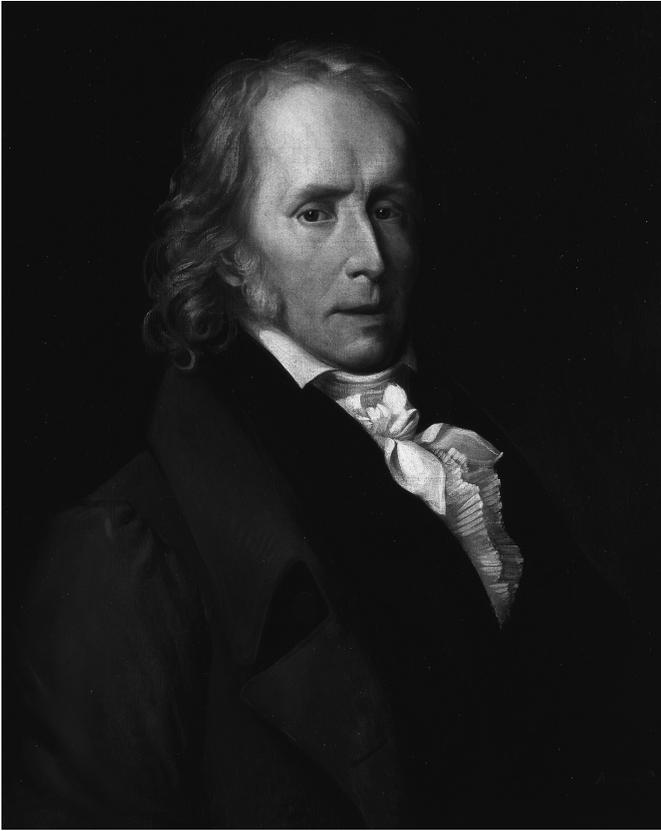


COMMENTARY ON FILANGIERI'S WORK



BENJAMIN CONSTANT

Commentary on Filangieri's Work 🐼

BENJAMIN CONSTANT

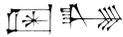
Translated, Edited, and with an Introduction by Alan S. Kahan



Liberty Fund

INDIANAPOLIS

This book is published by Liberty Fund, Inc., a foundation established to encourage study of the ideal of a society of free and responsible individuals.



The cuneiform inscription that serves as our logo and as the design motif for our endpapers is the earliest-known written appearance of the word “freedom” (*amagi*), or “liberty.” It is taken from a clay document written about 2300 B.C. in the Sumerian city-state of Lagash.

Translation, introduction, editorial matter, and index © 2015 by
Liberty Fund, Inc.

Frontispiece: Portrait of Benjamin Constant by Lina Vallier (fl. 1836–52),
from the Musée du Château de Versailles. Photo credit: Gianni Dagli Orti/
The Art Archive at Art Resource, NY.

All rights reserved
Printed in the United States of America

C 10 9 8 7 6 5 4 3 2 1
P 10 9 8 7 6 5 4 3 2 1

Library of Congress Cataloging-in-Publication Data

Kahan, Alan S.

[Commentaire sur l’ouvrage de Filangieri. English]

Cometary on Filangieri’s work/Benjamin Constant; translated, edited,
and with an introduction by Alan S. Kahan.

pages cm

Previously published: Paris: Belles lettres, c2004, under title, *Commentaire sur l’ouvrage de Filangieri*, with the series *Bibliothèque classique de la liberté*, no. 2.

Includes bibliographical references and index.

ISBN 978-0-86597-882-9 (hardcover: acid-free paper)

ISBN 978-0-86597-883-6 (paperback: acid-free paper)

1. Filangieri, Gaetano, 1752–1788. 2. Filangieri, Gaetano, 1752–1788.

Scienza della legislazione. 3. Political science—Philosophy—History—18th century. I. Constant, Benjamin, 1767–1830. *Commentaire sur l’ouvrage de Filangieri*. II. Title.

