

## LEGITIMACY AND LEGALITY OF REVOLUTION IN THE THEORETICAL THOUGHT OF EDMUND BURKE

**ABSTRACT:** Within legal doctrine, a longstanding debate has persisted as to whether revolution may be regarded as a legitimate and lawful means of altering state authority. From the perspective of a democratic constitutional order, revolution constitutes a violent change of state authority; however, within certain ideological frameworks, it is perceived as an instrument for transforming authoritarian regimes. Historical experience demonstrates that while some revolutions have constituted the only “effective” remedy against autocracy, others have served merely as a means of its establishment. The French Bourgeois Revolution and the October Socialist Revolution represent the opposing poles of these interpretations. Each, in its own manner, revealed both positive and negative consequences, as they were ultimately betrayed by their leaders, who appropriated them for their own ends. This study employs a range of scientific methods—most prominently historical, comparative, inductive, and hypothetico-deductive—in pursuit of an integral approach aimed at highlighting the importance of Edmund Burke’s theoretical thought. It should not be overlooked that the distinguished Serbian legal theorist Slobodan Jovanović devoted particular attention to this author, especially in the context of examining revolution as a means of violently replacing one political order with another.

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## 1. Introduction

Edmund Burke was born in Dublin on January 22, 1729, and passed away in Beaconsfield on July 9, 1797. He was a writer, political thinker, and erudite scholar, but also an anti-revolutionary and a model for all those who reject the ideas of rapid and reckless transformation of social and political reality. Although Irish by origin, Burke occupies a prominent place at the very pinnacle of English political thought. He possessed a keen ability to discern the manifold forms of legal abuse that may arise during periods of mass social upheaval. For this reason, part of his intellectual engagement was devoted to the study of law as a legitimate instrument for the regulation and organization of social relations.

Following family tradition, Burke initially chose to pursue legal studies. However, owing to a combination of circumstances, he abandoned them and instead turned toward a practical engagement with the socio-political conditions prevailing in England and France at the time. It may therefore be argued that such immediacy in observing people and events enabled him to develop and later steadfastly defend his own distinctive views. His prematurely interrupted legal career ultimately created the opportunity for his subsequent political engagement. Burke became a supporter of the Whigs, working actively to strengthen and unify the party. In 1765, he was appointed secretary to the Marquess of Rockingham, the leader of a prominent Whig faction. Around the same time, he entered the House of Commons, marking the beginning of his active participation in English political life. However, it was precisely through his experience of English parliamentarism that Burke came to perceive both the advantages and the deficiencies of an insufficiently structured political system, in which power tended to contract in an unnatural and exclusive manner.

The roots of Burke's later political engagement may be traced to the constitutional contradiction that emerged during the reign of King George III. The essence of the problem lay in two opposing positions concerning whether supremacy in controlling the collective executive power should belong to the King or to Parliament. Burke articulated his views on this issue in his 1770 pamphlet *Thoughts on the Cause of the Present Discontents*. In this work, he opposed King George III, arguing that the monarch had no right to appoint ministers, as such matters properly fell within the competence of Parliament,

the representative body of the people. In Burke's conception, as the role of Parliament gained increasing importance, political parties were to become the principal political agents, serving as the crucial link between the monarch and Parliament. Within these parties, the political will of the people was, in Burke's view, embodied and subsequently channeled through the distinct branches of government.

Guided by such convictions, Burke made active efforts to strengthen and enhance parliamentary control over royal authority in England. In doing so, he did not adhere to a purely numerical understanding of democracy, whereby governance is reduced to the attainment of a parliamentary majority. Rather, he maintained that democracy cannot meaningfully be quantified in such terms. His views on this matter are well known: members of Parliament, he argued, must not serve merely as passive transmitters of the will of their constituents. Instead, the political—and by extension, the social—role of popular representatives (delegates or members of Parliament) ought to be directed toward the pursuit of the common good. In practical terms, this implies that a representative should act on the basis of personal judgment and conviction, remaining entirely unburdened by populist pressures.

