

# Artefacts of Culture: The Constitutional Theories of Edmund Burke and Benjamin Disraeli

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**Abstract:** Edmund Burke and Benjamin Disraeli defend an understanding of the English constitution that values culture and cultural history against the attacks of Enlightenment rationalists and utilitarians, which promote theories of abstract right and principle that disavow the impact of the particular development of polities and their peoples. One cannot understand the constitution of a country without recourse to the constitution of its peoples, and thus cultural history becomes more than a simple flourish on top of long political struggle. Engaging with Burke and Disraeli's constitutional defences, standing athwart English Romanticism, reflect a political understanding where constitutions can only be understood with recourse to culture, and thus constitutional history takes the form of cultural history, and vice-versa. In looking toward France, and especially the aftermath of the French Revolution, Burke and Disraeli find a constitution and politics that is completely alienated from French culture and cultural history, thus condemning it to failure, if not perpetual tyranny, and Disraeli extends this criticism to other countries, reflecting the pitfalls of blindly copying constitutions when culture cannot support it. Thus cultural history and constitutional history are deeply and fundamentally intertwined for Burke and Disraeli, and to understand one, it is necessary to know the other equally well.

## I. A CONSTITUTION OF CULTURE

How do we define what a constitution is? It seems like a rather obvious question to which a simple answer can be suggested: it is a set of agreed-upon laws stipulated for political societies as their fundamental rulebook. But such a barebones definition of a constitution is misleading and has formed the core of one of the oldest debates in the history of political philosophy, to which Burke and Disraeli make a valuable addition. The Victorian critic Matthew Arnold, to whom the pithy aphorism 'politics is downstream from culture' is often attributed, was far from the first to aver that politics was deeply intertwined with culture. What the dominant strand was and is, however, has been a matter of dispute for as long as Aristotle tried to define what a constitution meant in his *Politics*. Aristotle criticises Plato's *Laws* as containing "hardly anything but laws; not much is said about the constitution" (Aristotle, *Politics* II.6, 1265a1-2). In the fifth book of the *Politics*, dedicated largely to faction and revolution, Aristotle concludes that "the best laws, though

sanctioned by every citizen of the state, will be of no avail unless the young are trained by habit and education in the spirit of the constitution” (Aristotle, *Politics* V.9, 1310a14-16). The Aristotelian solution to the problem of defining a constitution and the role that culture plays in it, however, is lifelong education in the arts, which habituates the young and shores up the old, and makes culture the problem of the legislator (Lord 1982, pp. 35, 84, 154f). Politics existed within the substratum of culture, a tool that the legislator used in service of the ultimate goal—making virtuous citizens out of ordinary men. That is, for lack of a better phrase, the ‘classical’ solution to the problem we are faced with. History played no part in this solution, and attempts to incorporate history into the equation have oftentimes led to relativism through the historicising of every concept worth studying, thus confining it to the dustbin of irrelevance (Strauss 1953, pp. 120-64).

For Benjamin Disraeli and Edmund Burke, however, this was not an option; historicism would confine that which they treasured—custom and tradition—into the past, and take it away from the domain of the living. Burke and Disraeli stand apart from these ‘moderns’, who are conscious of their past, and the role that it has played in shaping them, without suggesting that constitutions are merely historical artefacts with no relevance today. For Burke and Disraeli, the crucial difference was seeing constitutional and cultural history as a tool to understand the present; the world was only intelligible in the form of what already existed and could be easily perceived by an astute reader, not in the speculative designs of abstract principles, or, as Burke famously decries, of economists, sophisters, and calculators. Who are we? Where do we come from? How have we found ourselves in our present pickle? The slow accretion of custom has not only informed the character of their beloved Englishmen, but also formed the regime which they cherish and prize. The son of Jewish parents who was baptised after his father had a falling out with his synagogue, Disraeli was an unlikely candidate to locate his cultural inheritance mainly in the origin and character of the laws. Edmund Burke, too, represented the quintessential outsider—a well-adjusted one, yes, as David Bromwich points out, but an outsider from the margins of Britain nonetheless (Bromwich 2014, p. 27ff). Being outsiders to English society and culture was essential to the perspicuous clarity that enabled Burke and Disraeli to stand athwart their peers and examine closely that which had been taken as granted, the English constitution. For them, the English Constitution meant a lot more than a mere assemblage of laws that had come together by a series of fortuitous accidents. This is a resting place that Benjamin Disraeli revisits time and time again, in *Vindication of the English Constitution* (Disraeli 1835) and *Sybil, or the Two Nations* (Disraeli 2017 [1845]), though he continues to subscribe to it over the course of his political career, even as Prime Minister. Burke expresses this throughout his career, but nowhere is this more prominent than in his *Reflections on the Revolution in France* (Burke 1987 [1790]).

Burke and Disraeli are paradigmatic figures for English Romanticism; what the tutor started, the disciple brought to fruition. While they agree significantly on more general questions, including *how* a constitution ought to be defined and the role culture placed in it, Burke and Disraeli were partisans of opposing parties, and they had crucial differences in the particular ways they mobilised this understanding of constitutional history as cultural history. Burke defended the Glorious Revolution of 1688, while Disraeli railed against the Whig Ascendancy and decried it as the coming of a Venetian oligarchy, to name one stark difference. However, for the moment, the specific question—*how* Burke and Disraeli use constitutional history and cultural history, and how they inexorably intertwine them together—is of interest to us.