JC183.F4C66 2015

320.01—dc23

2014049745

Liberty Fund, Inc.
8335 Allison Pointe Trail, Suite 300
Indianapolis, Indiana 46250-1684
www.libertyfund.org

Contents

Introduction, by Alan S. Kahan ix
Translator's Note xvii
Commentary on Filangieri's Work xix

Part One

CHAPTER ONE: Plan of This Commentary 3
CHAPTER TWO: From an Epigram by Filangieri against
Improvement in the Art of War 7
CHAPTER THREE: On Encouragements for Agriculture 10
CHAPTER FOUR: On the Conversion of Rulers to Peace 15
CHAPTER FIVE: On the Salutary Revolution Which Filangieri
Foresaw 18
CHAPTER SIX: On the Union of Politics and Legislation 21
CHAPTER SEVEN: On the Influence Which Filangieri Attributes
to Legislation 23
CHAPTER EIGHT: On the State of Nature, the Formation of
Society, and the True Goal of Human Associations 29
CHAPTER NINE: On Errors in Legislation 34
CHAPTER TEN: Some Remarks by Filangieri on the Decline of
Spain 43
CHAPTER ELEVEN: On Filangieri's Observations about
France 50
CHAPTER TWELVE: On the Decline Filangieri Predicted for
England 54

Part Two

- CHAPTER ONE: Object of This Second Part 71
CHAPTER TWO: On the Black Slave Trade 73
CHAPTER THREE: On Population 83
CHAPTER FOUR: Continuation of the Same Subject 87
CHAPTER FIVE: On Malthus's System Relating to
Population 91
CHAPTER SIX: Some Writers Who Have Exaggerated
M. Malthus's System 99
CHAPTER SEVEN: On a Contradiction by Filangieri 104
CHAPTER EIGHT: On the Division of Properties 109
CHAPTER NINE: On the Grain Trade 122
CHAPTER TEN: On Agriculture as a Source of Wealth 132
CHAPTER ELEVEN: On the Protection Given Industry 135
CHAPTER TWELVE: A New Proof of Filangieri's Fundamental
Mistake 139
CHAPTER THIRTEEN: On Guilds and Masters 143
CHAPTER FOURTEEN: On Privileges for Industry 148
CHAPTER FIFTEEN: On Taxation 151

Part Three

- CHAPTER ONE: On Criminal Prosecution Confided Exclusively
to a Magistrate 171
CHAPTER TWO: On Secret Indictments 175
CHAPTER THREE: On Denunciation 179
CHAPTER FOUR: New Thoughts on the Idea of Giving Each
Citizen the Right to Prosecute 183
CHAPTER FIVE: On the Right to Prosecute Given to Servants,
When It Is a Question of Crimes against Society 186
CHAPTER SIX: That the Prosecuting Magistrate Should Be
Responsible, If Not for the Truth, at Least for the Legitimacy of
the Accusation 189
CHAPTER SEVEN: On Prisons 192
CHAPTER EIGHT: On the Shortening of Legal Procedures 195
CHAPTER NINE: On Defense Witnesses 199
CHAPTER TEN: On Judgment by Juries 202

CHAPTER ELEVEN: On the Death Penalty 206
CHAPTER TWELVE: On Convict Labor 211
CHAPTER THIRTEEN: On Deportation 213

Part Four

CHAPTER ONE: On Education 219
CHAPTER TWO: On Religion 227
CHAPTER THREE: Of the Growth of Polytheism 232
CHAPTER FOUR: On the Priesthood 237
CHAPTER FIVE: On the Mysteries 244
CHAPTER SIX AND LAST: Conclusion 248

Index 263

Introduction

Benjamin Constant's *Commentary on Filangieri's Work* (1822–24) discusses almost every important political and social question that Constant, one of the most important liberal thinkers of the nineteenth century, ever discussed. It bears on politics, economics, religion, and criminology. It contains extensive commentary on Montesquieu, Malthus, Turgot, and Adam Smith. It summarizes the mature views of an important writer who often changed his mind—and yet all this has not preserved the work from being out of print in French from 1824 until 2004, nor prompted anyone to translate it into English before now. While the *Commentary* has not been ignored by scholars, it has never received the attention given Constant's *Principles of Politics*, his writings on religion, or his novel *Adolphe*. Why? The reasons owe something both to the character of the book and of its putative subject, the work of Constant's not-quite-contemporary Gaetano Filangieri.

Filangieri published the first volume of *The Science of Legislation* in 1780, when he was only 28. The fifth volume (of a projected seven) was unfinished when the author died of tuberculosis, in 1788. All the volumes were translated and acclaimed throughout Europe and even the Thirteen Colonies. Benjamin Franklin read Filangieri and corresponded with him. Today, however, Filangieri is of interest to relatively few. This is not only because Filangieri was, as Constant puts it in this *Commentary*, a man of “uncritical erudition, and a mediocre intelligence.”¹ Those traits were no bar to his international success in the late eighteenth century. Constant's *Commentary on Filangieri's Work* helps us understand why Constant is remembered and Filangieri forgotten.

