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NATURAL RIGHTS AND LIBERTY: A CRITICAL EXAMINATION OF SOME LATE EIGHTEENTH-CENTURY DEBATES IN ENGLISH POLITICAL THOUGHT.

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ABSTRACT

The purpose of the thesis is to explore the conception of natural rights and liberty in late eighteenth-century English political thought. It is argued that the conception of natural rights, or rights of man as they have been conventionally called, is a mixture of heterogenous and often contradictory theoretical assumptions. It is shown that the language of natural rights on the one hand, was increasingly dominated by utilitarian ideas, and on the other, was associated with a conception of moral agency - derived from treatises on morals and metaphysics - which rendered the rhetoric of natural rights especially appealing for purposes of reform. An attempt is made to illuminate in detail the way in which the right of private judgment was transferred from religion to politics. In distinguishing between the formation of thought, its expression, and acting in accordance with it, it is contended that the affinity between the arguments in defence of religious and political liberty lies in their common ground, that is, as rights concerning the expression of opinion. The exercise of such a right by all was deemed equally compatible and even conducive to the formation of the public interest. Although terms such as 'rights' and 'liberty' were often used synonymously, an attack on natural rights involved an analytical distinction between liberty and a right. The study investigates conceptual problems involved in attempts to define liberty in relation to law. It further discusses the tendency, common in many eighteenth-century writers, to confound liberty with other concepts such as utility, obedience, or wisdom. The primary sources used consist of a considerable number of pamphlets which have previously received little attention.
<table>
<thead>
<tr>
<th>Title:</th>
<th>1.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abstract:</td>
<td>2.</td>
</tr>
<tr>
<td>Table of Contents:</td>
<td>3-5.</td>
</tr>
<tr>
<td>Acknowledgements:</td>
<td>6.</td>
</tr>
<tr>
<td>Introduction:</td>
<td>7-21.</td>
</tr>
<tr>
<td>II. A Critical Analysis of Price's Conception of Liberty as Self-Determination:</td>
<td>40-65.</td>
</tr>
<tr>
<td>III. From 'Man is a Law unto Himself', to 'Man is his own Legislator':</td>
<td>66-83.</td>
</tr>
<tr>
<td>IV. Natural Rights and the Public Good: Josiah Tucker and the Attack on the 'Lockian Republic':</td>
<td>84-104.</td>
</tr>
<tr>
<td>(ii). The Contrast between Titles and the Public Good:</td>
<td>96-104.</td>
</tr>
<tr>
<td>V. The Influence of Utilitarianism on the Rights of Man:</td>
<td>105-134.</td>
</tr>
<tr>
<td>(i) Tucker's Critique and the General Response to Price:</td>
<td>105-113.</td>
</tr>
<tr>
<td>(ii). The Lockean Counter-Attack:</td>
<td>113-124.</td>
</tr>
<tr>
<td>(iii). Utilitarianism and the Language of the Rights of Man:</td>
<td>124-134.</td>
</tr>
<tr>
<td>VI. The Connection between Religion and Politics: The Problem:</td>
<td>135-152.</td>
</tr>
<tr>
<td>VII. Toleration and Religious Liberty:</td>
<td>153-183.</td>
</tr>
<tr>
<td>(i). The Balance between the Sacredness of Religious Conscience</td>
<td></td>
</tr>
</tbody>
</table>
and the Need for a Religious Establishment: 153-164.

ii. The Balance Subverted in two Opposite Views:

Price and Burke: 164-172.

iii. The Distinction between Spiritual and Temporal Matters Abandoned: Priestley and Williams: 172-183.

VIII. The Extension of the Right to Private Judgment From Religion to Politics: 184-220.

i. The Right to the Formation of Private Judgment, its Expression, and to Act according to it: 184-188.

ii. Power and Right: 188-196.


v. The Extent of the Right to Private Judgment: 207-211.

vi. The Importance of Opinion: 211-220.

IX. The Distinction between Political and Civil Liberty: 221-251.

i. 'Political' as Opposed to 'Civil', and 'Political'-'Civil' as Opposed to 'Natural': 221-224.


i. Lind and the 'Partial Absence of Coercion': 253-258.

ii. Hey and the 'Liberty of the Peaceable': 258-271.


i. Unlimited Power: The Point of Concurrence: 286-293.

ii. The Qualifications of 'Omnipotence': 293-298.
iii. The Logical Prerequisite of Government: 298-302.


Conclusion: 308-317.

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INTRODUCTION.

The thesis is built around three major themes which capture different aspects of the late eighteenth-century debate about natural rights and liberty. First, it considers the doctrine of natural rights in relation to the idea of moral agency, on the one hand, and utilitarianism on the other. Second, it discusses the problem of the extension of the right of private judgement from religion to politics. Third, it concentrates on analytical discussions of liberty and the distinction between political and civil liberty.

The late eighteenth-century debate on the rights of man has been customarily presented as an ideological clash between Burke and Paine, who established the frameworks of political radicalism and conservatism respectively. Diametrically opposite views have been expressed about the theoretical merits of the two gladiators' major works. One commentator has presented Paine's *Rights of Man* as 'essentially a basic philosophy' and not a mere 'rebuttal of Burke’s arguments'. Another has considered Burke as the original philosopher claiming that the 'Reflections on the Revolution in France' would have been written, even if Paine had never existed.  

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Quite apart from the reason alleged, the latter contention is true simply because the *Reflections* constituted a response to Richard Price and not to Thomas Paine. Despite this fact, the importance of Price has been seriously underestimated, at least until recently. It was often argued that Price offered to Burke the golden opportunity to write his brilliant *Reflections*, but after that Price himself was forgotten.

An increasing tendency, however, to focus on the role of Rational Dissent and Richard Price, in particular, has gained ground in recent years, especially after the publication of D.O. Thomas's comprehensive study of Price's work as a whole.\(^4\) Thus Price's role has been emphasised at the expense of Paine's in the context of measuring the extent and assessing the nature of political radicalism in the 1790s.\(^5\) Certain distinctive features permeating the account of natural rights as it was expounded by others have been attributed to his philosophical influence.\(^6\) An analysis of Price's arguments have enabled some historians to account for certain peculiarities in the arguments of other political thinkers, such as Godwin. The philosophical rationale for Godwin's ideas concerning the importance of private judgement and moral duty (which tended to undermine the utilitarian framework of his theory), has been traced back to Price's texts.\(^7\) The recognition of Price's significance as a moral philosopher


\(^5\) e.g. Mark Philp, 'Rational Religion and Political Radicalism in the 1790s', *Enlightenment and Dissent*, No. 4, 1985, pp. 39-40.


has been followed by attempts to link his ethical theory with his political ideas.*

Following in this direction, it will be argued here that the most crucial idea for the articulation of Price's political thought was his conception of free will.

In the writings of all those who inveighed against the rights of man, the words 'natural rights' and 'metaphysics' (in a pejorative sense) went hand in hand. Paine was accused for having 'crudely stolen' his 'crazy metaphysics' from others.° Studies of Burke have continuously pointed to his dislike of the 'professor of metaphysics'. Burke's aversion to abstract speculation and metaphysics has often been interpreted as the natural reaction of an English politician confronting the generalities propagated on the other side of the Channel. Frederick Dreyer, however, has argued that in composing the *Reflections* Burke had in mind Price's philosophical arguments rather than the events of the French Revolution. According to him, the 'metaphysician', whom Burke so often and so vehemently denounced without naming, was, in fact,

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8 Bernard Peach, who has most emphatically pointed to the unity between Price's epistemological, moral and political theory, finds it rather hard to distinguish politics from ethics in Price. Sometimes he writes in such a way that it seems that ethical considerations constitute a weightier, yet distinctive, factor apart from political considerations ('...Price holds, quite generally, that moral and ethical factors carry "greater weight" than political factors') but at other times it appears that political considerations are themselves ethical considerations ('Price judges political, military, economic, or religious attitudes, practices, or policies from the moral point of view'). See Richard Price and the Ethical Foundations of the American Revolution, Durham NC. 1979, pp. 23 and 27 respectively; also pp. 29, 34-5 cf. 'Human Nature and the Foundation of Ethics', Enlightenment and Dissent, No. 4, 1985, p. 28. The closest connection between Price's ethical and political ideas is defended in S.R. Peterson, 'The Compatibility of Richard Price's Politics and Ethics', Journal of the History of Ideas, Vol. 45, 1984, pp. 537-47; esp. pp. 536-7.

9 Anon., Letters to Thomas Paine in Answer to his Late Publication on the Rights of Man, London 1791, p. 15.

Richard Price. In substantiating his position Dreyer quotes, among other things, a revealing passage from Burke: 'There are people who have split and anatomized the doctrine of free government, as if it were an abstract question concerning metaphysical liberty and necessity, and not a matter of moral prudence and natural feeling.' Although Dreyer does not follow the full implications of the evidence he presents, this is a remarkable statement, because it indicates what Price had undertaken. In his philosophical works Price defended the idea of metaphysical or philosophical liberty as a precondition of moral agency. In the first and most important theoretical section of his influential Observations on the Nature of Civil Liberty he primarily summarized his earlier philosophical views in the analysis of the nature of liberty. As one of his opponents complained, in the first section of Observations the 'political divine' was 'totally out in his philosophy'.

Although, the Lockean, the republican, and the millenarian influences in the formation of the late eighteenth-century radicalism have received from historians the attention they deserve, there are certain ideas and linguistic conventions in widespread use among the champions of natural rights, which do not make much sense when set against the background either of Locke's Treatise, or Harrington's republican ideas. Instead, they are meaningful, however, against the background of philosophical treatises concerning the morality of human action and especially the notion of agency. This is plausible if we bear in mind that the dominant issue in philosophical

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11 Ibid., p. 467.

discussions of the eighteenth century (and before) was freedom from sin.\textsuperscript{13} Consequently the great controversy focused upon free will and necessity. Intellectual historians have suggested that there is a connection between this debate and political ideas.\textsuperscript{14} However, certain links can be established in different and even opposite directions. While, for example, Priestley can been regarded as the eighteenth-century paradigm of 'a conjunction of moral determinism with political liberalism',\textsuperscript{15} John Lind or John Brown could serve as examples of a conjunction of moral determinism with political conservatism.\textsuperscript{16} On the other hand, while Price is the most notorious example of a philosophical libertarian and political liberal, many of his opponents, like Johnson, were political conservatives but would have agreed with him that 'free will' was 'absolutely essential if men were to be regarded as moral beings'.\textsuperscript{17} No suggestion, therefore is made here of an exclusive link between certain political ideas and a particular stance in the great metaphysical controversy. After all as Thelwall claimed:

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\textsuperscript{15} Vartanian, 'Necessity or Freedom?', p. 174, note 25.
\textsuperscript{17} C. Chapin, 'Samuel Johnson and the Scottish Common Sense School', \textit{The Eighteenth Century}, Vol. 20, 1979, p. 59. For the link between conservatism and free will see Vartanian, 'Necessity or Freedom?' pp. 160-61.
I care not upon what hypothesis of man you proceed: whether of creation, of eternal succession, of chance, of necessity, of inherent laws of matter and motion, or what not: for a treatise on government, like government itself should be of no sect - but accommodated to all. All lead to the same conclusion: for here is nature, or the universe; and here is man, chief tenant of the universe! child and creature of that nature!18

Thelwall’s remarks allude to the connection between political and metaphysical ideas that his contemporaries sought to establish. Very often, expressions were borrowed directly from the metaphysical controversy to expound natural-rights ideas. The consideration of this debate is essential for acquiring a clearer view of the language and philosophical underpinnings of the doctrine of natural rights as it was held by many of its eighteenth century adherents. In a political context, the special appeal of the idea of free will, was that it enabled people to present liberty as a moral requirement and not only as a means to another good. Thus the appeal to higher moral principles was a plausible way of counteracting arguments exhibiting the advantages of the institutions in a ‘perfect’ constitution. No doubt the defence of free will as a metaphysical reality carried the claims ‘of human nature to dignity’ ‘too high’,19 but the notion of dignity was essential to the idea of personality which figured as the sole foundation of the rights of man. Chapter I provides the textual evidence (taken from many writers except Price) concerning the connection between free will and political ideas. Chapter II demonstrates in what sense free will could be relevant to political argument. Chapter III indicates how congenial to the articulation of the doctrine of natural rights was the conception of the internal constitution of man which emerged


in the discussions about free will and necessity.

Eighteenth-century radicalism has been characterized by a tendency towards theoretical eclecticism and a disregard 'for logical consistency'. From this perspective an interesting but neglected aspect of eighteenth century political thought is the relationship between natural rights and the utilitarian tradition. It is worth considering, more specifically, the extent to which the doctrine of natural rights was permeated by utilitarian language and utilitarian concepts.

Writing about John Cartwright, the English radical who had based the right to vote solely on the idea of individual personality, John Osborne suggested that at one point Cartwright came under the influence of Bentham's writings. 'This was especially true of A Fragment on Government, which had been published in 1776. Toward the end of An Appeal his sentence about the end of all government being the good and happiness of the people might suggest Bentham's influence. But as far back as Take Your Choice! Cartwright belonged to the natural rights school, which was completely distinct from utilitarianism. As Halévy points out, "To the divine right of kings Cartwright opposed the divine right of individuals, not the utility of the greatest number." Is the acknowledgement that the end of government is the happiness of the people evidence of utilitarian credentials? It is hardly possible to find a champion of natural rights who did not include this or a similar statement in his political vocabulary. Is the natural rights school completely distinct from

\[20\text{Dinwiddy, 'Conceptions of Revolution in the English Radicalism of the 1790's', p. 169.}\]

utilitarianism? It is difficult to answer this question since the same idea was often described as a law of nature by one and as utility by another. Finally, is it true that Cartwright and his allies did not oppose to the divine right of the king the interest of the greatest number? This question is very important for assessing the relation between utilitarianism and the doctrine of the rights of man, because it brings to the forefront a common problem, that is, the problem of individuals or minorities versus the majority.

The traditional critique of utilitarianism, namely that its logic fails to take notice of individual or minority rights, can stand only as a criticism of a caricature of 'classical utilitarianism' and especially Bentham's ideas. Despite its historical inaccuracy, this has been the received interpretation of utilitarianism and has been widely employed by contemporary exponents of natural or moral rights. It is interesting, however, to observe in this connection that in the eighteenth century the accusation of a failure to pay due attention to individual or minority rights was directed against the exponents of the rights of man by conservative thinkers, many of whom were also outspoken utilitarians (eg. Hey, Lind). They launched this kind of critique in order to bring out their opponents' self-contradiction. Briefly, the argument was that since the exponents of the rights of man had adopted the principle of majority rule as a legitimate mode of decision-making, they had necessarily abandoned the notion of an inalienable individual right. For conformity to the wishes of the majority implied such an alienation of the right to follow one's own will. The ultimate end was to undermine the notion of personality as the theoretical foundation of natural

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rights, by arguing that since one could not follow his own will he ceased to be a moral agent.

The contrast in those discussions was between individual titles and the public good. This contrast between individual titles, or rights, and the public good can be presented either as an opposition between individual rights and 'some version of utilitarian theory' or individual rights and 'majoritarian democracy'. This is the main reason why the language of utilitarianism and the language of the champions of the rights of man tended to converge in the late eighteenth-century. The exponents of the rights of man defended primarily the right to political participation, that is, an individual right enjoyable only in a collective form. In providing the theoretical foundation of this right the champions of the rights of man stressed its individual character and its inalienable nature. When, however, they applied this conception to the cause of political reform they had to stress the rights of the community as a whole against the rights or the interests of the one or the few, that is, the king and the court.

Further, the conception of public good in those discussions has generally been taken by contemporary historians as an indication of a commitment to republicanism. However, there is no reason why it should be seen exclusively in this light. In considering the language of the rights of man we shall demonstrate that very often the conception of public good was used with explicit utilitarian overtones.

Josiah Tucker has been taken as the starting point for considering the extent


of the influence of utilitarianism on the conception of the rights of man. Although he is generally known for his economic ideas and his novel views concerning the need for separating from the Colonies, his political theory is built on a sharp and systematic contrast at all levels between individual titles and the public good. The interesting element in Tucker is that, without being known as a utilitarian, he launched the same critique and made the same connections as persons who are known to be committed utilitarians. Tucker’s critique of natural rights is discussed in Chapter IV. Chapter V places in a broader context the features of this critique and assesses the extent of the influence of utilitarianism on the rights of man.

The renewed interest in the role of religion in the formation of political radicalism has left unanswered many questions. There are, in particular, many ambiguities surrounding the widely held assumption concerning the connection between the Dissenters’ political and religious views. It is difficult to show where the similarity between their political and religious principles lies. The major difficulty in this sense is to locate the common features of religious liberty and political participation, since the two kinds of liberty point in different directions. The argument which shall be advanced here is that religious and political liberty are similar because of their special character as rights concerning opinions. The unique characteristic of such rights, unlike for example the right to property, is that their most extensive exercise by all was believed to be feasible, and even beneficial to the formation of the public interest. It was the importance of the free expression of opinion in all its different forms (one of which was political participation) that was highlighted by the champions of natural rights. However, their opponents suppressed this dimension, and tended to analyze natural rights in terms of physical powers in an anarchical state of
nature.

We shall acquire a better understanding of this problem by focusing on the three distinct (although occasionally overlapping) meanings of the right to private judgment. The right to private judgment could mean the right to form a judgement; it could also mean the right to express a judgment; it could mean further the right to act according to the judgment. The first meaning could be dismissed as trivially true (although it was in this context that power and right really meant the same thing). The third meaning could render the right of private judgement incompatible with the idea of civil society, since it implied a potential disobedience to every law which was not approved by the individual’s judgement. Thus, the right of private judgement in this sense was regarded as a very dangerous principle. Those who challenged the rights of man were very keen to stress this point. Nevertheless, they tended to ignore the second meaning indicated above (the expression of judgment), or to absorb it into the third meaning (acting according to one’s own judgment), overshadowing in this way the unique characteristics of the right to the free expression of opinion. The axis of our analysis of the right of private judgement shall be the comparison of earlier arguments in defence of religious toleration with Thomas Paine’s formulation of the doctrine of natural rights in the classical form it assumed in the First Part of the Rights of Man.

Our argument concerning the relationship between religious and political liberty does not depend on certain theological premises which were deployed in the context of religious toleration. Instead, it stresses the common criteria connecting religious liberty and political participation. The argument concerning the link between political and religious liberty presupposes the elimination of the distinction between
temporal and spiritual matters which dominated the controversy over religious toleration. Religious and political liberty are treated here in the light of a conception of the universal toleration of opinions. From this perspective political liberty is related to the right of free speech as much as to religious liberty. Moreover, the limitations of the distinction between temporal and spiritual matters was felt even in the context of defending religious toleration, and in the course of the debate it was partly replaced by an emphasis on the conception of public good. The free dissemination of individual opinions were seen as part of the formation of the public interest, and this dimension was also critical to the arguments in defence of political participation. Lastly, the right of private judgment had an immediate religious reference, and those who challenged, defended, or at any rate investigated this idea, did so in the immediate context of the religious controversy. For these reasons it has been necessary to consider the discussion of toleration and religious liberty before embarking on the detailed analysis of the right to private judgment.

Chapter VI indicates in what senses there are problems with the idea of the extension of the right to private judgment from religion to politics, and how the Dissenters fit into this argument. Chapter VII focuses on the theoretical underpinnings of the discussion of toleration and religious liberty and provides the link for the comprehensive analysis of the right of private judgment in Chapter VIII.

The last major theme which is dealt with here concerns liberty in a more explicitly political context than before. Chapter IX discusses the distinction between political and civil liberty. Chapter X discusses various attempts to define liberty and relate it with other concepts. The last chapter (XI) concentrates on the conception of sovereign which is also crucial to the discussion of both civil and political liberty.
The distinction between political and civil liberty is one of the most complex and important ideas of the eighteenth century. Priestley's definitions are the common point of reference and are usually taken as the starting point for discussing this distinction. Price is generally considered as confused, while David Williams is believed to be the most original contributor to the debate. An attempt is made here to show that the very phrasing of Priestley's important definitions reflected his sentiments respecting the value of each one of the two kinds of liberty. Outside this context his definitions are an easy target, and less cogent than it is often assumed. Another important but neglected aspect of the discussion about the two kinds of liberty refers to the way in which Price modified his argument in Additional Observations on the Nature of Civil Liberty. Price's indebtedness to Montesquieu is not apparent for two basic reasons. The first is that his account of natural rights placed him in the tradition established by Locke. The second is that Price made a rather peculiar use of Montesquieu, namely, he did not take from him ideas which in the long run have been associated with Montesquieu's name. (For, example Price quoted Montesquieu and not Rousseau in support of the idea of self-government). It is argued that Price responded to his opponents (who drew heavily on Montesquieu to refute him) by stressing the idea of security. What is less clear in this connection, is that he advanced an argument whereby political liberty became a part of his conception of civil liberty. This made redundant the initial division of liberty into these two broad categories, civil and political. This is exactly what Montesquieu himself had done. The

third element that is stressed is Williams's significant departure from the traditional language of natural rights. This departure was brought about not only by his insistence on the idea of security, but also by his attempt to clarify the distinction between the sovereign and the actual administration of government, which placed the distinction between political and civil liberty in a new perspective.

The distinction between political and civil liberty is also important for another reason. It enables us to acquire a clearer perception of the arguments concerning the attempts to define the meaning of liberty. It is argued that some attempts (mainly by Lind and Hey) to distinguish between liberty and a right in the critique of certain ideas of liberty was nothing more than the reintroduction of the distinction between civil and political liberty in a different shape. It is also suggested that the absence of a conception of political liberty, either in the form of security, or in the more traditional form of direct political participation, was one of the main causes which led to the transformation of civil liberty into utility. A utilitarian argument about liberty and a confusion between liberty and utility are different things. It is arguable that utility, in a sense, bridged the gap of legitimacy created by the absence of a conception of political liberty which could justify restrictions on civil liberty.

One further difficulty surrounding the idea of liberty was that the same word was used to define relationships between individuals and describe ways of controlling, or influencing the acts of the legislator. An account of natural rights may be advanced as the strongest possible control on the legislature as it incapacitates it from intervening in areas protected by the respective right. In a natural-rights account the acts of private individuals and those of the supreme legislature are seen in the same light, that is, both as illegitimate invasions of the same nature. The main difficulty is
to reconcile the conception of natural rights with the conception of the sovereign. The
last chapter deals with some attempts to resolve this difficulty by placing the emphasis
on the interests of the members of a nominally unlimited sovereign. Particular
attention is paid to the fact that the notion of an unlimited power was meant in a
relative sense, despite the contrary impressions which might be created by the
terminology used. The idea, however, that sovereign should be reckoned formally
unlimited was retained as a logical requirement.

The thesis focuses mainly on the arguments of Richard Price, Joseph Priestley,
Thomas Paine, David Williams, Josiah Tucker, John Lind and Richard Hey, but a
large number of pamphlets by others have also been explored.
I.- THE GENERAL DIVISIONS OF LIBERTY.

In his *Observations on the Nature of Civil Liberty* Price gave a general definition of liberty as the power of self-government, and he approached liberty through its four general divisions: physical, moral, religious and civil. Commentators on Price have often acknowledged that his conception of liberty, as it has been expounded in his political pamphlet, is indebted to his earlier philosophical work and notably his *Review of the Principal Questions in Morals*.\(^1\) This acknowledgement, however, has not been followed by a clear exposition of the way in which the divisions of liberty Price put forward in his *Observations* are mutually related.

Clark, although he claimed that Price’s political theory was premised on ‘a moral theory of the autonomy of the individual’, identified Price’s conception of free will with religious liberty and then claimed that civil liberty ‘in general seemed to follow from Price’s preoccupation with religious liberty.’\(^2\) In contrast, Brown asserted that the connection between Price’s conception of moral obligation and his religious beliefs was ‘none whatsoever’, because Price ‘considered moral consciousness an endowment common to all, and equally binding upon the atheist and the believer’.\(^3\)


Gunn, although he asserted that Price sought to 'ground his case on philosophical premises', went directly to Price's definition of civil liberty identifying its defects without considering in what sense those premises were linked with civil liberty.\(^4\)

White appeared to have gone to the other extreme in making a connection between Price's philosophical stance and political theory, for he asserted that Price's notion of independent agency deriving from his conception of physical liberty or self-determination, enabled him to elaborate the philosophical justification of property qualifications for suffrage.\(^5\)

Robbins maintained that civil liberty comprised all other divisions of liberty and by Price's physical liberty she understood, 'self-preservation, our own control over our own actions'.\(^6\) But what actions? Note how different signification the same idea has in the context of considering Price's moral and notably epistemological theory by Raphael without any connection with his political doctrines:

"The physical concept of action is incompatible with the concept of right, for ethical concepts are outside the field and language of physics. The actions with which we are concerned are actions which proceed from a free, or at least a self-determining, will.

\(^4\) J.A.W. Gunn, *Beyond Liberty and Property*, pp. 244-5.

\(^5\) 'It would appear, however, that Price thinks of the "collective body of the people" as composed only of what he calls "independent agents," namely, those of us who possess what he calls physical liberty, spontaneity, or self-determination "which gives us a command over our actions, rendering them properly ours, and not effects of any foreign cause." ... Here we see a philosophical rationale for property qualification in a free society. The whole society or state can be free if and only if its "independent agents" elect representatives, and the indigent are, for Price, definitely not independent agents.' See Morton White, *The Philosophy of the American Revolution*, Oxford 1981, p. 262; see also pp. 289-91. It might be said that this argument applies to Joseph Towers, but for more mundane reasons than White suggests. See [J. Towers], *Peace and Reform against War and Corruption*, London 1974, pp. 81, 95-100.

