

Russell Kirk

Edmund Burke and the Constitution

CONSTITUTIONS ARE something more than lines written upon parchment. When a written constitution endures—and most written constitutions have not been long for this world—that document has been derived successfully from long-established customs, beliefs, statutes, and interests; it has reflected a political order already accepted, tacitly at least, by the dominant element among a people.

True constitutions are not invented: they grow. The Constitution of the United States has endured for two centuries because it arose from the healthy roots of more than two centuries of colonial experience and of several centuries of British experience. For the most part, the American Constitution expressed formally what already was accepted, practiced, and believed in by the people of the new republic. A constitution without deep roots is no true constitution at all.

In a symposium at Kenyon College, three decades ago, I expressed such views. Clinton Rossiter dissented. Why, a constitution can be created overnight, he said; just that had been done in many European countries shortly after the First World War and the Second World War.

"Where are those constitutions now?" I inquired. And today one might ask, with equal pertinence, "Where are now the constitutions of the emergent African states, so grandly promulgated in the 1950s and 1960s?" The framers of a successful constitution must take into account the history, the moral order, the resources, the prospects of a country—and much else besides. Those framers must be endowed with political imagination—which is not at all the same thing as political utopianism—and with much practical knowledge of affairs. Otherwise a

constitution may live no longer than a butterfly.

The constitution of the United States and constitution of England have survived the crash of empires, and for reasons similar enough. Both constitutions have grown out of centuries of social experience; both have been capable of adaptation in altered circumstances; both have been interpreted and defended, over the years, by some men of imperial intellect and high imagination. Anniversaries of both constitutions are nearly upon us: the bicentenary of the constitution of the United States, the tercentenary of the English constitution (if, in the latter case, we regard the English Bill of Rights and the Act of Settlement as giving to the old English constitution substantially its present form). So, in a time when the fountains of the great deep are broken up, it seems worthwhile to try to ascertain the sources of these constitutions' strength.

Burke's Pervasive Influence

My present purpose is to examine the influence of Edmund Burke upon the Constitution of the United States. Burke was the most eloquent champion of the English constitution, and the most mordant adversary of the several French constitutions of the Revolutionary era. He touches upon constitutional questions from his earliest political speeches

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to his final publications. And yet Burke never did or wrote anything about the Constitution drawn up at Philadelphia in 1787.

So my choice of theme may surprise some people. Burke's name is not to be found in the recorded proceedings of that Convention at Philadelphia, nor is it mentioned in the pages of *The Federalist*. After the year 1782 and American independence, Burke scarcely mentions North American affairs in his speeches, his publications, his correspondence. Then why assert that the great Whig politician, who never visited the Thirteen Colonies, somehow may be associated with that highly successful political device the federal constitution of the American Republic?

I have my reasons. First, because the general frame and substance of the Constitution of the United States accords with the political principles of the Rockingham Whigs, whose manager and intellectual chief Burke was. The framers of the American constitution borrowed deliberately and liberally from the English constitution. According to Sir Henry Maine in his *Popular Government*, the American framers took for their model the English constitution as it stood between 1760 and 1787—the years when Burke loomed so large in the House of Commons.

I do not suggest that everything in the original Constitution of the United States would have been thoroughly approved by Edmund Burke; later I will discuss certain exceptions. Yet for the most part, the constitution agreed upon at Philadelphia not only was derived from the eighteenth-century British constitution, but was derived more precisely from the idea of that English constitution which Burke himself had enunciated so ringingly from his *Thoughts on the Present Discontents* (1770) to his *Speech on Moving Resolutions for Conciliation with the Colonies* (1775). In substance, the Constitution of the United States was an amended version of what Burke called "the chartered rights of Englishmen." Burke had been the principal expositor of the English constitution that the American gentlemen at

Philadelphia took for their model; and Burke, like those American gentlemen, was a practical public man of much experience, no closet philosopher—and so was congenial to the Framers, whether or not they acknowledged Burke as the English constitution's soundest interpreter; whether or not, indeed, they were aware of Burke's influence upon them. The delegates to Philadelphia, naturally enough, apprehended the English constitution very much as Burke had expounded it.