1. See p. 228.

Filangieri's *Science of Legislation* was a compendium of Enlightenment commonplaces. Constant by no means rejects the Enlightenment, and he often lauds Filangieri's intentions, but the *Commentary* is a litany of corrections of the means Filangieri and many of his eighteenth-century contemporaries chose to attain their ends, informed by bitter experience, yet retaining hope and faith in human perfectibility and social progress. Constant's critique of Filangieri is a young Liberal critique of a well-meaning but ignorant and bumbling Enlightened parent. What separates Filangieri from Constant is the abyss of the French Revolution, and we are on the same side of that abyss as Constant. The presence of Filangieri in the title and to some extent in the structure of the work has done much to limit the attention given to it.

Why did Constant choose to comment on Filangieri? We do not know, exactly, but history and circumstances give some hints. Constant had been aware of Filangieri's work for some time before he published the first volume of the *Commentary* in 1822. Constant had served briefly as a member of the Tribunal, one of the Napoleonic legislative chambers. The president of the Tribunal, Gauvin Gallois, was Filangieri's translator. He, or simply the wide renown of Filangieri's work, may have introduced it to the young Constant. But Constant's acquaintance with Filangieri went beyond the superficial. From 1806 he refers to it in the manuscripts of the *Principles of Politics Applicable to All Governments* and with particular frequency in *On Religion*, where he takes Filangieri to task for his understanding of Greek religion, a theme he returns to in the *Commentary*. However, familiarity with the work does not explain the decision to write about it. That decision may have been encouraged by Filangieri's resurgent popularity. *The Science of Legislation* was seen by many as a blueprint for a moderate constitutionalism, and in the Restoration era of the 1820s, this led to three Spanish and three Italian editions being published between 1820 and 1822, culminating in a new French edition by Constant's publisher in 1822. After the second part of the *Commentary* was published in 1824, it was bound and printed together with this edition. At the time Constant wrote it, a commentary on Filangieri might reasonably have seemed both a timely subject and a good means of creating a summary of his own views, in contrast to those of the Enlightenment represented by Filangieri.²

2. See Antonio Trampus, "Introduction" to the critical edition of the *Commentaire sur l'oeuvre de Filangieri*, in Benjamin Constant, *Œuvres complètes*, vol. 26, *Commentaire sur l'ouvrage de Filangieri*, edited by Kurt Klocke and Antonio Trampus (Berlin: De Gruyter, 2012).

The *Commentary* is indeed a summary of the conclusions of a lifetime of reflection. In his book on Constant, Stephen Holmes writes that “throughout this study I have taken the *Commentaire* as a yardstick by which to gauge Constant’s mature views.” But it is noteworthy that this remark appears in a footnote. Other leading commentators have referred to the *Commentary* as the “most complete and bold statement” of Constant’s economic views, and his “*ultima verba*” in political philosophy. Nevertheless, while scholars have always been aware of the work, from the time of its publication onwards it has been the subject of little or no sustained discussion in its own right.³

This is despite the fact that the *Commentary* treats subjects, such as poverty, immigration, and the slave trade, that drew a great deal of attention as the nineteenth century went on. Like his fellow French liberal, Alexis de Tocqueville, Constant fell into a certain mitigated obscurity in the decades after his death, and for somewhat analogous reasons. Both Tocqueville and Constant suffered in the public imagination for what was perceived to be their lack of interest in social questions, particularly poverty and class struggle, during a period when those questions increasingly preoccupied French society. Speaking of Constant, Helena Rosenblatt writes that “indeed, there is very little about poverty or class antagonism in Constant’s writings, which gives him the appearance of having been relatively unaware of or unaffected by working-class misery and industrial unrest.” The *Commentary* is counter-evidence to this statement. Had the work been better known in its time, Constant might have retained more interest. Like Tocqueville, Constant was preserved from complete oblivion by the enduring reputation of a single work. What *Democracy in America* did for Tocqueville, *Adolphe*, his romantic novel, did for Constant. But *Adolphe* did nothing for Constant as a social and political theorist.⁴

3. Stephen Holmes, *Benjamin Constant and the Making of Modern Liberalism* (New Haven: Yale University Press, 1984), p. 269, n89; Kurt Kloocke, cited in Alain Laurent, “Préface” in Benjamin Constant, *Commentaire sur l’ouvrage de Filangieri* (Paris: Les belles lettres, 2004), p. 8; Laurent, “Préface,” p. 8. An exception to the lack of sustained discussion is found in Jeremy Jennings, “Constant’s Idea of Modern Liberty,” in *The Cambridge Companion to Constant*, ed. Helena Rosenblatt (Cambridge: Cambridge University Press, 2009), pp. 69–91. The *Cambridge Companion* should be regarded as the first place to look for anyone interested in the current state of Constant scholarship.