It is, only in this sense of the word that actions can be called right or wrong. Long, without reference to Price's divisions of liberty, gave an account of his notion of liberty containing ideas pertaining to a combination of Price's idea of physical and moral liberty. He contended that for Price freedom 'meant the absence of certain wicked impulses, and complete subservience instead to others - a conception, one would think, not unlike Bentham's notion of total subservience to our "sovereign master", pleasure and pain.' Long regarded Price's theological stance as responsible for this conception of freedom. However, what is striking in Long's interpretation is that, given the fact that he discusses Price's conception of freedom in the context of the critique launched by Lind (and Hey) based on Bentham's conception of negative liberty, how is it possible to compare Price's conception of freedom, not with Bentham's conception of freedom, but with Bentham's conception of 'physiology'. It might have occurred to him that what he perceived as Price's conception of freedom in general could well refer to a conception of physiology, or natural psychology, contrary to that of Bentham's. When Lind challenged Price's idea of moral freedom, by saying that if Price did not allow for passions to be the motives of action no man could be free, he made a claim identical to Priestley's, when the latter attacked Price's conception of free will by means of his conception of

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9 Ibid., p. 55.

10 'If the operation of the passions destroyed moral liberty, where is the man who is morally free? Do you suppose any man to act without motive? Can you point out any other motive than the passions?' (J. Lind), Three Letters to Dr. Price, London 1776, p. 14); cf. also the following passages by Shebbeare referring to Price's
determinism. Price used the word 'freedom' to denote both social freedom (and I mean by 'social' the freedom of a person in relation to other persons) and freedom in a metaphysical or philosophical sense to expound a conception of natural psychology concerning the principles operating in the human mind. He contributed much to the confusion surrounding his conception of liberty once he gave the inappropriate name of 'physical freedom' to describe his conception of the internal constitution of man. Those of Price's contemporaries who embarked on an attempt to provide a refutation of the principles he enunciated in his Observations did not seem aware of the meaning Price attached to 'physical liberty', and even the accounts of recent specialists on Price exhibit instances of remarkable confusion on that issue: Laboucheix observed that there was a 'defect' in Price's classification of the general divisions of liberty, for he presented physical liberty as something 'so noble' in a way that it was 'too easy to emphasize a similarity between physical and civil' liberty. He would prefer Price to have started 'from a purely animal physical liberty and progressively enrich it with consciousness and reason. But it is quite clear that by physical liberty Price meant that of a rational being. On the other hand, by making political liberty come after moral liberty, Price managed to emphasize even more the close link between these two powers. The self-government of the community, which wants to organize itself in its

conception of passion, that is, the brute within: 'Passion, or the brute, as you call it, does not conquer but create the will of the man.' 'Such were the effects of Dr. Price's Brute, without which, man would have remained as inert as matter, and reason have had no motives to induce him to act...' (J. Shebbeare, An Essay on the Origin, Progress and Establishment of National Society, London 1776, pp. 63, 39); cf. Hobbes: 'Appetite, fear, hope, and the rest of the passions are not called voluntary; for they proceed not from, but are the will, and the will is not voluntary', Human Nature or the Fundamental Elements of Policy, Ch. xii, The English Works of Thomas Hobbes of Malmesbury, W. Molesworth (ed.), London 1839-45, 4:69.
own way, derives from intellectual or moral liberty, which prescribes its own law.'\textsuperscript{11}

We can detect here an initial reservation about the appropriateness of Price's use of the word 'physical', accompanied by a subsequent identification of moral with physical liberty, which are then linked with civil or political liberty. In an almost similar vein Cone has remarked that without fully realizing the importance that Price attached to 'freedom of action and will', one cannot comprehend the 'integration of his moral, religious, and political thought', adding, however, that priority should be given to Price's idea of moral freedom. What is actually claimed here is that although Price's idea of physical freedom -identified both with freedom to will and freedom to act according to will- is the unifying element which gave value and coherence to Price's moral, religious, and political thought (corresponding to the three remaining divisions of liberty), the 'first and basic was moral freedom'.\textsuperscript{12} Consider, further, the argument in the following passage: 'Without freedom, or the power to form decisions and act, Price considered, there could be no moral capacity. This liberty, obviously, could be dangerous, but how much better it was to be free, even to err, than to be the creature of physical necessity!'\textsuperscript{13} What sort of relation can possibly exist between liberty being dangerous and leading to error on the one hand, and the power of mind to form decisions on the other?\textsuperscript{14} The inability to distinguish between freedom of the


\textsuperscript{12} Cone, \textit{Torchbearer of Freedom}, p. 24.

\textsuperscript{13} Ibid. p. 23.

\textsuperscript{14} cf.: 'The political theory Price puts forward actually follows from his insistence on the individual's capacity for \textbf{free will}: the first mark of a just government is its protection of individual \textbf{liberty, enabling its citizens to act as moral agents}.' (S.R.
will and freedom to act according to the will - attributing both ideas to Price's conception of physical freedom - has led these authors to misconstrue the gist of the Price-Priestley controversy, and still more importantly, to present Priestley as being inimical to social freedom just because he was a philosophical determinist:

The one [Price] was led to establish a political theory in which man is self-determining. The other [Priestley] came to formulate a social doctrine in which man is a determined being. Price's moral obligation does not deny that psychological or social forces are determining, but it makes use of them or controls them. Priestley's determinism is self-sufficient and the very idea of liberty loses all meaning in his eye. So we see, in new perspective, a confrontation between liberty as a regulator of well-being and the sole principle of utility as negating all liberty.\(^{15}\)

The connection of determinism and indeterminism with the idea of freedom embedded in a political theory in this way is false and naturally leads to false conclusions. What Laboucheix asserts that Price did not deny is exactly what Price denied. Equally false is the claim that because of Priestley's determinism the idea of liberty 'loses all meaning in his eyes'. Priestley was at great pains to point out exactly the opposite, namely that only by the assumption of determinism or 'philosophical necessity' it was possible to construct a conception of liberty. The subsequent identification that Laboucheix makes between Priestley's adoption of the principle of utility and his inimical position to 'all liberty' manifests an ignorance of Priestley's doctrine of determinism, for Priestley insisted that '[i]n fact the system of necessity makes every

\[^{15}\text{Laboucheix, Richard Price as Moral Philosopher and Political Theorist, pp. 100-1; contrast Laboucheix, 'Chemistry Materialism and Theology in the Works of Joseph Priestley', Price - Priestley Newsletter, No. 1, 1977, pp. 36, 41.}\]
man the *maker of his own fortune*.

The clouds surrounding Price's conception of liberty, as the above examples show, provide a good reason for considering afresh how Price's conception of free will is relevant to his conception of freedom. However, there is a further reason warranting a detailed exploration of Price's conception of free will. In the eighteenth century the language of natural rights, to a large extent, was dominated by the idea of free will. The typical assertion in giving an account of natural rights was that God created man with reason and free will. But what was meant by 'free will'? Man had been created free to act according to his will, or the will of man itself was free in the sense that its resolutions were not determined by God or by any cause extraneous to the agent or the 'self'. Consider the following extracts:

...for liberty or a power of choosing or refusing, is only another term for will. Will, or willingness, implies freedom in the very term. ... There neither is, nor can be, any will but free will. Constraint, or force, is the very opposite of will, or willingness.

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16 J. Priestley, *The Doctrine of Philosophical Necessity Illustrated, The Theological and Miscellaneous Works of Joseph Priestley*, Rutt (ed.), vols. 25, 1817-32, 3:503. A similar confusion can be indicated in Cone's argument in the same context of comparing Price with Priestley: 'Where Price insisted upon moral autonomy as the only basis for freedom of the will, Priestley believed that men, as agents of God who placed the proper motives before them, would respond in a necessary and mechanical manner once they chose the course of their actions.' (Cone, *Torchbearer of Freedom*, p. 99). Priestley's doctrine was exactly the opposite. The choice was determined in a mechanical but imperceptible way which left as much freedom of acting as one could wish. Cf.: 'To be a necessarian in practice was to allow oneself to be perfected by the goodness of God's system and to urge or compel others to act in accordance to that system as well. ... The necessarian hypothesis ... is at bottom, a manifesto for social and psychological manipulation.' (J.J. Hoecker, *Joseph Priestley and the Idea of Progress*, New York 1987, p. 81.

...the natural Liberty of mankind consists properly in a power of acting as one thinks fit... being a right inherent in us by birth, and one of the Gifts of God to man at his creation, when he endued him with the faculty of free will...18

If man existed, as I think is clear, had not the power of willing and of acting...?19

It is in vain to think of enjoying liberty of action, if the opinions, by which is to be directed, are not also free.20

We apprehend those patriarchal rights were, first, the operations of the mind, such as perception, and volition.21

...let those men, who thus inconsiderably venture to affront the dignity of mankind, by withholding from them their temporal Rights, (viz. Choice, Free will, and the due exercise of that Reason which God has given them)...22

...the eventual unfoldings of the Human Mind divine, the diversified operations of Genius and the Understanding: the unavoidable spontaneous result of all which, in the course and issue of things, is - Dominion, Empire, Independence.23

...by depriving us of every species of free will ... reducing us to the


19 Anon., The Political Crisis; or a Dissertation on the Rights of Man, London 1791, p. 5.


21 T. Molloy, An Appeal from Man in a State of Civil Society to Man in a State of Nature, Dublin 1792, p. 96; ‘Man being created with free will, and endowed with reason to regulate it, he is therefore by nature a free agent; now, if he be deprived of that agency, contrary to his free will by any adventitious unnatural cause, the smart of his subservient situation, and the feelings of his immortal soul are at eternal war with his reason.’ (Ibid., p. 120; see also pp. 123ff, 167 and especially his comments on Locke pp. 102-3).


23 Th. Philadelphus, Sequence to Common Sense; or the American Controversy Considered, 2nd ed. Dublin 1777, p. 60.
mere automaton state of slavery, they would save us from the soul- 
sinking shame of being in any respect accessory to things, either to act 
or to suffer, are alike disgraceful to human nature!^24

Of the natural rights which God has given to man, the most perfect is 
the freedom of his own mind.25

When Cartwright maintained that all men had 'the same free will to determine, all 
alike"26 what idea did he invoke? Freedom of the will or being free to act according 
to the will? Probably the second, when he described what meant to 'be saddled against 
the freedom of one's own will with another's political creed', but presumably the first 
when he said that to 'think, to reason, and to will, on moral considerations, and with 
independency of mind, is to be a man'.27 In the way in which 'free will' was 
couched in these texts it is indeed very hard to disentangle the two notions. The 
ambivalence was often felt and reported by those who challenged the 'rights of man' 
and the assumptions on which they rested. Consider, for example, Samuel Cooper. It 
had been widely affirmed, he said, that men were born free. But this could only mean, 
he continued, something

which is as little to the purpose, - that NATURE, or more properly 
the GOD of NATURE, has endowed them with FREE-WILL, or a

1793?] p. 26; 'Two things, I think, will be allowed to belong to a man by the most 
sacred right, his purse, and his opinion. To tax a man without this consent, is to 
plunder him. But is it not infinitely more tyrannical to forbid the operation of his 
mind, and to rob him of that right of estimation and discrimination which every man, 
and even many animals, possess from Nature, and which of all thing should be free 
and spontaneous?' (Ibid., p. 10, cf. p. 52). The influence of Price is evident: '...O 
PRICE!' (Ibid., p. 39).


^26 J. Cartwright, Take your Choice, London 1776, p. 3.

^27 Both statements are in the same passage, J. Cartwright, Give us our Rights, 
London [1782], p. 2.
POWER of choosing one thing, in preference to another. This indeed, is certainly very true, and is therefore admitted; but the sole question, relative to the NATURAL FREEDOM of mankind, is, his natural freedom, as to the REAL EXERCISE of the POWER of ACTING, in CONSEQUENCE of SUCH a CHOICE. And this, it is manifest, is much less in a man's power in a state of nature, than even is a state of society.\textsuperscript{28}

However, despite his attempt to clarify the ambivalence, he went on to sustain it.

...though it may be granted, -that such is the turbulence, and violence of a state of nature, that in it, man cannot be said to be born indeed, to the actual exercise of freedom; yet nevertheless, he may be truly said, to be born with a RIGHT to freedom of action, in consequence of his free-will.\textsuperscript{29}

By this argument Cooper conceded to his opponents as much as they could possibly wish. At any rate, the frequent objections against the relevance of free will to political doctrines showed that many writers were prone to make the connection.\textsuperscript{30}

It seems that the appeal to the metaphysical notion of free will was made to add moral weight to the idea of freedom of action (in the sense of acting or not acting according to the will) which it otherwise would have lacked. Freedom in this sense appears too neutral an idea from a moral perspective and thus not suitable for providing a justification of the conception of natural rights. In a time dominated by theological controversies and teleological conceptions, the idea of free will -which emerged in a theological context- played the same role as contemporary ideas of ‘life projects’ (particularly associated with rights) where the value of individuality does not


\textsuperscript{29} Ibid., p. 44.

seem to require much defence. When the frustration of an individual's claim to a share in the legislature, or other restraints on liberty, were not perceived merely in terms of civil disadvantages, but were designated as a degradation and debasement of human nature, some conception of virtue and morality was invoked. The idea of 'free will', or philosophical freedom, figured prominently in religious and ethical discourse as a prerequisite of morality and virtue. Its direct implication was the articulation of a conception of man as a master of his own destiny, for only such an idea of man suited the glory of his Maker. In its original signification free will meant that man was free against God, and this in itself seemed to be a good reason for claiming that he should be free against other men.

The idea of free will became, in Price, the cornerstone of his conception of practical virtue. In dealing, however, with Price's account of 'free will', and particularly with his attempt to challenge Priestley's doctrine of determinism or philosophical necessity, two questions must be raised: first, whether Price has succeeded in giving a consistent account of free will, and second, in what sense his conception of free will is relevant to his conception of practical morality. The answer to the first question enables us to answer the second. The idea of free will that Price's conception of morality requires does not need the proof of the existence of free will in the sense of establishing what is called 'contra-causal freedom'. It needs only a consciousness of being free. Therefore, Price's moral arguments need only the idea of free will at the phenomenological level. This is, however, a claim that should be demonstrated, and this shall be done by following the contradictory implications resulting from Price's attempt to connect free will both with his conception of relative morality and with the metaphysical problem concerning the relation between matter
and spirit. His very attempt, however, despite its failure, shows how much importance
Price attached to the idea of freedom, as he wanted to ground it on the ontological
level.

It might be useful from the start to summarize the gist of the Price-Priestley
controversy over free will. Priestley contended that the doctrine of philosophical
necessity was consistent with our liberty to do as we will. Price's concern was merely
that if what we believed to be our liberty to act did not correspond to the reality of
things, then it was a deception, and as such liberty was completely worthless. Price's
originality in the account of liberty he expounded in his *Observations on Civil Liberty*,
lay only in the fact that by linking civil liberty with the conception of self-
determination that he had developed in his moral writings, he appeared to have laid
down the moral foundations of civil liberty. From the point of view of political theory,
his account of civil liberty is not so interesting, and is definitely much less cogent than
Priestley's. Price contributed his share in confounding distinct aspects of 'liberty', for
under the heading 'civil liberty' he included such ideas as political participation,
national independence, civil rights, while paying lip-service to Priestley's important
distinction between political and civil liberty. The contribution of Price to the
confusion around the idea of liberty will be treated in a subsequent chapter.

Let us start with Price's definition of the four general divisions of liberty 'as
such':

By PHYSICAL LIBERTY I mean that principle of Spontaneity, or
Self-determination, which constitutes us Agents; or which gives us a
command over our actions, rendering them properly ours, and not
effects of the operation of any foreign cause. MORAL LIBERTY is
the power of following, in all circumstances, our sense of right and
wrong; or of acting in conformity to our reflecting and moral
principles, without being controuled by any contrary principles. RELIGIOUS LIBERTY signifies the power of exercising,
molestation, that mode of religion we think best; or of making the decisions of our own consciences, respecting religious truth, the rule of our conduct, and any of the decisions of others. In like manner, CIVIL LIBERTY is the power of a Civil Society or State to govern itself by its own discretion; or by laws of its own making, without being subject to any foreign discretion, or to the impositions of any extraneous will or power.  

On the face of it, this is perhaps one of the most strange specimens of political theory ever written, and it was treated as such by many pamphleteers who set out to refute it. James Stuart announced that he had three reasons for being dissatisfied with Price’s account: ‘[F]irst, I cannot say I understand your definitions! Secondly, I dare say ninety-nine out of an hundred of your Readers, are in the same Predicament with me! Thirdly ... I am doubtful whether you yourself rightly know your own Meaning!’ Stewart’s observations captured a prevalent tendency amongst Price’s critics who expressed many reservations about Price’s attempt to define liberty. John Lind and John Gray thought that Price, instead of providing a definition of liberty, had provided nothing more than a horizontal division of objects to which liberty was applied. Shebbeare, considered each division in detail separately, and stretched them to extreme absurdities. Others, like Ferguson and Wesley, expressed their

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32 [J. Stuart], *A Letter to the Rev. Dr. Price, wherein his Observations ... are Candidly Examined*, London 1776, p. 6; also p. 15.


35 [A. Ferguson], *Remarks on a Pamphlet Lately Published by Dr. Price*, London 1776, p. 5.
admiration for Price’s ‘moral liberty’, but noted that it was irrelevant to his political arguments. A frequent statement was that Price did not make much use in the course of his argument of the first two (or even the first three) divisions of liberty, so they could be ignored. The most problematic division was taken to be ‘physical liberty’. If by this Price meant natural liberty in a rude state of nature, why did he not say it in simple terms? Thus ‘physical liberty’ was often interpreted as an unbridled liberty which would produce a ‘Society of Cut-throats’. Although the dominant role of ‘physical liberty’ in Price’s argument could be acknowledged, ‘physical liberty’ was interpreted in this light as the dominance of passions and appetites. There were, however, those who were not deceived (or did not pretend to have been deceived) by the words ‘physical liberty’. William King was one of those who challenged Price’s arguments by drawing on Jonathan Edward’s *Treatise* on free will and necessity.

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39 C. Dodd, *The Contrast; or Strictures on Select Parts of Doctor Price’s "Additional Observations on Civil Liberty"*, London 1777, p. 36.

40 Anon., *The Duty of the King and Subject, on the Principles of Civil Liberty*, London 1776, pp. 10, 4-6.

Similarly Richard Hey\textsuperscript{42} also correctly saw in the words 'physical liberty' an argument concerning freedom of the will, which as such he preferred to leave aside. We shall draw on the latter authors' insight, but seek to find out how the idea of free will impinged upon Price's articulation of the divisions of liberty.

To the ear of the modern reader, (and to many of Price's contemporaries as we have seen) the term 'physical liberty' sounds strange in view of the definition that follows it. It might be taken literally to mean simply man's capacity to move and act physically, if he is left unfettered. Price's wording contributes to this impression when he referred to 'a command over our actions'. In a few lines below, however, Price made clear that actions referred to volitions, and in the \textit{Review} the same concept (i.e. liberty as spontaneity) was referred to as implying 'dominion over our resolutions'. 'Physical liberty' then has a specific meaning, and by actions is to be understood the determinations of the mind, rather than their external manifestation in the form of physical actions.

This 'physical liberty', Price considered indispensable to morality. He supplemented his definition by claiming that:

\begin{quote}
[w]ithout \textbf{Physical Liberty}, man would be a machine acted upon by mechanical springs, having no principle of motion in himself or control over events; and, therefore, \textit{incapable of all merit and demerit}.\textsuperscript{43}
\end{quote}

These new remarks substantially transformed the picture, for 'physical liberty' is not

\begin{footnotesize}
\footnote{43 Price, \textit{Observations}, p. 5; 'In short the one [self-determination] is consistent with \textit{moral agency}. The other, [determination by motives] destroying \textit{all} agency, destroys of course all \textit{moral agency}. Is it possible there should be any greater difference?' (\textit{A Free Discussion of Materialism and Philosophical Necessity in a Correspondence between Dr. Price, and Dr. Priestly}, London 1778, p. 342).}
\end{footnotesize}
merely what constitutes us as agents, but what constitutes us as moral agents. Moral
appraisal is applicable on condition that ‘physical liberty’ exists. With this conception
of ‘physical liberty’ expanded, the question is then raised as to its relation to ‘moral
liberty’. For Price cannot maintain an adequate distinction between ‘physical’ and
‘moral liberty’, because by expanding the meaning of ‘physical liberty’, he has already
included in it the definition of ‘moral liberty’. This contention is vindicated by Price’s
supplementary remarks on the definition of ‘moral liberty’. He said:

Without *Moral liberty* he is a wicked and detestable being, subject to
the tyranny of base lusts, and the sport of every appetite.44

This is by no means an argument about liberty, but is more a statement about good
and evil. Without moral liberty the agent is bad and unworthy. When moral liberty
obtains, the agent is good and worthy. But both these aspects are contained in the
expanded definition of ‘physical liberty’, specifically in the words ‘merit’ and
‘demerit’. Moral liberty lacks the idea of choice which characterizes ‘physical liberty’,
and as such it is not a species of liberty. To see this consider the following
alternatives ensuing from Price’s definitions:

*With* physical liberty a man is capable *either* of merit or demerit.

*Without* physical liberty a man is *not* capable *either* of merit or demerit.

*With* moral liberty a man is meritorious.

*Without* moral liberty a man is *not* meritorious.

Taken together, ‘physical’ and ‘moral liberty’ provide the rationale for the right
to private judgment, and we can dispense with ‘moral liberty’ as it is included in
‘physical liberty’; or indeed, we can give to ‘physical liberty’ the name ‘moral

liberty'. There is no difference here, and in fact what Price called 'physical liberty', modern philosophers call moral liberty. In Price's account the only idea that 'moral liberty' conveys, if taken in isolation from 'physical liberty', is an internal sense of moral obligation to follow the prescriptions of reason. But 'moral liberty' cannot stand alone and acquires value and worth only on the precondition of 'physical liberty', for if an agent was predetermined to act rightly he would have been a worthless machine:

It should never be forgotten, that moral agency implies, in the very notion of it, the capacity of acting wrong as well as right, and that there cannot be true virtue without the power of being vicious, or good desert without the power of contracting ill desert. The possibility therefore of an introduction of moral evil is the necessary consequence of granting moral powers; nor could it have been excluded in any other way than either by not granting such powers, or by restraining the exercise of them. In this way indeed evil might have been excluded; but in this way would have been excluded also all that is most worthy and honourable in the creation, and therefore it is a way of preventing one evil by producing an infinitely greater.45

Price was well aware of the difficulty both to maintain the distinction between moral


Cf. 'If we could suppose a malignant being, with power to interrupt the present wise and beneficial order of things, he could no injure mankind more essentially than by revealing to them such truths and precepts as would make the exertion and use of private judgement unnecessary.' (D. Williams, A Letter to the Body of Protestant Dissenters, London 1777, p. 22); 'But what state of discipline for free agents can be conceived, without supposing a possibility of their behaving ill in it? Nothing but an absolute restraint upon the liberty of the creature ... could have prevented their acting in many instances amiss. ... And what freedom is conceivable without a possibility of error...?' (Burgh, The Dignity of Human Nature, pp. 219, 220); '...it must be evident that MAN is either the most glorious, or the most miserable and base of all other Creatures!' (G. Sharp, A Tract on the Law of Nature and the Principles of Action in Man, London 1777, pp. 202-3); 'I believe we may venture to call the law of nature and providence, a perfect institution; and yet we see that it doth not exclude evil; nor necessitate men to be healthy, wise, and virtuous. On the other hand, every tyranny hath been necessarily introductive of evil.' (Cartwright, Take Your Choice, p. 18; see also Anon., Tyranny Unmasked, in Three Replies to Taxation no Tyranny, London 1775, p. 36).
and physical liberty, and to make them consistent with each other as distinct notions of liberty. Yet whenever he sought to furnish a solution to this problem, he merely incorporated elements of ‘moral liberty’ into ‘physical liberty’ as will be abundantly clear when we consider his discussion of the relation between liberty and intelligence below.

In this chapter we have indicated the ambivalence of the term ‘free will’ as it figures in political pamphlets defending natural rights. Focusing on Price we have maintained that his conception of ‘physical’ and ‘moral’ liberty which provided the connection between his political doctrines and his moral theory alluded to the idea of free will. It has been proposed that ‘moral’ and ‘physical’ liberty do not constitute distinct notions of liberty, but in conjunction make up the conception of liberty as prerequisite to virtue. I have shown that Price is unable to maintain an adequate distinction between ‘physical’ and ‘moral’ liberty, for they both refer to the principles operating in the human mind, highlighting different but intimately linked notions about the inherent qualities of the human constitution.

46 'It may appear to some, that the account now given of moral liberty implies an inconsistency between it and natural liberty... But this objection is founded on a mistake concerning the true notion of natural liberty. It by no means signifies an indifference of will with respect to the way in which we shall act' (Sermons on Various Subjects, Works, 10:213; cf. Price, A Discourse on the Love of Our Country, 3rd ed. London 1790, p. 19).
II. A CRITICAL ANALYSIS OF PRICE'S CONCEPTION OF LIBERTY AS SELF-DETERMINATION.

In his discussion of liberty and intelligence as prerequisites of morality in the context of *A Review on the Principal Questions in Morals*, Richard Price developed a strong link with the views he held on the metaphysical question of free will versus determinism, exhorting the reader to consult further his published correspondence with Joseph Priestley.¹ Such a connection, however, entails contradictory assumptions, the implications of which Price did not seem to grasp. I shall first attempt to bring out some of these implications and show how they can impair his discussion of liberty and reason as prerequisites to virtue. Then I shall proceed to indicate why it is possible and desirable to disentangle the metaphysical question of free will from his account of morals.

Price argues that we can morally evaluate individuals upon the supposition that they are the causes of their actions. This means that we may attach responsibility on condition that men act freely within a given range of choice and are not predetermined to act in the way they in fact acted. Thus freedom, responsibility and moral evaluation go hand in hand in Price's system of morals:

[I]t is hard to say what virtue and vice, commendation and blame, mean, if they do not suppose agency, free choice, and an absolute dominion over our resolutions.²

According to Price human beings can be the object of moral praise because they are

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free and rational. As he maintained, 'Liberty and Reason constitute the capacity of virtue'.

Price held that 'practical virtue supposes LIBERTY' and continued:

The liberty I here mean is the same with the power of acting and determining: And it is self-evident, that where such a power is wanting, there can be no moral capacities.