In order to do so, we turn first to the problem of definition: what is the English constitution, and what is a constitution in general? The constitution, I will suggest, is for both of them a cultural inheritance that can only be justified with recourse to the particular rights of Englishmen existing in their organic polity. After we consider Burke and Disraeli’s answers, we move to the problem of the common law. While Pocock seems to suggest that Burke is railing against the excesses of law as pure reason received from Hobbes’ reduction of the common law as reason, Disraeli attacks the brute calculus of the utilitarian creed (Pocock 1960, pp. 133-34; Disraeli 1835, pp. 3-13). But lurking behind their rhetorical enemies is the understanding that the common law is a unique product of the English, a serious cultural entail, and that there is a reason why Englishmen refer time and time again to their ‘reverend antiquity’, to borrow from Coke. What is the common law, then, and are Burke and Disraeli’s accounts of common law anything more than accounts of

cultural history? I seem to suggest not—legal history, constitutional history, and cultural history are joined at the hip, and cannot be separated from each other. In doing so, I hope to show that for Burke and Disraeli, the constitution (and the problem of politics) is a decidedly cultural one, and vice-versa: politics cannot be understood without recourse to cultural history, and vice-versa. Concluding this discussion of Burke and Disraeli is a consideration of the extent to which history can be made and remade at the inkwell, which briefly addresses the differences between Burke and Disraeli, and the problems raised by it.

Cultural history, as we shall see, for Burke and Disraeli becomes a nebulous term. Matthew Arnold was wrong, Burke and Disraeli would say: politics is not downstream from culture—it is a part of it, and vice-versa. If, as I suggest later, a constitution is the way of life of a people—a way that includes its beliefs, literature, communities, resting-places, taboos, and almost everything else—then separating what is strictly constitutional from that which is strictly cultural is a futile exercise, and providing an account of culture devoid of politics, and vice-versa is impossible. If a separation must be made, however, returning to the barebones definition of a constitution proffered in the opening lines of this essay, then the domain of culture stops when formal laws and governing arrangements are stipulated. But even such a definition is wholly unsatisfactory. Law becomes culture through custom—and custom becomes law through the forces of common law. Culture begins in the non-legal domain, but it never remains there, and thus the problem of defining, for Burke and Disraeli, what culture is and how it relates to the definition of a constitution, and thus of their individual and joint histories. We can only know the constitution and culture through their pasts. In their quest to understand the present, Burke and Disraeli are compelled to look to the past and explain their constitutional arguments through an appeal to culture and its history. Thus, constitutional history and cultural history are ill-defined terms because they cannot be understood without the other, or even as distinctive entities with separate existences.

In searching for the answer to the preeminent political question—‘what must we do, how must we act, now?’—Burke and Disraeli turned instinctually to the past. Indeed, the question could only be answered through an appeal to tradition. Another answer was simply not possible. In charting the course of cultural history for wider audiences, Disraeli found his moment in the sun: the *Vindication* launched his career as a viable political candidate, earning the favour of Lord Lyndhurst and his acceptance at the Carlton Club. Disraeli is no historian of the laws in the way that Coke and Blackstone were, with their painstaking attention to legal minutiae; neither is he the historian of the English-speaking peoples, as Churchill was to be. Rather, for Disraeli, what mattered was the whole: where did politics and culture fit into the world? His answer was found in the English constitution, a living, breathing document. But he conceived of his task in the historical idiom and monopolised a significant trend in thinking not only about what it means to be ‘English’ but also how our past forged the way that we ought to look to the present. And Disraeli’s present was anything but pleasant, tarred with the soot of manufacturers who were callous and would stop at nothing in the pursuit of money, and aristocrats who refused to see that property had its duties as well as its privileges. But Disraeli was also harkening back to another figure—Burke—and oftentimes borrowed not only his cadence and tenor, but, as Anthony Quinton points out, “Burke’s actual words” (Quinton 1978, p. 80). For Burke, the particular development of the English peoples had given them rights and duties, associations and privileges, that no one else could have. But Burke, too, like Disraeli, was looking back to Coke and Blackstone, theorists of the common law responsible for the profound commonplace of “reverend antiquity” that animated these discussions. Both Burke and Disraeli both consciously frame cultural history in explicitly constitutional terms, and it is this that deserves further attention.

Burke and Disraeli stand in stark opposition to the French *philosophes* of abstract principle and the utilitarians, respectively, who have in common the denial of culture and custom and tradition. In the words of Michael Oakeshott, the task they had at hand was the refutation of rationalists in politics. Oakeshott describes the rationalist as a man who thinks he “is freed from the idols and prejudices of a tradition” and engages in the politics of the *tabula rasa*: every day is a blank slate to build the world anew, and the past must be thrown off like the yoke of an oppressive burden (Oakeshott 1962, p. 27n). Burke writes sadly but confidently that the rationalist attack in France has all but destroyed the country. “All the pleasing illusions

which made power gentle and obedience liberal, which harmonized the different shades of life, and which, by a bland assimilation, incorporated into politics the sentiments which beautify and soften private society,” he notes, “are to be dissolved by this new conquering empire of light and reason” (Burke 1987 [1790], p. 67). The vacuum this creates will help craft a culture that will countenance “preventive murder and preventive confiscation” and help create a “long roll of grim and bloody maxims” (Burke 1987 [1790], p. 68). In the utilitarians’ perverse moral philosophy, for Disraeli, “it is the interest of man to be a tyrant and a robber,” and anything that could not be justified with reference to a blank slate was condemned and discarded (Disraeli 1835, p. 11). Inheritances of anything but money do not pass the smell test for the rationalist. In talking of the utilitarians and rationalists Burke only mentions Jeremy Bentham and the Marquis de Condorcet by name respectively, but pays no attention to the specifics of either, and treats them as stock figures rather than individuals who must be treated seriously, much like an errant child (Disraeli 1835, pp. 20; 41). Both Burke and Disraeli were profoundly shaped by the denial of culture and the rejection of cultural history they encountered.