4. Rosenblatt, “Eclipses and Revivals: Constant’s Reception in France and America, 1830–2007,” in *The Cambridge Companion to Constant*, pp. 354–55. For the texts of the handful of reviews of the *Commentary* that did appear, in French and Italian journals, see Antonio Trampus

However, readers will also see reasons why, despite the fascinating material it contains, the *Commentary* may have had difficulty in attracting attention. The book's organization is loosely patterned after Filangieri's. *The Science of Legislation* consists of five long volumes of an unfinished seven-volume work, and the *Commentary* effectively consists of two short volumes (the two parts of 1822 and 1824). The resulting problems of organization were never really solved. As Constant says in the opening "Plan of the Commentary," his chief point of diversion from Filangieri is that he prefers to leave to free choice what Filangieri wishes to see regulated by the state. But if the plan states Constant's overall perspective, it never provides the reader with any scheme of organization for the discussion. Constant bases each chapter on a topic and passage taken from Filangieri, and he follows Filangieri's order of proceeding, without ever giving an overview of the topics Filangieri discussed, and indeed skipping most of them. The result is that Constant's work does not have a very clear order, although very roughly the first two parts concentrate on the proper sphere of government, part one mostly devoted to legislation in general, and part two mostly devoted to economic regulation in particular. Parts three and four center even more loosely on criminal law and religion. The lack of focus that often afflicted Constant's writing is evident in the *Commentary* as well.

Nevertheless, the *Commentary* is a work of great interest, partly for what it says in itself, and partly for what it says about Constant, who since his period of relative obscurity in the late nineteenth and early twentieth centuries has come into his own as one of the leading figures in the creation of modern liberalism after the French Revolution. If Emile Faguet perhaps went too far in claiming that Constant "invented liberalism," he certainly played a seminal role. His well-known distinction between the freedom of the ancients and the freedom of the moderns—the former based on the primacy of the public sphere in antiquity, the latter based on the primacy of the private sphere in modern commercial societies—has become fundamental to much political thought.⁵ That distinction was made in Constant's famous Royal Athenaeum speech of 1819 and in a less-famous passage in his *Principles of Politics* of 1810.

and Kurt Kloocke, "Reactions to Benjamin Constant's *Commentaire sur l'ouvrage de Filangieri*," *Annales B. Constant*, 2012, no. 37, and 2013, no. 38.

5. See Emile Faguet, *Politiques et Moralistes du XIX^e siècle* (Paris, 1885), art. "Benjamin Constant."

It is present in the *Commentary*. But Constant's work covered much more than that.

The *Commentary* is founded on the view that government should be limited to a strictly negative role in society: ". . . the functions of government are purely negative. It should repress disorder, eliminate obstacles, in a word prevent evil from arising. Thereafter one can leave it to individuals to find the good." "The functions of government are negative: it should repress evil, and let the good take care of itself." These two statements are found near the beginning and end of the *Commentary*, respectively. They act as bookends for all that comes between. This is Constant's political and economic credo, which finds expression in the *Commentary* in a variety of ways. Most of part one and much of the book as a whole is taken up with debunking Filangieri's and by extension much of the Enlightenment's and many of Constant's (and our) contemporaries' belief that legislation is all powerful, and that the legislator can single-handedly shape human societies in the desired way. The limits of legislation is a theme Constant repeatedly returns to, coupled with the corollary that in attempting to legislate for the good of humanity, despotism is often the unintended consequence. From legislation in general, Constant finds his way in part two to economic regulation in particular. The transition between politics (legislation) and economics passes through a relatively brief but ferocious denunciation of the evils of slavery and the slave trade in the French colonies. After this passionate plea in favor of government intervention (with the negative aim of preserving freedom), Constant proceeds to an extensive discussion of economic regulation. Here the first thing to be said is that Constant takes a resolutely liberal, *laissez-faire et laissez-passer* (a phrase he quotes, in whole or in part, on several occasions) view. The *Commentary* shows that in Constant's case there is no distinction to be made between economic liberalism and political liberalism. They both derive from his commitment to individual freedom.⁶

