

The Writings and Speeches of Edmund Burke Vol. VII, India: The Hastings Trial, 1788-1795

Review Number: 184

Publish date: Sunday, 1 April, 2001

Editor: Peter Marshall

Date of Publication: 2000

Publisher: Oxford University Press

Place of Publication: Oxford

Reviewer: Jon Wilson

[References which begin with a Roman numeral are to the volume number and then page in the Writings and Speeches of Edmund Burke. Other numerals are to end notes]

In the course of his distinguished career thus far, Professor P.J. Marshall has produced a rich vein of scholarship on Britain's relationship with India during the second half of the eighteenth century. In a series of monographs and articles, Marshall has examined Britain's trade and government in Bengal, British conceptions of Asian society, the relationship between South Asia's peoples and the East India Company and the debate about trade and Empire in Britain itself. Throughout Marshall's corpus of work the two inveterate enemies, Edmund Burke and Warren Hastings recur in numerous guises. The verbal and legal battle between the two men in the impeachment and trial of Hastings provided the major focus for Prof. Marshall's first work, *The Impeachment of Warren Hastings*, published in 1965. Marshall has returned to the same subject in this publication, the third and final volume of Indian material in the Oxford University Press series of *The Writings and Speeches of Edmund Burke*.

The Hastings proceedings formally began in February 1786, when Edmund Burke moved a motion in the House of Commons for papers on Warren Hastings. In June of the previous year, Burke had notified the House that he would initiate a series of inquiries into the conduct of Warren Hastings whilst he had been Governor and Governor-general of Bengal (1772-1785). During the winter of 1785, Burke decided that an impeachment would be the most effective form to bring his charges against Hastings before Parliament and the broader public. At that point, Burke suggested that it would be 'vain and idle' to speculate on the success or failure of the trial. Yet in spite of the unspoken opposition of George III and the more verbal criticism of the Lord Chancellor, Edward Thurlow Burke's worst fears were not initially realised. Burke and his supporters - who included Richard Sheridan, Charles James Fox and Philip Francis - gathered support through 1786 and 1787. By the time the trial opened in the House of Lords in February 1788, Burke was flush with the possibility of success.

However, by April 1789, the date at which this volume begins, enthusiasm and support for the trial of Hastings had begun to wane. In the ensuing months, other issues, most importantly developments in France and the threat of Jacobinism in Britain took up far much more column inches and occupied much more public time. The French Revolution was an issue which increasingly divided Burke from his Whig supporters. Whereas the early years had seen Fox and Sheridan playing a prominent role in the impeachment, by the 1790s 'Burke had to rely on those ... who shared his outlook on the perils of revolution'

(VII, 3). Burke retained the tacit support of Pitt and Dundas - in part no doubt bought by his reluctance to attack the regime's policy on France as vocally as he might otherwise have done. Throughout the trial proceedings Burke's tenacity remained, but he became increasingly tired, dispirited and disillusioned of success. Eventually, the trial talked itself out. The trial proceedings themselves closed in June 1794. On 23rd April 1795, the 29 peers who had declared they were willing to participate in the verdict acquitted Hastings on every count, with no more than six voting for a guilty verdict on any one issue. Burke himself did not survive for more than a year. As Marshall puts it '[t]he price of his tenacity was ... very high indeed. Both he and Hastings were its victims'. (VII, 23)

As one expects from Prof. Marshall, this volume is very well produced. Marshall's general introduction and detailed introductory remarks at the beginning of each section are scholarly and eloquent. The explanatory footnotes offer a rich context for Burke's writings and speeches. Edmund Burke's allusions ranged from Cicero and Caesar to Cervantes; Marshall explicates each one with skill. Marshall is as much a historian of South Asia as he is a scholar of the Britons who governed and traded with it; he explains Indian terminology accurately and succinctly. One might quibble on a minor editorial point, which Prof. Marshall would probably dismiss as an instance of political correctness on my part. More than any other Indian state, the Northeast province of 'Oudh' figures prominently throughout the volume. The more modern South Asian transliteration of 'Oudh' is 'Awadh' - it would have been helpful if both spellings could have been given in the index. Burke also frequently refers to the city of Benares. Again, it would have been useful to the uninitiated had its modern transliteration, Varanasi, had been indicated at some point.