What Burke and Disraeli were specifically engaged in is a quest that cultural historians oftentimes seek to do without making explicit mention of: an attempt to shape their cultures for posterity. In Burke and Disraeli, we see cultural history deployed for political, nay, nakedly partisan ends—and by understanding these unique texts in relation to each other, we see cultural history, understood somewhat at a distance from the way that Burckhardt manifested it, come to bear rather differently. Some of J. G. A. Pocock’s early work on Burke’s traditionalism and conception of the ‘ancient constitution’ has pointed us to the relationship between custom and the common law, but much is left to be said about how Burke picks and chooses his rhetorical strategies, and how constitutional defence is intrinsically an exercise in cultural history (Pocock 1960; Bromwich 1991). One of the most prominent contemporary interlocutors of Burke, Pocock’s exegesis of the foundations of Burke’s political thought, particularly in the *Reflections*, forms an important part of this essay. As for Disraeli, he has been either made out to be the arch-romantic nostalgist who traffics in reactionary politics or the quintessential politician who mobilises grand rhetoric to ensure electoral success (Blake 1967, p. 762; Disraeli 1914).

## II. THE CULTURE OF CONSTITUTIONS

What is the English constitution? Unlike the American constitution, organised neatly by articles, clauses, and amendments in a single text, the English constitution lacks the clear definition and the ease through which it can be defined. But even the American constitution is never read on its own: it is read with the *Federalist Papers* and Supreme Court decisions, along with debates at the Constitutional Convention, among other texts. As we shall see, both Burke and Disraeli repeatedly serve up appeals to the English constitution, but when they do so, they talk as much of the constitution of Englishmen as they do of the unwritten constitution of England. The “most important fact in the history of English political behaviour,” for Burke, is the fact that “Englishmen have always been concerned to establish their rights by appeal to their own past and not to abstract principles” (Pocock 1960, p. 128). Constitutional appeals are, in other words, appellations to the cultural history of Englishmen, and the particular inheritances that stem from the Magna Carta, which stands as the point of departure for both Burke and Disraeli.

In the *Reflections*, Burke defines a constitution as “the engagement and pact of society,” but leaves open the question of where this ‘engagement and pact’ starts and ends (Burke 1987 [1790], p. 18). In the passage in which it is contained, it is used to suggest that neither the Houses of Parliament nor the monarchy can give up power when expedient; each has its role, and without the proper functioning of each there is no constitution. But there is more to this—Burke is not simply suggesting that the constitution enumerates the relationship between the whole and the parts, between those who rule, and those who are ruled. If we left it at that we would be doing him a disservice by not looking carefully as to how he deploys this in the *Reflections*.

In another prominent passage from the *Reflections*, he asserts that:

The [Glorious] Revolution was made to preserve our *ancient*, indisputable laws and liberties and that *ancient* constitution of government .... If you are desirous of knowing the spirit of our constitution ... pray look for both in our histories, in our records, in our acts of parliaments, and journals of parliament ... (Burke 1987 [1790], p. 27).

Burke emphasises the antiquity of the English constitution, but he structures his rhetorical approach to show that the ‘laws and liberties’ of Englishmen might form a part of, but not the entirety of the English constitution. To mistake the part for the whole, we can observe, would be to make a categorical error. We know that the laws and liberties of Englishmen are important and integral enough to its functioning that they cannot be separated from the constitution, but they are not the spirit of the constitution, as we learn from the following sentence. If we must try to get to the bottom of the “spirit of our constitution,” we ought to look first to “our histories” and then “in our records, in our acts of parliament, and journals of parliament” (Ibid.). In the *Reflections*, particularly when he talks about the constitution, history, tradition, and cultural history provide his readers with a distinction without a difference; in doing so, he is able to move from each category to the other while admitting that they do not form congruous, discrete entities that can be understood in the abstract, much like the whole they are projected as parts of, the constitution.

While Pocock holds this to be a simultaneous appeal that does not rank and order these various sources of understanding for the spirit of the constitution, there is ample evidence in the following lines to argue that the key operative in this sentence is first “our histories,” and the rest, important as they are, derive from this historical approach (Pocock 1960, pp. 127–28). The second half of the paragraph is worth quoting below in its entirety:

We wished at the period of the Revolution, and do now wish, to derive all we possess as *an inheritance from our forefathers*. Upon that body and stock of inheritance we have taken care not to inoculate any cyon alien to the nature of the original plant. All the reformations we have hitherto made have proceeded upon the principle of reverence to antiquity; and I hope, nay, I am persuaded, that all those which possibly may be made hereafter will be carefully formed upon analogical precedent, authority, and example (Burke 1987 [1790], pp. 27-28; emphasis original).