Also the Framers at Philadelphia, young men many of them (and only eight having been also signers of the Declaration of Independence), had grown up during the decade when the parliamentary addresses of Burke and Chatham had upheld the cause of the colonies against the Crown in Parliament; when Burke's Irish invective had been directed against George III's American policies, his ministers, and indeed the King himself. Burke's famous American speeches from 1770 to 1775 had been read and discussed by every American of the rising generation who had taken any interest in politics—especially the *Speech on American Taxation* (1774) and the *Speech on Conciliation* (1775). (The latter of these was prescribed for rhetorical study in most American high schools until well into the twentieth century.) Burke never had favored American separation from the British Empire; the Declaration of Independence struck him a sore blow; nevertheless, doubtless the large majority of delegates to the Convention at Philadelphia regarded Burke as a friend to America. Burke's constitutional doctrines, during those five years of vehement opposition to the King's Friends, had been intertwined with his denunciations of the folly of taxing Americans against their will. So it is not surprising that Burke's concept of a just constitution had come to be taken for granted by most of the delegates to Philadelphia.

Moreover, the Philadelphia delegates' understanding of the causes and course of the War of Independence had been formed by Burke himself through a medium quite

distinct from his speeches. For also Burke was the editor of *The Annual Register*, the London publication that printed every year a detailed account of the Revolution in the Thirteen Colonies—the only such reporting available on either side of the Atlantic. Assuming the *Register's* editorship when the publication was founded, Burke continued editorial supervision down to 1789, when he retired from that labor. Much of the writing and editing of some articles was done by subordinates, from time to time; but those subordinates were Rockingham Whigs, Burke's friends and disciples. The whole political tone of the *Register* was Burke's. And probably every delegate at Philadelphia in 1787 had read the *Register*, with its interpretations of the war and related constitutional controversies, in its annual volumes from 1765 to 1785 (and perhaps the newly-published volume for 1786); indeed, they had available then no other systematic and tolerably impartial analysis of military and political events during those years. In this fashion, quite aside from his oratory in the House of Commons, Burke exercised through serious journalism an ascendancy over the minds of leading Americans of the Revolutionary and Constitutional eras an influence greater than is obtained over the American people two centuries later by the most famous publicist of our day.¹

It was the reflective part of the public that the *Register* reached, of course; but then, as today, it is the reflective part of the public which tends to determine public policy. So powerful was the influence of Burke's *Annual Register* that the principal American historians of the early Republic not only accepted the *Register's* information and judgments almost without question, but plagiarized shamelessly from its historical articles. David Ramsay, William Gordon, Charles Stedman, and Thomas Anburey—all well-reputed and much-read writers—were discovered, long later, to have borrowed many of their pages from Burke, without acknowledgement. But the most eminent of the plagiarists was John Marshall, Chief Justice of the United States,

in his *Life of George Washington*, the first volume of which was published in 1804. (Marshall's heavy borrowings from the *Register* were not described by American historical scholars until 1937!) In effect, Burke's *Annual Register* established America's quasi-official version of the Revolutionary War—and so early as 1787, the authority of the historical articles in the *Annual Register* for 1765 to 1783 stood almost unchallenged. The delegates to the Convention at Philadelphia were steeped in Burke, whether they wished it or no.²

Burke had weight with such of the Framers as Alexander Hamilton, Gouverneur Morris, Benjamin Franklin, John Dickinson, George Washington, George Wythe, and Charles Cotesworth Pinckney. Some of the delegates, notably James Wilson, later would disagree in theory with Burke on large matters; but in 1787, when Thomas Paine still thought of Burke as a friend to revolutionary change, those differences were not conspicuous. Why then is Burke's name absent from Madison's *Notes of Debates*? Why do not the authors of *The Federalist* cite Burke?