The trial of Warren Hastings occurred at a moment in which Britain's relationship with the Indian subcontinent was changing rapidly. What strikes the reader of the papers and speeches collected in this volume is the fact that neither Burke nor Hastings' were able to implant their conceptions of Empire onto the public or official mind. Neither man got what he wanted from the trial. Burke lost the eventual vote. Anticipating opposition from the Law Lords, from the beginning his strategy had been to counter what he saw as the inbuilt bias in favour of Hastings within the House with support for a guilty verdict from outside. As he wrote to Dundas in 1787, '...if we proceed under the public eye, I have no more doubt than I entertain of my own existence, that all the ability, influence and power that can accompany a decided partiality in that tribunal can[not] save our criminal from a condemnation followed by some ostensible measure of justice...'. (1) Yet he failed to sustain the interest or support of propertied public opinion 'out of doors'. Whereas the press had initially been fairly sympathetic, by the mid-1790s they rounded upon his increasingly abusive vocabulary towards Hastings (VII, 228). But defeat for Burke did not mean victory for Hastings: the former Governor-general was never properly rehabilitated, not at least until long after his death in 1818. Hastings saw the trial itself as punishment enough. Writing even in 1788, he could not conceive any worse punishment, 'had he pleaded guilty to the whole Charge, which could equal that which he had already suffered' (VII, 20). Hastings received an annuity from the East India Company and honours from Oxford University. But, he spent a secluded and largely uncelebrated retirement on his estate in Gloucestershire. He was not even awarded a baronetcy.

Edmund Burke's critique of Hastings was based on his belief that the British government of Bengal should be 'a government of law'. Burke argued that Hastings had violated the law of Britain in claiming for himself 'that high, supreme, Legislative sovereignty, which the Law attributes with the consent of both Houses of Parliament, to the King and the King only' (VII, 288). But he also condemned the former Governor-general for abrogating the 'refined, enlightened, curious, elaborate [and] technical jurisprudence' of Indian law (VII, 285). Burke perceived Indian and British law as instances of 'the Law of our Creator' suited in each case to the circumstances and manners of different people (VII, 280). In - as Burke saw it - attempting to establish his own arbitrary power, Hastings had acted illegally, and threatened to 'put an end to Law'.

Prof. Marshall suggests that Burke played a role in framing the reforms in the judicial government of Bengal implemented by Hastings' eventual successor as Governor-general, the Earl (later Marquess) Cornwallis in 1793. Cornwallis' code 'made the executive government in Bengal accountable to separate courts'. It recognised the holdings of Bengal's zamindars (landholders) as private property rights, and by fixing the rate

at which they were taxed, secured them from the arbitrary depredations of the East India Company. These measures were part of an attempt to establish 'regularity' and 'security' in an environment which was perceived as relatively lawless. Proposals for reform had played a part in the discussion of Bengal policy in the 1780s, well before the launching of the impeachment. Edmund Burke and his Whig colleagues were crucial in creating a rhetoric in defence of Bengali 'property', central both to Cornwallis' administration and Burke's later tirade against Hastings.

However, Marshall concludes by suggesting that '[i]t is inappropriate to judge Burke on India by any contribution which he may or may not have made to the future development of the Raj' (VII, 20-1). Burke's 'principles' were 'disregarded with increasing frequency' during the 1790s and early nineteenth century, as Company officials increasingly believed they had the capacity to remodel and transform South Asian society. One wonders how Marshall would respond to those who identify a greater continuity between Burke's rhetoric on India and later imperial ideas. Professor Andrew Porter, for example, argues that Burke was instrumental in forming a notion of 'Imperial trusteeship' which 'remained central in what came to be recognised as the humanitarian approach to Empire and overseas influence' throughout the nineteenth-century. Porter does concede that Burke formulated a 'conservative and defensive' notion of Imperial responsibility appropriate only 'to an eighteenth-century society' in which government possessed a limited range of functions.⁽²⁾ But others have suggested that a connection existed between Burke's 'conservative' approach to Indian law, and later 'Orientalist' endeavours by British officials to support the study of Indian languages and literature against the encroachment of English, and to preserve and codify subcontinental jurisprudence.

I suspect that Marshall is right to emphasise the differences and discontinuities between Burke's conceptions of British rule in India, and later Imperial discourses. Later 'Orientalist' officials - the judicial officer W.H. MacNaghten, and the judge and later Boden Professor of Sanskrit at Oxford University H.H. Wilson are two such - were concerned to simplify, textualise and (and sometimes reconfigure) the complexity of South Asian jurisprudence in order for it to be easily comprehended by British officials. The 'orientalists' of the 1820s and 1830s defended pre-colonial Indian law against its detractors, but they believed Indian jurisprudence could be appropriated and administered by a British imperial bureaucracy that possessed absolute sovereign rights and powers. In contrast, Burke saw Indian law as an organic, self-contained system of rules and procedures. It could not be detached from the society that had produced it and be administered by foreigners. The law of the subcontinent was 'refined, enlightened, curious elaborate [and] technical'. It formed 'a basis and substratum to the manners and customs and opinions of that people' (VII, 285). Not surprisingly, East India Company servants in the nineteenth century found Burke's rhetoric here difficult to incorporate within their own imperial ideologies. Burke was rarely quoted in mid-nineteenth century controversies about Indian languages and law during the.