Another sphere of Burke's engagement concerned the American colonial question in the latter half of the eighteenth century. Edmund Burke vehemently and passionately opposed the British imposition of the *Stamp Act* of 1765. This Act introduced new tax burdens on the American colonies, prompting ten of them to refuse its implementation. In response, the colonies adopted the *Declaration of Rights and Grievances*, which called for a boycott of British goods and the rejection of all direct taxation. Consequently, the British Parliament repealed the *Stamp Act* the following year. A decade later, in 1776, thirteen British colonies declared their independence from the Kingdom of Great Britain and established the United States of America.<sup>1</sup>

Burke's intellectual engagement may be situated within the context of three major revolutions: the Glorious Revolution in England of 1688, the American Revolution for Independence of 1776, and the French Revolution of 1789. The central intellectual and political questions of the late eighteenth century were profoundly shaped by the interpretation and understanding of these transformative social upheavals (Raunić, 2013, p. 158).

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<sup>1</sup> The American colonies in question were the following: Delaware, Pennsylvania, New Jersey, Georgia, Connecticut, Massachusetts Bay, Maryland, South Carolina, New Hampshire, Virginia, New York, North Carolina, Rhode Island and Providence Plantations.

The objective of this paper is to provide a scholarly examination of Edmund Burke's political thought regarding the legitimacy and legality of revolution as a form of social upheaval. We believe that Burke's theoretical framework remains highly relevant today in light of contemporary global events. His substantive insights as an 18th-century philosopher serve as invaluable material for any researcher in this field.

## **2. The legitimacy and legality of revolutionary change of state authority**

### ***2.1. Edmund Burke's Critique of the Revolutionary Transformation of State Authority***

In both political and legal theory, opinions diverge regarding the necessity of revolutionary change in government and the moral superiority of a gradual transition from one political order to another—presumed to be more just and equitable. Numerous theorists have claimed the right to defend revolution with persistence and conviction, often operating within, yet at times exceeding, the boundaries of their own ideological frameworks. Unfortunately, even those thinkers were not immune who, driven by their own interests, spoke in favor of the revolution, since it was precisely through it that they attained high positions within the state apparatus. Yet, some among them later voiced profound disillusionment with the course of events, acknowledging that the revolution had betrayed its own principles—and, subsequently, those who had once placed their faith in it.<sup>2</sup>

Edmund Burke belongs to the group of theorists who regarded revolution as an impermissible means of replacing one political order with another. Citing a number of adverse social, political, and economic indicators, Burke, in his *Reflections on the Revolution in France*, emphasizes in particular: “*In July 1789 (a period that shall always be remembered), the finances of the city of Paris were still in good condition; revenues covered expenditures, and the city at that time had a balance of one million (forty thousand pounds sterling)*”

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<sup>2</sup> A clear example of this perspective is found in Leon Trotsky, who wrote about the *betrayed revolution* in the Soviet Union. However, Trotsky did not abandon the thesis of the necessity of revolutionary transformation of an existing order; rather, he predicted that such a change would ultimately be carried out by the bureaucracy within the USSR itself. He thus argued that one must distinguish between *social revolutions*, which replaced feudalism with a bourgeois order, and *political revolutions*, which, without altering the economic foundations of society, merely overthrew the existing ruling formations (Trotsky, 1973, p. 220).

*in the bank. The expenses incurred by the city after the Revolution amounted to 2,500,000 livres. Because of these expenses and the considerable reduction in voluntary contributions, there occurred not a temporary, but a complete lack of money.”* (Burke, 2001, p. 280)

Burke is rightly regarded as the founder and steadfast defender of conservatism, defining it as a deeply rooted worldview. While conservative ideology rests upon an established hierarchy of values and a traditional way of life grounded in inherited social patterns and the experiences of previous generations, the negative outcomes of the French Bourgeois Revolution further reinforced conservative political orientations and the corresponding value system. This system emphasized the importance of the family, the Church, the state, and various professional and guild associations. In this context, Vojislav Stanovčić cites the view of Ljubomir Tadić, who criticized Burke’s considerable influence on the thinking of both his contemporaries and later generations. Tadić argues that Burke’s popularity should primarily be attributed to the activity of conservative forces (Stanovčić, 2022, p. 140).<sup>3</sup> Nevertheless, Burke’s conservatism should not be equated with the positions of certain authors who criticize only specific revolutions, rather than revolution as a means of changing power itself. Thus, Radomir Lukić directs his critique toward the French Bourgeois Revolution, questioning the attainability of its fundamental principles—liberty, equality, and fraternity.<sup>4</sup>