Because the delegates at Philadelphia were too much occupied with practical disputation to quote from statistis abroad. They do not mention, either, so far as reports of their debates go, the other two chief constitutional thinkers of the closing decades of the eighteenth century: Jean-Jacques Rousseau and Jeremy Bentham; nor even Sir William Blackstone, closely studied then by every American lawyer. Both the men of the Convention and the authors of *The Federalist* mention or quote Montesquieu several times; Hume, though a Tory, is commended; there are references in *The Federalist* to Raynal, Delolme, and one or two other eighteenth-century writers. But the literary, historical, and philosophical allusions of Madison, Hamilton, and Jay are drawn chiefly from antiquity: gentlemen benefiting from a classical education, Madison, Hamilton, and Jay turned naturally to familiar Greek and Latin authors, whose authority presumably would be recognized

by many readers of *The Federalist*. Montesquieu was the principal exception to this predilection: *The Spirit of Laws* had been published in 1748, and the first English edition had appeared in 1750. Jay had been born in 1745, Madison in 1751, Hamilton in 1757; Montesquieu had been the grand political writer of their youth, his reputation unassailable. The elapse of nearly four decades sufficed to remove *The Spirit of Laws*, almost adulatory of the English constitution, from political partisanship.

Burke, on the other hand, in 1787 still was partisan and quick, a British party leader passionately committed to a reforming course in English politics. What might Burke do next, in 1787? His indictment of Warren Hastings was of little immediate interest to the delegates at Philadelphia, even though Burke's disquisitions on the rule of law, in the course of Hastings' indictment and prosecution, had much to do with political constitutions. Burke's enduring reputation, unlike Montesquieu's, was yet to be determined. It was more prudent to cite, among recent writers, David Hume, also a friend to America: Hume having died in 1776, he could not demur from what might be said about him at the Convention.

There existed another reason why Burke was not directly acknowledged at the Convention or in *The Federalist*: Burke's presumed contempt for the Declaration of Independence. Although Burke's concerted assault upon *a priori* theories and fanciful claims of natural right would not commence until 1790, already it was made clear enough in 1787 that Burke was the adversary both of Rousseau and of the *philosophes*. The Declaration of Independence, calculated to please Paris and Versailles, had broken with the constitutional argument of the Americans that had been advanced ever since passage of the Stamp Act. Until 1776, protesting Americans had pleaded that they were entitled to the rights of Englishmen, as expressed in the British constitution, and particularly in the Bill of Rights of 1689. But Jefferson's Declaration of Independence had abandoned this tack—what did Frenchmen

care for the real or pretended rights of Englishmen?—and had carried the American cause into the misty debatable land of an abstract liberty, equality, fraternity. Such reasoning was anathema to Burke the practical statesman. Once the Declaration of Independence was proclaimed, Burke ceased to interest himself in America. Why quote him at a Convention he might reproach?

Thus Burke's understanding of constitutions went formally unacknowledged at Philadelphia; nevertheless Burke's constitutionalism was pervasive there. Three years later, when *Reflections on the Revolution in France* would appear, Burke's arguments and aphorisms would be on the lips of every American politically literate—but it was not so in 1787. Nevertheless, the delegates of 1787 produced a constitution that conformed astonishingly to Burke's idea of what a good constitution must be.

Prescription, Law & Balance of Powers

Let us descend to particulars. In what respects would the new Constitution of the United States have satisfied Edmund Burke—if he had not been too busy in 1787 even to notice that Constitution in the pages of his *Annual Register*?