Hastings' rehabilitation occurred more quickly. His administration was eulogised by the hard-headed advocates of Britain's absolute imperial power in India, such as the Law Member of the Viceroy's Council, Sir James FitzJames Stephen. For Stephen, Hastings was exactly what Asia needed - a despot in a despotic land. Similarly, in his 1868 *Annals of Rural Bengal* (seen by many as the source for Bankimchandra Chattopadhyaya's *Anandamath*) W.W. Hunter described Hastings as 'a true Asiatic Prince of the best type', who acted with 'that prompt, unerring audacity, so well calculated to overawe a race whose long oppression had stripped of any self-respect'. As a result, Hunter insisted, Hastings had created 'a security of person and property' hitherto unknown in Bengal.⁽³⁾ These late nineteenth-century descriptions of Hastings as a paternal, benevolent autocrat required his reinvention for a very different imperial moment, as the stern but enlightened despot ruling a people who were seen as incorrigibly different and inferior from their own. Most importantly, Hastings was perceived as a sovereign able to make new law, to frame novel forms of rule which were able to preserve British interests and 'improve' Bengal at the same time.

Yet these conceptions of Hastings' period in office were far removed from the practice of his government itself. Prof. Marshall suggests that Hastings 'did not believe that he was bound by some ancient Indian or Mughal constitution' (VII, 22). This may have been Hastings' argument during the trial, forced upon him by

the exigencies of the debate with his opponents. In the years following the War with the American colonies fought to defend Parliamentary sovereignty, Hastings might have found it more convenient to appeal to the House of Lords with a novel language of absolute imperial authority rather than appeal to the constitutional jurisprudence of India's own states. But there is plenty of evidence to suggest that he did draw from an interpretation of Indian ideas about India's government in the making of his own regime. It was, after all, Warren Hastings who established the Amini Commission, appointed to ascertain the nature of revenue collection and land rights in Bengal before British rule. In attempting to revive officers such as the Faujdar and Qanungu (literally, 'speaker of law'), Hastings was concerned to support the 'officers of the ancient constitution', who were seen as an effective check on the potentially corrupt conduct of landholders and British officers. And as Marshall notes elsewhere, it was Hastings who began the publication of English language translations of Indian works on jurisprudence.

Perhaps the best way to understand Burke and Hastings is to place them both in a context that Marshall has himself provided us in earlier work. In his inaugural lecture as Rhodes Professor of Imperial and Commonwealth History at King's College London, Professor Marshall discusses the pervasive anxiety mid-eighteenth-century Britons felt about political power in Asia.⁽⁴⁾ Using a civic republican political language, contemporaries contrasted the supposedly 'free' government of Britain with the 'Oriental despotism' of Asia. Britain's liberties were rooted in its mixed constitution, the vigour of its public life, and the sanctity of its private agrarian property, none of which were perceived to exist in India. Many feared that Britons governing the subcontinent would bring Asiatic luxury and despotic principles back home to corrupt the liberties of Englishmen. The East India Company was often regarded as the vehicle by which this corrupting influence occurred. The lesson to be learnt was that a self-consciously 'free' people could not govern a despotic state without themselves becoming enslaved.

Yet, Marshall notes how a very different conception of Britain's Asiatic empire emerged during the 1790s. A harsher, more militaristic and more absolute conception of imperial power allowed Britons to perceive that they were able to govern an Asian population whilst maintaining their liberties back home. The production of British knowledge about India's laws, commerce and 'customs and manners' allowed Asia to be reduced to governable proportions - Marshall here approvingly cites the work of Edward Said. Possessed of a new sense of confidence in their ability to exercise authority in Asia, elite Britons began to perceive themselves as a 'free though conquering people'.

Both Hastings and Burke stand on the cusp of this conceptual transformation. Burke's critique of Hastings was based on a persistent anxiety about the corrupting effect which Oriental luxury might have on Britain's constitution and character. However, he saw British rule in India as a political necessity. 'There we are', he said, 'there we are placed by the Sovereign Disposer; and we must do the best we can in our situation' (V, 404). For Burke, India could come under British suzerainty because it possessed its own indigenous juridical tradition which 'yields neither to the Jurisprudence of Roman Law nor the Jurisprudence of this Kingdom', and which could offer a check on the potentially arbitrary conduct of its rulers. Yet in making this point, Burke relied heavily on an argument Hastings himself had made twenty years earlier. In debating Indian affairs in the early 1770s, many British parliamentarians had argued that a free people could only govern a despotic country if they gave it their own laws. Briefly, British politicians countenanced the possibility of introducing English law wholesale to Bengal. Hastings rebutted this challenge to his own and the Company's authority by emphasising the distinctiveness and relative civilisation of India's own laws. Professor Marshall's volume allows one to see that Burke and Hastings' arguments had far more in common with each other than either was able to perceive. Occasionally this was made explicit. At one point in his nine day speech in reply to the evidence presented in Hastings' defence in 1794, Burke confessed that he 'felt [him]self obliged to him' for printing *The Code of Gentoo Laws*, the text Hastings had had published in London in order to assert the distinctiveness of Indian jurisprudence. (VII, 285)