The second requisite of practical virtue is a rational faculty, reason, or intelligence:

Some degree of this is necessary to the perception of moral good and evil; and without this perception, there can be no moral agency.

Since, however, according to Price, without liberty there can be no 'moral capacities' and without intelligence there can be no 'moral agency', it is essential that we examine how, in Price's view, liberty and rationality are connected with morality; and further what relationship he envisaged between liberty and rationality.

In the Review Price offered a longer discussion of liberty as a prerequisite of morality, which was followed by a much shorter statement about the need for intelligence. His discussion concerning the requirement of intelligence is very short (the three lines I have quoted above) and the paragraph ends by taking up the theme of the preceding discussion concerning the requirement of liberty. Meanwhile, Price introduced a novel distinction concerning the relationship between liberty and intelligence in an unsuccessful attempt to distinguish man from animals. The attempt is unsuccessful because it gives rise to the following problem: The distinction between man and animals can be admitted only at the cost of sacrificing the conception of liberty as self-determination, and liberty as self-determination is heavily indebted to

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3 Ibid., p. 184.

4 Ibid., p. 181.

5 Ibid., p. 183.
Price's account of free will. This is Price's new distinction:

It must not be imagined that liberty comprehends or infers intelligence; for all the inferior orders of beings possess true liberty. There seems no difference between wanting all spontaneity, and being quite inanimate. But though liberty does not suppose intelligence, yet intelligence plainly supposes liberty.⁶

I shall endeavour to show that both clauses of the last sentence, which was intended to uphold the distinction between men and animals, are wrong in the sense that they do not fit in Price's central assumptions. Or alternatively that the two parts of the sentence become consistent only if liberty in the first clause is not liberty as spontaneity (self-determination); or if intelligence in the first clause is not the same as intelligence in the second clause.

Let us start with the assertion contained in the second clause, namely, that intelligence presupposes liberty. If intelligence means reason in the sense of intellect, Price establishes a distinction between man and animals, but this contradicts the assumption that intelligence presupposes liberty. Intelligence in this sense simply perceives the moral order; it neither creates nor alters it. In fact Price conceived of this faculty of which animals are destitute in contradistinction to liberty: 'Reason is the guide, the natural and authoritative guide of a rational being. Where he has no discernment of right and wrong, there and there only, is he (morally speaking) free'.⁷

Let us consider now the first clause of the sentence. Assuming that the connection which Price establishes between liberty (in the form of self-determination) as a prerequisite to morality and free will is the one he really wanted, he cannot

⁶ Ibid., p. 183.

⁷ Ibid., p. 109.
sustain the distinction between men and animals. The liberty that Price had in mind when he spoke about self-determination was not freedom from external impediments; it was not the absence of restraint. Humans and animals (and generally animate beings) were not free in the sense that they were not fettered, but they were free in the sense in which matter was not free. Price could have maintained that freedom did not suppose intelligence if the freedom involved was freedom from external restraint. In this sense freedom would signify the existence of a state for the conception of which intelligence on the part of a free being was not a necessary requirement. Capability of some degree of sensitivity would be enough for an animate being to sense the lack of freedom, or to experience the enjoyment of its possession. Price's notion of liberty, however, as spontaneity, a form of self-determination by definition, supposed intelligence. It signified the capacity of being able to act - that is, of being an agent, as opposed to being acted upon, as a passive instrument.

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8 It is not what Hume means in using the following words: "By liberty, then, we can only mean a power of acting or not acting, according to the determination of the will; that is; if we choose to remain at rest, we may; if we choose to move, we also may. Now this hypothetical liberty is universally allowed to belong to every one who is not a prisoner and in chains. Here, then, is no subject of dispute." See D. Hume, Enquiries Concerning Human Understanding and Concerning the Principles of Morals, P. Nidditch (ed.) 3rd ed., Oxford 1975, Bk. I, sect. vii, para. 1, p. 95; cf. J. Locke, An Essay Concerning Human Understanding, Nidditch (ed.), Oxford 1979, Bk. II, Ch. xxi, para. 21, p. 244; also D. Hartley, Observations on Man, his Frame, his Duty, and his Expectations, London 1749, 1:501; cf. also Priestley: "The common Arminian doctrine of free will, in the only sense of the words on which mankind generally use them viz. the power of doing what we please, or will, is the doctrine of scriptures, and is what the philosophical doctrine of necessity supposes." (Priestley, An Examination of Dr. Reid's Inquiry, 2nd ed. London 1775, p. xv; also p. 171; see also The Doctrine of Philosophical Necessity Illustrated, Works 3:459-61, 505; Disquisitions Relating to Matter and Spirit, Works, 3:295). However, with the above passage from Hume cf. Ibid., II, para. 7, p. 99 and contrast it with D. Hume, A Treatise on Human Nature, Selby-Bigge (ed.) Oxford 1888, Bk. III, part i, sect. i, p. 461n.

was one between spirit which is active (and in this sense free) and matter which was passive and needed the operation of spirit to set it in motion. Price’s main objection to Priestley was that attraction and repulsion were not inherent qualities of matter but were the effects of some foreign action upon it. This foreign power was spirit. Price claimed that Priestley was wrong to believe that spirit was an extension and modification of matter according to the laws of motion. On the contrary, Price believed, spirit was the only underivative cause of motion:

solidity, inertness, figure, receptibility, &c. are the properties which distinguish matter ... on the contrary, sensation, perception, simplicity, self-determination, judgment, &c. are properties which distinguish spirit.

Animate beings (as opposed to inanimate beings) had a share in spirit ‘meaning by spirit such a thinking intelligent nature as I feel myself to be’. Spirit, thinking, soul and mind were interchangeable terms and for Price they signified the

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10 Ibid., pp. 39-40.
11 Ibid., pp. 13, 15.
12 Ibid., pp. 72, 65.
13 Ibid., p. 36; also p. 26.
14 Ibid., p. 97.
15 Ibid., p. 85; ‘The soul, that is, the being that thinks and acts...’ (p. 113); ‘...of the mind; that is of the being that acts...’ (p. 84).
16 Ibid., pp. 64, 70, 74, 81. The same is true for Priestley (pp. 76, 79, 82, 83) but this does not pose problems of the sort with which we are concerned here, to his materialism. Compare, however, Cudworth’s wording: ‘...there is a Superior Power of Intellection and Knowledge of a different Nature from Sense, which is not terminated in mere Seeming and Appearance only, but in the Truth and Reality of things...’ (Treatise concerning Eternal and Immutable Morality, British Moralists Selby-Bigge (ed.), Oxford 1897, para. 831, 2:258); ‘...sensible Things are the only real and substantial Things in Nature’ (para. 836, 2:261); ‘...Souls and Minds ... are real Things in Nature, superior and antecedent to Body and Matter’ (para. 838, 2:262); ‘...since Mind and Intellect are first in order of Nature before Matter and Body’ (para.
identity, substance, and unity of being\textsuperscript{17}, what he called 'myself'\textsuperscript{18} (or 'himself')\textsuperscript{19} the 'self moving power'\textsuperscript{20}, the self-determined power, the agent.\textsuperscript{21} He claimed:

I am indeed full of darkness about myself; but in the midst of this darkness I am taught the following particulars by an irresistible consciousness, which will not suffer me to doubt, 1st. That I am a being, or a substance, and not a property, or a mere configuration of parts. 2dly, That I am one being, and not many beings, or a system. 3dly, That I am a voluntary agent, possessed of powers of self-motion, and not a passive instrument. 4thly, That my senses and limbs, my eyes, hands, &c. are instruments by which I act, and receive information; and not myself; or mine, and not me.\textsuperscript{22}

The discussion gives the image that the universe is composed of matter, the Deity and men.\textsuperscript{23} In fact Price directly derived his argument concerning man's self-determination by analogue extension of the divine attributes:

In like manner, the Deity is an intelligent being; therefore intelligent

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\begin{itemize}
\item \textsuperscript{17} Price, \textit{A Free Discussion}, pp. 77, 62.
\item \textsuperscript{18} \textit{Ibid.}, p. 87.
\item \textsuperscript{19} \textit{Ibid.}, pp. 62, 331-2.
\item \textsuperscript{20} \textit{Ibid.}, p. 84.
\item \textsuperscript{21} \textit{Ibid.}, pp. 138, 136, 355.
\item \textsuperscript{22} \textit{Ibid.}, pp. 85-86.
\item \textsuperscript{23} In contrast Priestley was particularly concerned with the place of animals in the moral universe, and even argued that they might gain immortality as a recompense by a merciful God for all their suffering in this world. His stance on that issue is the best illustration of his thorough commitment to divine voluntarism. For the certainty about future immortality of man was not derived from any special feature of the human soul but exclusively from the explicit and revealed promise of God. See Priestley, \textit{Disquisitions, Works}, 3:383; \textit{Introductory Essays to Hartley's Theory}, 3:182; \textit{Letters to the Philosophers and Politicians in France}, 3:93; \textit{Continuation Letters}, 21:125; \textit{The History of the Philosophical Doctrine Concerning the Origin of the Soul}, 3:439; \textit{Letters to Mr. Volney}, Philadelphia 1797, pp. 15-16.
\end{itemize}
beings are possible.- He possesses the powers of self-determination; therefore such powers are possible.- He is an agent; therefore there may be other agents. All these conclusions appear to me to be just.  

This passage does not exclude, in principle, inferior beings from being agents, but it is obvious that when Price invoked God's qualities what he had in mind was man. One could not have expected that Price would have considered it 'honourable to the deity' to include animals in the category of 'free beings formed after his image, with powers of reason and self-determination'. However, reverence is one thing and theoretical consistency another. The question of animals had to be addressed if the conclusion drawn from the distinction between spirit and matter was to have general validity and applicability. Indeed Price appeared to be more consistent in those places of his discussion where he did not invoke the name of God.

Having defined '[a]fter Dr. Clarke' liberty as 'a power of self-motion, or self-determination' Price observed that this 'liberty is common to all animals, as well as to all reasonable beings, every animal as such, possessing powers of self-motion or spontaneity'. Now the distinction between animals and reasonable, i.e., rational beings, is problematic, if only for the reason that spirit (i.e., the only efficient cause of motion, the substance which constitutes the identity and unity of being) was

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24 Price, A Free Discussion, pp. 102-3; cf. p. 66.


26 Price, A Free Discussion, p. 158; also p. 355.

27 Ibid., p. 134.
conceived by Price as being identical with thinking power, mind or soul. Consider how Price’s preoccupation to distinguish in clear-cut lines spirit from matter resulted in a conception of spirit encompassing the whole of an animate beings’ mental and sentient experience:

But is it possible to conceive of any thing more substantial than the soul? Can there be a being in nature, of the sentient principle, the subject that feels pleasure and pain, that thinks and reasons, and loves and hates, is not a being?²⁸

In such a broad interpretation of soul or spirit (that is, of the self-determined power) motives are included in the very definition of this power. Therefore, there is not any difference whatsoever between acting under the impulse of motives, and being self-determined.

Additionally, on such a view, it is impossible to establish any difference between animals and rational beings. The only available way for separating the two would be to argue that they differ in the degree in which they possess the same faculties. This would result in a qualitative difference, which, once it was admitted, could not be applicable solely to animals, while overlooking differences within the human species. But despite that, Price could not afford such an argument because of the combination of two assumptions he held: a) there were no degrees in the power of self-determination;²⁹ and b) the power of self-determination was located in soul or spirit which exhausted an animate being’s non-corporeal existence. Thus the assumption on which Price rested to distinguish spirit from matter and defy the idea...

²⁸ Ibid., p. 77.

²⁹ ‘There are no degrees of liberty, because there is no medium between acting, and not acting; or between possessing self-motive powers, and not possessing them.’ Ibid., p. 135.
of self-moved matter would not allow him to distinguish between species of animate beings.

But even if Price had a more subtle distinction in mind when he spoke of spirit, which he failed to spell out (or I have failed to grasp), there is still a more direct and straightforward admission that animals had in common with human beings something more than the liberty that does not suppose 'intelligence'. This becomes obvious in the place where Price sought to render his idea of self-determination compatible with 'acting with a regard to motives', but to deny Priestley’s contention that motives determined actions:

Supposing a power of self-determination to exist, it is by no means necessary that it should be exerted without a regard to any end or rule. On the contrary, it can never be exerted without some view or design. Whoever acts, means to do somewhat. This is true of the lowest reptile, as well as of the wisest man. The power of determining ourselves, by the very nature of it, wants an end and rule to guide it; and no probability, or certainty, of its being exerted agreeably to a rule, can have the least tendency to infringe or diminish it. All that should be avoided here, is, the intolerable absurdity of making our reasons and ends in acting the physical causes or efficents of action. This is the same with ascribing the action of walking, not to the feet (or the power which moves the feet) but to the eye, which only sees the way. The perception of a reason for acting, or the judgment of the understanding, is no more than seeing the way. It is the eye of the mind, which informs and directs; and whatever certainty there may be that a particular determination will follow, such determination will be the self-determination of the mind; and not any change of its state stamped upon it, over which it has no power, and in receiving which, instead of being an agent, it is merely a passive subject of agency.\(^\text{30}\)

This passage displays some confusion in Price’s argument. Price not only wanted to reject the doctrine that motives were causes of actions, but also that they

\(^{30}\) Ibid., pp. 137-8.
were physical causes.\textsuperscript{31} The two issues are conceptually distinct, but Price marred his account of free will by entangling it with the metaphysical controversy over the relation of matter and spirit. It is probably due to this connection that Price does not employ his terms cautiously enough, with attendant unhappy results.

Price argued that the power of self-determination was a common feature of man and animals. He added that self-determination was inconceivable without the operation of motives, which he called reasons for action. He then maintained that both man and animals stood on the same footing in respect of having their actions preceded by reasons for actions (i.e. motives). There was no difference in this respect between the wisest man and the lowest reptile as they both meant to do something when they acted. The word 'mean' is ambiguous but we may pass by it and instead notice that the example on which Price drew to show the way in which self-determination was compatible with the operation of motives is constructed on a shift in terms: ‘reason in acting’ gives way to ‘the perception of a reason for acting, or the judgment of the understanding’. Now the transition from the reason in acting to the judgment of the

\textsuperscript{31} '...that our volitions are \textit{perfectly mechanical things}; that motives influence \textit{exactly as weights operate on a scale.' (Ibid., p. 340). We may note, however, that this connection is proposed by Priestley, who regarded the mind and the brain as the result of the corporeal organization of matter (\textit{Disquisitions} pp. 220, 224, 252, 276, 278, 290-91, 303, 341, 370, 399). Despite his great admiration for Hartley, Priestley was particularly annoyed by Hartley's notion of \textit{infinitesimal elementary body} standing between gross body and soul. He also criticized Locke, for whom he had ambivalent feelings, for his not having completely endorsed the materiality of the soul (\textit{Disquisitions, Works}, 3:279, 367, 337). Hartley was prepared to drop the notion of physical cause but still retain the idea of cause: '... According to the Theory here laid down, all Human Actions proceed from Vibrations in the Nerves of the Muscles, which are either evidently of a mechanical Nature, as in the automatic Motions; or else have been shewn to be so in the Account given of the voluntary Motions. And if the Doctrine of Vibrations is rejected, and Sensation and muscular Motion be supposed to be performed by some other Kind of Motion in the nervous Parts; still it seems probable, that the same Method of Reasoning might be applied to this other Kind of Motion.' (Hartley, \textit{Observations on Man}, 1:503).
understanding without any distinction poses afresh the question of the relation between man and animals, because, according to Price, they were similar in respect of acting with a regard to motives (as self-determination was inconceivable without the latter). However, if this similarity is sustained, if motive or a reason in acting is the same as the perception of a reason in acting, and if the latter amounts to the judgment of the understanding, then man and animals are equally capable of making judgments. Therefore, the initial assertion that man and animals had in common the power of self-determination, infiltrating through the discussion of motives, would result in the additional assertion that they were capable of understanding. If self-determination supposed judgment of the understanding, the question is how this understanding was different from that intelligence, of which animals were destitute, mentioned in the Review. If there was no difference, then animals were capable of virtue since they fulfilled the requirements that Price put forward in the Review: liberty and intelligence. It is difficult for Price to establish a difference, because of the connection between his notion of agency and his conception of self-determined spirit moving externally determined matter. It is not so much the case that it is impossible to distinguish between the different meanings that the word 'understanding' may convey, or between perception and intellect, or between levels of understanding, whether the distinctions refer to the operation of human or animal mind, provided the distinctions do not contradict other assumptions of the background theory. Locke was prepared to assign to brutes 'some Reason' but 'only in particular Ideas, just as they received them from

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32 Consider what he says in Review: 'The power, I assert, that understands; or the faculty within us that discerns truth, and that compares all the objects of thought, and judges of them...' (p. 18); 'Supposing then, that we have a power immediately perceiving right and wrong: the point I am now to endeavour to prove, is, that this power is the Understanding...' (p. 41; cf. pp. 21, 68, 73, 148, 225).
their Senses and to reserve as 'Prerogative of Humane Understanding' the faculties of which brutes are destitute, and idiots possess imperfectly. Whatever one may think of the validity of the distinction, Locke's account does not confront the difficulties which Price's account faces, for Locke's argument does not impinge on his discussion of free will, nor does the latter impinge on his discussion of human morality in the way Price's does. Locke's argument regarding free will is not the most illuminating part of his theory, but he considered will determined by motives, without regarding it as a diminution of freedom. Hume, on the other

33 Locke, Essay, Bk. II, Ch. x, para. 11 (16-20), p. 160.

34 Ibid., para. 5, 7, 10, 12, pp. 157-9.

35 The remarks on the freedom of will in Treatise do not tackle the Free Will issue. They refer to the power of man to do what he wills (within the boundaries of natural law), his volition being determined. See, e.g. Locke, Two Treatises of Government, P. Laslett (ed.), Cambridge 1963, Bk. II, Ch. vi, para. 58, pp. 348-9, para. 61, pp. 350-51, para. 63, p. 352.


37 '...uneasiness. this is the great motive that works in the Mind to put it upon Action, which for shortness we will call determining of the will...' (Locke, Essay, Bk. II, ch. xxi. para. 21, p. 244; also para. 36, 33, 34, 39).

38 Ibid., Bk. II, Ch. xxi, para. 48. Laboucheix (Richard Price p. 91) draws on paragraphs 8 and 48 to maintain that Locke and Price share similar conceptions of liberty. Laboucheix mistakes the context of the discussion and he fails to see that Price's liberty as self-determination disputes what Locke takes for granted: '... I think the Question is not proper, whether the will be free, but whether a Man be free.' (Essay, para. 21, p. 244); '... a Man in respect of willing ... cannot be free.' (Ibid., para. 23, p. 244); '... a Man is not at liberty to will, or not to will, because he cannot forebear willing.' (Ibid. para. 24, p. 246). Paragraph 8 is ambivalent, but later Locke makes clear that 'Voluntary ... is not opposed to Necessary; but to Involuntary.' para. 24, p. 246. ('In Locke's usage consent is not a notion which demands the removal of causality', J. Dunn, The Political Thought of John Locke, Cambridge 1969, p. 140 note 2). Bentham improves on Locke and anticipates Ayer's contention that causal determination is not the same as constraint, and the opposite of being free is to be constrained (A.J. Ayer, 'Freedom and Necessity', in G. Watson, Free Will, Oxford 1982, pp. 19-20): '...synonymous to spontaneous. The sense of the word involuntary
hand, considered the reasoning of man in conjunction with the free will problem, but in a way perfectly consistent with his (soft\textsuperscript{39}) determinism. He understood that a kind of 'experimental reasoning' was common to man and beasts, and claimed that it was this kind of reasoning that the 'philosophic genius' as well as common man employed in the 'active parts of life'.\textsuperscript{40} As one might have expected, Priestley went much further in this direction, arguing that the faculties of men and animals differed only in degree and not in kind, and he criticized Locke for not conceding to animals the power of abstraction, since they 'evidently have memory, passions, will, and judgment too'.\textsuperscript{41}

\textsuperscript{39} Hume, Enquiries Concerning Human Understanding, Bk. I, Sect. viii, Part. i para. 73, p. 95.


Even if everything which Price said in the above passage (p. 48) is correct, what he said is not an argument proving self-determination, but a mere assertion of self-determination. Indeed, it is a tautology where premise and conclusion are the same.

He wanted to break the causal relation Priestley envisaged between motives and actions, in order to sustain the view that self-determination was compatible with the operation of motives. He seemed to think that if motives were ‘reasons in acting’, a cause was still needed to produce the action. But he notably changed the direction of the argument by claiming that it was absurd to make ‘our reasons and ends in acting the physical causes or efficient of action’. The term physical is highly ambivalent and its use tends to obscure the fact that the whole discussion of free will is about the self-determination of the mind. Whether motive is taken as a cause of action or reason, or end, or rule in acting, it is always a mental cause or a mental reason, or end, or rule. The question of free will refers to whether a mental event, the train of ideas according to Priestley, would lead to the certainty or probability of physical actions. Price thought that if he proved that motives were not physical causes, he simultaneously proved that they were not causes. Due to the irrelevance of the term physical, the example which Price offered, when he equated the feet with the power that moved the feet, is unfortunate. For the question is not, nor could it have been, whether the action of walking is produced by the feet or the eye, but

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42 Price appears to have a very primitive conception of motive. In the definition of motives Bentham included ‘any thing whatsoever, which influencing the will of a sensitive being, is supposed to serve as a means of determining him to act, or voluntarily to forbear to act upon any occasion’ (Bentham, An Introduction, Ch. x, para. 3, p. 97). And he would have preferred the term ‘determinative’ to cover consistently the case of forbearing to act (note b).
whether the power which moves the feet is self-determined or not. This cannot be shown by proving that motives are not physical causes. The power which moves the feet is a faculty of the mind. The feet may be in this context a physical cause, but being so does not tell us anything about the power which moves the feet.\(^{43}\) If the example fails to support the difference, either the difference is non-existent, or another argument is needed to uphold it.

Assuming that his example clarified the problem, Price proceeded to apply it analogously to mind. He claimed that the eye of the mind informed and directed, but whatever determination followed, was the self-determination of the mind. Without any distinction between the faculties of mind the assertion is tautological. But it is fair to assume that what Price meant by the eye of the mind was the faculty of understanding, and by self-determination of the mind the volitional faculty. If this is so, his assertion amounts to this: The faculty of understanding does not determine the faculty of volition. For Locke the very question of whether one power determines the other is inconceivable even as a question.\(^{44}\) But we can allow for the truth of Price's conclusion, and still claim that it does not prove the existence of free will. For the crux of the question does not refer to whether understanding\(^{45}\) determines will, but

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\(^{43}\) Cf. Hobbes: 'That power of the mind which we call motive, differeth from the power motive of the body: for the power motive of the body is that by which it moveth other bodies and which we call strength', Human Nature, (ch. vi, para. 9), Works, 4:30; cf. Priestley, The Doctrine of Philosophical Necessity Illustrated, Works, 3:467, 473.

\(^{44}\) Locke, Essay, Bk. II, Ch. xxi, para. 17, p. 242; cf. Hume: 'tis impossible that reason and passion can ever oppose each other, or dispute for the government of the will and actions.' (Hume, Treatise, Bk. II, Part iii, Sect. iii, p. 416).

\(^{45}\) If understanding corresponds to reason (intellect) the answer of Hume is definitely not (Treatise, Bk. II, Part iii, Sect. iii, p. 413). If understanding is taken as perception, it is needed as a medium for the operation of motives, but perception is
whether motives do so. What Price appears to have done is what Hume and Priestley thought as the only possible way of refuting their argument concerning free will; that is, by changing words and definitions of words. For Price appeared to present motives as 'reasons in acting' in order to bring them into the orbit of understanding as purely abstract ideas. Once he had done so he could claim that understanding did not determine will and therefore motives did not determine will, hence will was self-determined. Note the example he borrowed from Clarke that an abstract notion 'cannot strike a ball', and compare it with his own example of feet and eyes.

Let us now consider perhaps the most substantial feature of Price's discussion concerning free will. It refers to the certainty or probability of actions, that is, whether the agent whose free will is at stake 'could have acted otherwise than he did'.

Price argued that the certainty of an action, that is, an action produced in conformity to the antecedent judgment of mind, did not invalidate his notion of self-determination. Whether the specific determination which followed the preceding judgment was certain or probable, it was not certain because of causation. Price

not the faculty that makes judgments in Price's sense when it includes animals.

46 'The world has been too long amused with mere names.' (Priestley, Disquisitions, Works, 3:236, also 325); 'THE greatest difficulties in the consideration of the subject of liberty and necessity have arisen form ambiguities in the use of the terms.'; '... the writer is, in fact a Necessarian; and, though unperceived by himself, is, in words only, an advocate for the doctrine of metaphysical liberty.' (Priestley, The Doctrine of Philosophical Necessity Illustrated, Ibid., 3:480, 481). See Ibid., 3:459, 473, 476; Hume, Enquiries, Bk. I, Sect. iii, Part i, para. 62, p. 80, para. 70, p. 91, para. 71, p. 92, para. 73, p. 95, Part ii, para. 75, pp. 97-98; Treatise, Bk. II, Part iii, Sect. ii, pp. 409-10.