What is this inheritance that Burke speaks of? It rests upon “the principle of reverence to antiquity,” Burke says, and the recourse to antiquity comes from the primacy of cultural accounts over strictly legal accounts. Pocock recognises correctly that Burke has “made the State a family ... in the sense in which a family is relation in law,” but by taking the law to be more important than the ties that bind individuals together in this community, Pocock disorders the relationships that Burke prescribes (Pocock 1960, p. 131). The spirit of the constitution rests first in history, and later in law; it is the cultural entail of each and every Englishman. Burke’s idiom in the aforementioned passage—that the constitution is an inheritance—implies the existence of a family. But, as Bromwich seems to suggest, Burke operates on the spectrum between law and culture, and seeks to weaponize culture to suit his critical ends (Bromwich 1991, p. 316-17).

Throughout the *Reflections*, Burke continues to stress the inherited traditions and culture of Englishmen that transforms into the idiom of laws and liberties. When he speaks specifically of the continuity between the Magna Carta and the Glorious Revolution, he joins them together through the thread of “an *entailed inheritance* derived to us from our forefathers, and to be transmitted to our posterity—an estate specifically belonging to the people of this kingdom, without any reference whatever to any to any other more general or prior right” (Burke 1987 [1790], p. 29). The constitution is not only the embodiment of a people’s culture, it also works analogously in this account. Thus, Burke can speak of the rights of Englishmen in reference to the American Revolutionaries whilst simultaneously declaiming abstract right and principle: when the colonists left England, they did not forsake their Englishness, but rather sought to affirm it across the Atlantic (Burke 2000 [1777], p. 181). Harvey Mansfield tries to establish the two poles of the Burkean constitution as between popular government and the rule of gentlemen, but in doing so we lose to either the agent that

binds it together: that of custom, of cultural entail that is observable through the estate everyone inherits by virtue of being an Englishman (Mansfield 2013, pp. 123-200; 164).

The formal definition of a constitution, to which Mansfield resorts in his exegesis of Burke's constitutional thought, is rejected by Burke, as we saw above. In denouncing the National Assembly of the French revolutionaries, he writes, "I do not mean its formal constitution, which, as it now stands, is exceptionable enough, but the materials of which, in a great measure, it is composed, which is often thousand times greater consequence than all the formalities in the world" (Burke 1987 [1790], p. 35). Here the word 'constitution' serves a dual purpose. In one sense, Burke refers to, as he admits, the "formal constitution" of the National Assembly, the individuals of which it is comprised, those who, to borrow an old formula, rule and are ruled in turn. However, Burke reminds us that this is largely irrelevant; it would do little, he says, to clarify what it really was made of, and what it stood for.

A system of authority, he remarks, is defined by "God, and nature, and education, and their habits of life" (Ibid.). A constitution is, in other words, the way of life of a people—a way that includes its beliefs, literature, communities, resting-places, taboos, and almost everything else. In other words, it is the cultural history and entail of a people. The poet Alexander Pope and the jurist John Selden are both integral parts of the English constitution (Burke 1987 [1790], pp. 153; 28). While Burke's literary interests have been widely traced, particularly through his literary and philosophical debut, *Philosophical Enquiry into the Origins of our Ideas of the Sublime and Beautiful* (1757), it is important to observe that he was not afflicted with the increasingly rigid separation between disciplines that informed many of his contemporaries. It is hard to put it better than David Bromwich, who writes that in reading Burke, "his early aphorism, 'custom reconciles us to every thing' [from the *Enquiry*], and his late aphorism, 'art is man's nature,' are meant to be taken together" (Bromwich 2014, pp. 16-17). The aesthetic bent of the early Burke is very much present in the political writings of the later Burke, where it is presented in the all-encompassing concept of culture and its history. Those who seek to depart from that cultural history "do not hold the authority they exercise under any constitutional law of the state" (Burke 1987 [1790], p. 145). As we have seen above, then, for Burke a constitution far exceeds in scope the particular rules that apply to its governing arrangements: it is an account, a realisation, of the cultural history of a people. It is more protean than procrustean.

Disraeli follows a similar line of argument in his *Vindication of the English Constitution*, a text, Anthony Quinton notes, borrowed much in tone and form from Burke's *Reflections* (Quinton 1978, pp. 80-81). Like Burke above, he provides us an account of the gulf between a constitution and a set of laws and governing arrangements. In doing so, he casts the English constitution as the estate of Englishmen passed down as an inheritance—the same idiom that Burke uses—and compares the nation to a family. He points to the American constitution as having English roots, but goes further in showing the folly of others who tried to adopt the American constitution without the prior habits and entails of the English. The United States of America, he reminds us, was not founded in 1776. He views the French 'constitution' as an anomaly and declaims the revolutionaries for permanently destroying the entail of all Frenchmen, causing a bloody revolution to take place every fifteen years. From the examples he provides of the French 'constitution' and the other constitutional arrangements he considers, we can, like we get from Burke, an account of the constitution as the realisation and actualisation of the cultural history of a people. Let us consider each in turn.