First, the Constitution did not break with the established institutions and customs of the American people: it was a healthy growth, an enlargement of a political structure of which the foundations had been laid early in the seventeenth century—or earlier still, in medieval England. As James Bryce would point out nearly a century later, the new federal constitution had for precedent and source the colonial charters or constitutions. Those basic laws were altered somewhat with the coming of American independence; but some of them not altered greatly. The colonial constitution of Massachusetts was transmuted into the state constitution of 1780 without radical change; and, as Bryce remarks, the Constitution of Massachusetts "profoundly influenced the Convention that prepared the Federal Constitution in 1787."³

Second, the Constitution recognized and incorporated a body of historical experience far older than the North American colonies: the constitutional development of England, the country with the highest degree of both freedom and order during the eighteenth century. Many parallels between the old British constitution and the new American constitution are obvious enough. Sir Henry Maine points out somewhat wittily that the Convention's delegates conferred upon the president of the United States powers precisely of the sort which George III claimed for the kingly office—despite all their previous lamentations about royal usurpation of power.⁴

Third, the Constitution rejected *a priori* theories of government, settling for politics as the art of the possible. As Sir William Holdsworth puts it in his *History of English Law*, "The political theory of the Declaration of Independence which dwelt upon the equality of men, their unalienable rights to life, liberty, and the pursuit of happiness, and their right to resist a tyrannical government, retired into the background. The founders of the American constitution recognized with Burke that such theories, however well they might be suited to a period of revolution, were of very little help in a period of reconstruction. They therefore abandoned the democratic theories of Paine and Rousseau, and went for inspiration to that eighteenth-century British constitution with which they were familiar."⁵

It may be added that besides rejecting Paine and Rousseau, the Framers ignored John Locke. Gottfried Dietze, who has written the best book about *The Federalist*, suggests that "Locke is the philosopher to whom the authors of *The Federalist* are most indebted for an exposition of constitutionalism and free government."⁶ I dissent. Locke's influence upon the Declaration of Independence is sufficiently obvious, though Jefferson was somewhat awkward about confessing that indebtedness; yet Locke is not mentioned in *The Federalist*. Why not? He was sufficiently removed in time to be cited without difficulty. It appears to me that

Locke was omitted deliberately, as indeed Burke usually avoided reference to the first great Whig thinker. There is Whiggery in the Constitution, and the echo of the Glorious Revolution—though this latter chiefly in the first nine amendments. But I find this the later Whiggery of Burke, not the early Whiggery of Locke. To the Framers, as to Burke, Locke's first principles had become suspect. *The Second Treatise of Civil Government* no longer could be accounted a true historical account of the origins of society, nor could its reliance upon the law of nature be accepted by the serious statist. Despite Locke's frequent quotations from Richard Hooker, he did not really echo that great divine in his understanding of natural law, and still less did he follow Hooker back to Aquinas and the other Schoolmen. When Burke, a century after Locke wrote, found it necessary to oppose a revolution on the same grounds that Locke had used to justify a revolution, he appealed not to the "law of nature" that Locke understood, but rather to the richer natural-law tradition of Hooker, the Scholastics of the fourteenth century, and Cicero. Besides, Locke, with his fantastic scheme for organizing the colony of Carolina, was not precisely the sort of constitutionalist required for drawing up a practical instrument of government for a new nation. The realist Hume was far more to the Framers' taste. Let me add that Professor Dietze expresses more perceptively than does any other commentator the strong influence of Hume upon the authors of *The Federalist*. It is worth mentioning in this connection that Hume, sixty years after the publication of Locke's *Second Treatise*, made mincemeat of Locke's theory that men, at any remote period, ever joined themselves in a formal compact for their common welfare.

Fourth, the Constitution of the United States put strong constraints upon arbitrary power. It distinctly limited the operations of the general government; it preserved state and local powers for the most part, avoiding the curse of centralization for which Burke was to reproach the French revolutionaries; it recognized a form of natural aristocracy in

the United States senate; it established the Congress as a body of true *representatives*, not delegates, according to Burke's famous speech on declining the poll at Bristol. It would be easy to suggest other ways in which power was hedged by the Constitution, and other provisions of that document which Burke would have approved.