47 'In short; to ascribe a necessary and physical efficiency, is (as D. Clarke has observed) the same with saying, that an abstract notion can strike a ball.' (A Free Discussion, p. 140). Cf. Priestley: 'In fact, a ball acted upon by a foreign mechanical impulse, may just as well be said to have a self-moving power as the soul of man...' (Disquisitions, Works, 3:289).
insisted on this issue and clarified his intention by drawing a distinction between physical and moral causes:

The certainty of event arising from the operation of physical causes is always equal and invariable, but the certainty of event arising from moral causes, that is, from the views and perceptions of beings, admits of an infinite variety of degrees; and sometimes passes into probability and contingency.\(^{48}\)

By way of example Price maintained that:

a benevolent man will certainly relieve misery when it falls in his way; but he has the power of not relieving it. On the contrary, a stone thrown from the hand must move.\(^{49}\)

Approaching the question from the point of view of the benevolent man and the action of relieving misery, Price’s argument is beside the point, for it has already assumed too much. The qualification ‘benevolent’ refers to the character of the agent. The notion of the character as benevolent derives from the fact that in the past the agent acted in a benevolent way - that is, his actions were produced by the motive of benevolence, or in Price’s terminology, benevolence was his ‘reason in acting’. Now Price wants to claim that although the benevolent man acted benevolently (and it was predictable that as a benevolent man he would have acted likewise) it was in his power not to have acted as he did, i.e., in a benevolent way. But we might say that had he done the latter (which we allow it was in his power to do) he would have simply ceased to be a benevolent man (in virtue of his new action). The only conceivable way of still calling him benevolent is by adding the new action to the old ones, and assessing according to some criterion whether after his deviation he still


\(^{49}\) Price, A Free Discussion, p. 141.
deserves on the whole to be called 'benevolent'. But the causal relation between motives and actions, which Price wants to break, does not break at least in this way. It does not break even if we introduce an additional element of indeterminacy, namely, that the act of relieving misery may be the product not only of benevolence (be it motive or reason in acting) but of pride, vanity, ostentation, etc. The only meaningful and conceivable way of breaking the causal relation is by showing that the motive (or reason) of benevolence can at the same moment by interposition of will produce the effects of relieving misery, eating, killing, resting and so on; in exactly the same way as by interposition of will the motive of thirstiness may produce the effects of relieving misery, eating, killing, resting and so forth. It is not a proof of free will if among a variety of operating motives (or reasons in acting), the will assents to one of them by suppressing the operation of the others. For this is consistent with saying that one motive (or reason in acting) prevailed, which in turn is the same as saying that the prevailing motive determined the will. The will can be free only if uninfluenced by any motive, power or principle, can make each single motive produce all possible diverse effects. In the unlimited variety of operating motives the freedom of the will (its self-determination) would lead to pure chance and total unpredictability by making whatever motive produce whatever effects. (The difficult task here is not to account for the contingency of human actions, but for what sort of coincidence is that which brings about even a minimum certainty).

Thomas did not consider Price's discussion of free will particularly profound, but he thought that his insight was 'fatal to all forms of determinism'.

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51 Ibid., p. 166.
In my view, Price a) failed to establish the self-determination of the will; and b) sought to connect in an irrelevant way free will with morality.

Price always insisted that without the supposition of free will the notion of agency vanished. Priestley, nevertheless, believed that individuals acted voluntarily under the doctrine of philosophical necessity he espoused. Therefore, he accepted the view that they were voluntary agents in the common-sense use of the term, but not in reality, since their volitions were determined by antecedent states of mind. Priestley had no objection to calling men 'free agents' but Price saw in this nothing more than what 'makes a watch free'. In Price's words, Priestley 'acknowledges that we necessarily ascribe our determinations to ourselves, but denies that we do really determine ourselves'. All the controversy was about this 'really', for Price could not allow the idea of agency be founded on the deceptive feeling that we act voluntarily, and yet necessarily. However -and this is vital- much of the evidence he adduced to support free will is of an intuitive nature. He appealed to introspection and the consciousness of the individual whose free will was at stake to derive an argument about its 'real' existence. Now evidence from introspection does not prove

52 Priestley, A Free Discussion, pp. 86, 177.

53 Ibid., pp. 128, 146, 151; An Examination of D Reid's Inquiry, p. 332.

54 Priestley, A Free Discussion, p. 178.

55 Price, A Free Discussion, p. 341 n.

56 Ibid., p. 133.

57 'We are conscious of it in ourselves. I can say nothing to convince a person who will declare that he believes his determinations do not originate with himself, or that he has no power of moving or determining himself.' (Ibid., p. 135). See especially the passages quoted above in pp. 44-45.
free will in the way Price would have liked, but this is the only evidence his moral theory requires. Price's moral theory revolves around two axes, namely 'abstract virtue' or 'rectitude', and 'practical virtue' or 'relative morality'. Abstract virtue or rectitude, was conceived in contradistinction to any notion of will, whether human or divine. The conception of free will has no relevance here for Price and the tradition which he followed was readily prepared to see the will of God determined by His Rectitude and Goodness. Will became the pivotal element of Price's conception of relative morality, and it was in this context that he developed the idea of liberty as self-determination. As practical virtue was constructed upon a distinction between passion and reason, the conception of freedom that was merely required here was the individual's consciousness and introspective certainty that he was free to follow the dictates of reason or to submit to blind inclinations. If what is important is that individuals feel that they have the choice to give or to withhold their assent from what

58 D.J. O'Connor, Free Will, London 1972, pp. 17-23; see Hume, Enquiries, Bk. I, sect. viii, part i, para. 71 p. 92, and especially p. 94 note 1; also Treatise, Bk. II, part iii, sect. ii, pp. 407-8. 'What we feel, and what we do, we may be said to know by intuition; but what we are we know only by deduction or inference from intuitive observations.' 'It is a question that cannot be decided by simple feeling...' 'If, however, this conclusion be denied, it must be controverted by argument, and the question must not be decided by consciousness.' (Priestley, Disquisitions, Works, 3:293, 294, 295); see also 243, 281 and The Doctrine of Philosophical Necessity Illustrated, Works, 3:482.

59 Consider e.g. the affinity of his account with Hare's example concerning education against what he calls naive determinism. See R.M. Hare, Freedom and Reason, Oxford 1963, pp. 61-65.

60 For example Butler: '... I am far from intending to deny, that the will of God is determined, by what is fit, by the right and reason of the case.' (The Analogy of Religion, Part I, Ch. vi, para. 16, Works, 1:151 note k).

61 Granville Sharp, who held similar ideas on liberty and free will, claimed at one point that 'the inestimable blessing lies in a consciousness that we are free'. See An Essay on Slavery, p. 14.
their reason prescribes, then the positive or negative answer to the question of free will in a way that it requires the proof of contra-causal freedom is completely irrelevant. It does not concern practical virtue or relative morality (in the way understood by Price) at all. If one disconnects in Price's framework the demand for contra-causal freedom from free will (free will in the sense of an introspective certainty of being free to choose between the directives of reason that contain our sense of duty, and inferior desires of which the mind disapproves), then one realizes the similarity of Price's account to the arguments of contemporary compatibilist libertarians, such as Campbell.

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62 Note some of Price's formulations: 'Suppose an agreeable proposal made to a person which shocks his moral feelings, but which must immediately resolve, either to accept or not. If he accepts, he gratifies his passions. If he does not accept, he follows his sense of duty.' '...the essence of moral merit and demerit consists in the free resolution of the will (or in its self-determination) to act on one of them rather than on the other.' 'Passion and interest draw us one way. Conscience and duty order us another. In these circumstances, we may determine as we please.' (A Free Discussion, pp. 346-7; also p. 140; Review, pp. 109, 194, 210, 215, 222, 226, 227). Compare the above extracts with the views of a modern disciple of Price: 'The alternatives, then, between we choose are both determined, but I hold that our choice between them is free. ...between what he thinks his strongest obligation and a conflicting desire choice is free.' (E.F. Carritt, Ethical and Moral Thinking, Oxford 1947, p. 135; see also Raphael, The Moral Sense, p. 22).

In short, where the idea of will is required (i.e. in Price's conception of practical virtue) a feeling of having free will is sufficient, and where the idea of will is not required (i.e. in Price's conception of rectitude) the proof of free will is redundant.

Price, indeed with remarkable frankness, came to the point of admitting that his discussion (as any other discussion) on free-will from a metaphysical perspective could not be very promising, and in fact would lead us exactly to the point from which we started:

We experience the operation of many powers and faculties, but understand not what they are, or how they operate. We find that our wills instantaneously produce motion in our members; but when we endeavour to account for this, we are entirely lost. ... We are indeed often disputing about some of them, but this only proves more strongly our darkness; and our best way in general is to take the frame of our natures as we find it, without being very anxious about discovering the hidden springs which actuate it.  

In his Four Dissertations Price hinted at the fact that consciousness of being free answered to all purposes of morality. This occurred when he sought to reconcile the liberty of moral agents with the active presence of the Deity in human affairs. He maintained that the doctrine of the Providence 'ought never to be explained in such a manner as to destroy the value of the agency of created beings'. Otherwise the 'whole rational system' would have been reduced to 'a system of conscious

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64 Price, Sermons on Various Subjects, Works, 10:165; 'I am, in a particular manner, sensible of my own blindness with respect to the nature of matter and spirit, and the faculties of the human mind ... You have asked me some questions (and many more may be asked me) which I am incapable of answering.' ('Price to Priestley, Sept 19 1778', Correspondence, 2:23).

machinery, void of value and dignity'. However, Price believed that it was not at all contradictory to postulate the active interference of God and the liberty of mankind. It is vital to see what form his notion of liberty took in this context and in what sense it differed from his previous account. In his controversy with Priestley over free will Price often pointed out that our conception of morality could not rest on a deception. That is, it was not sufficient that an agent was aware of his liberty if this consciousness of freedom did not correspond to real facts. Here, however, the argument took a different direction. Price considered the situation in which a man was dying under a falling wall. Undoubtedly God could have prevented this event from happening. He could have done so by 'insensibly influencing the train of ideas in his [a man's] mind, and in numberless other methods of, which affect not his liberty'. In other words, the liberty of the individual was not violated if he was not aware of its violation. Had the Deity wanted, He might have secretly directed 'the thoughts of men, without offering any violence to them'. This means that the conception of liberty which Price employed in this instance was fully compatible with determinism of the sort Priestley advocated. For he said that the thoughts of men might be determined by God and still 'the liberty of moral agents is preserved'. The liberty was preserved because individuals continued to act as if God had not determined the

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66 Ibid., p. 94; also pp. 126, 223.

67 Ibid., p. 13. The individual himself could have saved his life if he had a knowledge of the natural causes affecting his predicament (p. 14). This knowledge could have saved him but its possession does not diminish or augments his liberty, since it would have been still in his power not to utilize this knowledge and perish.


69 Ibid., p. 15.
course of events and thoughts of men. Price maintained that

he who had the complete management of it might give rise to almost any events he desired, at the same time that men went on to think, and judge, and act from themselves as they do now.\footnote{Ibid., 15n.}

As they do now, that is, when they do not think that God determines their thoughts. This is not, however, a hypothetical example put forward for reasons of better explicating what actually happens. For the judgement of what is hypothetical must rest on a judgment on what is certain. And Price by no means claimed the possession of such knowledge.\footnote{‘We are too unacquainted with his counsels...’; ‘...the directions of Providence are ... concealed and invisible...’ ‘...incomprehensible exactness of art and workmanship...’ ‘...believing where he does not see, and adoring where he finds himself incapable of comprehending.’ ‘The ways and administration of the Deity must be unfathomable to us.’ (Ibid., pp. 69, 88, 104, 110, 158).} The above extract continues as follows:

But who can say how far it may be actually influenced by the suggestions of invisible beings, and particularly by the secret agency of the supreme Spirit?

It should be recalled that in his controversy with Priestley, Price started from the assumption that God was an agent, the supreme agent of the universe, and from this he inferred that human beings were also unique agents, by virtue of their share in divine attributes. In the\textit{ Dissertation on Providence}, he proceeded in reverse order. He commenced with the assumption that man was an agent, and claimed that this admission did not derogate from the supreme agency of God, which was taken to imply an active presence of the Deity in the human mind. The conception of free agency that was invoked in these two instances was very different. In the first instance it took the shape of free agency primarily against God, in the sense that no act on the part of the Deity affected man’s ultimate choices. Had the case been otherwise man
would have been reduced by his Creator to a state of worthless machinery. But this could never happen because the Glory of God can only demand that man’s obedience to Him ‘must be left to be a free-will offering; this being the only service that can be acceptable to him, or do him any real honour’.\(^\text{72}\) In the second instance, however, the notion of free agency remains at the phenomenological level and is compatible with the view that men are passive instruments carrying out their Creator’s unfathomable purposes.\(^\text{72}\) In such a context it is inconceivable to claim that a man’s obedience or disobedience proceeds from a free will.

Price, of course, failed in something in which no one has ever succeeded - that is, to connect the two ideas of agency mentioned above and to reconcile them with the idea of God’s omnipotence and foreknowledge. What is interesting, however, is not the failure itself, but his tenacious and persistent attempt to show that man is free even in relation to his Creator. It was this view which had a direct impact on the formation of his political doctrines. For it was claimed that if God created man free in the most severe and strict sense of the word no power on earth should meddle with man’s freedom. And such an argument was employed both in the defence of religious liberty and political participation.

It has been argued that although Price sought to establish free will on the ontological level, a consciousness of freedom is all his moral theory requires, so that a failure to establish contra-causal freedom does not impair his idea of liberty as a

\(^\text{72}\) *Sermons on Various Subjects, Works*, 10:343. This comes as a reply to the view often taught by ‘some good men’ that the ‘absolute sovereignty of the Deity’ means that God ‘does whatever he pleases with his creatures.’

\(^\text{73}\) ‘Tis with me out of doubt, that there is an instrumentality of subordinate agents in carrying on the designs of Providence, and it may not perhaps be possible to conceive how far it reaches...’ (*On Providence, Four Dissertations*, p. 85).
success or failure. The extensive analysis of his conception of free will that has been undertaken here will enable us to dispel some confusion about the character of his doctrine of rights as it has been interpreted by recent scholars. This will be the subject of the next chapter in which by drawing on the analysis in this chapter, we shall be considering some of the direct implications of his notion of free will for his conception of rights.
III. FROM 'MAN IS A LAW UNTO HIMSELF' TO 'MAN IS HIS OWN LEGISLATOR'.

Mark Philp has contended that 'the central principle' in Price's thought 'is that of duty', and has drawn considerably on his Review to show the way in which Godwin held 'something like a right, but it is duty-based'. It is true that the right to private judgment possessed a special place in the thought of Rational Dissenters, no matter how they differed in other particular ways. However, there was a great difference between Price and Godwin which should not be overlooked: Godwin rejected rights of the sort Paine advocated, while Price did not. On the contrary, his political pamphlets abounded with the language of rights, although this language was almost absent from the Review. Philp's problem was to reconcile Godwin's utilitarianism and rejection of rights with his belief in the sacredness of the right to private judgment. Our task is to reconcile Price's opposing views in the Review and in his political pamphlets - that is, to show how Price without feeling any contradiction, passed from a discourse on duties (and what is right) to pamphlets on rights.

Introducing the distinction between 'goal-based', 'duty-based', and 'right-based' theories, Dworkin has offered the following exemplification:

Utilitarianism is, as my example suggested, a goal-based theory; Kant's categorical imperatives compose a duty-based theory; and Tom Paine's theory of revolution is right-based.

No historian of ideas dealing with the revolution debate in England will doubt that


Price is a rights theorist as much as Paine. Paine does not differ from Price in his theory of rights but in his practical radicalism and the subsequent development of his thought in introducing welfare state policies. On the other hand, as early as the beginning of the century, Roland Thomas had seen in Price an anticipator of Kant, and since then many philosophers coming to grips with Price's Review have commented on the relation between Price's moral theory and Kantian ethics. Given that there is a relation between Price's Review and Civil Liberty, Price's theory would appear to be 'right-based' in view of Dworkin's remark about Paine, and 'duty-based' in view of Dworkin's remark about Kant (or Philp's remark about Godwin). Further, Paine's political writings contain expressions which would not lend support to the view that his theory is 'right-based' in Dworkin's sense, because in cases like these,

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it is not that an individual’s self-interest defines his duty, but rather the ‘other way round’.  

Let us focus more closely on Philp’s discussion of ‘duty-based’. Philp did not hold fast to the distinction between the will of God and the nature or perfections of the Deity -which Price thought of cardinal importance- and occasionally treated them as being identical. He maintained that the Rational Dissenters accepted Locke’s approach to the law of nature, tending to emphasise, however, the place of reason. The supposed affinity between Locke’s and Price’s conception of Natural Law is, however, groundless because of the different attitudes to the very idea of the will of God in relation to Natural Law. In his *Essays on the Law of Nature*, Locke thought that the ‘light of nature’ was a sufficient guide for the comprehension of Natural Law, but in Locke, reason was not the ‘maker’ but the ‘interpreter’ of that Law which was created by God’s will: ‘For there is no law without a law-maker, and law is to no purpose without punishment’.  

These ideas were wholly absent from the *Review*. Punishment did not create

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11 Ibid., pp. 183, 185, 187.

12 Ibid., p. 173; p. 151.
obligation, according to Price, and reason was not the interpreter but the maker of God's will: it 'is the source and guide of all the actions of the Deity himself, and on it his throne and government are founded'. Price separated moral law and obligation from God's will and punishment. The problems of motivation that his moral theory faces are attributable exactly to these factors. Let us consider then a) how we incur the obligations and b) what motivates us to discharge them.

Philp maintained:

We have this duty *qua* rational artifacts of God, capable of discerning His will. We have, therefore, an obligation to act according to right and reason whether we want to or not. ... This rather strenuous view of duty ties in with the Rational Dissenters' view that instincts, interests and passions have no place in determining the virtuous life: [Philp

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13 See above; 'These are moral obligations or laws of rectitude ... They are in particular the rule and measure of all the actions of the Deity. By them his will is always guided, and according to them He governs the world.' *(Sermons on Various Subjects, XIV, p. 268).*

14 Besides the idea of punishment which takes the form of remorse and self-condemnation, this is what Price said about future punishment after death: '... what makes an agent ill-deserving is not any opinion he may have about a superior power, or positive sanction; but his doing wrong, and acting contrary to the conviction of his mind.' *(Review, p. 119)*; cf.: 'All that is necessary is, not innocence, but integrity of character; not sinless, but true virtue...' *(Correspondence, 1:48)*; 'Our future happiness depends on our virtue, and our virtue is *always in our power*; nor can any being rob us of it as long as we choose not to part with it.' *(Ibid., 1:82).* In view of passages like the above, Cua's objections are totally unfounded *(Reason and Virtue p. 122).* What he actually does, is first to claim that, according to Price, morality depends on the belief in God, and then to suggest that Price is wrong to think so. A similar case, but better argued, is made by W.D. Hudson, *Reason and Right: A Critical Examination of Richard Price's Moral Philosophy,* London 1970, p. 136. Contrast S.D. Hudson, *Human Character and Morality,* Boston 1986, p. 56.

15 Cf. Price: 'A prudent regard to our own interest is a duty...' *(Sermons on Various Subjects, X, p. 200).*

16 Although Price's conception of practical virtue is constructed upon a sharp division between passions and reason, he only wants passions to operate through the channels approved by reason. (See *Review,* pp. 194, 214, 228). However, occasionally he goes even further: 'Virtue forbids only the wild and extravagant gratification of our
quotes from Price at this point and continues by saying that] ...for Price and others the true source of virtuous acts is the understanding. \(^{17}\)

Making the connection between reason, obligation and instincts, Philp automatically transferred the discussion to Price's conception of practical virtue or relative morality. Price was led to the introduction of the conception of practical virtue or relative morality in order to account for the situation where the 'excusable ignorance of facts' would lead to the performance of objectively erroneous (in the perspective of rectitude or abstract virtue) duties.\(^{18}\) Practical virtue according to its definition was constructed 'upon supposition' of individuals' having certain opinions, with the attendant possibility, not to say probability or certainty,\(^{19}\) of erroneous judgment. Therefore,

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\(^{17}\) Philp, *Godwin's Political Justice*, p. 28.


\(^{19}\) 'So weak indeed are our intellectual powers, and so imperfect our reason, that we see men continually imposed upon by every specious appearance that offers itself; mistaking shadows for realities, and embracing the grossest absurdities as the most important and sacred truths.' (*Sermons on Various Subjects*, IX, p. 172); 'We are liable to be deceived by wrong views of what is right, and to be mislead by numberless temptations.' (*Ibid.*, XIX, pp. 367-8; also XV, pp. 282-4); 'Until men can be raised above defective knowledge, and secured against partial and inadequate views, they must continue liable to believe cases and facts and the tendencies of actions, to be otherwise than they are; and, consequently, to form false judgments concerning right and wrong. And till the bulk of mankind can be secured from the most gross delusions and taking up the wildest opinions, they must continue liable to judgments of this kind the most grossly wrong.' (*Review*, p. 172); 'Can virtue be disciplined and tried without being endangered? or endangered without being sometimes lost?' (*Ibid.*, 204; cf. pp. 221, 226, 227).
Philp's 'obligation to act according to right and reason' amounts to an obligation to act according to the possibly wrong prescriptions of the fragile human mind, and not to act according to what Locke and others called 'right reason', which would correspond to Price's idea of rectitude or abstract virtue. Secondly, if it is true that we have this duty 'whether we want to or not', then the whole conception of practical virtue collapses at once. On the contrary the gist of Price's argument is that an individual is a moral agent because '[t]he law to which he is subject is no other than the law of his own mind - a law to which he gives his willing and hearty consent.'\footnote{Sermons on Various Subjects, XI, p. 217.} Despite the possible ambivalence of the words 'want', 'willing', or 'consent', the fact remains that Price meant the above sentence in the most literal sense. For this reason he sought to prove that an individual could have acted otherwise than he did. By implication, 'the source of virtuous acts' for Price was not the understanding but the will. We saw in the previous chapter how much emphasis Price laid on distinguishing between understanding and the self-determination of the will, even when the dictates of the understanding happened to prevail against the impetus of passions. Price and his predecessors have often been presented as naive rationalists who treated morality like mathematics. The connection is true but refers more to their epistemology rather than their conception of morality as it relates to human agents. If Price was satisfied with this equation, he would not have stressed the self-determination of the will in his discussion of practical virtue. Price claimed that '[d]id we act by the same necessity by which we ... judge two and two to be equal to four,
we could not, I think, be said to be free'.

John Balguy, who had similar views with Price on that issue, explicitly maintained that 'Immorality does not consist in the Errors of the Understanding, but the Rebellion of the Will. Neither does Virtue consist in clear Ideas, or just Apprehensions, but in chusing to do that which appears right.' Individual minds were likely to prescribe different measures of right and wrong, Price thought. Therefore, the unifying element for moral appraisal of all individuals had to be the use of their will. Price seemed in agreement with Pufendorf when the latter claimed that the exercise of his 'free will is the one thing a man may call his own; it is the only thing on which he may value or despise himself'. These remarks lead us to the second aspect of Philp's argument - that is motivation.

Making the connection between morality and mathematics, Philp contended that for the Rational Dissenters motivation 'was not a problem' for it was included in rationality. He quoted from Price the following passage:

> When we are conscious that an action is fit to be done, or that it ought to be done, it is not conceivable that we can remain uninfluenced, or want a motive to action.

Price's reflections on free will may shed some light on this passage, because what Philp calls motivation, and what Price calls motive are not the same. Price does not

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21 'To Lord Monboddo August 2-12 1780', Price, Correspondence, 2:66.


use 'motive' in any descriptive sense to imply that the perception of what is right will be followed by the right action. For Price, motive stands for a reason, rule or end of action and not the efficient cause of action. The above passage runs as follows:

It would be to little purpose to argue much with a person, who would deny this; or who would maintain, that the becomingness or reasonableness of an action is no reason for doing it; and the immorality or unreasonableness of an action, no reason against doing it. An affection of inclination to rectitude cannot be separated from a view of it. The knowledge of what is right, without any approbation of it, or concern to practice it, is not conceivable or possible. And this knowledge will certainly be attended with correspondent, actual practice, whenever there is nothing to oppose it.26

Precisely this: 'whenever there is nothing to oppose it'. But there is always something to oppose the sense of right, namely the passions. The will stands between reason and passions and arbitrates their fate. It is not reason that can extirpate appetites but the will, which for Price is not the 'last appetite'27 in the Hobbesian sense but an independent power.28 For this reason Price is preoccupied with free will. The argument here is not that a rational being is not actually susceptible to temptations simply because he is rational. It is that a rational being, contradicts himself when he truly believes that he ought to do X because he thinks it is right, and instead he does

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26 Price, Review, pp. 186-7; 'For, certainly, it cannot govern where there is any one passion that over-powers it...' (On Prayer, Four Dissertations, p. 272); 'It is impossible that our passions should be so far conquered as that they shall never harry us to any thing that our hearts shall disapprove.' (Sermons on Various Subjects, XIII, p. 261). Consider also his definition of moral liberty (in Additional Observations on the Nature of Civil Liberty and the War with America, London 1777, p. 11): '...every man's will, if perfectly free from restraint, would carry him invariably to rectitude and virtue'.


28 cf. Balguy: '...only there is this Difference, that the will has Power to rebel, and the Understanding has not.' (The Foundation of Moral Goodness, British Moralists, Selby-Bigge (ed.) para. 547, 2:76.
Y because he thinks it is wrong and he ought not to do it. The argument conveys the logical contradiction of saying that a rational being acts irrationally, and nothing more.  

Consider this passage in which the realm of 'ought' and 'is' are kept clearly apart:

It being therefore apparent that the determination of our minds concerning the nature of actions as morally good or bad, suggests a motive to do or avoid them; it being also plain that this determination or judgment, though often not the prevailing, yet is always the first, the proper, and most natural and intimate spring and guide of the actions of reasonable beings...

Price here spoke both in a normative and descriptive way: '[T]his determination or judgment, though often not the prevailing' refers to the actual behavioral attitudes and tendencies of individuals'. The question of actual motivation (in Philp's sense) is relevant only here, and Price's answer was two words: Free Will. '[Y]et is always the first, the proper, and most natural...' refers to a normative and teleological conception of 'natural' associated with a purpose and an end in view (i.e. rationality), which

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29 Cf. Balguy: 'What does a reasonable Creature propose in acting reasonably? ... What is it that induces a Man to be Rational Agent, when he has it in his power to be otherwise?' (The Foundation of Moral Goodness, London 1728, pp. 47-48); 'If it be repugnant to the Nature of a Rational Agent to act without Reason...' (The Second Part of the Foundation of Moral Goodness, p. 19).