Constant's discussion of economic issues is broadly construed. Besides rejecting government intervention in the market, he discusses such related topics as Malthus's theory of population, the problem of poverty, and taxation. He proclaims himself a reluctant convert to Malthus's view of the inevitable growth of population up to and beyond the means of subsistence, but

6. See p. 3.

he rejects Malthus's remedies. Constant shows a great deal more sympathy for the poor than Malthus, and he refuses to legally discourage the poor man from marrying, despite the advice of both Malthus and Sismondi (Constant compliments Sismondi's *New Principles of Political Economy* on several occasions, but explicitly rejects it in this context). In the course of defending the poor person's right to marry and have children Constant draws a picture of poverty that shows that he was by no means insensitive to its hardships:

It is not enough for you that the proletarian resign himself to have no part in any of the goods of which you possess a monopoly. It is not enough for you that he renounces fire, land, water, even air, for his condition obliges him to sometimes descend into the depths of the abyss, sometimes bury himself in workshops where he can barely breathe, and always to deprive himself of what he produces for you which he sees you enjoy at the price of his fatigue and sweat. One consolation remains to him, a consolation which Providence, touched by pity, has spread among all beings—you dispute his right to it. You want that that faculty given to all, of which the animals themselves are not deprived, be forbidden to your fellow because he is poor. I repeat, there is in this at least as much imprudence as iniquity.⁷

Constant's solution to the problem of poverty is freedom. He rejects the English Poor Laws' limitation on the freedom of the poor to move in search of work, as well as the restrictions on their right to enter a trade, requirements for expensive apprenticeships, etc.: "The poverty of the laboring class cannot be denied, and the laws of England are in this respect as absurd as they are atrocious. They weigh on indigence, they dispute its legitimate use of its faculties and its strength, they make its sufferings eternal, for they take from it every means of arriving at a more fortunate position." Given this situation, "the poor tax, a tax so regrettable in many respects, and which England will suddenly free itself from by a return to the principles of industrial freedom, is a kind of restitution consented to by the monopoly in favor of those whom it deprives of their rights." As a means of combating poverty in the long run, the *Commentary* goes on to champion parents' right to bequeath their property freely, rejecting both English entail and the Napoleonic Code's forced division of property among children: "When the disposition of property is free, it tends to division." Once all land has been made freely alienable by abolishing

7. p. 103.

entail, the actual cultivators of the land will be able to purchase it. This is important, because “when the poor man can acquire even one field, class no longer exists, every proletarian hopes by his labor to arrive at the same point, and wealth becomes in land as in industry a question of work and effort.”⁸

Freedom—of movement, of industry, of trade, of bequeathing one’s property—is always for Constant the best available remedy to any problem. A partisan of liberty, Constant is a partisan of a strictly limited government. But freedom can exist only with the aid of a government that is powerful in its proper sphere, which is negative yet crucial. Government naturally requires taxation, which for Constant is a necessary evil. He prefers taxes that “weigh equally on all, proportionally to their wealth.” His suggestions favor an element of progressive taxation, and a combination of direct taxation and consumption taxes. But one form of tax he absolutely rejects—taxing capital, because this means destroying future economic growth.⁹

Constant’s discussion of the justice system in part three raises many issues, some of them familiar to us, others less so. He devotes considerable effort to rejecting Filangieri’s contention that only private individuals, rather than government officials, ought to be allowed to prosecute those they consider criminals. One of the consequences of modern liberty’s preference for private life will mean that in this case too many crimes will go unprosecuted. He also defends the jury system. In an anticipation of William F. Buckley Jr.’s remark that he would rather be governed by the first four hundred names in the Cambridge phone book than by the faculty of Harvard, Constant says he would rather face a jury of twelve uneducated workers who owed nothing to the state and feared nothing from it, than one composed of twelve members of the Académie Française who all hoped for a government promotion. Curiously, his defense of the death penalty is based on consideration for jailors. Being a jailor, according to Constant, is inevitably morally corrupting. Being an executioner is worse, but we will need far fewer executioners than we otherwise would need jailors; therefore, better the death penalty than prison. Readers will be relieved to learn that Constant rejects the death penalty for crimes against property, and reserves it for crimes against persons.