But let us turn to provisions in the United States Constitution that ran contrary to Burke's principles. In the theory of checks and balances, Madison and the other principal Framers submitted to the authority of Montesquieu, endeavoring to establish through the Constitution a balance among three equal estates or powers. Yet this notion of an artificial balance, a kind of abstract triangle of powers, actually may end in anarchy or in impotence. So Stanley Pargellis reminds us in his essay "The Theory of Balanced Government" (1938). Burke did not subscribe to this ancient and almost sacrosanct concept, expressed by Madison in *The Federalist* as the principle "that the three powers, executive, legislative, and judicial, shall be forever separate and distinct." Burke did believe in the independence of the judiciary; but that is not the same thing as faith in "a delicate equipoise between equal powers," leading to stability through mutual jealousies. Pargellis summarizes Burke's quite different understanding of the arrangement of power within a constitutional order, beginning with his *Thoughts on the Present Discontents*:

In 1770 Burke recognized and rather vaguely defined a new convention of the constitution, the convention of cabinet government which a century later Bagehot was finally to popularize. As Burke read history, every sort of government, unless it was to fall into hideous disorder, must have its administration correspondent to its legislature. There are bound to be parties in a state, argued Burke. Set up, then, a party ministry in trust to the nation, with power to act efficiently, within limits defined by the law, responsible to the majority of the representatives of the people, and through them to the people themselves—that is Burke's great

contribution to the art and practice of government.⁷

The presidential cabinet of the United States is not responsible to Congress, of course; and the president of this country holds today the executive powers that George III longed for but could not obtain. The "balance" among the executive, legislative, and judicial branches of the federal government falls from time to time into confusion and hatred, working much mischief to the national interest—as during the second Nixon administration. The tremendous power conferred upon the president, in part through a plebiscitary elevation unintended by the Framers, may work at one time or another to the advantage of the nation; but also the misuse of that power may bring on ruinous consequences at home and abroad, as in the administration of Lyndon Johnson.

The Framers blundered in their design of the Electoral College, which very promptly malfunctioned. That College was meant, in effect, to choose an elective king of high rectitude and talent, the ablest conceivable chief magistrate. The Electoral College's early virtual collapse has given the country instead, most of the time, the sort of presidents described by James Bryce in 1893: "The only thing remarkable about them is that being so commonplace they should have climbed so high."⁸ The limited competence and imagination of many presidents considered—Warren G. Harding and Jimmy Carter spring to mind—great power slides into the hands of the Executive Force generally: that is, into the hands of persons not responsible to Congress or to anyone else except an overworked and underendowed president.

Nor did the Framers foresee the necessity for responsible political parties—rather, they dreaded parties as "factions." Burke's Rockingham Whigs formed the first party of principle, as contrasted with parties of expedience and place-seeking. "Party is a body of men united, for promoting by their joint endeavours the national interest, upon some

particular principle in which they are all agreed." This is Burke's definition in *Thoughts on the Present Discontents*. Parties lacking, representative government cannot be carried on.

The contest from year to year between the Congress on the one hand and the Executive Force on the other—a rivalry well analyzed by Alfred de Grazia, James Burnham, and others—may yet undo America's security and prosperity, in some unguarded hour. Yet whatever might have been the advantages of cabinet government upon the pattern that developed in Britain (commencing there in Burke's day), two centuries later it seems inconceivable that the Constitution's theoretical division of the federal government into three branches should be discarded, or that presidential tenure should be made subject to a majority in the House of Representatives. *Quieta non movere*: for good or ill, two centuries' precedents cannot be undone, and prescription is the best of titles. If there is to occur some change in the American relationships between the legislative and the executive powers, that change must be effected very gradually and with much caution. If an institution has functioned tolerably well for a great while, a legitimate presumption is established in its favor; so Burke himself instructs us.