30 Price, Review, p. 188; cf.: 'To sin therefore is to counteract the plan of nature, and to break the order of the universe. Sin is contrary to every person's private judgment and conviction. It is doing what the sinner knows he ought not to do, and what he condemns and hates himself for doing. It is disobedience to the dictates of our consciences, and offering violence to our best and highest powers.' (Sermons, XIV, p. 269).

31 'Reason is the nature of a reasonable being...' (Price, Sermons by R. Price and J. Priestley, II, p. 21); cf.: 'And what is there more natural than to think that a rational being ought to be directed by reason?' (Burlamaqui, The Principles of Natural Law, p. 211).
Price borrowed mainly from Butler, and as such cannot address the question of actual motivation in Philp's sense. Other thinkers as well expressed themselves like Price, in a way that they seemed to say that reason prompts one to action so that the only problem with morality is to know what we ought to do in order to do it. However, on close reading one can easily detect an approach to that issue in both a normative and a descriptive way. Burlamaqui, for example, who often argued as if he meant that established obligations operated as an efficient cause of action, made clear that he was speaking about a 'moral necessity'. For 'we are not to destroy the nature of man' who 'remains always what he is, a free and intelligent being ... Therefore even the strictest obligations never force the will; but, rigorously speaking, man is always at liberty to comply or not, tho' as we commonly say, at his risk and peril.' Consider further Granville Sharp. He contended that 'the divine knowledge [i.e. reason] necessarily engages and includes our agreement or assent to "the Laws of Nature", whether we obey them or not'. Similarly in another instance he claimed that 'there is no occasion to assign any other Motive of Obedience ... than Human Reason ... For the knowledge of what is Good, or what is Evil, is surely a sufficient Motive for choosing the one, and rejecting the other ... Sinister Motives do,

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33 Burlamaqui, The Principles of Natural Law, London 1752, p. 96; also pp. 188, 213; cf. pp. 32, 50, 61, 62, 64, 76, 93, 208, 209.

nevertheless, too frequently prevail'.

It is illuminating to see now the terminology in which the sharp distinction between reason and passion was rendered. The domain of reason was designated by Price in terms of authority, law, command and government, in juxtaposition to appetites, the rebels within the self. His descriptions of the internal constitution of man do give the impression of a microcosm of civil society, of a relation between sovereign and subjects. This analogy could even lead historians who came across

35 Ibid., pp. 60-61; also pp. 50, 114; cf. p. 172.

36 'Instinct drives and precipitates; but reason commands. The impulses of instinct we may resist, without doing any violence to ourselves. Our highest merit and perfection often consists in this. The dictates of reason we can, in no instance, contradict, without a sense of shame, and giving our beings a wound in their most essential and sensible part.' (Price, Review, p. 188); '[T]o make it own whole ambition to subject all our powers to the reasonable and divine part of our natures, to weaken the force of rebellious appetites as much as possible...' (Ibid., p. 227); '[The greatest...[wickedness'] would imply, that conscience is so far overpowered as to be wholly extirpated, and all regard to right and wrong and all influence from it destroyed.' (Ibid., p. 226; also pp. 222, 215, 109); 'He is the most vicious man, who is most enslaved by evil habits, or in whom appetite has gained so far the ascendant...'

37 'The faculty that was made to govern preserves its authority...' (Sermons by R. Price and J. Priestley, II, p. 21); 'Then only is the soul in its right state, when the faculty of reason preserves its superiority over our other faculties... Sin ... places the passions on the throne of reason.' (Ibid., XIV, p. 272); '...under the government of reason... in the throne of our minds... all passions and affections in subjection... disobedience of our lower powers to the authority of reason... the supreme controlling power within us... all our affections are in a state of subordination to that faculty which God has made to be our ruling faculty... real supremacy... direct and govern... he is under a different government from that of reason...' (Sermons on Various Subjects, XIII, pp. 251-4).
Price’s texts to describe understanding, that is, a mental faculty, as a right-holder: ‘The right to choose between right and wrong, Price maintained, lay in the understanding and was not, as Locke argued, the result of sense perception.’

The influence of Butler on Price’s conception of man being divided into two parts, where passions represent the lower and brutal part, and reason the higher and divine is both obvious and important. When Price maintained that ‘[e]very being endowed with reason, and conscious of right and wrong, is as such, necessarily a law to himself’, he said that he followed with some latitude Butler, giving ‘the sense of his observations in other words’. In his Sermons Butler discussed extensively St. Paul’s dictum that Gentiles ‘are laws unto themselves’, and he concluded that the Apostle’s meaning was that man ‘from his make, constitution or nature, he is in the strictest and most proper sense a law to himself’. The overwhelming feature of Butler’s discussion was the opposition of reason to passions. His terminology is more important for our purposes than the substance of his argument. Reason or conscience or reflection was the ‘supreme authority’, ‘the presiding faculty’, the ‘proper governor’. When appetites became ascendant, it was a mere ‘usurpation’.


40 Butler, Sermons, Sermon III, para. 3 in Works, 2:69; II, para. 6 in Ibid., 2:56.

41 These and similar words are continuously repeated throughout his second and third Sermons. (See Butler, Works, 2:51-7. cf. Balguy, British Moralists Selby-Bigge (ed.), 2:60). In Cudworth the ‘hegemonicon’ is not reason but will itself, the liberum arbitrium: ‘This faculty of [abregovn or suj potestas, or, power over ourselves which belongs to the hegemonicon of the soul ... is this liberum arbitrium of free will’ (A Treatise of Free Will, John Allen (ed.), London 1838, pp. 46-47; see esp. p. 37).

42 Butler, Sermons, II, para. 18, Works, 2:63.
distinction was

no more than the distinction, which every body is acquainted with, between *mere power and authority*...\(^{43}\)

And as in civil government the constitution is broken upon, and violated by power and strength prevailing over authority; so the constitution of man is broken in upon and violated by the lower faculties and principles within prevailing over that which is in its nature supreme over them all.\(^{44}\)

Had it strength, as it had right; had it power, as it had manifest authority, it would absolutely govern the world.\(^{45}\)

Not only Price but even Paine might have found his political vocabulary here,\(^{46}\) by transferring Butler's terminology concerning 'the several principles in the mind of man' to the principles of civil government. Price undoubtedly did so. In the same context of distinguishing between reason and passions he contended that we are 'masters of ourselves' 'when our *reason maintains its rights*, and possesses its proper seat of *sovereignty* within us'.\(^{47}\) He went on by sustaining a similarity between the

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\(^{44}\) *Sermons*, III, para. 1, *Works*, 2:68.


\(^{46}\) Although there is no positive evidence that Paine ever read Butler (A.O. Aldridge, 'Thomas Paine and the Classics', *Eighteenth Century Studies*, Vol. 1, 1968, pp. 370-80; C. Robbins, 'The Lifelong Education of Thomas Paine (1737-1809)', *Proceedings of the American Philosophical Society*, Vol. 127, 1983, pp. 135-42; Claeys, *Thomas Paine*, pp. 85-86) consider the following passage from Claeys which is relevant to the point that is made here: 'Though they attained a degree of independence by the early eighteenth century, natural rights discussions were originally only one segment of the moral law, which systematically addressed the entire range of *psychological, moral* and political experience in order to determine the meaning of the natural law...' (*Ibid.* p. 11).

\(^{47}\) Price, *Sermons on Various Subjects*, XI, p. 209. Burlamaqui in similarly emphatic language claims: 'Reason has it always in her power to preserve her
principles operating in the constitution of man, and the principles of civil government:

It is no more true liberty to follow every vagrant inclination that happens to prevail within us, than it would be true liberty to make ourselves the dupes of every ignorant and insolent creature, who in our civil affairs would claim a power to direct us. To be carried away blindly by any thing contrary to our own approbation, is to be reduced to captivity and servitude. Every man is a law to himself.  

The civil equivalent of passions was the will of another individual. Submission to passions and submission to the will of another was something like succumbing to force, to sheer power or to violence, destitute of every authority to demand obedience. Whether this analogy is plausible and defensible, the fact remains that Price used it. On this basis any idea of civil authority other than that approved by the individual could not be but a usurpation in the same sense as when the passions usurp the authority of reason. The statement in Review that ‘[e]very being endowed with reason, and conscious of right and wrong, is, as such, necessarily a law to himself’ became in Observations ‘[e]very man is his own legislator’. Indeed, there can hardly be a more direct connection between Price’s morals and politics.

John Lind commented on Price’s assertion that every man is his own legislator.

superiority and rights ... to bridle the most unruly passions...’ (The Principles of Natural Law, p. 32).

48 Price, Sermons on Various Subjects, XI, p. 210; ‘Liberty can no more reside in a tyrannical form of government, than the soul of a man in the body of brute.’ (C. Lofft, Elements of Universal Law and Particularly of the law of England, London 1779, para. 1217, p. 267); ‘In general, to be free is to be guided by one’s own will; and to be guided by the will of another is the characteristic of Servitude. This is particularly applicable to Political Liberty.’ (Price, Observations, p. 11, also p. 18; ‘How wonderful is that there should be any occasion for exhorting men to be free and not slaves, or in other words to be men and not brutes?’ (Sermons on Various Subjects, XI, p. 223); ‘Reason in man, like the will of the community in the political world, was intended to give law to his whole conduct and to be the supreme controlling power within him. The passions are subordinate powers, or an executive force under the direction of reason...’ (Price, Additional Observations, p. 31).
He objected that Price’s statement ‘implies a flat contradiction; that it supposes a relative without its correlative; a superior without an inferior; a sovereign without a subject’. A right to be obeyed implied a duty to obey, according to Lind. It was absurd then to say that a man had a right to be obeyed by himself and a duty to obey himself. Such a view was not only repugnant to common sense but for Lind was absolutely incomprehensible given his psychological determinism which would not allow for the distinction between reason and passions in the way understood by Price. Crucial to Price’s conception of man as his own legislator was also the accompanying assumption concerning the self-regulating power of conscience. Reason not only indicated the right conduct, but also passed judgment on man’s conduct. The ultimate punishment for every rational being who contravened his sense of duty was the remorse of conscience. Such a conception concerning the operation of the internal constitution of man seems to have had a prominent place in natural-rights arguments. By being free to assent to the prescriptions of reason or to submit to the impulses of appetites (and other principles nobler, but always inferior to reason) man was the object of his own self-condemnation or self-reward by the supreme principle of reason or conscience. As Balguy put it reason ‘presents it self to our Minds not only as a Law but as a kind of Legislator, rewarding our good Actions with pleasing Reflections, and punishing our bad ones with painful After-thoughts, and the Stings

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50 e.g.: ‘...reckon ourselves accountable for them...’ ‘...charge themselves ... reproach themselves...’ ‘...to applaud or reproach ourselves for our conduct...’ (Price, *A Free Discussion*, pp. 131, 158-9, 143; *Review*, pp. 188, 218; *Additional Observations*, p. 11).
of Remorse'.

It is mainly in the background of such ideas that obedience to a law to which an individual had not given his assent was regarded as a degradation of human nature. Since God had implanted in man reason and will, He had enabled him from the Creation to be his own governor, which was a precondition for holding him as a morally responsible agent.

Perhaps the most direct proof of the relevance of such a conception of the constitution of man to the arguments defending political participation can be collected from the response of those who opposed the doctrine of natural rights. Those thinkers tended to juxtapose a completely opposite conception of human nature, and in particular, they emphasised the overwhelming influence of passions if left uncontrolled by the external force which only government could provide. Passions were too strong for conscience to prevail. Referring again to the motto that man is a 'law unto himself' Scurlock observed that 'if it were possible, that mankind could be brought

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51 Balguy, The Second Part of the Foundation of Moral Goodness, p. 16.

52 ‘...giving authority TO ONE man, to PREVENT the EXERCISE OF SUCH FREE-WILL, and to PROVIDE SUCH A CONTROUL...’ (Cooper, The First Principles of Government, p. 78); ‘When a government ceases to act, all the bad propensities of the people immediately break forth; Government is to the passions of mankind, what the banks are to a river...’ (J. Jones, The reason of Man, London 1792, p. 15); ‘...and, as man can be effectually restrained from injurious actions by no means but by the fear of punishment, the "brute overpowering the man", penalties and inflictions were annexed to the commission of such acts, as the powers of morality were unable to prevent.’ (Shebbeare, An Essay on the Origin, p. 40). See also Burke, A Letter to a Noble Lord, Works, Rivington (ed.), 1815-26, 8:23-24; Thoughts and Details on Scarcity, Ibid., 7:375-6; see further Anon. Letters to Thomas Paine, pp. 9, 23, 29, 80; Anon., Considerations on Mr Paine's Pamphlet, p. 49; Anon., The Interests of Man in Opposition to the Rights of Man, Edinburgh 1793, pp. 10-11; Anon., Licentiousness Unmask'd, London n.d., p. 2; E. Tatham, Letters to the Right Hon. Edmund Burke on Politics, Oxford 1791, p. 16n; R. Hey, Happiness and Rights, York 1792, p. 161; F. Plowden, Jura Anglorum: The Rights of Englishmen, London 1792, p. 462; M. Dawes, An Essay on Intellectual Liberty, London 1780, p. 43n; contrast, Molloy, An Appeal from Man in a State of Nature, p. 129; J. Barlow, Advice to the Privileged Orders, London 1792, Part I, p. 79.
to an unerring perception and observance of the pure dictates of reason, then all laws of government as well as those of revealed religion, would become useless.\textsuperscript{53} For 'men require restraint, subordination and coercion, to make them to do their duty',\textsuperscript{54} because as Burke claimed, '[d]uties are not voluntary. Duty and will are even contradictory terms.'\textsuperscript{55} Society, Burke declared, 'requires not only that the passions of individuals should be subjected, but that even in the mass and body as well as in the individuals, the inclinations of men should frequently be thwarted, their will controlled, and their passions brought into subjection'. And he continued: 'This can only be done by a power out of themselves; and not, in the exercise of its function, subject to that will and to those passions which it is its office to bridle and subdue.'\textsuperscript{56} The existence of society depends upon 'that control of all our appetites and passions'\textsuperscript{57} and 'the less of' 'the controlling power upon will' 'there is within, the more there must be without.'\textsuperscript{58} This is indeed a most straightforward renunciation of the assumptions on which the doctrine of the natural right to political participation rested, and sometimes similar attacks come even as a direct consequence of the rejection of the doctrine of moral agency and free will.\textsuperscript{59}


\textsuperscript{54} [L. Parsons], \textit{Thoughts on Liberty and Equality}, Dublin 1793, p. 36.

\textsuperscript{55} Burke, \textit{An Appeal from the New to the Old Whigs}, \textit{Works}, 6:204-5.

\textsuperscript{56} Burke, \textit{Reflections on the Revolution in France}, p. 151.

\textsuperscript{57} Burke, \textit{Third Letter on a Regicide Peace}, \textit{Works}, 8:376.

\textsuperscript{58} \textit{A Letter to a Member of the National Assembly}, \textit{Works}, 6:64.

\textsuperscript{59} See John Brown, \textit{Thoughts on Civil Liberty, on Licentiousness and Faction}, London 1765, pp. 12, 14, 25, 37-40.
In this chapter we have focused on Price’s passage from a discourse on duties to political pamphlets on rights. In the context of his ethical theory Price presented man as a law unto himself because of his endowment with a rational faculty. In his political writings he postulated that man should be his own legislator. The first proposition was uttered in the context where man was identified with his higher faculties. The second proposition was uttered in the context of considering man as a member of civil society. Crucial to the transition from the first to the second context was Price’s conception of the internal constitution of man which permeated his conception of practical virtue. This conception was built on a sharp contrast between reason and passion which was delineated in terms of a sovereign - subject relationship. The contrast was between those faculties which were destined to command and those who ought to follow. This identification facilitated analogies with normative relationships obtaining in civil society. For Price identified subservience to passions with obedience to an external to the ‘self’ powers, which in the political context was the wishes of other men. Further, the element of political voluntarism (which, to some extent, necessarily accompanies any conception of political rights) in Price’s argument does not seem to contradict the premises of his moral theory. Considering the role the idea of will played in the articulation of his conception of practical virtue, it has been shown that despite Price’s rejection of ethical voluntarism (in articulating his conception of abstract virtue) political voluntarism flows from his conception of morality as it relates to human agents.
IV.- NATURAL RIGHTS AND THE PUBLIC GOOD: JOSIAH TUCKER
AND THE ATTACK ON THE 'LOCKIAN REPUBLIC'.

It has been a commonplace that the late eighteenth-century radicals followed
in the tradition established by Locke. However, it is difficult to spell out which ideas
should be described as Lockean. It suffices to note that Price acknowledged a
similarity between his principles and those of Locke at the same time that Priestley
presented his own different argument as an improvement on Locke; that Thelwall
dismissed the principles of the Glorious revolution as 'trash', visions of Locke and his
followers, at the same time that Spence insisted that his egalitarian scheme was to
stand or fall together with Locke's principles. Although various different connections
might be made between Locke and eighteenth-century writers, here we shall be
concerned with the kind of connection which Josiah Tucker sought to establish.
Tucker, who in his youth had considered Locke as 'a kind of Oracle both in

1 As it is well known this assumption has been challenged notably by Pocock in
The Machiavellian Moment (Princeton 1975) and in Politics, Language, and Time
(London 1972). However, as Pocock recently made clear, his argument 'never was
that Locke was of no importance, but was that his importance had been misinterpreted
by uncritical exaggeration'. See his 'Review' of Kramnick's Republicanism and
Bourgeois Radicalism: Political Ideology in Late Eighteenth-Century England and
America (Ithaca 1990) in Eighteenth Century Studies, Vol. 25, 1991-2, p. 223; also
225-6. Similarly Raphael who sought to demonstrate parallel sources of ideological
inspiration for the Revolutionists never dismissed the importance of Locke, whose
views, he claimed, were transmitted often through others. See 'Enlightenment and
Revolution', pp. 4-5; cf. H.T. Dickinson, 'The Eighteenth-Century Debate on the
Glorious Revolution', History, Vol. 61, 1976, p. 36. For a survey of the literature on
the influence of Locke see S.M. Dworetz, ''See Locke on Government": The Two

Metaphysics and Politics',³ became the most outspoken opponent of Locke to appear in the eighteenth century. Unlike Pownall, who believed that it was common for his contemporaries to 'follow Mr Locke's phrases rather than his arguments',⁴ or John Saint John, who asserted that 'Mr. Locke would have no more weight' with Paine and his followers 'than Sir Robert Filmer',⁵ Tucker regarded Locke as the ideological ancestor of the English radicals. Whatever were his intentions, Tucker claimed, Locke's principles propagated 'a perpetual Right to shift and change, to vary and alter, without End; That is, without coming to any solid Establishment, Permanence, or Duration'.⁶ Tucker insisted that subversive radicalism already existed in Locke. Rousseau did not appear to have added anything new to Lockean radicalism apart from 'an happy Expedient for accomplishing this desirable Work of perpetual Alterations' - once per year.⁷

Pocock places Tucker's criticism of Locke in the context of the debate between ancient virtue and commercial society. The central issue for Tucker, according to Pocock, is the unity 'between the need for economic freedom' and 'submission to civil authority'.⁸ Locke 'appears to have been totally indifferent to the clash of ideas about ancient virtue and modern commerce' and as a consequence Tucker 'was able to


⁴ Pownall, *A Letter from Governor Pownall to Adam Smith*, p. 5n. See also Anon. *Civil Liberty Asserted*, p. iii.


assume that Locke had played a wholly reactionary role and could be denounced as an exponent of archaic politics.\(^9\) Pocock postulates that it makes no difference that 'the rhetoric of Roman virtue and independence is singularly absent from Locke's writings'. In the rhetoric of republicans 'there is a union between the classical idea of the citizen (merged with the Gothic ideal of freeholder) who commands his own lands and arms, so that he can be involved in government only in his own person, and the "Lockian" ideal of the individual whose rights to personality and property are anterior to the being of civil society, so that he can be brought under government only by his own consent'.\(^10\) Since, Pocock has posited that the notions of natural rights and ancient virtue are liable to the same criticism,\(^11\) it is impossible to say which type of criticism is directed against natural rights and which against the classical ideal of citizen. Both notions appear to hinder the progress of commercial society.\(^12\) In

\(^9\) Ibid., p. 177; also p. 180.

\(^10\) Ibid., p. 178.

\(^11\) Ibid., p. 188.

\(^12\) Although it is not entirely clear why Tucker chose Locke (who did not address the issue of ancient virtue versus modern commerce) and not Rousseau who throughout his writings emerged as a virulent enemy of commercial society, and proclaimed Tucker’s ‘Shop-keeping Nation’ a nation of slaves precisely because it was a shop-keeping nation (see J. Tucker, *Four Tracts together with Two Sermons on Political and Commercial Subjects*, Glocester 1774, p. 132, and Rousseau, *Social Contract*, M. Cranston (ed.), Harmondsworth 1968, Book III, Ch. xv, pp. 140-43). Samuel Adams, for example, whom Tucker would have described as a champion of natural rights, used the phrase ‘A Nation of shop keepers’ with a pejorative meaning. He further appealed to Machiavelli and Rousseau to inveigh against the evils of repose and luxury, defend civic virtue and exhort his compatriots to fight for liberty (see *An Oration Delivered at the State-House in Philadelphia*, n.d. pp. 10, 20-1n). Thomas Day was another exponent of the doctrine of natural rights who attacked Tucker and was immensely influenced by Rousseau (see J. Keir, *An Account of the Life and Writings of Thomas Day*, London 1791, pp. 25-30, 73; T. Day, *Reflections upon the Present State of England*, London 1783, pp. 12, 30, 103). A remarkable affinity also existed between Rousseau’s and Price’s ideas on virtue and commerce (see
Pocock's exposition Tucker's critique of natural rights is virtually absorbed into the contrast between ancient virtue and modern commerce, so that other significant dimensions of Tucker's argument could easily be overlooked. It will be argued here that Tucker's critique of natural rights can also be seen as an early statement of the conflict between individual rights and utilitarianism, traditionally understood.

The major contrast in Tucker's argument was between titles and the public good. By Lockean principles he meant an adherence to titles having as their only basis the idea of personality and moral agency. Tucker sought to bring out the self-contradictory character of the Lockean system. He pointed to the impossibility of reconciling a conception of moral agency to the principle of majority rule. Like Richard Hey and others, he theoretically connected this discussion with the need for adopting a different justification of the foundations of government from the one adopted, according to his opinion, by the champions of the doctrine of natural rights. Tucker gave priority to the public good at the expense of the idea of moral agency when applied to politics. His idea of virtual representation was merely the epitome of the change of the principle of political legitimacy from the idea of consent to that of public interest. In this chapter we shall consider Tucker's critique of natural rights and the different levels at which his contrast between titles or rights and the public good emerges. In the next chapter we shall place the essential elements of Tucker's critique in a broader context and shall show the extent to which utilitarian ideas pervaded the doctrine of natural rights. The best way, perhaps, of doing this is to consider the leading features of Tucker's critique in conjunction with its reception by those against

whom it was addressed.

*i. The Attack on Moral Agency.*

The principle which Tucker deemed to be at the core of the justification of natural rights which the Lockeans espoused was moral agency. In England, he maintained, voting had been considered a privilege, but 'according to the Principles of Mr. LOCKE and his Followers, all this is totally wrong':

for the Right of voting is not annexed to Land, or Franchises, to Condition, Age, or Sex; but to human Nature, and moral Agency: Therefore, wherever human Nature, rich or poor, old or young, male or female, it must follow from these Principles, that the Right of voting must exist with it: For whoever is a moral Agent is a Person; and Personality is the only Foundation of the Right of voting.\(^\text{13}\)

This being the principle, Tucker thought that the whole problem with natural rights was reduced to two related questions: first, whether they were natural, since, if they were natural they had to be equal; second, whether they were inalienable natural rights. In both questions Tucker believed that the Lockeans could not follow their own assumptions. They spoke profusely about the rights which all human beings possessed by nature, but their arguments and policies proved how frivolously they took their own principles. He claimed that Indians never ceded (and it would have been unlawful had they done so) to anyone, let alone to their American oppressors, their natural rights. Yet the slave trade proved how 'very mutable' the 'immutable Laws of Nature' were.\(^\text{14}\) Women, no less than men or Indians, were moral agents, but Cartwright


seemed to think that God and Nature had excluded them from the right to vote, and
Towers paternalistically refused their participation on account of their delicacy,
without however having constructed 'an electioneering Barometer, so that we may
know when this Delicacy of the Sex rises, or falls to the voting Point'. Far from
being a mere rhetorical reaction, the status of women was considered as a critical
validating test for natural-rights doctrines. In fact, all those who raised the issue\(^{16}\) did
nothing more than to take more seriously than their opponents\(^{17}\) the claim that an

\[^{15}\text{See Tucker, } \textit{Four Letters}, \text{ pp. 55-57; also } \textit{Treatise}, \text{ pp. 214, 358-65.}\]


\[^{17}\text{For whom women did not constitute a problem at all. See Towers, } \textit{A Vindication of the Political Principles of Mr. Locke}, \text{ pp. 72, 94; Spence, } \textit{The Important Trial of Thomas Spence}, \text{ p. 76 (cf. The Rights of Infants, p. 6); J. Cartwright, } \textit{An Appeal, Civil and Military on the Subject of the English Constitution}, \text{London 1799, p. 17 and esp. } \textit{The Legislative Rights of the Commonalty Vindicated}, \text{2nd ed., London}\]
appeal to the rights of men, if prosecuted to its natural and legitimate consequences, will give liberty to the whole human race'.

By excluding women and other sections of the population, Tucker observed, the inalienable natural rights of mankind were the rights of a 'Part of Mankind' only. But even less than that. That part of mankind, namely the male population, could not enjoy the inalienable right to be their own governors, because of an inherent contradiction that bedeviled the Lockean system. The Lockeans asserted inalienable rights, and at the same time took for granted the principle of the majority in decision making, a concession directly undermining the inalienable character of these rights.