For Disraeli, like Burke, it would be a categorical error to regard the design of ruling arrangements as the entirety of the constitution. "In speaking of the English constitution," he reminds his readers, "I speak of that scheme of legislative and executive government consisting of the King and the two Houses of Parliament; but this is a very partial view of the English constitution" (Disraeli 1835, p. 67). But what else is included in this list? Disraeli adds to it not only other "established associations," but themes as varied as "Trial by Jury" and "the compulsory provision of the poor" (Disraeli 1835, pp. 67-68) and the important role of associative life at the most local level, in language evocative of Burke's statement about the love we have for "the little platoon we belong to in society" (Burke 1987 [1790], p. 35). "The political institutions of England," Disraeli tells us, "have sprung from its legal institutions," which owe everything to custom, and to law, which he also identifies with custom, à la Coke and Blackstone (Disraeli 1835, p. 68). Disraeli circles

back to this and emphasises it in the closing pages of the *Vindication* by condemning any view of the constitution as existing solely of the governing arrangements as a “superficial view of the nature of the English constitution” (Disraeli 1835, p. 203). It is the “political condition of the country” and the “state of our society” that matters as much as ruling arrangements (Disraeli 1835, p. 203).

While Disraeli adopts Burke’s idiom of the nation as a family, he ensconces it explicitly in terms of cultural history. Disraeli writes, “They looked upon the nation as a family, and upon the country as a landed inheritance. Generation after generation were to succeed to it, with all its convenient buildings, and all its choice cultivation, its parks and gardens, as well as its fields and meads, its libraries and its collections of art, all its wealth, but all its incumbrances” (Disraeli 1835, p. 24). Disraeli is speaking of the wise statesman who rules in accordance with the constitution of his people and the constitution of the land, and though he casts the relationship between man and state in terms of “filial piety,” it has more to do with the acceptance, preservation, and propagation of a particular ideal that transcends the mere transactions of politics (Ibid.).

The idea of the constitution and culture as a specific entail, like Burke, is projected very easily onto the Americans, but not quite so for the French. Disraeli refers to Washington and the framers of the American constitution as “Anglo-Americans,” and claims that the Pilgrims on the Mayflower brought with them “the laws of England, and a republican religion; and blended together, these formed the old colonial constitution of Anglo-America” (Disraeli 1835, p. 59). There is, in Disraeli, like Burke, the distinct sense that the American revolutionaries were not that revolutionary at all, and Disraeli puts it more succinctly than Burke does when he observes that “the Anglo-Americans did not struggle for liberty: they struggled for independence; and the freedom and the free institutions they had long enjoyed, secured for them the great object of their severe exertions” (Ibid.). The inheritance of the Englishman remained with him when he left the shores of England and sailed across the seas; if it were merely a legal covenant, one that rested upon the King and the Houses of Parliament, it would make no sense for appeals to be made in the vein of what Eric Nelson calls ‘Patriot Royalism’ (Nelson 2011).

Like Burke, Disraeli consistently applies the totalising view of the constitution as an artefact and product of cultural history to considerations of other constitutional arrangements and criticises the South Americans and the French for their constitutional innovations, which consisted either of lifting constitutions wholesale from other countries, or trying to inflict radical change upon a preexisting polity in accordance with abstract principles and little consideration of cultural and political realities. “Why has the republican constitution flourished in New England, and failed in New Spain?” Disraeli asks (1835, p. 57). The answer is twofold: first, that “the constitution of the United States had no more root in the soil of Mexico, and Peru, and Chili, than the constitution of England in that of France, and Spain, and Portugal,” and second, that “it was not founded on the habits or the opinions of those whom it affected to guide, regulate, and control” (Ibid.). Paying close attention to the structure of the argument, it can be observed that in Disraeli’s view, there was nothing really in the ‘soil of the United States’ than the cultural artefacts brought over by the Pilgrims to the United States; thus the continual usage of ‘Anglo-Americans’ to describe the United States. To take a permutation of an English constitution and thrust it upon a people with no English inheritance would be to fan the flames of revolution and rebellion (Ibid.). Mexico, Chile, and Peru lack the habituation that the entail of every Englishman has provided for them. A wise legislator would mould a constitution from the people and their culture, whilst an intelligent but unwise legislator would merely copy wholesale the constitution of the United Kingdom or the United States, in Disraeli’s view.

The “anecdote” that Disraeli repeats about the Pasha of Egypt serves the same purpose as that of the example of the Latin American nations which sought to emulate the American constitution but achieved nothing but discord and strife (Disraeli 1835, pp. 102–6). The Pasha, having learnt of the Houses of Parliament, is praised for his prudence in instituting two chambers, but they embody the principle of “representation without election” (Disraeli 1835, p. 105). Disraeli goes on to praise the “healthy seeds of a popular government” the Pasha set up and commends the Pasha for permitting the lower house to petition without debate, and restricting the upper house to debate without voting on a particular course of action. Disraeli is sensitive to changing manners, and like Burke, would rather promote slow, measured change instead of bloody,

violent revolution. Constitutions are encumbered and profoundly shaped by culture, and while political shifts can and do occur, it is better done in small steps such that culture can assimilate and participate in it. Radical departures are siren songs for revolutionaries and bloodshed, but slow change can accommodate the need for change and conservation, as Burke also reminds us, and is vital to the health of a constitution (Burke 1987 [1790], p. 19).