However it may be, with every year that passed after 1787, the effectual power of the king of England would diminish, and the effectual power of the president of the United States would increase. Jefferson's professed deference to the Congress would not slow this drift. The two great constitutional systems moved in opposite directions. Montesquieu's doctrine of checks and balances quite overwhelmed Burke's concept of responsible cabinet and responsible party as constitutional agencies. Yet with this large exception, the Constitution framed at Philadelphia still conformed well enough to Burke's idea of a constitution in which the claims of order and the claims of freedom would be reconciled.

"When the American Constitution was framed," Maine concludes his *Popular*

Government, "there was no such sacredness to be expected for it as before 1789 was supposed to attach to all parts of the British Constitution. There was every prospect of political mobility, if not of political disorder.

The signal success of the Constitution of the United States in stemming these tendencies is, no doubt, owing in part to the great portion of the British institutions which were preserved in it; but it is also attributable to the sagacity with which the American statesman filled up the interstices left by the inapplicability of certain of the then existing British institutions to the emancipated colonies."

Just so. And it may be permissible to add that the wisdom and eloquence of Edmund Burke had something to do with that success of the Constitution of the United States—if more in subtle fashion than overtly.

Beyond the Philadelphia Convention

If Burke's views on constitutions obtained little public mention in 1787, by 1790 all was changed. Edmund Burke had commenced his denunciation of the French Revolution. From 1790 to 1797, everything Mr. Burke wrote about constitutions—the successively collapsing French constitutions, Poland's new constitution of 1791, the embattled British constitution—was eagerly read on either side of the Atlantic.

In America, the leading Federalists, north and south, applauded Burke and adopted his arguments as their own; even John Adams and John Quincy Adams were won over, if grudgingly. Nor was it Federalists merely whom Burke persuaded: John Randolph of Roanoke, who had been the Republican speaker of the House, presently became Burke's hottest disciple; the great jurist Joseph Story embraced Burke's politics; later, John C. Calhoun would find in Burke the foundation for his own constitutional reasoning.

And after his death, Burke came to exert a strong influence upon American jurisprudence. His thought helped to shape interpretation and application of America's

federal constitution and of several state constitutions. Chief Justice Marshall, whose *Life of Washington* owed so much directly to Burke's *Annual Register*, was no great scholar: but he did know his Burke, and it would be interesting, were there time, to trace the concepts and the phrases of Burke within certain of Marshall's important opinions. Justice Joseph Story was yet more clearly an admirer of Burke; and in New York, Chancellor James Kent was of Burke's school. Story's *Commentaries on the Constitution* and Kent's *Commentaries on American Law* were of Burke's mode of thought. One might trace the influence of Burke upon this or that justice of the Supreme Court all the way down to the 1950s, if not beyond.

Yet Burke's idea of a true constitution, so nobly expressed in his *Appeal from the New to the Old Whigs* (1792), was under assault in Britain even then. Holdsworth remarks "that Adam Smith, Bentham, and Paine were beginning to teach men to approach the law and constitution of England from a point of view which was the exact opposite to that of Blackstone and Burke."¹⁰ The constitutionalism of Edmund Burke, together with Burke's whole concept of law, ever since then has been battered by positivistic and utilitarian concepts of law and constitution, either side of the ocean.

Nowadays there is much talk of a Second Constitutional Convention in these United States. If merely two more state legislatures should pass resolutions calling for such a convention, with the purpose of drawing up an amendment to provide for a balanced federal budget, presumably that gathering would come to pass.

Just as the Convention of 1787 swept away the Articles of Confederation altogether—even though not convened for that express purpose—so a Convention of 1987, say, could deal so summarily as it might like with the present Constitution of the United States. All sorts of voices would be heard at such a convention; all sorts of interests would clash hotly there. Great error would be possible, irremediable error; one

may even conceive of the drafting of a constitution quite new—and perhaps destined to last no longer than the constitutions of Zaire or Kampuchea.

