies, based on similar privileges and equal protection.

The difference between keeping the colony or losing it was played in choosing the abstract right to tax the colonies – which tax, however small, was an expression of the arrogance of the State – or opting instead for the governance that had been practiced until then and which had been advantageous for both parties.

George III was choosing a “speculative” right, whose theoretical perfection was linked to a practical fragility: it was literally a right, but in spirit, an abuse.

The right not to be taxed without being represented, which the English people enjoyed in their homeland and which should be extended to all the subjects throughout the Empire, was ratified by prescription, had historical realization on its side, was endowed with practical perfection and, for those reasons, was preferable in the context of a prudent political exercise.

By taking sides for the defence of human rights in a concrete and delimited way, Burke follows the ancestral practice of the British tradition. In fact, in his confrontation with authoritarianism in all the struggles in which he was involved, Burke recovered for the 18<sup>th</sup> century a much older tradition of civil rights, which had been reformulated and sustained in a different way by the radical commonwealthmen in 17<sup>th</sup>-century England.

In fact, in the 17<sup>th</sup> century, England had lived through a period where the claim for rights had been made in a different way from that upheld by Magna Carta, namely through the invocation of the abstract principles of the political contract. In the years going from 1646-7 to 1649, the *Clarke Manuscripts*, edited by Woodhouse, compile a series of interventions by the Puritans presenting the “leveller principles” they defended. Three decades later, in response to Filmer’s *Patriarch*, Algernon Sidney wrote *Discourses Concerning Government*, where he demanded for the community the same rights that Price will later request in his famous *Discourse On the Love of our Country*. Burke rebuts Price’s discourse in his *Reflections*; later, in his *Appeal*, he again rejects the revival of Republican ideas presented in Thomas Paine’s *Rights of Man*. Although anxious to repeal 17<sup>th</sup> century radical ideas of republicanism and rights, Burke is, nevertheless, as concerned with the independence of Parliament as those radicals were. To Burke, the stress is to be put on civil rights and their historical defence by prescription.

In Burke, we see the recovery and appreciation of the prudential dimension of governance and the enjoyment of rights. Looking at Magna Carta, it is easy to understand how Burke could support concrete rights while vigorously fighting the so-called abstract rights upheld by French revolutionaries. The rights supported by Magna Carta are civil rights, possible and protected within society, practiced and consolidated by prescription. According to William Sharp McKechnie, these rights were concrete remedies for concrete ills and aimed at restoring the degraded dignity of subjects. First of all, they restored the rights of the protesting nobility, but they also benefited the people. The rights claimed by the Barons in Runnymede were aimed at correcting concrete wrongs, and their scope at the time was perfectly practical.

These are precisely the kinds of rights that Burke repeatedly upheld. Thus, in his *Reflections*, he states that the claim and consecration of

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<sup>1</sup> William Sharp McKechnie, *Magna Carta: A Commentary on the Great Charter of King John, with an Historical Introduction*, 2<sup>nd</sup> edition revised and in part re-written, Glasgow: James Maclehose, 1914, p. 120.

the rights of the English people was not made, in their most important documents, in the name of abstract rights:

“In the famous law (...) called the Petition of Right, the Parliament says to the king “Your subjects have inherited this freedom”: claiming their franchises, not on abstract principles, “as the rights of men,” but as the rights of Englishmen, and as as (sic) a patrimony derived from their forefathers. Selden, and the other profoundly learned men who drew this Petition of Right, were as well acquainted, at least, with all the general theories concerning “the rights of men” (...) but, for reasons worthy of that practical wisdom which superseded their theoretic science, they preferred this positive, recorded, hereditary title to all which can be dear to the man and the citizen to that vague, speculative right which exposed their sure inheritance to be scrambled for and torn to pieces by every wild, litigious spirit”. Burke (1865), *RRF*, Works III, p. 273.

To Burke, the virtue of political action and the most effective way to oppose authoritarianism is to opt for “practical wisdom” and to oppose abstract claims of rights. The English “Constitution,” not conceived by intellectual design, but grown from usages and customs was the guardian of this order.

Burke didn't think that, in certain historical circumstances, society could ignore the right to life, liberty or property. But his writings and the battles he fought make it clear that he thought the best way to uphold these rights is not by simply enunciate them in their theoretical perfection, but rather by endorsing them on the basis of their historical practical application and doing that within a strong and independent Parliament.