Edmund Burke, in his works, offers a profound analysis of the practical consequences of the French Bourgeois Revolution. In them, he expresses open contempt for the actions of the revolutionaries, marked by recklessness and cruelty amid an atmosphere of chaos and the insecurity of every individual. These represent the most peculiar and absurd actions, in which crimes and

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<sup>3</sup> Tadić’s view should be accepted only conditionally, since there were other thinkers—skeptics of a conservative orientation—who had left a significant mark even before Edmund Burke. They may be credited with helping Burke to recognize the importance of social conventions, which arise from and rest upon stable social relations. Moreover, Burke was also associated with the liberal intellectual circle, to which the renowned economist Adam Smith made a notable contribution (Stanovčić, 2022, p. 168).

<sup>4</sup> “Freedom and equality, as the rallying cries of the Revolution, thus expressed the program of the Revolution—one that had already begun to be realized in practice, if not yet in constitutional and legal terms. The third slogan, fraternity, insofar as it referred to French society and not to the international ideology of the Revolution, further deepened the significance of the previous two slogans as their logical complement and as a completion of the desired transformation. It signified the emergence of the French nation—unified and fraternal—in place of the old estate divisions, under which, instead of a nation, there had existed a kind of feudal international. Despite the many conflicts and wars between feudal states, these wars were not fought over national causes but rather over particular feudal interests” (Lukić, 1989, p. 655).

follies intertwine. Such monstrous, and at times even tragicomic events, reveal the diverse human passions that inevitably succeed one another and occasionally overlap. Thus, feelings of contempt and indignation, laughter and tears, mockery and horror alternate — emotions that, under normal circumstances, would never coexist. Burke openly criticizes those who perceive these revolutionary circumstances in a completely different and self-serving way. In short, such events evoke in them no feelings other than triumph and rapture (Burke, 2001, pp. 17–18).

Every form of revolutionary government is, by its very nature, unjust and incompatible with an established political and legal order. Nevertheless, Edmund Burke does not extend unconditional approval to governments formed under regular circumstances. His conservatism is neither rigid nor dogmatic, for he recognizes that any form of authority may degenerate into tyranny if the prevailing conditions allow it. Such decay, he argues, is most often fostered by excessive individualism and the social atomization of citizens, which render them vulnerable to the encroachments of despotic power. Burke underscores the necessity of competence within the higher political strata — a competence that must be commensurate with wisdom and a genuine capacity to safeguard the broader interests of society. Without such qualities, those in positions of authority cannot fulfill their essential function as regulators of political and social order.

Burke reinforces his opposition to individualism through a profound analysis of human nature. Drawing on the inherent traits of human character, he argues that individuals are far more prone to surrender to their passions than broader social groups. It is evident that Burke had in mind the fact that individuals are often incapable of fully mastering their emotions and impulses, thereby rendering themselves vulnerable to the temptations and challenges inherent in the exercise of political power. In political and legal theory, such views are commonly attributed to what is termed “Burkean conservatism,” a framework that also encompasses certain ambiguities — notably, an aversion to constitutional reform and an inherent skepticism toward radical institutional change (Jones, 2015, p. 1125).

It should not be overlooked that the essence of Burke’s political philosophy is closely tied to his affiliation with the Whigs. His political allegiance is inseparable from his views on the state and on the individuals who exercise authority within it. Edmund Burke extended the applicability of his ideas beyond the borders of England, grounding his arguments in major historical events in other nations where revolution served as a means of overthrowing established governments. In this respect, Huntington observes that although

Burke stands on equal intellectual footing with John Locke in the context of America, he holds an equally significant position within the English political tradition (Young, 1994, p. 662).