Whether we Americans are to have a second constitutional convention or not, we would do well to renew our knowledge of the constitutional wisdom of Edmund Burke and of the authors of *The Federalist*, and that of other eminent practical statesmen of 1787. Burke's unfinished *Fourth Letter on a Regicide Peace*, his last published work, terminates with the fragment of a sentence: "There is no such Euthanasia for the British Constitution . . ." Here Burke refers to an early essay by David Hume, in which the speculative Scot suggested that in the fullness of time the decaying British Constitution might die an easy death from inanition, a case of euthanasia, "gently expiring without a groan in the paternal arms of a mere Monarchy." The end of the Constitution would not be painless, Burke declared: not if Jacobin France, or Jacobins within Britain, should gain the mastery. The end would be terrible, a destruction of Britain's civil social order by merciless fanatics.

Nor would there be any euthanasia for the Constitution of the United States, if we Americans should lose the great grim contest with the Soviet power, more formidable and more ruthless than ever the Jacobin power was. Or if we were to undo our Constitution ourselves, on plausible grounds, substituting for it some frame of government purportedly suited to the Age of the Computer—why, before long we would discover that a nation's passage from a venerable old order to a hard glittering new order cannot be painless.

For today we may say of the Constitution of the United States, which has endured very nearly two centuries, what Burke said of the British constitution in 1791:

It is no simple, no superficial thing, nor to be estimated by superficial understandings. An ignorant man, who is not fool enough to meddle with his clock, is however sufficiently confident to think he can safely take to pieces, and put together at his pleasure, a

moral machine of another guise, importance, and complexity, composed of far other wheels, and springs, and balances, and counteracting and co-operating powers. Men little think how immorally they act in rashly meddling with what they do not understand. Their delusive good intention is no sort of excuse for their presumption. They who truly mean well must be fearful of acting ill. The British constitution may have its advantages pointed out to wise and reflecting minds; but it is of too high an order of excellence to be adapted to those which are common. It takes in too many views, it makes too many combinations, to be so much as comprehended by shallow and superficial understandings. Profound thinkers will know it in its reason and spirit. The less inquiring will recognize it in their feelings and

their experience. They will thank God they have a standard which, in the most essential point of this great concern, will put them on a par with the most wise and knowing. . . . We ought to understand it according to our measure; and to venerate where we are not able presently to comprehend.

Amen to that. Should there come to pass a Constitutional Convention of 1987, it should be opened with prayer, and the prayer should be followed by a solemn public reading of that passage from *An Appeal from the New to the Old Whigs*. For we have learned how to transplant human hearts, after a fashion, precariously; but constitutions, the hearts of nations, remain unresponsive to sudden surgery.

1. *The Annual Register* for the years and subjects in question now is reprinted in a useful large volume edited by David R. Murdoch, *Rebellion in America: A Contemporary British Viewpoint, 1765-1783* (Santa Barbara, California: Clio Books, 1984).
2. American historians' plagiarism from Burke's *Annual Register* was exposed in historical journals so early as 1889. A recent summary of this influence is contained in Harvey Wish's book *The American Historian* (New York: Oxford University Press, 1960). See also Peter Stanlis, "Burke's *Annual Register* and American History," in *The Burke Newsletter*, Vol. IV. No. 2, Winter, 1962-63, 179-81.
3. James Bryce, *The American Commonwealth* (New York: Macmillan, 1919, revised edition), Vol. I, 427-32.

4. Sir Henry Maine, *Popular Government: Four Essays* (London: John Murray, 1886, second edition), 212-16.
5. Sir William Holdsworth, *The History of English Law* (London: Methuen, 1938), Vol. XI, 137.
6. Gottfried Dietze, *The Federalist: A Classic on Federalism and Free Government* (Baltimore: The Johns Hopkins Press, 1960), 325.
7. Stanley Pargellis, "The Theory of Balanced Government," in Conyers Read (ed.), *The Constitution Reconsidered* (New York: Harper Torchbooks, 1968, revised edition), 37-49.
8. Bryce, *American Commonwealth*, 77.
9. Maine, *Popular Government*, 247.
10. Holdsworth, *History of English Law*, 279.