

# Do Constitutions Fail Because They Are Both Made And Unmade By Men?

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SOPHIA GORE, NOV 28 2012

Constitutions, in the Classical understanding, are practiced political customs defining the relationship between citizens and the state. The structures of Constitutions vary according to the nature of autonomous rule. Aristotle defined the 'Constitutions' of a state as "its organisation of the [political] offices" [1] (Aristotle). Through collecting and studying the constitutions of many sovereign city-states, distinguishing the differing state-citizen relationships, Aristotle started to classify and 'categorise' them. In Aristotle's *The Politics*, he perceives the concept of constitutionalism as wholly 'natural', the inevitable arbiter protecting civil liberties. This is based on his understanding of human nature and man's teleology. On the contrary, Machiavelli in *The Prince*, upholds a more cynical appreciation of human nature. For him, this highlights the potential vulnerability of constitutions when in the hands of man. Similarly, in *The Discourses* he believes the cyclical building and demise of constitutions is largely due to the fact that 'man is inevitably the same and somewhat incapable of governing themselves. ...They will continue to make the same mistakes over and over"[2] (Machiavelli). He observes that 'the same problems always exist in every era.'[3] This brings our attention to the potential fragility and instability of constitutionalism.

Given Aristotle and Machiavelli perceive constitutions as logical, inevitable and somewhat organic entities of civic structure, both philosophers therefore recognise the inevitability of man 'making' constitutions. It seems therefore, that the issue of contention raised by the title question is more about determining what is meant by the word 'fault' and less about whether they are 'made' or 'unmade' by man, since both philosophers recognise this as a natural. It appears that the philosophers differ most widely in their interpretation of 'good' constitutionalism, most notably evident in their alternate understandings of human nature. Although there are a multitude of differing opinions between Machiavelli and Aristotle's appreciation of what constitutes 'good' governance, parts of Cicero's theology interestingly compliment both arguments and seems to bridge some of the differing ideas between the two, which will also be explored in this essay.

In discord with the title statement, Aristotle argues it is only through constitutionalism that men are more likely to fulfil their 'eudaimonia' and flourish. Aristotle's close study of nature allowed him to appreciate the importance of the 'parts' which form civil society. 'The 'nature' of a thing, he claims, is not its first but its final condition.'[4] (Aristotle). This is explained through his 'acorn to oak tree' analogy in book I. His understanding of this stems from his interpretation of the natural 'pairs' of relationships in society; man and wife, master and slave, leading to the coalescence of households and 'the final association, ... is the state;'[5]- a coalescence of villages. He continues, 'the state came about as a means of securing life itself...Therefore every state exists by nature.'[6] (Aristotle) This teleological perspective is that it is the instinctive desire for man to live among a political community. The means for human flourishing is only achieved through the structures of a constitutional state and this is underpinned by the term 'Zoon Politikon.' Whether or not a state's constitution is 'good' or 'deviated'; they are nonetheless natural, unavoidable entities. They will continue to exist and there is an inevitability of constitutionalism. Aristotle develops this case in Book III vi to distinguish between the types of constitutions. He defines 'correct' constitutions as Monarchy, Aristocracy and Polity, and the 'deviated' versions of these; Tyranny, Oligarchy and Democracy. If a constitution is 'deviated'[7] and no longer aims at the pursuit of common interest, it will over time, through man's growing discontent, inevitably 'correct' itself. Therefore, regardless if the 'fault' of constitutions is that they are man made, they are fundamentally unavoidable institutions. Aristotle believes that 'By nature man is a political animal'[8]

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(Aristotle), and is of the view that there would never be society without some form of constitutionalism, because without it man would be unable to flourish.