A crucial aspect of Burke's political thought lies in his strong emphasis on morality. He insisted that moral integrity must be present in politics, arguing that immoral individuals contribute most to the corruption of state authority. Their lack of virtue, in his view, serves as the principal instrument in undermining key state institutions — particularly the parliament. However, Burke's insistence on moral virtue in political life did not always receive unqualified support within academic circles. The British theorist H. L. A. Hart, for instance, acknowledges that a consensus on moral judgments is, in certain cases, essential for the preservation of a community. Yet, he cautions that it does not necessarily follow that every practice which public morality might condemn is of equal importance to the community. Hart therefore proposes two key questions: first, whether a practice that offends moral sentiment is indeed harmful; and second, what the broader consequences of such a practice might be in relation to the general principles of morality (Trajković, 2011, p. 263).

## ***2.2. Burke's (Non-)Opposition to the Military Resolution of State Affairs***

As an ideologue of conservatism and a proponent of systematic, evolutionary change within society—particularly in matters concerning the state—Edmund Burke also articulated his views on the military resolution of political issues. It is well known that Burke belongs among those conservative thinkers who refused to believe in the success or efficacy of abrupt social transformations. “His conservatism rested on an organic conception of the state, an aversion to individualism, and a profound respect for tradition, continuity, and the balance of political forces as the essential conditions for preserving order. In Burke's view, the state is a living organism, uniting past, present, and future generations through the social contract. It evolves gradually, and any radical political rupture disrupts its natural development toward more just and stable arrangements. The legitimacy of a political order rests on its prescription—on the fact that it has endured over time. Social life and the development of the state cannot be founded upon the ideas of isolated individuals, for it is the accumulated experience of centuries, perpetuated and transformed into customary habits (in the sense of inherited prejudices), that binds together different generations in thought and behavior. He maintained

that the essential role within the state is not played by individuals, but by the elements of civil society—an idea crucial to understanding the English political tradition” (Starčević & Kajtez, 2018, p. 782).

Burke’s political and legal foresight can be credited with his somber predictions regarding the ultimate outcome of the French Bourgeois Revolution, which historically degenerated into Napoleon’s dictatorship. Napoleon, in fact, capitalized on all the weaknesses inherent in revolutionary regime change and on the failings of its leaders, who lacked the inclination and capacity to establish lasting solutions to fundamental questions of governance. Under such circumstances, a well-organized army—structured according to strict military principles and resilient to political interference—can assume a decisive role. However, Burke was careful to emphasize the need to delineate the scope of influence and power among different segments of the military hierarchy. In particular, he warned against the undue influence of the officer corps over the soldiers, who represent the most sensitive element within any army’s structure. Unlike his predecessors, Burke identified the potential danger arising from the separation and increasing autonomy of officers and enlisted men—developments that ultimately undermined the fragile revolutionary government in France. Indeed, even in contemporary contexts, the relationship between the officer corps and the rank-and-file soldiers remains a crucial factor in the overall functioning and stability of any military organization (Starčević & Kajtez, 2018, pp. 786–787).

In this regard, recent research highlights the importance of more active communication between the military leadership and the broader society.<sup>5</sup> Within contemporary military structures, this often takes the form of managerial representation, which includes presiding over meetings and negotiations aimed at achieving defined objectives. The armed forces, therefore, should not remain a passive actor, blind to opportunities for broader cooperation—cooperation that, in turn, secures their continued relevance and respected role within society (Milošević Stolić & Marček, 2017, p. 202). Accordingly, Edmund Burke conceives of the military as an entity that must never allow itself to become a weapon turned against its own fundamental interests. His insight in this respect once again proves both prescient and enduring, remaining applicable across vastly different historical and social contexts.

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<sup>5</sup> The Ministry of Defence of the Republic of Serbia continuously conducts training programs involving officers and non-commissioned officers to enhance internal and external communication. These activities are carried out in accordance with adopted strategic documents that define regional security challenges.