Like Burke, Disraeli attends to the question of France, but writing in 1835, he has more to say than predict the rise of a Napoleonic figure. Louis XVIII gave way to Charles X, and with that, a more limited monarchy gave way to a full-blown revival of the *ancien regime*, with all the ills that precipitated its demise. Disraeli provides a lengthy analysis of the French constitution bifurcated by the Revolution. Following Burke's lead, Disraeli notes that the *ancien regime* had "all the elements of a free constitution," in which he gives prominent place to "custom, in its ancient states" (Disraeli 1835, p. 28). Of the Revolutionaries he remarks, "they not only destroyed law and custom, but they destroyed their country" (Disraeli 1835, p. 29). The geometrical division of provinces in France was despicable because it paid no heed to the "variety of manners, or diversity of temperament" (Ibid.). In other words, the French Revolution was not very French at all to begin with—it was Parisian in tone, tenor, and substance, we are reminded, and blind to the culture, habits, and manners of the country, which stands apart from the shibboleths of a small, stratified urban elite (Disraeli 1835, pp. 29–30). Even a genius of Napoleon's stature, Disraeli reckons, could not fix this:

The Emperor of the French was not one of your abstract-principle gentlemen. His was eminently a practical mind. He looked about for the elements of government, and he could discover no better than those which had been created by the national character, and hallowed by the national habits. Even his sagacious mind deferred to the experience of ages, and even his unconquerable will declined a rivalry with the prescriptive conviction of an ancient people. He reestablished the tribunals; he revived chivalry; he conjured up the vision of a nobility; he created the shadow of a church (Disraeli 1835, pp. 30-31).

The idiom of "national character," "national habits," "experience of ages," and "conviction of an ancient people" all point us to the cultural history and mores of the French. The French constitution is inseparable from the cultural history of the French; it captures the totality of being, of every Frenchman from Lorraine or Toulouse. Having never had a representative assembly of the calibre of the House of Commons, Louis XVIII is compared to "the lunatic with a crown of straw" for being a faithful copier of the Houses of Parliament, but without the work it would take to mould it in the vein of the French (Disraeli 1835, pp. 31-32). The Pasha of Egypt is praised for being inspired by the Houses of Parliament and adapting it to his peoples, while Louis XVIII commits the categorical error of supposing that "the English constitution consists merely of two rooms full of gentlemen, who discuss public questions, and make laws in the metropolis at a stated season of the year" (Disraeli 1835, pp. 32-33).

Disraeli consistently uses this cultural idiom in attempting to define not just a constitution but also the English constitution, and as we saw above, he provides us more examples than Burke does, largely because Burke is writing before the Age of Revolutions, while Disraeli has more than two score years to draw upon to mock and belittle, criticise and pillory. And nowhere is this totalising view of the constitution as an artefact and part of the cultural history of a people more evident than in the closing pages of the *Vindication*, where he tells his readers that the English constitution is "founded not only on a profound knowledge of human nature, but of human nature in England," while recent constitutional attempts recognise neither the universal nor the particular French aspects of it (Disraeli 1835, pp. 206-7). That aspect of human nature shaped by the culture of a particular people and country becomes integral to constitutionalism of any kind; to ignore it would be to set up a constitution that will not and cannot work because it simply ignores the long sweep of cultural history.



### III. CULTURE AND LAW: ENGLISH HISTORY AS THE HISTORY OF THE LAWS

Burke and Disraeli write of ‘law and custom’ repeatedly, and though they both find themselves following the footsteps of Coke and Blackstone, they add a dimension to it: that of Englishness. As we saw above, a constitution does not merely provide an account of governing institutions—it extends far beyond that. This enables Burke to emphasise the idiom of the ‘spirit of our constitution’ whilst Disraeli can wax eloquently about the “character of our constitution” (Burke 1987 [1790], p. 27; Disraeli 1835, p. 1). This is not to say, however, that law does not form an integral part of the constitution, or that it does not matter what ruling arrangements are if it cannot produce a tenable and continuous strand of justice that joins past, present, and future. Burke and Disraeli both hold that it is through custom that law is able to mediate through culture, and therefore the curious mix of positive prescription and common law that makes the English constitution unique is a peculiar cultural artefact. An account of the laws, then, is no different from an account of one of the most integral parts of culture.

Both Burke and Disraeli point to the antiquity of the laws, not to say that the laws were formed immemorial and thus have been handed down to us, but rather that they had positive beginnings and a history that is found in the breast of every Englishman. Thus, a history of the laws becomes a history of the English peoples, of the Saxons, the Normans, and everyone else that moulded Albion. Burke argues that repeated appeals to the ancient origins of English laws “demonstrates the powerful prepossession toward antiquity, with which the minds of all our lawyers and legislators” (Burke 1987 [1790], p. 28). Disraeli, like Burke, reminds us of “this deference ... to ‘reverend antiquity,’” and is effusive in his praise for jurists and historians of the law (for they seem to be the same) (Disraeli 1835, p. 25).

But a healthy love for history does not condemn both to historicism, understood by Strauss as the belief that everything was historically determined and is and always be an artefact of the time it was produced and nothing more, and therefore the on-ramp to the highway of relativism, as Leo Strauss reminds us in his comparison of Burke with Cicero: like Cicero, “Burke traced the excellence of the British constitution to the fact that it had come into being ‘in a great length of time’ and thus embodies ‘the collected reason of ages’” (Strauss 1953, p. 321-22). For Burke and Disraeli, antiquarianism run amok was not the solution to ahistoricism, and they both warn against it. While Burke explicitly voices his discontent with it, it is through Disraeli’s “philosophical statesman” that he structures his criticisms of the historicist fetish.