The position of an individual in the minority confronting an opposing majority was crucial for Tucker's repudiation of the idea of moral agency as the ground of the right to political participation. He did not object to the principle of majority rule as such. He merely objected to its inattentive adoption by the Lockeans, who did not seem to be aware of what its adoption implied for their own principles. Tucker exploited the argument which the Dissenters had used to entrench religious liberty.

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19 Tucker, *Four Letters*, p. 67; see also *Treatise*, pp. 33-34, 214.

20 '... a Vote of the Majority is in fact a vote of the Nation to all Intents and Purposes.' (Tucker, *Four Tracts*, p. 172).

21 'For all of them [except honest ROUSSEAU, who is generally consistent, whether in Truth, or Error, and perhaps also except Dr. PRIESTLY; -I say, all of them] scruple not to maintain that the Minority ought, for the most Part, to be concluded by the Majority.' (Tucker, *Treatise*, p. 236, square brackets in original).
The right of private judgment required that every moral agent should act according to
the conviction of his own mind. From the point of view of the individual concerned
'a Plurality of Votes is no Evidence of Infallibility' and therefore his 'inward
Conviction may not be altered by his being overpowered by Numbers'. When
therefore an agent submitted to the authority of a majority with which he did not agree
he virtually surrendered his inalienable right to judge for himself.

For these same Rights, unalienable and untransferable as they are, and
the very Pillars of the LOCKIAN Cause, will vanish in a Moment, and
disappear at once ... as soon as ever the Majority of a single Vote
shall appear against them.

Either the right was alienable and could be forfeited or it was inalienable and could
not be surrendered to occasional majorities. On Lockean principles, Tucker claimed,
only unanimity was binding. He proceeded to point out a further departure from the
doctrine of inalienability, which was linked with his argument concerning the
impossibility of providing a justification of the principle of majority rule on what he
perceived as Lockean grounds:

For the very same Reason, that the Members of a Lockian Republic
cannot Surrender their unalienable Rights to a Majority, be it small or
great, they cannot likewise, transfer their unalienable Right of voting
to Deputies or Representatives to act and vote for them. For this in
Fact comes to the same Thing with the former. They must, therefore
all vote in Person or not at all.

Tucker thought that inalienable rights should be regarded as inalienable precisely

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22 Tucker, Treatise, p. 34.


24 Tucker, Treatise, p. 36; Four Letters, p. 108.

25 Tucker, Treatise, p. 37. Contrast Dworetz's discussion on about the
'fundamental principle of consent' and the derivative nature of the rights of
representation'. See 'See Locke on Government', p. 111; also p. 112.
because they could not be transferred. The right to private judgment in religion was
inalienable because a believer could not be damned or saved by proxy. But if an
individual were to legislate through his deputy, he could not have any valid claim to
an inalienable right properly so called. As with the principle of majority rule, Tucker
did not inveigh against the representative system as such, but upon the principle on
which it had been defended. Representation had been defended on the ground of moral
agency, but a strict adherence to this notion was incompatible with a representative
system of government. Moral agency required direct practice and continuous personal
involvement, otherwise it was an empty letter. A man was a moral agent not because
someone else was summoned to do the job in his place, but because he could not
suffer to suspend his private judgment by procuring a substitute. This argument was
directed especially to Price, Tucker's arch-enemy. After quoting an extract from his
Observations on the Nature of Civil Liberty where Price had connected religious and
civil liberty, Tucker subjoined a footnote where he argued that if 'the Cases are
parallel, as the Doctor supposes them, there can be no such Thing allowed as
Representatives in Parliament; but every Voter must attend in Person. --- This is an
important Point; therefore more of this hereafter'.

Tucker did not miss the
opportunity in this connection to praise Rousseau. Rousseau as a Lockean himself had
not offered a more profound alternative. But he was an honest Lockean who did not
hesitate to draw the consequences wherever they would lead. Tucker firmly believed
that Lockeans deceived themselves in order to deceive others. Rousseau clearly
elucidated what the theoretical consequences of the initially adopted premises were.

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26 Tucker, Treatise, p. 21n (the extract is from the fifth ed. of Price's
Observations, p. 15).
The premises demanded direct political participation, or nothing.

HONEST, undissembling ROUSSEAU clearly saw, where the Lockian Hypothesis must necessarily end. And as he was a Man who never boggled at Consequences, however extravagant or absurd, he declared with his usual Frankness that the People could not transfer their indefeasible Right of voting for themselves to any others.27

The main reason, thus, for which Tucker drew on Rousseau was to bring out the internal inconsistencies of the Lockean system. Whereas the doctrine of moral agency which he attributed to Locke could have been easily attributed to the 'fanciful' 'Rousseau'28 - or even the 'fanciful Montesquieu'.29 Many years before Burke made the association between Rousseau and radicalism,30 Tucker used the citizen of Geneva to expose the republican system as it was advocated in England.31

Once Tucker pinpointed the internal inconsistencies of Lockean principles he turned his attention to the notion of virtual representation,32 which he thought did not

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30 See Burke, Letter to a member of the National Assembly, and Observations on the Conduct of Minority, in Works 6:38 and 6:270-71.

31 Tucker made one among many different ‘conservative’ uses of Rousseau at the time. See e.g. [J. Cusac Smith], Rights of Citizens, London 1791, p. 5, 23-24, 47, 86-92, 115-6; Shebbeare, An Essay, pp. 21, 37; cf. p. 12n.

deserve the scorn poured on it by the Lockeans. This was because the discredited notion of virtual representation was in fact the result of the concessions the Lockeans had to make in the face of the impracticality of their principles. Tucker sought to connect theoretically the conception of virtual representation with his preceding account in which he had shown the shortcomings of any idea of universal participation in a literal sense. He took the Lockeans to have said that a man might pay a tax because he had consented to it personally, or at least through his own immediate representative in his respective province. 'Because all other Members being chose[sic] by other Persons, and not by him, and perhaps by Persons of an opposite Interest, are therefore not his Representatives, and consequently not the true Guardians of his Property'. It followed that no obligation was incumbent upon him to obey a law enacted by a legislature composed of members who were not his immediate representatives. There could be no way to account for the legal obligation of all who 'have no Votes ... and also all those Voters, whose Representatives did not expressly consent'. How could a Lockean grapple with this difficulty? He had a double choice, according to Tucker: either to abide by his principles and render


34 Cf.: By 1773, even the ministry ceased to justify American legislation on the grounds of virtual representation, and by 1776, the administration abandoned all efforts of colonial taxation partly because the concept of virtual representation of the colonists by Parliament had become untenable. (J.P. Reid, The Concept of Representation in the Age of the American Revolution, Chicago 1989, p. 119).


36 Ibid., p. 110; see also Tucker, An Humble Address and Earnest Appeal, pp. 87-88, 90-92.
government impracticable (and this indeed would have been an offence against the Law of God, Who did not leave to the discernment of mankind whether they should have a government or not) or to follow the path which would lead directly to the conception of virtual representation. But, this, in turn, would contradict his professed principles:

You cannot turn about, and say, that the other Representatives, whom this Man never chose, and from whom he had no Vote to give, and against whom perhaps he had particular Exception, have nevertheless a Right of taxing him, because he makes a Part of the Body Politic implied in, and concluded by the rest; ---you cannot say this, because the DOCTRINE of IMPLICATION is the very Thing to which you object, and against which you have raised so many Batteries of popular Noise and Clamour.37

Tucker substituted his own 'implied', or 'Quasi-Contract', which required only a 'virtual representation',38 for the Lockean actual contract and actual representation.

He did not present -as Towers accused him- the ideas of virtual representation and the quasi-contract as his new discoveries. On the contrary the gist of his argument was that these notions, instead of being the absurdities that the Lockeans sought to demolish, were the principles which they tacitly would have to adopt once the infeasibility of their professed principles forced them to make the necessary concessions. The first concession, he thought, was enough to change the character of the theoretical foundation of government. It was the 'DOCTRINE of IMPLICATION' which they initially set out to defy, but their own account, as far as it could be made consistent with the existence of any government, would ultimately subscribe to this

37 Tucker, Four Tracts, pp. 109-10.

38 Tucker, Four Letters, pp. 105-6; Treatise pp. 240, 275; Four Tracts, p. 172.
doctrines.

-Nay, the Government of the Massachusetts-Bay itself, whenever this Colony shall become independent of the Mother-Country, must then, as well as now, be supported on this very Principle; that is to say, on the very Principle against which they so loudly clamour.\(^{39}\)

J.R. Pole has argued that the idea of 'virtual representation has a predecessor in Locke's doctrine of "tacit consent"'.\(^{40}\) Tucker linked his conception of virtual representation with the idea of a 'quasi-contract'. Towers who publicly denounced Tucker took seriously Locke's idea of a 'tacit consent'.\(^{41}\) However, he regarded the latter not unlike Tucker's 'quasi-contract'. As we shall see, he interpreted the latter in light of Priestley's utilitarian principles. From our point of view it is particularly significant that Towers could not see any difference between the ideas of tacit consent and quasi-contract since the latter idea was very close to utilitarianism.\(^{42}\)

\[\textit{ii. The Contrast between Titles and the Public Good.}\]

As already mentioned, at the core of Tucker's critique of Locke and his disciples lay his belief that the 'Lockian principles' diverted attention away from the idea of public good toward questions concerning titles. The sharp contrast he envisaged between titles and ways of promoting the public good shaped his argument at several different levels. At a more practical level he was led to share the view that

\(^{39}\) Tucker, \textit{An Humble Address}, p. 91.


\(^{41}\) Towers, \textit{A Vindication of the Principles of Mr Locke}, p. 46.

it was 'less material who elects, than it is who may be elected'. Since the object of government was the public good, its attainment would depend on the enactment of good and wise laws. This in turn was contingent upon the quality and capacities of those who had been elected; that is, those who would bear the burden of legislation. He challenged Price to dispute his contention that every voter was 'bound in conscience' to vote only for the candidate who would be 'upon the whole, better and more worthy, or even ... less detrimental to public Welfare'. Tucker, concluded that it was incumbent upon the champions of natural rights to show that the representatives elected by a larger number of electors would be 'always foremost in Promoting the Publick Good'. This could only be done by demonstrating that 'a thousand Voters always display more Wisdom and Judgment in the Choice' of their representatives 'than one hundred can be supposed to do'. Their maxim then would be "Few Voters, little Wisdom --- Many Voters, great Wisdom", which would necessarily mean that unlike the dull representatives returned by fewer votes in certain boroughs 'the four Representatives of our great Metropolis must, for the same Reason, be the

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46 Ibid., p. 68.
They are the Standard of political Wisdom'. Tucker could not envisage any connection whatsoever between extending the right to vote and improving government.

On the other hand, and at a more theoretical level, the contrast between titles and the public good made him indifferent to prescriptive rights (although perhaps the major contrast at the time was between natural and prescriptive rights). Republican authors had asserted that the inalienable rights of man entailed that each generation had an original God-given right to legislate for themselves and start afresh unconstrained by previous legislation. Burke's conception of society as an eternal contract between succeeding generations was only the culmination of the conservative reaction involving essentially Humean ideas - albeit in an emphatically dramatic form and uniquely rhetorical garment. It was held that society presupposed the continuity of obligations between succeeding generations. To believe that it was possible to draw a line separating the generations was preposterous: 'The fathers sink not all into the grave on the same day, to vegetate into sons, on the next' as Elliot among others

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47 Ibid., p. 69.


49 C.H. Elliot, The Republican Refuted, London 1791, p. 17, also pp. 18, 21-22; see also Smith, Rights of Citizens, pp. 13-17 (cf. the implications in pp. 33-34, 40, 90, 120); Plowden, Jural Anglorum, p. 67; Saint John, A Letter from a Magistrate, pp. 96-102, 118; Hawtrey, Various Opinions of the Philosophical Reformers Considered, p. 17. The same point is made also against Paine even by Molloy, An Appeal from Man in a State of Nature, p. 179; Lewelyn, An Appeal to Men, Part II, p. 76. See D. Hume,
put it, paraphrasing the language of Hume. Tucker's critique reflected these sentiments.\(^\text{50}\) However, he never became an enthusiast of prescriptive rights after the manner of Burke. On the contrary, Tucker thought it equally mischievous to reason from what 'ought originally to be the Case, - to what in future shall, or must be' and 'from what actually was, - to what still ought to be'.\(^\text{51}\) Natural and prescriptive rights were, in his view, pregnant with deficiencies but not, of course, to the same degree.

The contrast which Tucker envisaged between the public good and titles of any sort was formed in his mind at a very early stage of his intellectual development. In his *Two Dissertations on Certain Passages of Holy Scripture* he announced that the 'Master Key' for the understanding of the principles of government was not to lose sight of the distinction between titles and good administration. On such a distinction he built a novel interpretation of the passage from Romans xiii where the Apostle had asserted that all the power was of God. A continuous appeal was made to this passage by thinkers of a characteristically conservative frame of mind. Figures such as Nares, Plowden, or White advanced relatively moderate interpretations of the Apostle's passage in Romans xiii,\(^\text{52}\) while others, such as Fletcher or Riland, drawing on the

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\(^{50}\) Tucker, *Treatise*, p. 76; *Four Letters*, pp. 105, 111; Ferguson, *Remarks on a Pamphlet*, pp. 21-22.


same passage were not far from reasserting Filmer’s doctrine. On the other hand, many radicals played down the relevance of the passage from Romans. It appeared to them that scriptural evidence did not provide definite answers to the question of political obligation. David Williams bestowed his contempt on the ‘impiety of bringing the Deity into questions of civil Obligation’ and claimed that the assertion that the ‘Powers that be, are ordained of God’ ‘is true in the same sense as, whatever is, is right’. In similar vein Price claimed that everything was ultimately attributable to God, and Priestley, that future powers would be ordained by Him as well.

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54 Williams, An Apology for Professing the Religion of Nature, p. 92.

55 [D. Williams], The Philosopher in Three Conversations, London 1771, 1st Conversation, Part I p. 22.

56 R. Price, The General Introduction and Supplement to the Two Tracts on Civil Liberty, 2nd ed., London 1778, p. vii note; Priestley, First Principles of Government, p. 27; see also Rousseau, Social Contract, Bk. I, ch. iii, p. 53; Hume, Essays, pp. 466-7; Anon., The Political Crisis, p. 84. Barlow regarded the frequent appeal to God as the best proof that kingly authority could not be justified on any ‘social principle’, and others grasped the opportunity to test the loyalty of the upholders of divine right to the Hanoverian dynasty. See Barlow Joel, Advice to the Privileged Orders, Part II, p. 8; Anon., The Pamphlet, entitled, "Taxation No Tyranny", Candidly Considered,
Tucker's approach was sharply different from the authors mentioned above. He scrutinized the whole passage in order to unfold St. Paul's meaning, and he believed that he found there the principle which he made the cornerstone of his political theory:

But how was it to be understood, that God was the *Fountain of ALL Government and Authority*: And how did it appear, that the Powers in Possession were ORDAINED by him? These were the very *Points in Question*. It is natural therefore to ask, where is the *Proof* of them? It follows in these Words, which *explain* and *limit* his general Assertions; *For Rulers are not a Terror to Good Works, but to the Evil*.* Wilt thou then not be afraid of the Power? do that which is Good, and thou shalt have Praise of the same. For he is the Minister of God to thee for Good,* &c.* Here the Apostle explains, for what *Ends* and *uses* Government in *General* is derived from God; and for what Reasons in particular the Powers in *present* Possession should be looked upon as his *Ordinance*. The *Magistrate* [in general] is the Minister of God for Good.  

Nares, for example, had argued that St. Paul's words signified the fact that God was a Protector of all legal government. Tucker thought otherwise. Questions about the legality of a particular government referred only to the problem of how those who had already been in power seized it. But this was and ought to have been a matter of indifference to the governed, as long as governors governed well. St. Paul intended

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58 Similar views but not in the context of this passage are held by F. Hutcheson, *A System of Moral Philosophy*, 2 vols., 1755, 2:300-301; see also 2:231.

59 'The *Justification* of Caesar's Title against other Claimants, and the *Justification* of the People in rend[er]ing *Obedience* to Caesar, are two very different *Things.*' 'It is to no Purpose to say, that this is not *his Fault*; and therefore he ought not to be *deprived* of them: That may be true, if urged *against* the *Usurper*: But it is nothing to the *People*: *They do him no Injustice.*' (Tucker, *Two Dissertations*, pp. 44,
to redirect attention to how the power was employed by those who happened to be in possession of it, whatever the manner of its acquisition. For the Apostle 'did not put the Matter upon Caesar's Original Right, or his better Title than any other Claimant, who either did, or might appear; But upon Caesar's present Possession, and his Good Administration while in Possession'.\(^6\) It almost appears that Tucker regarded the statement 'the powers that be are ordained of God', as an instruction not to the people but to those who contested for power\(^6\) - or, by implication, to the people as far as they did the same. If 'the Governors came unjustly to the Acquisition of such Power, that was their own proper, Concern: And they alone were to answer for it'.\(^6\) Tucker's use of the idea of a double obligation (one for the subjects and other for the governors) nevertheless differed from the two mutually opposite views, enunciated by Filmer\(^6\) and (say) James Burgh.\(^6\) According to Tucker potential usurpers were those who threatened the powers 'that be', and for this they alone were answerable to God. In relation to the governed, however, governors, whether usurpers or not, were placed by God under the obligation to serve the good of the people. As a consequence

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\(^{61}\) Consider the different perspective introduced when all the emphasis was placed on the sentence referring to 'the punishment of evil doers' and 'the praise of those who do well'. See Tatham, *Letters to Burke on Politics*, p. 43; Gray, *Doctor Price's Notions of the Nature of Civil Liberty*, p. 16; Lewelyn, *An Appeal to Men*, Part II, p. 17.

\(^{62}\) Tucker, *Two Dissertations*, p. 41.


\(^{64}\) Burgh, *Political Disquisitions*, 1:4.
the people 'have always a Right to be governed well, be the Governors who they will'. They owed obedience to their governors only as far as they governed well, that is, they promoted the public good:

The Powers that be, when they are the Ministers of Good to the People, are ordained of God. This is the best Politicks, as well as true Divinity. For after all, let me ask, upon what other Footing do the Titles of all the Governments around us this Day subsist? If it is said, that long Prescription has given them a Right: I ask, what has given a Right to Prescription? The Answer must be, for there is no other, It was the PUBLICK GOOD, the ultimate End of Government. That indeed is very just. But then I must observe, it is the Thing itself I am here contending for. As Tucker made clear he was contending for the 'thing itself'. This early argument which he described as 'Best Politics, as well as true Divinity', lingered in the writings of subsequent years. In his Sermons on Political and Commercial Subjects he contended that the 'great End of Government' was 'to promote the Good and Happiness of the Governed', and described the pursuance of this objective as 'Religion appearing under another Shape'. In his Treatise he distinguished again between titles and good administration in the same context of the passage from Romans xiii which he had already discussed so extensively in his Second Dissertation on Certain Passages of Holy Scripture. In his Treatise Tucker depicted the modern radicals as persons who were obsessed with only one question: 'What is your Title, to be

65 Tucker, Two Dissertations, p. 47.

66 Ibid., p. 48; cf. Anon., An Essay on the Right of Every Man in a Free State to Speak and Write Freely, London 1772, pp. 3-4. The same argument was expounded several years later by Robert Hall, a disciple of Priestley. See R. Hall, Christianity Consistent with a Love of Freedom, London 1791, pp. 44-46.

67 Tucker, Sermons on Political and Commercial Subjects, pp. 9-10 in Four Tracts with two Sermons but with separate pagination.
Governor, or Chief Magistrate of this Country? 68

We have seen so far that a constant theme in Tucker’s writings was a contrast between titles or rights and the public good. He first elaborated this contrast in the interpretation he gave to the meaning of St. Paul’s statement concerning the origins of political power. He then connected his idea about the impossibility of reconciling the conception of government and the doctrine of individual inalienable rights with the implications of an adherence to majority rule and a representative system. As we shall see, Tucker was not an isolated figure.

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68 Tucker, Treatise, p. 86; see also A Letter to Edmund Burke, Glocester 1775, p. 12.
V.- THE INFLUENCE OF UTILITARIANISM ON THE RIGHTS OF MAN.

In this chapter it will be demonstrated that the kind of criticism Tucker launched together with its theoretical ramifications was to be found in almost all the pamphlets which rebuked Price. It will be shown that the Lockeans disregarded this kind of critique and, whenever addressing issues that Tucker and others similarly-minded raised, they did not appear to have realised the nature of the criticism. This happened, it will be suggested, because the language of natural rights was to a large extent deceptive, and ideas which Tucker proposed himself as the only credible theoretical foundation of government pervaded the current conceptions of natural rights. There was an increasing latent utilitarianism taking many shapes behind natural rights rhetoric. As a consequence Tucker’s attack, although sound, could only make sense against some of Price’s arguments. But Price’s theoretical approach to natural rights was not the only version available and, if we are to judge by the reaction to Tucker’s arguments, not perhaps the dominant form among the Lockeans.

i. Tucker’s Critique and the General Response to Price.

Parsons claimed that the binding force of the majority did not derive from nature and was not compatible with the equal natural right of every individual to be his own governor. If men were by nature equal, no man could have a right to direct the conduct of another. The collective right was only the sum of individual rights. Since according to the law of nature all men were equal, no single individual could have a right over another. Thus, two, three, or any number of men could not have any right over a third man. Either the binding force of the majority over a minority or the equal rights of all individuals existed by nature. For to admit the authority of the
majority by a law of nature was to admit that by the same law of nature not all men were equal but some men had rights against and over others.\(^1\)

However, it was the arguments of those who were directly involved in the refutation of Richard Price\(^2\) which manifested a striking affinity with the major points of Tucker's critique. To a large extent the themes were placed in the same order and linked in the same way as in Tucker:

I cannot see why every woman, and every person arrived to years of discretion, ought not to have a voice also; for, upon our author's system, without it they must be slaves. But I will not insist upon this. If I happen to be one of the minority, which is as likely as not, I am in a worse state than if I had no voice, for I have probably made the persons elected unfriendly by giving a vote against them;\(^3\) and it is most certain that I am not self-governed; I am bound by laws, and forced to submit to taxes to which I never gave my consent, neither in person, nor by my representative.\(^4\)

The attempt to rehabilitate the notion of virtual representation was accompanied by a persistent attempt to test how literally the proponents of the doctrine of natural rights could possibly mean their professed principles. The point which Tucker, Hey, Goodricke and others sought to make was that from the point of view of a theory of legitimacy constructed upon the idea of individual consent, the position of an


\(^2\) It was also around that time when Tucker elaborated the ideas he laid down in his *Treatise* several years letter. See G. Shelton, 'Dean Tucker's A Letter to Edmund Burke', *Studies in Burke and his Time*, Vol. 10, 1968-9, p. 1156.

\(^3\) Cf. Hume: ‘...it would be absurd to infer a consent or choice, which he expressly in this case, renounces and disclaims’ in Buckle and Castiglione, ‘Hume's Critique of the Contract Theory’, p. 477.

\(^4\) Anon., *Experience Preferable to Theory*, pp. 12-13; see also p. 20 for his account of virtual representation (although he did not use the term).
individual in the minority and the position of an unrepresented individual were logically identical. In neither case did the individual consent to the law to which he had to submit. In a sense, the position of an individual in the minority was worse because of his declared dissent from the decision finally adopted. Thus in the eyes of those critics the problem of justifying authority on the basis of personal consent would remain even if the Americans were 'actually' represented in the British Parliament. This was the reason for which the consideration of the status of an individual arrayed against an adverse majority figured so prominently in the writings of the period.

Lind observed that not 'even of those who have a right to vote can it with any degree of truth be affirmed, that their own personal consent, or the personal consent of their representative is necessary to render a tax legal. If it could, it would follow, that no representative could be chosen but by the unanimous consent of every constituent, that no law could pass without the unanimous consent of every representative'. In the same vein Johnson argued that '[o]f Electors the gap is but little better. They are often far from unanimity in their choice, and where numbers approach to equality, almost half must be governed not only without, but against their choice'. Wesley, who was accused of having plagiarised Johnson's views, remarked that the 'majority are not all the individuals that compose' the state. Similarly, Ferguson was perplexed by Price's arguments and thought that, according to Price's definitions, the loss of liberty was unavoidable in any civil society, for 'even where


6 Johnson, Taxation no Tyranny, p. 205.

7 Wesley, Some Observations, p. 19.
the collective body are sovereigns they are seldom unanimous and the minority must ever submit to a power that stands opposed to their own will'.

In similar vein Goodricke noted that Price's principles could not justify such an easy transition from direct participation to representation as Price had made. He coupled, of course, this objection with the consideration of the status of majority against minority. He thought it ludicrous to call the individuals who fell in the minority their own legislators when not only did they not give their consent to the enacted law, but they 'really and expressly dissent[ed] from' it. The expression 'their own legislators' might cover them only in a very qualified sense. But in such a qualified sense that expression 'will be more or less true, of other schemes besides. Literally it is true of none'.

Shebbeare took up the same issue, remarking that on Price's assumptions any other decision-making principle apart from unanimity would reduce the minority to slavery, and Fletcher pointed to the impossibility of enjoying 'FULL liberty' in Price's sense since a participant in a numerous collective body would enjoy an inconsiderable part of political liberty. He added immediately that the participant could not enjoy even that - for 'if the majority are to carry their point against the minority;

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8 Ferguson, Remarks on a Pamphlet, p. 3.

9 H. Goodricke, Observations on Dr Price's Theory and the Principles of Civil Liberty and Government, York 1776, p. 76. Cf. Ferguson's remark: '... men may be their own legislators, without so much as knowing what laws are enacted or proposed.' (Remarks on a Pamphlet, p. 10).

10 Goodricke, Observations, p. 123, the same argument applicable to taxes as 'free gifts' in p. 125.

11 See [J. Watson], Cursory Remarks on Dr. Price's Observations, London 1776, pp. 8, 11.

12 Shebbeare, An Essay, p. 71; also pp. 76, 79.
there are nine million degrees of probability to one, that Dr. Price upon his own
scheme, will be forced to give up his own legislative will'.