### **3. A contribution to slobodan jovanović's critique of Edmund Burke**

Slobodan Jovanović extended his intellectual thought across several different fields of social sciences, all connected by a shared aim — to explain specific political processes through the actions of their key participants. While the core of his theoretical thought reveals an explicit effort to distinguish the political from the social context of every revolution, in examining the French Bourgeois Revolution, Jovanović directs certain criticisms not only at its leadership but also at the theorists who were among its harshest critics. Thus, his intellectual critique also targeted Edmund Burke, a strong representative of conservative thought who viewed revolution as an illegitimate means of changing state power. Jovanović primarily reproached Burke for overemphasizing the political dimension while neglecting the social aspects of the French Bourgeois Revolution (Terzić & Joksić, 2021, pp. 312–313). Therefore, Edmund Burke can be regarded as a critic of modern democracy and political rationalism (Terzić, 2020, p. 90). In this, one may also find the reasons behind the eventual failure of the French Bourgeois Revolution and, conversely, the success of socialist revolutions across the world.

The question of the relationship between morality in politics and morality outside of it represents a distinct area where debates in political and legal theory are most intense. It is quite certain that Jovanović and Burke are in agreement regarding the necessity of moral discipline in individuals — both when exercising authority and when using freedom. Slobodan Jovanović emphasizes the utilitarian approach characteristic of English statesmen. Such an attitude aligns with the general model of Anglo-Saxon political thought, and arguably, with its practical understanding of law as well. Therefore, practicality and morality in politics should not be attributed solely to Edmund Burke, but rather to the entire Anglo-Saxon Protestant ethos. In fact, this ethos is as practical as it is moral, maintaining a careful awareness of the interdependence between these two notions. Consequently, Burke actively advocated for moral discipline as the most reliable means of achieving the common good in any society (Milosavljević, 2011, p. 290).

Slobodan Jovanović criticizes Burke for a certain degree of inconsistency in drawing conclusions within a broader political context. He deliberately begins with an individual case and then attempts to determine the wider consequences of a particular political action, constitutional and ultimately, of a given policy. As was his habit of exaggeration, Edmund Burke often attributed to events potential outcomes that, in fact, never occurred. Being an

imaginative thinker, Burke frequently projected his personal impressions onto political life. In doing so, he justified the formulation of general conclusions to which he persistently aspired. This tendency diminished both the intellectual and historical reach of his overall scholarly work. Taking a further step in his unrealistic depictions, Burke exaggerated the influence and moral shortcomings of the king's associates. Jovanović notes that they were nowhere near as dreadful and malevolent as Burke portrayed them, which reflects his lack of objectivity in perceiving people and events. They were certainly not unrestrained Machiavellians intentionally undermining the constitutional issue that arose from the French Revolution. However, in making this critique, Jovanović did not seek to diminish the intellectual significance of Burke's theoretical thought but rather to present it realistically—with all its strengths and flaws (Jovanović, 1935, pp. 313–314).

Burke's attitude toward the Church carries a number of distinctive features that shaped his theoretical thought. He upholds the thesis of the divine origin of the state, which, according to him, can be authentically interpreted only by members of the clergy. In this way, the possibility of infallible interpretation of God's will is effectively excluded, while the circle of those entitled to interpret it at all is significantly restricted. Burke's conservatism was subjected to sharp criticism by many thinkers with revolutionary leanings. Speaking from their own ideological standpoints, they often labeled Edmund Burke as a man who stubbornly—and, according to some, entirely without justification—defended the existing order and the established state of affairs within it. Slobodan Jovanović, too, was at times accused of approaching state matters from a “privileged” position of an intellectual closely aligned with the upper social strata. However, the fact that his doctrine was not imbued with a religious conception of the world fundamentally distinguishes him from Burke and other conservative theorists of his time.<sup>6</sup>

An important segment of Edmund Burke's thought belongs to the social element of his theory. This standpoint rests on Burke's views that emphasize the role and social significance of tradition, public opinion, class, political parties, and all other actors that do not operate, strictly speaking, within the framework of existing laws. Consequently, state mechanisms cannot reach these influential social groups. Against them, any form of state power is

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<sup>6</sup> “Slobodan Jovanović was aristocratically educated; therefore, he approached social issues from an extremely narrow and exclusive aristocratic point of view. Communist activists, who were at the same time the leading Marxist theorists of the interwar period, reduced Jovanović's scholarly objectivity and neutrality to a false bourgeois objectivism — i.e., to subjectivism” (Milosavljević, 2012, p. 129).