The fourth part, shorter than the others, is divided between a discussion of

8. See p. 112.

9. See p. 160–61.

education (comments on which are scattered through the work) and religion. Constant champions freedom in the educational sphere as well. He fears both government political indoctrination and incompetence in a state-run system. The extent to which he wishes to banish government from education is not entirely clear, however. On the one hand he states that “Education belongs to parents, to whom the education of children is confided by nature. If these parents prefer domestic education, the law cannot oppose it without being a usurper.”¹⁰ On the other hand he also says that “One can look at [education] as a means of transmitting to the rising generation the knowledge of all kinds acquired by preceding generations. From this perspective, it is within the competence of government. The preservation and increase of all knowledge is a positive good. The government should guarantee us its enjoyment.”¹¹ His conclusion is that “Public education is beneficial in free countries above all. Men brought together at whatever age, and above all in their youth, contract by a natural effect of their mutual relations a feeling of justice and the habits of equality, which prepare them to become courageous citizens and enemies of arbitrary power. Even under despotism, we have seen schools dependent on the government generate, despite it, the germs of freedom which it tried in vain to smother.”¹²

Constant’s final discussion of the origin of religion is full of references to his work *On Religion*, of which the first volume had already been published, and whose remaining three volumes were much on Constant’s mind at the time. Constant mostly devotes himself here to disputing Filangieri’s account of the origin of religion in general and of Greek and Roman religion in particular. His dislike for a priestly caste, evident throughout his writings on politics and religion, is prominent here too. It is in this section that he is most harsh toward Filangieri. The book concludes with a passionate defense of the freedom of thought, no matter how pernicious the ideas expressed may be. Constant was a thorough liberal, as can be seen from the *Commentary*’s final words: “Let us therefore cross out the words *repress*, *eradicate*, and even *direct* from the government’s dictionary. For thought, for education, for industry, the motto of governments ought to be: *Laissez-faire et laissez-passer*.”¹³

10. p. 28.

11. p. 219.

12. p. 223–24.

13. p. 261.

Translator's Note

As the translator of Benjamin Constant's *Commentary on Filangieri's Work* I have, like Dennis O'Keeffe in his Liberty Fund translation of Constant's *Principles of Politics*, striven to "retain as much as possible of the general elegance and subtle rhetoric of Constant's writing while seeking to render it in accurate, graceful, and accessible English."¹ This has meant breaking up some of Constant's very long sentences, and lengthening some of his very brief paragraphs by annexing them to preceding or following ones where appropriate. As conventions change across times and languages, translations must change with them. The intention has always been to give the English reader of the twenty-first century the same ease and comfort that the French reader of the nineteenth century experienced when reading Constant. However, it must be admitted that in Constant's *Commentary on Filangieri's Work* the quality of the writing is very variable. Constant could write with elegance and subtlety when he wished, but he did not always take the trouble to do so. Nevertheless, for the most part even when Constant is not elegant, his meaning is clear, and the task of the translator is in this sense a straightforward one.

In certain respects, however, any translator of eighteenth- or nineteenth-century French social thought has to make choices that are less than straightforward. It is only proper to give the reader fair warning of how some of the most important of these choices have been made. For the word *liberté*, which presents the translator with the alternatives of "liberty" and "freedom," I have generally chosen *freedom*, on the grounds that *liberty* has an increasingly archaic or historical ring to readers today. The French terms *lumières*, *pouvoir*,

1. Dennis O'Keeffe, "Translator's Note," in Benjamin Constant, *Principles of Politics Applicable to All Governments* (Indianapolis: Liberty Fund, 2003), p. xi.

and *autorité* have been translated into the appropriate English words—words plural, rather than singular, because the meanings Constant wished to convey by those terms varies and depends on context. Thus while Constant most often used *pouvoir* and *autorité* as synonyms for “government,” he sometimes used them in a more abstract sense. In those cases they have been translated accordingly, as “power” or “authority.” *Lumières* has been translated as “education,” “knowledge,” and more rarely “enlightenment,” depending on context. To those who argue that a word has only one meaning for a given author, I can only reply that this sort of consistency, if it is ever to be found in any writer, is not present in Constant’s writings.

Whether the result of these choices has succeeded in producing an English-language text that is faithful to Constant as well as to both the French and English languages is a decision that must be made by the reader. In making my choices I have been greatly aided by my editor at Liberty Fund, Christine Henderson, and by the reader for the project, Jeremy Jennings. To both of them go my thanks for their help. All remaining inaccuracies and needless infelicities of style are the responsibility of the translator alone.

COMMENTARY ON FILANGIERI'S WORK