Many of the writers mentioned above tended to employ a utilitarian
language and made frequent appeals to social utility in order to counterattack
arguments based on the idea of moral agency. But the most outspoken utilitarian was
Richard Hey. Nevertheless his concerns were the same as Tucker's. Hey conceded that
it was 'frequently impossible to consult the good of the Public without neglecting that
of some individual'. He further admitted that only the idea of unanimity was
compatible with the natural rights of mankind: 'It is an insult upon the common sense
of Mankind, first to tell men they all are and must continue free, and then that a
Majority, any number exceeding half of the Society, have a right to Command the
remainder, without any consent previously obtained from that remainder'. The
previous agreement of all citizens that the resolutions of the majority would be
compulsory for the minority was compatible with the starting point of natural equality.
Such a consent, however, did not show, according to Hey, the inherent rationality of

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13 Fletcher, *American Patriotism*, p. 95; also p. 20; *A Vindication*, pp. 24-25. See
further T. D., *A Letter to the Rev. Dr. Richard Price*, London 1776, p. 12; see also
Anon., *Civil Liberty Asserted*, pp. 15-16; Martin, *Familiar Dialogues between
Americus and Britanicus*, pp. 18-21; Gray *Doctor Price's Notions of the Nature of
Civil Liberty*, pp. 6, 119. The same argument was used also against Paine. See J.
47; see also 'To James Sullivan, 1776', *The Works of John Adams*, C.F. Adams (ed.)


15 R. Hey, *Three Dissertations*, (originally published in 1783, 1784, 1785),
Cambridge 1812, p. 247.

16 Hey, *Happiness and Rights*, p. 20; also pp. 16-17, 43.
adhering to the principle of majority rule. Provided we started from the stipulation of natural equality and freedom (conditions that Hey accepted only for the sake of the argument), consent could have legitimized whatever the members consented to. At any rate it did not prove the inherent justificatory power of the majority. Assume, Hey claimed, that the Dutch and the English unanimously consented to form a civil union. Then a law unanimously enacted by the English, who formed the majority of the union, would be binding as well on the Dutch. Since the authority of the majority over the whole sprang from the previous consent of the whole, as it did not exist in nature, Hey asked what was it that forced men to abandon unanimity which was the only condition under which the original natural equality continued to exist. By way of giving an answer Hey commented on Locke’s exposition upon that subject. Locke’s contention (that the body politic should move in the direction the ‘greater force carries it, which is the consent of the majority’) although had been intended as a Proof was only an Illustration. The argument which Locke used to justify the principle of the majority, according to Hey, was to be found in the next paragraph where Locke said

17 This line of argument could place the champions of natural rights in a difficult position: ‘...suppose, now, that he does not happen to approve of Representation as a mode of government. What is your answer to this? You have fixed, in your mind, that there shall be a Representation. I Say, then, you are a Tyrant. You infringe the inherent and unalienable Rights of Man.’ (Hey, Happiness and Rights, p. 84); ‘For, if nations chuse to live under an hereditary government, what principle of liberty shall controul their will? (Saint John, A Letter from a Magistrate, p. 41); see also J. Adams, An Answer to Pain’s Rights of Man, Dublin 1793, p. 12; Anon., Letters to Thomas Payne, London [1992], pp. 28-29.

18 Hey, Observations, pp. 48-49n; Happiness and Rights, p. 64. And on the same principle Fletcher argued that all parts of the British Empire could have a right to exclude England from the Empire (A Vindication of the Rev. Mr Wesley’s Calm Address, pp. 24-25).

19 Hey, Observations, p. 60.
that unanimous consent 'is next impossible ever to be had, if we consider the
Infirmitics of Health, and Avocations of Business, which in a number, though much
less than that of a Common-wealth, will necessarily keep many away from the publick
Assembly'. To these Locke added 'the variety of Opinions, and contrariety of
Interests, which unavoidably happen in all Collections of Men'. This being the
situation, the demand for unanimity would immediately threaten to dissolve the body
politic the very moment it was established. The interpretation Hey gave to Locke's
argument was that unanimous consent was impossible, and if we insisted on achieving
it, many mischiefs would have ensued. He concluded: 'It is then upon the Principle
of Utility that he [Locke] builds his reasoning:--- the foundation of all laws Civil and
(perhaps) Moral'. Utility and the force of necessity in such a context were
interchangeable terms as Hey reasserted that the departure from unanimity 'can be
justified upon no other ground but the Necessity of it'. Once the first step of
deviation was taken no strict boundaries could ever be recognized:

...when once you allow that we may dispense with the actual
unanimous consent of all Individuals, because we are under a necessity
of dispensing with it; you must go on where the necessity of human
affairs leads you.

If the general circumstances of society required the abandoning of unanimous actual

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20 See Locke, Treatise, II, para. 96, (lines 4-7) and para. 98, pp. 331-3.

21 Hey, Observations, p. 47, also p. 48.

22 Ibid., p. 66; cf. p. 48: 'If we should urge you for your Reason, I fancy you must
recur to the principle of Utility...'. See also Happiness and Rights, p. 33; compare
with Hall's 'sufficient answer' in An Apology for the Freedom of the Press and for
General Liberty, 3rd ed., London 1794, p. 65; consider also the argument of Anon.,
A Political Mirror, p. 17.

23 Hey, Observations, pp. 51-52; cf. Happiness and Rights, p. 72.
consent 'so the particular circumstances of different cases will oblige you to recede more or less from that consent, and will of course justify various forms of government'.

It was, in Hey's view, as rational for the majority to obey the minority under certain circumstances as it was any other alternative scheme that utility would make necessary. Like Tucker, the thrust of Hey's argument was to show that the first departure from unanimity was of major theoretical consequence, for it changed 'intirely' 'the Foundation of the government, the Reasons and Ground on which it stands'.

According to Dunn, Locke's comments on the status of majorities in political choice were only 'a part of his formal analysis of the concept of political legitimacy' and did not constitute 'a proposal for the appropriate form of social organization'. It was precisely as a part of the conception of political legitimacy that Hey or Tucker discussed the consequences of adopting the principle of majority rule in political decisions. Hey explicitly related the problem of adopting any principle other than unanimity to the idea of utility. If he did not attack Locke, as Tucker did, it was simply because he made Locke a utilitarian.

Tucker, Hey, Lind, Shebbeare, Goodricke, and others thought that the place of the minority in political choice raised questions which, unless solved, would

24 Hey, Observations, p. 66.

25 Ibid.; also p. 61; see also Shebbeare, An Essay, p. 76.

26 Hey, Happiness and Rights, p. 72.

27 See Dunn, The Political Thought of John Locke, p. 129.

effectively undermine any conception of government based on the idea of moral agency. In diverse ways, they emphasised the beneficial effects of a good government. What remains to be seen is the attitude of the Lockeans to these arguments.

ii. The Lockean Counter-Attack.

The people whom Tucker described as Lockeans exhibited a remarkable indifference in Tucker's criticisms. Although, as it has been shown, his arguments were held also by others, the indifference of the Lockeans is striking in Tucker's case because of the nature and extent of his attack. Tucker had formally announced (several times) his intention to write and publish a total refutation of Locke's principles as he was firmly convinced that Locke was the dominant intellectual figure of the eighteenth century and the undisputed master of all subsequent republicans. When his promise was finally carried out, a massive work of more than four hundred pages was published, containing a formidable and explicit attack on Locke and his followers - the only to appear in the eighteenth century on such a scale. It is strange that such a work, appearing in an era which its author described as the reign of Lockean orthodoxy, was virtually ignored by the Lockeans, given the fact that in such a prolific period of pamphleteering as the eighteenth century, controversialists were keen to respond on occasions of much less consequence than the appearance of Tucker's work. The question is why the Lockeans reacted in the way they did. A highly plausible answer is that they thought that Tucker had mistaken their principles in such a way as to launch an irrelevant critique to the ideas they professed. Considering Tucker's

29 Tucker, A Series of Answers to Certain Popular Objections, pp. iii-iv.

30 Written at a theoretical level far above the average pamphlet of the time.
reception, Shelton, Tucker's biographer, has noted that although '[s]everal replies did appear', 'one is left with the general impression that the Treatise was either received unfavourably or ignored'. However, Shelton, himself, did not even consider them worth mentioning and he devoted just a few lines to the 'most notable' of the 'several replies', maintaining that it failed to address Tucker's 'legitimate questions'. The pamphlet mentioned by Shelton as the 'most notable' was Towers's Vindication of the Political Principles of Mr Locke. As we shall shortly see, in this work Towers (drawing on Priestley) made what can be described as a utilitarian defence of rights. From this angle he pointed to similarities between Locke's and Tucker's arguments. In Towers's mind Tucker had not raised at all such 'legitimate questions' as Shelton plausibly assumed.

The most serious attempt to defend the idea of moral agency and deal with the questions Tucker and others had raised was made by Cartwright. He did not accept that the conception of man as his own legislator conveyed wrong ideas because unanimity could not be achieved. He explained that this idea did not mean that every man had to represent himself personally or to have an exclusive representative of his own in the community. It only meant that every man had to have a vote for the representatives of the community:

Giving that vote they enjoy their right; and the person elected being

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31 See G. Shelton, Dean Tucker and Eighteenth-Century Thought, London 1981, p. 239. Another reply was by J. Ibbetson who in his Dissertation on the National Assemblies Under the Saxon and Norman Governments, (London 1781) added no more than four pages in a Postscript Addressed to the Dean of Glocester, where (pp. 33, 36) he argued that Tucker exaggerated the oppression of feudal aristocracy, and ignored the rights 'we at present enjoy' within the constitution through long prescription (therefore not natural rights in Tucker's sense).
truly and properly the representative of their community is as much the representative of those who did not vote for him as for those who did. Thus far, BUT NO FARTHER, extends virtual representation... 32

Tucker's question was why no further. However, such a concession is still remarkable when it is made by the man who objected to the misapplication of the term from 'Optics' to politics, and argued that the fiction of virtual representation would be harmless only when accompanied by a 'virtual taxation'. 33 Cartwright was ready to utilise the idea of virtual representation but only in order to account for the obedience owed to the decrees of the majority by the actual voters in the minority. That is, he confined it to the case his opponents regarded as the least defensible. For it had been argued that it could not be assumed that an actual voter was virtually represented by a delegate against whom he gave his actual and explicit disapproval. Cartwright, nevertheless, proposed a solution premised on a conception of moral agency derided by Tucker and others. It was inaccurate, he maintained, to say that a man in the minority was 'compelled' to submit to the will of the larger number. In every kind of society there was a 'compact' according to which 'the will of the many shall be a law to the whole'. The observance of such a law then becomes a moral obligation upon the mind of each member of the community, because it is the only way in which they can be justly enacted among free-agents. A moral obligation is not a deprivation of liberty; nor can it be called compulsion; because the mind, in its observance of it, is self-moved. So then it appears that every man having a vote in the election of Legislators is in a degree, and a very important degree his own legislator... 34

It is not difficult to trace the source of these ideas to Price's conception of

32 Cartwright, The Legislative Rights, p. 90.
33 Cartwright, Give us our Rights, pp. 12n, 17.
34 Cartwright, The Legislative Rights, pp. 92-93.
moral agency, by which Cartwright was deeply influenced. The argument here, of course, raises as many problems as it solves and is an attempt to transfer the level of justification one step further, so to render the conception of moral agency compatible with conformity to majority rule. An actual and explicit disapproval at the empirical level is overridden at a deeper level of mental experience. It justifies the principle which would apply in every case, so that one need not bother to consider the merits of a particular case. However, it is unlikely that the mind would be self-moved in the direction of assenting to the principle of majority as the only principle compatible with moral agency when it could perceive, for example, that the majority might put at risk one's religion. In such a case it is insufficient even to appeal to conditions guaranteeing that the boundaries between occasional majorities would be in constant flux. Cartwright's argument cannot show anything more than that a man is (or will be) his own legislator as far as he agrees with the majority (or will happen in the future to be in agreement with it), or that he is his own legislator as far as he 'promulgates' (that is to say consents) that the opinion of the majority will always be binding on him (this being the only rule he legislates upon himself and once for all).

Cartwright's justification of the principle of the majority was what the critics of the conception of moral agency (as applied to politics) would have expected to hear in order to claim that their account was vindicated. However, Cartwright's stance of defending majority rule in terms of the idea of moral agency was almost an exception. It is astonishing to imagine the reluctance of the 'Lockians' to grapple with the problem of justifying the binding force of the majority, given the extent of the attack

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35 This was another major argument Cartwright employed. Consider also Smith's argument made under the influence of Rousseau. See Rights of Citizens, p. 56; consider also Barlow, Advice to the Privileged Orders, Part I, pp. 73-74.
they received on that very point. Some of those who also addressed the issue, took the justification of the principle of majority rule for granted as the most evident thing in the world.\textsuperscript{36} Others regarded as a proof exactly what was asked from them to prove: 'When he will vouchsafe to shew us, how \textit{unanimity} can be drawn from large bodies of men; we will subscribe to his doctrine, that in the present use of it, \textit{consent} is a sound without meaning. Till then it must remain with the majority.'\textsuperscript{37} This very author was annoyed by the 'ministerial argument of a \textit{virtual representation}'\textsuperscript{38} and yet so far stretched the idea of consent as to maintain that in Britain every man 'must have \textit{consented} by his representatives' to the laws according to which one was punished or taxed.\textsuperscript{39} At the same time in his attempt to distinguish England and America he claimed that:

with respect to the people in England, those who have no voices for representatives, yet have lands, or, if not lands, occupancies, of some kind or other; and both lands and occupancies are represented in England.\textsuperscript{40}

\textsuperscript{36} 'As if every man did not know, that in all collective bodies, the determinations of the \textit{majority} of that body are always considered as the determination of the \textit{whole body}.' (C. Evans, \textit{A Letter to the Rev, Mr. John Wesley}, London 1775, p. 8; cf. \textit{A Reply to the Rev. Mr. Fletcher's Vindication}, Bristol n.d., p. 31); '...was placed on the British throne by a majority of only one deciding vote; and \textit{one was as good as a million}, for a majority includes a minority: Father Petre's ghost says, No.' (Bull, \textit{A Wolf in Sheep's Cloathing}, p. 14); '...if they are chosen by the \textit{unbiased} voices of a \textit{majority} of the \textit{state}, and \textit{subject} to their \textit{instructions}, liberty will be enjoyed in its \textit{highest} degree.' (Lofft, \textit{Elements of Universal Law}, p. 175 (he cites Price's \textit{Observations}); also Sharp, \textit{A Declaration of the People's Natural Right}, p. 9; S. Adams, \textit{An Oration}, p. 15.

\textsuperscript{37} Anon., \textit{Tyranny unmasked}, p. 68.

\textsuperscript{38} \textit{Ibid.}, p. 86.

\textsuperscript{39} \textit{Ibid.}, p. 67; cf. p. 62.

\textsuperscript{40} \textit{Ibid.}, p. 87.
One may reasonably ask: if this is not a description of virtual representation, what is it? At any rate, it is not at all different from what Burke, Tucker, or Johnson meant by that term. Another author of the same political persuasion was even more revealing:

To expect an unanimity of voices were ridiculous, and, therefore, the decision is to proceed from the majority, in consequence of which, the Law, **not weighing the dissent of a smaller part** of the People, supposes the greater part to have **virtually chosen** for the whole.\(^{41}\)

This author pointed out the impossibility of having all individuals assembled together and achieving their unanimous agreement, in the same way as Hey.\(^{42}\) However, he did not abandon the idea of consent which incredibly he extended in such a way as to say that there could be no doubt that an individual had consented to the law under which he was punished, because 'he dies by a law, to which either he, or his ancestors **consented**, either in person, or by a delegate'.\(^{43}\) From the point of view of the individual concerned his own actual consent, the actual consent of his predecessors, and the consent (of the majority) of the representatives of his predecessors were of equal justificatory force. Burke never asked for more - and many of his admirers did not even dare to ask that much.\(^{44}\) At any rate it is interesting to place such a view in the context of the argument widely used by radicals that the acts of the ancestors were not binding on succeeding generations. Another writer, in order to avoid the


\(^{42}\) 'It, therefore, was agreed, that a part, (and, out of that part, the Majority,) should choose for the rest...' (*Ibid.*, p. 56).


\(^{44}\) See e.g. Anon., *The Duties of Man in Connection with his Rights*, 2nd ed., London 1793, p. 17.
inferences Wesley derived from the critique of the principle of majority rule, opened
the way toward virtual representation by saying:

[I]t is by no Means necessary for every Individual to have a Vote at an
Election, in order to his being free, or properly represented. To suppose
this Necessity, will draw after it Consequences, which Mr. Wesley will
not allow - Consequences he would think severe; and such as our Laws
are totally ignorant of. If this were to be admitted, no Man could claim
the Benefit of the Law, who was not an Elector - The Electors alone
would be in a State of Freedom - and all others must be slaves.45

The author thought that it was absurd to say that those who had no right to vote
should not be protected by law. Because everybody enjoyed the protection of law, he
inferred that everybody should be regarded as having a share in its enactment, despite
the fact that he had postulated from the beginning that not every individual had a vote.
(The passage is also a representative example of an argument based on a confusion
between political and civil liberty.)

Considering the above arguments, it seems that their authors were more
concerned with the question of who said what than with what it was that was actually
said. At any rate they did not feel the need to explain why a moral agent should
regard as binding the decrees of the majority. Instead, the man who wrote the 'most
notable' pamphlet in response to Tucker's Treatise was amongst the most outspoken
advocates for the rights of the majority against the individual. In this pamphlet he
defended what he thought were the principles of Locke and his followers.46 The
contrast between Tucker and Towers is illuminating for they both assumed that the
English radicals followed Locke, yet a remarkably different picture of Lockean

45 Anon., A Full and Impartial Examination of the Rev. Mr. John Wesley's
Address, p. 5; cf. p. 8.

46 Contrast Tower's views with the summary of Lockian principles set forth by
Tucker in Four Letters, pp. 51-53.
principles emerged in Towers’s reply to Tucker.

Although Towers did not consider it necessary to defend ‘every particular phrase’ of Locke’s, he did not hide his admiration for the consistency and originality of his thought. Towers had no doubt that Locke ‘would have been pleased, if the general rights of representation had been more attended to’. After having attributed to Locke the view that a general representation was better than a partial one, he justified this position by claiming that a ‘general or universal representation’ provided a better security for the interests of the people than a ‘partial’ one. What was blatantly absent in Towers’s reply is any reference to the idea of moral agency, as if he did not realise that it was only on this basis that Tucker raised the theoretical objections shared by many others. Instead, he asserted the inherent legitimacy of the principle of majority rule, and continued by adopting expressions which certainly would frustrate people who could only see in these an abuse of language. He declared that ‘civil rights are certainly so far indefeasible, that no man can be deprived of them


48 Ibid., p. 74.

49 Ibid., pp. 13-14.

50 Ibid., pp. 16-17; consider also on what grounds Price is defended against Goodricke’s critique in Monthly Review (Vol. 55, 1776, p. 240). (Contrast, however, both with Towers, Peace and Reform against War and Corruption, pp. 98-99 where not even a general representation is required to achieve the end as far as men of property vote). Cf. T. Spence, The Meridian Sun of Liberty, London 1796, pp. 2-3.

51 ‘... the authority and consent of the majority...’ (Towers, A Vindication, p. 26); see also pp. 52, 53, 54, 96; Thoughts on the Commencement of a New Parliament, pp. 152-3.
but by his own act',\(^{52}\) and he told how literally he meant such expressions when he explained how we had to interpret Price's declaration that man was his own legislator\(^{53}\) (as well as Locke's sentiments on the matter). He claimed that when the majority decided on a tax the individual had no choice.\(^{54}\) Thus when 'it is said that taxes are *free-gifts*, it is not meant, that they are free-gifts, which every individual may either pay or decline as he thinks proper; but that they are the free-gifts of the majority, of the community at large, to the magistrate'.\(^{55}\) No reference to any conception of moral agency was made, and Tucker's critique of the justification of the principle on 'Lockian' grounds was ignored. Instead, the idea Towers set forth was that 'that system which will promote the happiness of the greatest number of individuals, appears to have a just claim to be considered as the best system'.\(^{56}\) On another occasion he was even more explicit:

> It is ... perfectly agreeable to the rules of virtue, and of justice, that the majority in any country, or of any community, should establish that mode of government, which they conceive to be best calculated to promote the general happiness; and *this is all* that is contended for by the advocates for the rights of men.\(^{57}\)

This is what Towers understood by 'natural rights' or 'RIGHTS OF MAN', 'one of

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\(^{52}\) Towers, *A Vindication*, p. 43.


\(^{54}\) Towers, *A Vindication*, p. 29.


\(^{56}\) Towers, *A Vindication*, p. 95, also p. 110; see also *A Letter to Dr. Samuel Johnson*, London 1775, pp. 56-57.

those expressive phrases, which are not easily altered for the better'.\textsuperscript{58} Plowden, one of the critics of the doctrine of natural rights, believed that many problems would have been avoided had other words than the 'epithet natural' been applied 'to these rights'.\textsuperscript{59} However, Priestley in his most outspoken work on natural rights underplayed the importance of the term 'natural',\textsuperscript{60} and a similar stance was adopted by many other writers as well. Thomas Day, who also spoke about 'the rights of nature',\textsuperscript{61} maintained that

\begin{quote}
there are certain claims, which, for want of a better name, we call rights, to which the human species has an indisputable title. To express myself in other words, 'There is a method of pursuing our own happiness in such a manner, that we may promote the general good at the same time; or, at least, not interfere with it.'\textsuperscript{62}
\end{quote}

This is reminiscent more of Hutcheson than Locke, and Day could also rephrase the 'general good' into the 'greatest possible degree of happiness'.\textsuperscript{63} Samuel Adams was equally explicit:

\begin{quote}
Political Right and Public Happiness are different Words for the same Idea. They who wander into metaphysical Labyrinths, or have recourse to original Contracts,\textsuperscript{64} to determine the Rights of Men, either impose on themselves or mean to delude others. Public Utility is the only
\end{quote}

\textsuperscript{58} \textit{Ibid.}, p. 154.

\textsuperscript{59} Plowden, \textit{Jura Anglorum}, pp. 29-30.

\textsuperscript{60} '...such advantages, or rights, as have been usually termed natural...' (Priestley, \textit{Letters to Burke}, p. 24).


\textsuperscript{62} \textit{Ibid.}, p. 15.

\textsuperscript{63} \textit{Ibid.}, p. 17; also p. 22.

\textsuperscript{64} He himself used, of course, the idea of an express social contract as applicable only to America (\textit{Ibid.}, p. 28).
certain Criterion.\textsuperscript{65} He claimed that the ‘Majority of the Members of any State, is the grand Standard by which everything relating to that State, must finally be determined’ and also that a generation could not resign its rights because it was ‘manifestly contrary to the good of the whole that it should be so’. This would have been a peculiar way of justifying the rights of each generation if the underlying assumption continued to be a God-given right at birth.\textsuperscript{66} All of these ideas were copied from Priestley.\textsuperscript{67} It was again to Priestley that Towers turned to show that Tucker's argument was unoriginal (and compatible with Locke's premises).\textsuperscript{68}

As to Dr. Tucker's \textit{Quasi Contract}, of which he seems so fond, and on which he descants so copiously, as if it were a new and important discovery, it seems to be nothing more, than a new term, or rather a new application of an old term, and appropriating it to a very common idea. Dr. Priestley has delivered a sentiment somewhat similar, but more just and comprehensive, when he observed, "that it must necessarily be understood, whether it be expressed or not, that all people live in society for their mutual advantage; so that \textit{the good and happiness} of the members, that is the \textit{majority of the members} of any state, is \textit{the great standard} by which every thing relating to that state \textit{must be finally determined}.\textsuperscript{69}"

Tucker believed that the Lockean actual contract was necessarily linked with

\textsuperscript{65} Adams, \textit{An Oration}, p. 13.

\textsuperscript{66} \textit{Ibid.}, p. 15.


\textsuperscript{68} Towers, \textit{A Vindication} pp. 67-8.

\textsuperscript{69} \textit{Ibid.}, p. 51. Not also his argument concerning the rights of each generation (pp. 42-43).
the conception of moral agency -no matter how the term was understood- and he thought it necessary to replace it with the idea of a quasi contract, a notion he associated with the public good. Towers, a leading Lockean himself, had no difficulty in admitting that the idea of the public good was at the heart of what Tucker described as an actual Lockean contract. In making this association Towers quoted Priestley's statement that the general happiness of the majority was the ultimate standard of political legitimacy.

iii. Utilitarianism and the Language of the Rights of Man.

One may be tempted to think that the reason why the Lockeans were so indifferent to Tucker's critique was that the doctrine of natural rights was not conceived by its exponents in contrast with the public good, because both ideas for various reasons were closely connected. Perhaps Tucker had failed to appreciate the extent to which the language of the rights of man was permeated by utilitarianism. In the same passage in which Priestley spoke of 'natural' and even 'inalienable' rights, he claimed that they were 'founded on a regard to the general good'. Hutcheson had grounded rights on a tendency to promote (or at least to be consistent with) the 'publick good' or 'the general good' or the 'general happiness' or the 'general good, which must result from the happiness of individuals'. This idea had acquired such an appeal that even Price -the most ardent and influential advocate for the notion

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moral agency- acknowledged that:

though I cannot allow public good to be the sole original of justice, yet undoubtedly, it has great influence upon it, and is one important ground of many of its maxims. It gives a very considerable force to the rights of men, and, in some cases, entirely creates them.  

Price had profound theoretical objections to utilitarianism as a moral theory, and he even once claimed that the formula ‘the greatest sum of happiness’ was as inconceivable ‘as the longest of all durations, or the largest of all numbers’.  

However, in the passage quoted above the ‘public good’ was used with the same meaning as ‘general utility’ and ‘publick happiness’ in the context of discussing the merits and defects of utilitarianism. The specification is necessary as one might plausibly argue that the idea of public good was not used with a utilitarian connotation but only with a republican one, as indicative of the ‘RES PUBLICA, the public affairs, or the public good; or literally translated, the public thing’. However such

325-6, 329-31, 339-40.