powerless to fight; it is therefore more advantageous for the state to try to win them over through cunning persuasion. In this way, Burke expresses a sociological perspective, even though sociology at that time had not yet been established as an independent social science. Thus, Slobodan Jovanović attributes to Burke's political and legal standpoint a distinctly social character—though without denying his firm opposition to all forms of tyranny (Jovanović, 1935, pp. 316–317).<sup>7</sup>

Comparing the ultimate reach of Burke's theoretical thought with that of his contemporaries and later authors, Slobodan Jovanović believed that the dark forebodings surrounding the French Bourgeois Revolution had, for the most part, come true. His prophetic predictions about the failure of every revolution proved to be, to a considerable extent, accurate.

#### **4. Conclusion**

It is well known that revolutions have always represented a radical departure from the existing order. They tended to disparage everything that came before while simultaneously promising the rise of a new and more just society. Carried on the wings of such visions, the masses joined the revolutionaries without having a clear understanding of the “bad present” or the “better tomorrow.” However, shortly after the first successfully executed revolutions, the question arose concerning the legitimacy of the newly established government and the legality of the decisions it made.

Edmund Burke belongs to the group of thinkers who expressed open aversion toward revolution. In both his writings and public activity, Burke opposed all those who sought to justify revolution—especially those who regarded it as a legitimate means of changing state power. He also challenged the legality of revolutionary decisions by pointing to the numerous flaws of the French Bourgeois Revolution. According to him, it represented a model of an undemocratic coup and the very source of the future dictatorship that emerged with Napoleon's rise to power.

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<sup>7</sup> It seems that this view of Burke's, as well as Jovanović's remarks directed toward him, remain relevant in light of contemporary global developments. First in public life, and then gradually in political terminology, the term “deep state” has taken root and become established as a synonym for social groups possessing pronounced power tied to their economic, political, media, and other forms of influence. These groups politically outlast every change in government and continue to control key social processes regardless of shifts at the top of political authority. Moreover, they directly influence the overthrow of political leaders who resist their power and refuse to submit to their influence.

Slobodan Jovanović offered a critical analysis of Burke's theoretical thought and political positions. He regarded Burke as an ideologist of conservatism, centered on the belief that nothing in society should be radically changed. Burke justified his views through unconvincing praise of existing holders of state power. If we were to judge Burke from the perspective of Jovanović's theoretical reflections, we could point to the social dimensions of state functioning and an overt exaggeration in his criticisms of others.

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## **LEGITIMITET I LEGALITET REVOLUCIJE U TEORIJSKOJ MISLI EDMUNDA BERKA**

**APSTRAKT:** U pravnoj doktrini više vekova unazad postoji polemika o tome da li revolucija može biti legitimno i legalno sredstvo promene državne vlasti. Iz ugla demokratskog državnog uređenja revolucija predstavlja nasilnu promenu državne vlasti, ali iz ugla određenih ideologija ona predstavlja sredstvo promene autoritarnih poredaka. Istorija nas uči da dok su pojedine revolucije bivale jedini *delotvoran* lek protiv autokratije, druge su bile samo

sredstvo njenog uvođenja. Na različitim polovima ovih pogleda nalaze se Francuska buržoaska revolucija i Oktobarska socijalistička revolucija. Svaka na svoj način pokazala je i pozitivne i negativne posledice, jer su bile izneveravane od strane svojih vođa koji su se njima samoposluživali. U radu je korišćeno više različitih naučnih metoda od kojih preovlađuju istorijski, komparativni, induktivni, hipotetičko-deduktivni, a sve u cilju integralnog pristupa, kojim se nastoji ukazati na važnost teorijske misli Edmunda Berka. Ne treba zaboraviti da je naš veliki pravni teoretičar Slobodan Jovanović posvetio posebnu pažnju upravo ovom autoru u kontekstu razmatranja revolucije kao sredstva nasilne promene jednog političkog poretka drugim.

**Ključne reči:** legitimitet, legalitet, revolucija, državna vlast, Edmund Berk, Slobodan Jovanović.

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