Cicero seems to agree with the ideas of Aristotle on the naturalness of constitutionalism and develops his own interpretation. Like Aristotle, Cicero perceives the 'natural condition of the human race is one of mutual cooperation; government exists to promote that end.' [9] (Boucher, 2009) But his reasons lie in his view that humans are 'both rational and linguistic characters.' [10] (Boucher, 2009) It is through the power of lingual communication, education and discussion, that man cooperates and flourishes into a natural community. Whereas Cicero perceives linguistics as a means to reaching this harmony, Machiavelli, in *The Prince* analyses the ways in which one man could manipulate the power of oratory flare to their own personal gain as opposed to developing a constitution, which seeks to benefit the wider community. His view of human nature in *The Prince* is cynical and negative. If he is right in his perception that men are 'ungrateful, fickle, simulators and deceivers, avoiders of danger, [and] greedy for gain' [11], (Machiavelli) it seems fair to argue that there is truth in the statement in recognising 'man' as the fault of constitutions. For, since all constitutions are unavoidably manmade, if the foundations are built on the basis of corruption and are compiled of self-seeking individuals, then they are all fundamentally immoral at the core. Since there is no higher court of judgement than constitutional law, 'men- corrupt, volatile, biased as they are- are the sole judge and arbiter.' [12] (Viroli, 2005) In this pretext, it seems fair to argue that the statement is true. Man is the greatest 'fault' in the process of constitutionalism since the incapability and the misery of the human condition leads to the demise of previously healthy constitutions. Therefore, all constitutions are predisposed to fail. This view is explored most explicitly in Machiavelli's *The Prince*.

Machiavelli's *The Prince* could be read as a satirical text, which highlights the possible ways by which humans as powerful individuals can corrupt and disenfranchise civic political community through principality. This interpretation of it as a satire is based on the starkly contrasting perspective in his alternate longer study of republics in *The Discourses*. Perhaps one could interpret *The Prince*, which was written in widely accessible Italian as opposed to Latin, as a means to educate the populace to recognise the precarious nature of princes and how to defend their constitution from corruption. Through studying the histories of former states, similar to Aristotle's practical approach, Machiavelli guides a prince on how best to take and uphold a principality by any means possible at the cost of republican civic community. Machiavelli, like Aristotle, recognised the importance of property to man. He advises *The Prince* how to manipulate and uphold stability in the kingdom. 'So long as you do not deprive them of either their property or their honor, the majority of men live happily; and you have only to deal with the ambition of a few, who can be restrained without difficulty.' [13] The simplification of human character as selfish and self-seeking undermines Aristotle's view that a constitution and community is natural entity. Machiavelli insists upon the importance that a Prince establishes distance from the citizens. He claims 'it is much safer to be feared than to be loved' [14] (Machiavelli) and thus a principality relies on fear rather than respect of the citizens. One could also recognise this as a logical development of Aristotle's argument, since it is a means of disassembling the 'parts' which Aristotle claimed forms society. If a constitution is to be 'made' and upheld by the virtues discussed in *The Prince* it seems fair to agree that a great fault of constitutions is that they are susceptible to be amended and are made from men of corruption. This is exaggerated in principalities when the values are structured according to the character of the 'ruler' as opposed to being maintained on just and virtuous principles seeking common-good.

Aristotle likewise recognises the difficulty to secure the practice of the three 'correct' constitutions. His research proved how easily one type of constitution can quickly demise into a 'deviated' one due to factions within the structures. He criticizes a 'democracy' which is often typified as being one of the 'fairest' forms of constitution, perceiving it as government 'for the benefit of the men without means,' [15] It seems once a constitution no longer benefits the 'common good', even it is benefiting the majority of citizens, a revolution of the constitution is likely. The collapse of the democracies of Cos and Rhodes are his examples. This suggests therefore, that constitutions cannot merely be maintained by the support of the masses. They rely on a carefully balanced relationship between all 'three state-sections: the very well off, the badly off and ...those in between.' [16] He believed a 'middling amount is best of all.' [17] And this is maintained through the 'merits of the Middle Constitution.' [18] Nonetheless attaining and maintaining the fragile balance for this type of polity is difficult, and subsequently this results in weakening the stability and durability of 'correct' constitutions. This unobtainability is an obvious 'fault' of constitutionalism.