Throughout the proceedings, Burke insisted that the trial of Hastings was a battle between those who wished to uphold both Indian and British 'law', and those who had attempted to assume arbitrary power against law. But in fact, neither Burke nor Hastings believed India before colonial rule was a land without law, as some

later British officials did and present-day Indian lawyers still do. The argument between Hastings and his critics was about the interpretation of customs and constitutions. Burke and Hastings both saw 'law' as something that was entangled and intertwined with both the manners and customs and the political constitution of the country. Perhaps the most important disagreement was about the character of property in the subcontinent. Burke emphasised the existence of a hereditary class of nobles whose rights were proscribed by an ancient, customary constitution. Hastings argued that zamindars, jagirdars and others were nothing of the sort, and largely held their estates subject to the Indian Crown. In debating points such as these, Burke and Hastings belonged to an early modern intellectual world in which political controversy was conducted as a debate about rights and privileges, about the character of particular sovereign bodies, the interpretation of covenants and tenures, and the meaning of particular pieces of constitutional vocabulary. In this respect, the trial took place within a classic idiom of eighteenth-century British political debate.

But, the constitutional arguments of Burke and Hastings were eclipsed by a very different language, which asserted Britain's status as 'a free though conquering people'. Burke had been concerned to discover how the structure of British rule in Bengal should be defined by existing modes of juridical right. But within the new imperial discourse, it was comprehensible for Britain to build 'a new constitution' - as Cornwallis claimed he had done - to govern the people of Bengal. Cornwallis' constitution was intended to preserve existing property rights. But it was based on the belief that those rights did not originate from their place within an ancient constitution, but could be disentangled from pre-colonial governmental structures and secured by an entirely new machinery of rule.

Fundamentally, the trial of Hastings marked the end of a characteristically eighteenth-century attempt to speak of Empire using a language of constitutional right. As British sovereignty in India was increasingly taken for granted, a constitutional, juridical language was replaced by a discourse about the proper exercise of authority in India, which assumed that the East India Company could dispose of the law which governed its subjects as it liked. The new language spoken by officials in Calcutta and the mofussil was marked by terms such as 'expediency' and 'utility' far more than 'right'. The trial of Hastings talked itself out because an eighteenth-century juridical discourse was no longer capable of sustaining the kinds of political practices British rule depended on in Bengal.

The publication of an edition of the Writings and Speeches of a politician as energetic and verbose, and with so many wide-ranging interests as Edmund Burke must be an arduous task. In offering the final volume in his trilogy of Burke's Indian writings and speeches, Prof. Marshall has performed an invaluable service to the scholarly community for which one must pay tribute. More than anything else, the publication of the volume will allow students and historians to develop a sense of the complexity of Burke's thought and to understand how, behind his high-flown rhetoric a consistent but manipulable political theory had emerged. As well as allowing students access to an important primary source, its publication will offer possibility of important reinterpretations of the role of Burke, and of Empire, within the development of British political thought.

Notes

1. Burke to Henry Dundas, 1st November 1787. Quoted in P.J. Marshall, *The Impeachment of Warren Hastings* (Oxford, 1965), p.71.[Back to \(1\)](#)
2. Andrew Porter, ed., *The Oxford History of the British Empire, vol. III, The Nineteenth Century* (Oxford, 1999), 199.[Back to \(2\)](#)
3. James FitzJames Stephen, *The Story of Nuncomar, and the impeachment of Sir Elijah Impey* (2 vols, London, 1885); WW Hunter, *The Annals of Rural Bengal* (1st edition 1868, Calcutta, 1996), p.213.[Back to \(3\)](#)
4. P.J. Marshall, 'A Free Though Conquering People. Britain and Asia in the Eighteenth Century', Inaugural lecture in the Rhodes Chair of Imperial History, 5th March 1981.[Back to \(4\)](#)

Other reviews:

[2]

Source URL: <https://reviews.history.ac.uk/review/184#comment-0>

Links

[1] <https://reviews.history.ac.uk/item/1168>

[2] <https://reviews.history.ac.uk/>