Burke, in his fragmentary ‘Essay towards an History of the Laws of England,’ warns his readers against mistakenly conflating the antiquity of English laws with the false idea that “English law has continued very much in the same state from an antiquity” (Burke 1997a [1757], p. 323). What use is history if nothing has changed since time immemorial, Burke asks the reader, deploring the state of “the leading science in every well-ordered commonwealth” (Ibid.). Law, he says, ought not to be “confined and drawn up into a narrow and inglorious study,” a study that is content only on recording the minutiae of certain legal proceedings (Ibid.). Pocock is right in pointing out that in the aforementioned fragmentary essay, “the course of change in the law can be historically explained by relating it to the operation of factors outside the law and independently known,” but Pocock does not admit into his evidence the key qualifier: that law conforms and shapes culture and represents more than the mere comings and goings, the prosecutions and disputes, of a growing society (Pocock 1960, p. 139).

The common law, even though it provides an account of custom and is the embodiment of accreted custom, in the conventional idiom used to conceive of English law, is, in Burke’s account, “compounded, altered, and variously modified, according to the various necessities, which the manners, the religion, and the commerce of the people, have at different times imposed” (Burke 1997 [1757], p. 325). Insofar as law is worth studying, it is not the study of the letter of the law and those specific legal decisions that have provided important resting places for lawyers and judges, but rather the cultural forces that shaped it into what it is now.

Disraeli’s ‘philosophical statesman’ stands in contrast to the beleaguered antiquarian because he seeks, like Burke, not the letter but the spirit of the law. Thus, he is compelled to turn to the “essential character of their [the law’s] history” and the “principles of ancestral conduct” (Disraeli 1835, p. 17). The philosophical

statesman, to whom the *Vindication* is ostensibly addressed, would do well to learn the principle of English history. “There is, throughout the whole current of our history, a most salutary legal flavour,” a flavour so strong that even “arbitrary monarchs and rebellious parliaments ... alike quote precedent and cling to prescription” (Disraeli 1835, p. 22). English history is for Disraeli legal history, but in the same expansive sense that Burke, as we saw above, uses.

Nowhere is this more evident than in *Sybil, or the Two Nations*, the middle novel of Disraeli’s middling ‘Young England’ trilogy. At the heart of *Sybil* is a class conflict. Industrialisation has created an underclass with pitiable living conditions and no representation, ruthlessly exploited to the point where even its more knowledgeable members strongly believe that they do not live in the same nation as those better off than they are. Charles Egremont, the protagonist of the novel, encounters two strangers in the ruins of Marney Abbey, and the conversation veers toward inequality and the breakdown of communal life in England. The stranger reminds Egremont, that England is currently comprised of two nations:

Two nations; between whom there is no intercourse and no sympathy; who are as ignorant of each other’s habits, thoughts, and feelings, as if they were dwellers in different zones, or inhabitants of different planets; who are formed by a different breeding, are fed by a different food, are ordered by different manners, and are not governed by the same laws (Disraeli 2017 [1845], II.5).

These two nations, of course, as the nations of “THE RICH AND THE POOR” (Ibid.). One would not be amiss if one only read the first and the last phrase in that flowing sentence, but between those two nations, Disraeli is trying to remind us, there is no common culture, no common ground remaining upon which people can meet. Thus, they “are not governed by the same laws” (Ibid.). The Stranger is able to bemoan the division of a once-united country into two because there was once a resting place that was common to all—the monasteries and abbeys that served as the foundation of communal life. The dispute here is framed as laws *and* culture. Similarly, when the stranger reminds Disraeli of Henry VIII’s dissolution of the monasteries, he is able to criticise the dissolution by remarking that while it seemed plausible that religion could be changed, in reference to the Magna Charta’s very first clause that guarantees the independence of the established Church, Henry VIII had no right, no jurisdiction, to sack and dissolve the monasteries, for those were not only “a matter of religion, but [also] as a matter of right” (Ibid.). But the stranger associates with the old church because, as he reminds us, the monasteries tended to and cared for his people: the trodden underclass. Culture, here, picks up a “most salutary legal flavour,” and vice-versa (Disraeli 1835, p. 22). We see this repeatedly in *Sybil*, where the dramatic tension between the rich and the poor, between the upper and the lower classes, is repeatedly cast in legal terms. The Chartist agitators, fighting for the rights of the lower classes, want to add to the charter of the land, and “issued a decree that labour was to cease until the charter was the law of the land” (Disraeli 2017 [1845], VI.6). When Disraeli enters into an extended digression more pertinent to the politics of his day—perhaps the dire influence of Sterne’s *Tristram Shandy*—he criticises the Reform Act of 1832 by asking, “Has it cultured the popular sensibilities to noble and ennobling ends?” (Disraeli 2017 [1845], I.5)

Accounts of law and culture are never too far away from each other in the accounts Burke and Disraeli provide to us. Indeed, cultural conflicts are legal conflicts, too, as Disraeli’s *Sybil* shows us through its adoption of the idiom of law as a remedial tool between two cultures that have since departed from each other. In Burke, we see an added defence of custom and the common law, which is identified with it. The law, like the constitution, is a cultural relic, and to provide an account of law, we are forced to resort to custom and, through that, to culture. To know culture, we must study its history; we must see where it comes from and how it has evolved. To know law without legal history is a grave error in a system where common law is extremely important; to know culture without considering its history is a comparable act of folly when one considers how cultural history and legal history are deeply and inseparably intertwined.