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Machiavelli in accordance with Aristotle saw the benefits of a constitution built with the goal to protect the interest of the citizens. Whereas Aristotle saw polity as the correct constitution when political autonomy is 'exercised by the mass of the populace'.<sup>[19]</sup> In *The Discourses*, Machiavelli believes a republic is the best form at protecting civil liberty. His ideals of a civil community are manifested from Cicero's principle of ('*vivre a une loi*') which is 'an assembly of men living under the same law'<sup>[20]</sup>, (Viroli 2005) the principle that no man is above the law. This conception of political liberty 'became the core of modern republicanism,'<sup>[21]</sup> and is explored in Livy's account of the recovered Roman liberty 'in the fact that the laws were more powerful than men.'<sup>[22]</sup> (Viroli, 2005) Machiavelli in consideration believes that impartiality of law is the basis of civil life 'and, once in its place, it must be obeyed without allowing for privileges or discriminations.'<sup>[23]</sup> However, he also stresses the need to recognise 'how easily men can be corrupted, even when they are good and well trained...[and] Lawmakers should bear this in mind when they make laws to restrain human passions.'<sup>[24]</sup> Machiavelli again emphasises the importance for 'anyone who organises a republic and institutes laws to take for granted that all men are evil and that they will always express the wickedness of their spirit whenever they have the opportunity.'<sup>[25]</sup>(Machiavelli) One could again interpret that as a reflection of the 'fault' in constitutions made by men. However, due to Machiavelli's stress on civil liberty and support of republicanism, it seems one could also argue that constitutions, although potentially flawed by the fact they are made by men, if given strong direction and are guided by a noble leader in conception, the republic can eventually be entrusted to the many and function sufficiently on the principle of equal civil liberty.

Machiavelli highlights the importance of having a strong, noble leader to 'kick-start' and guide a republican constitution. This is explored through the romanticised story celebrated by Livy of the humble Cincinnatus 'who was ploughing his little farm...when the legates of the senate arrived '<sup>[26]</sup> to entrust him to save the Roman republic as Dictator. Machiavelli argues that although men are prone to corruption, which can lead to the collapse of a constitution, given virtuous guidance, appropriate laws and strong emphasis on civil liberty, a republican constitution can best protect a fair, structured and just government.

In conclusion, it seems difficult to dispute the claim that the 'fault' with constitutions is that they are 'made and unmade by men.' It is true that history is littered with constitutions that have failed and been corrupted by the hands of man. However, the question seems to be whether this fault is redeemed when a constitution is working 'correctly' in their ability of creating stability, protecting civil rights and upholding rule of law. In agreement with Aristotle, it does seem almost natural and inevitable that constitutions exist since they have been 'made and unmade' by men for centuries and continue to do so in even more entrenched and codified forms. It seems that despite the fact they are often unavoidably unstable at times of civil unrest, they are equally valuable in maintaining continuity and structuring society, and are a means by which humans are able to flourish. The longevity of constitutionalism and the fact they are still in practice centuries later therefore implies that though susceptible to corruption by man, overall they are the most reliant, inevitable and organic way by which society organises itself and this seems unlikely to change.

Therefore one can disagree with the title quote, since when functioning and practiced correctly, 'manmade' constitutions enable humans to 'flourish' and are a means of protecting civilians from the tyranny and corruption of their own actions.

[1] Aristotle, *The Politics* pg. 187 book III vi

[2] Machiavelli, *The Discourses* Ch. XXXIX. p.252

[3] Ibid.

[4] From the italic notes, Aristotle, *The Politics* book I ii Pg.55

[5] Aristotle, *The Politics*, Book Iii Pg.59

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[6] Ibid.

[7] Aristotle, *The Politics* Book III vi pg. 186

[8] Aristotle, *The Politics* Book III vi pg.187

[9] Boucher and Kelly, *Political Thinkers* Pg.100

[10] Boucher and Kelly, *Political Thinkers*, Pg.102

[11] Machiavelli, *The Prince*, Chapter XVII pg.131

[12] Maurizio Viroli, *Founders of Modern Political and Social Thought; Machiavelli*, Pg.8

[13] Machiavelli, *The Prince* Ch. XIX pg. 136

[14] Machiavelli, *The Prince* Ch. XVII pg.131

[15] Aristotle, *The Politics*, Book III vii p.190

[16] Aristotle, *The Politics*, Book IV xi Pg. 266

[17] Ibid.

[18] Aristotle, *The Politics* , Book IV xi Pg. 264

[19] Aristotle, *The Politics*, Book III vii Pg. 190

[20] Virilo, *Founders of Modern Political and Social Thought* Pg.116

[21] Virilo, *Founders of Modern Political and Social Thought*, Pg.119

[22] Ibid.

[23] Virilo, *Founders of Modern Political and Social Thought*, Pg.22

[24] Machiavelli, *The Discourses* Ch. XLII pg. 261

[25] Machiavelli, *The Discourses* Ch. III pg.182

[26] Machiavelli *The discourses* book III xxv pg. 401

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