## IV. THE LIMITS OF CULTURAL REMAKING

The journeys that Burke and Disraeli embark upon are similar, and have many of the same resting places, but ultimately, they are not the same; they do not lead us to the same destination, and it would be amiss to not mention it. But there is something valuable hidden behind this. Culture is slow in changing. Its resting places, its defining contours, its peaks and vales, change about as quickly as they did in the pre-industrialised world. In that it keeps mostly with its premodern characteristics, though it cannot be left unsaid that technological advancement has opened up, and to a large extent, accelerated the speed of change, in ways that might jeopardise the vitality and existence of constitutional orders all over the globe. To force rapid cultural change in a short period of time is to ask the Sirens to wreck the nation and cause political instability.

For Burke and Disraeli, there is scarcely any distinction to be made between the constitutional history of England and its cultural history and underpinnings. If there is, it is a distinction without a substantive difference. This framework of understanding is extended to other countries as well, making it hard to criticise Burke and Disraeli for applying one standard to their own constitution and laws and another to foreign constitutions and laws. This basic agreement, however, masks a fundamental disagreement that lurks beneath the surface. Burke and Disraeli represent two bookends to English Romanticism, and in certain ways they stand opposed to each other. Burke vociferously defends the Glorious Revolution of 1688, while Disraeli attacks it as a settlement brought about by an oligarchy run amok. Burke defends the rights of returned Members of Parliament to set up government without interference from the monarch, while Disraeli is a staunch advocate of royal prerogative. These are but two small differences; plenty more exist. Disraeli is far more strident in his championing of “those who will not follow the beaten track of a fallacious custom,” raising the prospect that there is, in the first place, even such a thing that exists (Disraeli 2017 [1845], VI.13).

Both Burke and Disraeli, it is clear, engage in selective historiography. Isaiah Berlin writes of Disraeli’s *Vindication* and *Sybil*: “This was the material out of which his own historical, or pseudo-historical, imagination constructed the personality with which he faced England and the world” (Berlin 2013, p. 337). Berlin seizes on the right word to describe what Disraeli and Burke were up to. Sins of omission—for instance, neither Burke nor Disraeli venture to mention the enclosure of the commons in the 17<sup>th</sup> century—are plentiful. While Burke is more attentive to the multifaceted sources of English law and custom, and consequently culture, especially in his fragmentary essay on the laws, he still steamrolls over differences, and paints a serene image of a picture-perfect society. Disraeli, on the other hand, seems more attentive to the violation of first clause of the Magna Charta guaranteeing the independence of the Church by Henry VIII, especially in *Sybil* (II.5), but he takes the fiction of legal continuity nonetheless and adopts it as an important stratum of his idiom. And neither deign to mention the many republican elements in English thought and life.

Burke and Disraeli might use cultural history, but to get a fuller picture of the cultural history of the English one ought not to solely rely on them. On the other hand, Burke and Disraeli matter immensely for the course of English political thought. Whatever the merits of Heraclitus’ famous utterance might be, after Burke and Disraeli, it is impossible to step into the same river again, so to speak. Phantasmagorias can be potent—and Burke and Disraeli are exponents of that form. But this does not take away from the vitality of culture and tradition that they both drawn on and mould significantly. Their failings as cultural historians do not negate their success in crafting a vision of politics that has culture at its heart, in stark contrast to the rationalist, who negates the importance of culture and, if he does admit it, seeks to tear it down and dismantle it with the lustful, vengeful eye of an iconoclast.

So far, we have considered Burke and Disraeli as political thinkers, not partisan pawns. In returning both Burke and Disraeli to their more nakedly partisan realms in which they existed, it becomes important to consider the extent to which they make and remake history. Neither are professional historians, though they do not lack in learning. But the ends to which cultural history can be mobilised are various, and indeed, oftentimes contradictory. By the mid-nineteenth century, however, the early Victorian Conservatives had carefully adopted Burke into their pantheon, in no small part due to the influence of Disraeli and had

become a staple of the Tory periodicals (Roberts 1979, p. 66). Burke's Whiggism was toned down, and the great cultural-and-constitutional historian was made a Tory in all but name. 'Tory Men, Whig Measures' was only second to the 'one-nation' idiom that Disraeli coined in *Sybil*, and it seemed that what was once a satirical statement had taken a life of its own, a decade before *Sybil*, in the *Vindication* and the legion of followers it drew to the Tories.

It would do us well to pay more heed to our duo's close mapping between constitution and culture. We speak oftentimes of the best constitution possible, and part of this particular mode of utterance has been to keep (rightly) the question of the best constitution alive but refusing to see that at its root is culture. To impose a constitution upon a people is an act of folly. The Aristotelian solution in light of the best city was to use culture to habituate citizens to fit the best possible constitution, but we seem to have obscured and forgotten the vital role of *paideia* in political life. Politics do not simply appear from thin air. And this is what Burke and Disraeli, among countless others, have tried, since reverend antiquity, to point out, time and time again. The best constitution in the United States is not the same as that in Chile or Afghanistan. When constitutions are imposed, one ought to be more sensitive to the spirit and substance of the culture upon which they are imposed, whether it is through the cunning of the ballot box or at the wrong end of the gun. Intelligence, perhaps, might demand Westminster Parliamentarism, but it is wisdom that is required. And it is wisdom that demands that we pay attention to culture—not merely as a tool for constitutional design, but also as a defining feature of constitutions and law.<sup>1</sup>

## NOTES

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