74 See his views in Review, pp. 63, 71, 74-75, 80, 82, 105-6, 133-4, 138-40, 152, 158-62, 186, 187n.

75 Price, On Providence, Four Dissertations, p. 120n.

76 Price, Review, pp. 159, 161.

77 Paine, Rights of Man, p. 178; see also Dissertations on Government, Writings, 2:137. Cf.: ‘...the term republic, public thing, public good or commonwealth is more applicable to a well-constituted monarchy, than to any democracy...’ (Molloy, An Appeal from a Man in a State of Civil Society, 175); compare: ‘WHERE THE PEOPLE GOVERNS ITS OWN AFFAIRS WHICH IS CALLED A DEMOCRACY OR COMMON-WEALTH’ with ‘...common-wealth - for by that name I define every just government, its end being the welfare of the community and the means proportioned to the end...’ (Lofft, Elements on Universal Law, pp. 113, lix); ‘...is better secured in a limited monarchy, than in any republican form of government whatever.’ (Priestley, A View of the Principles and Conduct of the Protestant Dissenters, Works, 22:359; ‘...her Constitution, rightly understood, is truly republican.
references obtain in a different context of discussion (that of defining and redefining forms of government). On the other hand, since terms such as 'public good' or 'general happiness', and references to a computation of costs and advantages, were widely employed, it is not easy to distinguish adequately the conceptions involved.78

It is not unusual (both among conservatives and radicals) to find utilitarianism in a natural rights rhetoric. Brown who was not a Lockean, spoke about 'inherent and unalienable rights of human nature',79 and his essay was about the rights that resulted from the natural equality of man. Yet he similarly defined these rights in terms of their tendency to promote the 'public good' or the 'general welfare' or the 'universal happiness' or the 'greatest sum of general felicity'.80 For Mackintosh 'Justice is expediency', 'all rights natural as well as civil arise from expediency', and he used

He who shall deny this will have to maintain, that the objects of that Constitution are not to uphold a public interest...’ (J. Cartwright, The Constitutional Defence of England Internal and External, London 1796, p. 144); 'Indeed every lawful government is necessarily a REPUBLIC; for no other can have the public interest for its object...' ([D. Williams], Lessons to a Young Prince by an Old Statesman, London 1791, p. 23; cf. The Philosopher, 1st Conv. Part I, pp. 19-20, Part III, pp. 27-28; Towers, A Vindication, pp. 84-86; J. Allen, Oration Upon the Beauties of Liberty, Wilmington 1775, pp. 19-20; R. Nares, Man's Best Right, London 1793, p. 37.

78 Consider e.g. the way in which 'utility' and 'public good' is used in Tatham (Letters to Burke on Politics, pp. 22, 40, 63, 71, 87, 103) or in Dawes (An Essay on Intellectual Liberty, p. 58. Or consider Priestley's statement that every government in its 'original principles' is 'an equal republic', (First Principles of Government, p. 40) given the fact that the conception of public good or general happiness in a utilitarian meaning dominated his account of the original principles.


the term synonymously to ‘utility’ and ‘general interest’, and could also speak about ‘natural right and general happiness’. Boothby, who was a moderate conservative and not a moderate radical like Mackintosh, merely dropped the word ‘natural’ from rights, which, as in Mackintosh’s version, were grounded on the ‘laws for the public utility’, or, in other words, on the laws pursuing ‘the general sum of human happiness’. He also claimed, like Priestley, that the best government was that in which was ‘the general sum of general happiness the most increased’. Thelwall who wrote a book on *The Rights of Nature*, contended that landed property did not rest on the ‘metaphysical and abstract niceties of original right’ but upon the solid foundation of ‘general expediency’. Even in the very context in which he delineated the derivation of rights from man’s natural faculties (that is, natural rights proper) he did not miss the opportunity to claim that ‘expediency is his rule of right’. Such

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83 Boothby, *Observations on Mr. Paine’s Rights of Man*, pp. 164, 263, 211.


a renowned and influential utilitarian as Paley did not invoke different ideas than Towers when he said that the ‘happiness of the majority is binding upon the whole’ and that the interest of the whole binds the part. If Paley was considered a utilitarian there is no reason why Towers should not be considered in the same light. Our problem is not to elucidate the meaning of utilitarianism but to show that the doctrine of the rights of man was permeated by utilitarian ideas. Everybody admitted that the end of government was the happiness of the people. There are discernible degrees in which the term ‘happiness’ was enriched with additional adjectives in successive stages of its evolution as a utilitarian principle. The advocates of the rights of man seem to have been following that development. On the other hand, not many people, whether utilitarians or not, disputed the proposition that government was a trust of some sort. There was not much contrast between the rights of man arguments and utilitarianism in this respect, although there was some difference between radicals and conservatives. The contrast between the advocates of the rights of man and their opponents was not about the justification or foundation of rights but about the critical question of who (the people or their governors) had the normative power to make the ultimate judgment concerning the betrayal of the trust, or the failure to provide for

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87 Ibid., 2:149.

the happiness of the people. To be a right holder meant only to be in a position to make this kind of judgement.

In an imaginary dialogue, written by John Martin, the natural rights exponent was called Americus. His interlocutor Britanicus asked him: ‘Who are to judge where any act which has the general stamp of legal authority, be unwise, oppressive or unjust? Who! who are to judge of this matter?’ Americus replied that ‘every man ... is to judge for himself’. In an exchange between Paley and Gisborne, the utilitarian was Paley while Gisborne upheld the doctrine of natural rights and stressed the objectivity of natural law. Paley justified resistance on the probability that the ensuing benefits would outweigh the danger involved in the enterprise. He continued: ‘But who shall judge this? We answer, "Every man for himself."’ That point was utilised by Gisborne to challenge Paley on the grounds that he first based morality and justice on utility, and ‘at the same time constitute[d] the agent the sole judge of that utility’. Paley would have defended his position by saying that utility, or in his terminology expediency, was like any other rule and ‘every rule that can be propounded upon the subject ... must in the application depend upon private judgment’.

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89 Martin, *Familiar Dialogues between Americus and Britanicus*, p. 12.


did not say anything substantially different. For he claimed that 'it is the duty of the subjects to exert that right, whenever they are persuaded that the purposes of their being ... will not be answered by forbearance as effectually as by resistance'. It is difficult to say where the line between prudence and utility ought to be drawn. However, the calculation of weighing advantages against risks has been seen as a manifestation of a commitment to utilitarianism. And if this is the case, then it is hard to find justification of revolution which is not a utilitarian one. There were no differences here between Tucker and Priestley, as there were no differences between Paley and Gisborne despite Gisborne's invectives against Paley's utilitarianism.

Of course, there are several other ways in which the contrast between radicals and conservatives could be read as a difference between natural rights and utilitarianism. Utility and expediency had often the meaning of prudence, convenience, or the enjoyment of various social advantages. From this point of view a connection with the establishment was highly plausible. Burke might be

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regarded as a utilitarian in this sense, although several commentators have argued that his commitment to utilitarianism went much further than this. A non-hedonistic interpretation of happiness was likely also to favour a conservative brand of utilitarianism, as Brown's, or Hey's position clearly demonstrates.

Nevertheless, Tucker's contrast between titles and the public good is closer to what is perceived in modern philosophical discourse as a contrast between moral rights and utilitarianism, where rights have been increasingly associated with claims or entitlements capable of overriding considerations based on the general welfare or the public good. This dimension clearly obtained in the eighteenth century. Capel Lofft could go as far as to maintain that the consent of the whole society could not put an 'innocent man to death, even for the preservation of the society'. But it was not arguments like this that permeated political writing. Even Lofft could also

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98 See Barlow's comments on Burke (as well as his terminology), *Advice to the Privileged Orders*, Part I, pp. 12, 15. Similar positions could be arrived at by using more conspicuous utilitarian calculations. See, for example, W. Coxe, *A Letter to the Rev. Richard Price*, London 1790, p. 43.


102 e.g. Dworkin, *Taking Rights Seriously*, pp. 91, 191, 269.

maintain that 'Natural right willeth that no opposition be made between the good of each particular, and the good of the whole.' This is because apart from religious liberty and free speech, the controversy was not about protecting the individual against the society, but instead about protecting the social whole against unscrupulous individuals. For radicals this individual could be the king, while in the narratives of conservatives it was usually the isolated savage or the selfish man. Thus as easily as Tucker could claim that he would never 'consider, the Interests of Individuals when they are sacrificing the Public Good', so Northcote (another Lockean mentioned by Tucker) could claim that the 'rights of a community cannot be property to individuals' so that it is not 'unjust ... in regard of the public welfare ... to deprive individuals of privileges' which could be detrimental to the community.

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104 Lofft, *Elements of Universal Law*, p. 18; cf. p. 10. One of the most self-evident truths with explicit political application by authors of different persuasions was that the whole is greater than the part, or that a part is never greater than the whole. See Oswald, *Review on the Constitution of Great Britain*, pp. 23-24; Rous, *Thoughts on Government*, Postscript, p. 73; Williams, *The Philosopher*, 1st Conv. Part I, p. 46; *Lessons to a Young Prince*, p. 24; *Lectures on Political Principles*, p. 133; Stewart, *The Total Refutation and Political Overthrow of Dr. Price*, pp. 12-13; W.D. *A Second Answer to Mr. John Wesley*, London 1775, pp. 10-11.


107 '... rights (that is to say, particular interests)...' (Thelwall, *The Rights of Nature*, Part II, p. 45; cf: 'The consent and vote of numbers...' 'Resolved, That we will give our votes, or interest...' (Lewelyn, *An Appeal*, Part II, p. 12; Hulme, *An Historical Essay*, pp. 163-4).


Two combatants fought each other employing the same idea which Priestley had clearly enunciated, namely that 'all claims of individuals inconsistent with the public good are absolutely null and void'.

Let us sum up the argument put forward in the last two chapters. Josiah Tucker has been taken as the starting point for the exploration of aspects of a sustained attack on the conception of natural rights. The main reason is that his arguments give rise to interesting questions about the character of the doctrine of natural rights as it was understood in the late eighteenth century. Tucker's name is connected with the most virulent endeavour to dethrone Locke from his dominant position in the eighteenth-century political thought. He assumed that the English radicalism had its roots in Locke, but different interpretations of Locke came to the surface in the exchange between Tucker and his antagonists. Tucker projected a uniform picture of the doctrine of natural rights premised on the ideas of personality and moral agency, and sought to undermine such a conception. He did so by bringing out the inevitable contradictions and inconsistencies attending the application of the notion of moral agency to politics. What underlay his critique was his commitment to the idea of the public good, which he conceived in contradistinction to individual entitlements. This contrast made him a staunch opponent of natural rights (and not particularly friendly to prescriptive rights). Considering the nature of his critique there can be no doubt that it was inspired by Price. It was designed to meet Price's arguments, and this is

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reflected in the fact that the major features of Tucker's critique were also the topics repeatedly discussed in almost all the replies to Price. The Lockeans' reaction to Tucker's arguments shows that many of them did not take the idea of moral agency as seriously as Tucker had imagined. Tucker's ambitious critique did not make an impression on the minds of those against whom it was directed. That was because the language of natural rights had been permeated by utilitarian ideas, and Tucker drew on such ideas himself to refute his opponents.
VI.- THE CONNECTION BETWEEN RELIGION AND POLITICS: THE PROBLEM.

In the contemporary historiography of the 18th century the contribution of Nonconformity in the articulation of Anglo-American political radicalism is a recurring topic.¹ It has been widely assumed that the exclusion of the Dissenters from public offices oriented them toward the adoption of a radical position in politics. The Dissenters were 'freer from the traditional pattern of culture' and because they 'were excluded from all branches of civil government, it was natural that they should be more critical of it'.² This is a convincing argument provided the premises are true. Indeed, writers who dispute the Dissenters' radical credentials do so precisely because they challenge the view that the Dissenters were in fact excluded from civil posts.³ However, intellectual historians have also contended something different, seeming to imply an identity or similarity between political and religious principles. Thus, Donelly claimed:

The leading intellectuals within Rational Dissent, men like Joseph Priestley and Richard Price, were, by extension of their theological stance to politics, strong advocates of religious toleration, the expansion

of civil liberties, the abolition of slavery and the extension of the franchise.⁴

Cookson believed that their 'rational Christianity and their liberalism were ideological solidarities,'⁵ and Mark Philp argued that

It does not take a great deal of imagination to see that the demands for the full and free exercise of private judgement, etc., could and would be extended. What holds true for rational religion also holds true for science, morality and politics.⁶

The argument that the Dissenters tended to extend the right to private judgment from religion to politics alludes to the fact that the same theoretical construction employed in the defence of toleration or religious liberty was also used to defend civil or political liberty.⁷ The 'theory of natural rights is Protestantism transferred to the region of worldly affairs'⁸ and this was precisely what Josiah Tucker affirmed about


⁶ Philp, 'Rational Religion and Political Radicalism in the 1790s', Godwin's Political Justice, pp. 19-34; see also Stafford, 'Dissenting Religion Translated into Politics: Godwin's Political Justice', pp. 280, 291-3; W.R.D. Jones in describing the 1790s admitted that it was 'an age far more conscious of an essential interconnection between political and religious liberty.'(David Williams: The Anvil and the Hammer, Cardiff 1986, p. 114); also J.G.A Pocock, 'Radical Criticisms of the Whig Order in the Age between Revolutions', in M. Jacob & J. Jacob (eds.) The Origins of Anglo-American Radicalism, London 1984. From a different point of view, but having the same connection in mind, I. Kramnick asserted that Priestley's belief in the non-interfering state 'flowed quite easily from his commitment to religious freedom, for there was a close relationship in the dissenting world view between religious dogma and the political and economic concerns of the bourgeoisie.'('Religion and Radicalism: English Political Theory in the Age of Revolution', Political Theory, Vol. 5, 1977, p. 511).

⁷ Stevenson, Letters in Answer to Dr. Price's two Pamphlets, pp. 57-58; Scurlock, Thoughts on the Influence of Religion on Civil Government, p. 55.

⁸ D.G. Ritchie, Natural Rights, p. 13.
the Lockeans:

...the Lockian Principle of the indefeasible Right of private Judgment.
... BUT, alas! he extended those Ideas, which were true only in what concerns Religion, to Matters of a mere civil Nature, and even to the Origin of civil Government Itself.  

Cooper seemed to make a similar observation:

So intimately connected, are your RELIGIOUS, and POLITICAL PRINCIPLES, and so close is the ALLIANCE, which you conceive to exist, between RELIGION and CIVIL GOVERNMENT; and consequently therefore, between CIVIL and RELIGIOUS ESTABLISHMENTS.

Neither Tucker nor Cooper wanted to avow that religion should not be connected with civil government. Tucker contended that religion and civil government 'cannot be completely established without the friendly Assistance and helping Hand of the other' and Cooper maintained that 'NOTHING, can more EFFECTUALLY EVINCE the IMPORTANCE and NECESSITY of RELIGION, to the SUPPORT of CIVIL GOVERNMENT'. All they wanted to say was that although there should

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10 Cooper, The First Principles, pp. 123-4; ‘His [Priestley’s] principles both religious and political bear a near resemblance.’ (Strictures on Religious Opinions, p. 142n); ‘Your general design appears to be, the disjoining of church and state, and to throw them into a perfect independence. This is folly illustrated in your notions of religion, as the basis of civil society.’ (Anon., An Answer to Dr. Priestley’s Letters to Edmund Burke, London 1791, p. 61); ‘Yet political and religious tenets have in general been so strongly bound together.’ (Anon., Cursory Remarks on Dr. Priestley’s Letters to Mr. Burke, London 1791, p. 16, cf. pp. 13, 18-19, 66-67); also Dawes, The Nature and Extent of Supreme Power, London 1783, p. 17n, 24; An Essay on Intellectual Liberty, pp. 45-46, 75, 76.

11 Tucker, Fab Tracts together with Two Sermons, pp. 9-10; ‘...nothing solid can be formed in morality or politics, that has not true Religion for its basis.’ (Nares, Principles of Government, p. x).

12 Cooper, First Principles, p. 133. The connection between religion and politics was stronger in conservative writers than in the Dissenters: ‘He is the best Citizen
always be a connection between religion and politics, the particular connection established by the Dissenters was politically pernicious and theoretically untenable. The connection, of which Tucker and Cooper disapproved, had to do with the extension of the right to private judgment from religion to civil government, while the sort of connection of which they approved was that there should be a religious establishment in the state. However, this distinction was less clear-cut. According to Tucker, the existence of a civil establishment in religion was perfectly compatible with the exercise of the right to private judgment in religion. However, the Dissenters sought to attack the existence of civil establishment as incompatible with the right to private judgment. Now the question is whether the extension of the right of private judgement to politics refers to the critique of a civil establishment in religion or goes to the very foundation of civil government. This question is difficult to answer, for it depends on how strong the link was intended between religion, the religious establishment and the state. For example, when religion was identified with church hierarchy, an attack on the religious establishment was by itself taken as a sign of irreligion, and was conceived as similar to or leading to an attack on civil government. Thus Fletcher contended that 'the transition from ecclesiastical to civil antinomianism, is easy and obvious: for, as he that reverences the law of God, will naturally reverence the commandments of the king: so he that thinks himself free from the law of the Lord, will hardly think himself bound by the statutes of his sovereign'.

Similarly John Brown inveighed against 'Irreligion' on the grounds that 'National who is the best Christian...’ (Anon., The Duties of Man in Connection with his Rights, p. 47); 'Christ ... often reasoned on political subjects' and St Paul or St Peter 'was that far a politician'. (Olivers, A Full Defence of the Rev. John Wesley, p. 4).

13 Fletcher, A Vindication of the Rev. Mr. Wesley, p. 46.
Virtue never was maintained, but by national Religion' concluding that whoever 'shakes the essential Principles of Religion, undermines the Virtue of his Fellow - Subjects' and should be treated as an 'Enemy of his Country'. On the other hand, the Dissenters prolonged similar ambiguities. Wollaston maintained that the 'Church of England', the 'national Church ... or the State' were 'the same', while an anonymous Dissenter, accused the friends of the establishment for their constant practice to 'make civil government and religious institutions appear to be one and the same thing'. Further, the Dissenters or their supporters often wrote in a manner that seemed to vindicate Tucker's remark quote above. Samuel Adams said 'Our Fore - Fathers threw off the Yoke of Popery in Religion, for you is reserved the honour of levelling the popery of Politicks'. Here the argument indicates that what holds true about religion holds true about civil government, and the utterance was made in the context of advocating political change. However, similar arguments were used against the civil establishment of religion. Robinson claimed that 'PRELACY as a system of governing is unsound at heart - IN all good governments - THE people are the origin of power -'. The attack here was on the civil establishment of religion and not on

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14 J. Brown, Thoughts on Civil Liberty, pp. 153-4.


16 S. Adams, An Oration, p. 2; 'This day, I trust, the reign of political protestantism will commence...' (Ibid., p. 3).

17 R. Robinson, A Plan of Lectures on the Principles of Nonconformity, Cambridge 1778, p. 10; 'PRELACY is naturally friendly to popery and tyranny...' (Ibid., p. 14); cf: 'I hope this kingdom will never engage in establishing an absolute monarchy of faith.' (E. Radcliff, A Sermon Preached to a Congregation of Protestant Dissenters, London 1772, p. 23); '...they refused allegiance to the Pope, only to Place the civil Magistrate in the Throne of the Christ...' (S. Adams, An Oration, p. 34); '...so far as
civil government. Further, the reasoning proceeded in reverse order from the way Tucker suggested. Robinson started by taking for granted some indispensable truths about politics and then applied them to religious matters. It is difficult to decide what actually was meant by an extension of religious principles to politics. Did the similarity between the religious and political principles of the Dissenters refer to an inherent link between their religious and political principles or as a group of men did they happen to uphold certain religious principles - for reasons other than their religious tenets?\(^{18}\)

Delolme, who spoke of a 'singular concurrence'\(^{19}\) in England of the love of political and religious liberty, proposed a sociological explanation of this concurrence.\(^{20}\) Paley felt the difficulty of locating any inherent link between religious and political principles, and instead he spoke of a contingent relationship between religious commitments and certain constitutional principles. He said that the magistrate aimed at disarming 'those political principles, which, however independent they are peaceable, they deviate from the spirit of popery.' (Stewart, The Total Refutation and Political Overthrow of Doctor Price, p. 62).

\(^{18}\) Note the ambivalence in Robinson: 'MODERN nonconformity naturally leads us to study government. - SIDNEY - LOCKE - MONTESQUIEU - BECCARIA - teach the notions - WHICH we hold - of government - ALL think the people the origin of power...' (A Plan of Lectures, p. 49).

\(^{19}\) 'The notions of religion, by a singular concurrence, united with the love of liberty; the same spirit which had made an attack on the established faith, now directed itself to politics...' (J.L. Delolme, The Constitution of England, London 1810, pp. 48-49); Rous makes the same connection but in the reverse order: 'Above all, those men first learnt to apply their reasoning on civil to religious liberty...' (A Letter to Burke, p. 41).

\(^{20}\) See Delolme, The Constitution of England, p. 104n. Contrast, however, with what he says about the ultimate cause of English liberty (in p. 212) and place it in the context of the distinction between political liberty and the liberty of the subject.
[might] be of any article of religious faith, the members of that communion [were] found in fact to hold.\textsuperscript{21} George Croft curiously connected the Dissenters' dangerous political principles and actions with questions concerning religious dogma, such as the doctrine of Trinity and the divinity of Jesus. However, it became clear in the course of his argument that the problem was not with the doctrine of Trinity but with the spirit of free inquiry and its 'tendency to unhang the mind, to introduce the general uncertainty, instability and absurdity of opinion ... which would introduce new principles, such as neither we nor our fathers ever admitted'.\textsuperscript{22} On the other hand, 'religious truth' was strongly linked to civil liberty. But again what was meant by religious truth was a general spirit of inquiry into political matters.\textsuperscript{23}

Among the Dissenters, Priestley above all would have dismissed the imputation that the Dissenters extended their religious principles to matters of civil government. Priestley claimed that so 'long as we continue Dissenters, it is hardly possible that we should be other than friends to civil liberty'.\textsuperscript{24} Such an observation has been taken to imply an inherent link between political and religious liberty which formed part of the Dissenters' self-understanding.\textsuperscript{25} Priestley, however, devoted much space in his


\textsuperscript{22} G. Croft, \textit{The Test Laws Defended}, Birmingham 1790, pp. xiii-xiv, xi, 33.


\textsuperscript{24} Priestley, \textit{A Free Address to Protestant Dissenters as such}, \textit{Works}, 22:263; \textit{A Free Address to Protestant Dissenters on the Subject of Church Discipline}, \textit{Ibid.}, 21:445.

writings to emphasize that there was no such an inherent link. He sought to make clear that the Dissenters' opposition to the 'ecclesiastics' should not be taken as evidence for arguing that they were advocating the freedom from all constraints of civil law. 26 ‘If I be asked what are our principles of civil government, I answer, that, as Dissenters, we have no peculia[sic] principles of civil government at all’. Priestley went on by attributing their love for freedom to their character as 'Englishmen', 27 and to the fact that they belonged to the middle class, a class with no connection with the court, and consequently more 'apprehensive of any approach towards arbitrary power'. 28 Priestley went further: in considering the situation of the Swiss Cantons, Denmark and Sweden, he contended that historical evidence showed that 'the modes of civil and ecclesiastical government had by no means so close a connection as some have imagined'. 29 The Protestants sometimes grew rebellious, but 'their resistance to government is not to be ascribed to the spirit of their religion, but to their spirit as men'. 30 The only thing that united the Dissenters with each other was their opposition


to the established church. Similar views were expressed by Robert Hall who emphasized the Dissenters' extensive religious disagreements. A Unitarian, he claimed, was one who believed that Christ had no existence before his earthly birth, while a Trinitarian was one who believed that Christ existed from all eternity. 'What possible connection', he asked, could one 'discern between these opinions and the subject of government?' The Dissenters' 'zeal' for freedom, could 'not be imputed to any alliance between their religious and political opinions, but to the conduct natural to a minority' within a community. From the political point of view, Edwards could not see any difference between the Dissenters and other Englishmen, and Lord Somerville praised the 'Dissenters not as Dissenters; but as persons of principle who revere the authority of conscience'.

It seems that the argument concerning the extension of the right to private judgment from religion to politics would probably follow from Price's exposition

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31 'It cannot be expected that the Dissenters in England should be one uniform set of men, since, as Dissenters, they agree in nothing but in dissenting from the doctrines and discipline of the Established Church' 'Besides, it is wrong to consider the Dissenters as one body. They have nothing necessarily in common, but their claim to worship God according to the dictates of their own consciences, and those consciences being the consciences of different men, dictate very different things...' (Priestley, A View of the Principles, and A Free Address to Protestant Dissenters as such. Works, 22:341, 294; cf. A Letter to a Layman, Ibid., 21:34).

32 R. Hall, An Apology for the Freedom of the Press, and for General Liberty, p. 79; Review of an Apology ... with Mr. Hall's Reply, Leicester 1822, p. 9.

33 Hall, Christianity Consistent with the Love of Freedom, pp. 56, 16-8; also pp. 7-8, 61.


35 For example Donnelly says about the Rational Dissenters their 'basic idea of a reasonable Christianity required that Man be an entirely free agent. In this respect
but definitely not from Priestley’s. And even in Price the common ground for applying the right of private judgement to religion and politics is his conception of moral agency, which has nothing to do with his belonging to a certain religious denomination.

It is worth considering in this respect how broadly the term ‘Dissenter’ must be understood in relation to the connection between their religious and political principles. Although Philp spoke about the Rational Dissenters, Dickinson, who made a similar claim, produced a list which included in the Dissenters’ circles David Williams and Thomas Paine. Paine was a Quaker but ‘Methodists and Quakers ... were not usually regarded as Dissenters in the eighteenth century.’Williams, on the other hand, was highly critical of the Dissenters, and his virulent remarks on their principles and conduct overlapped with essential features of the critique launched against them by the adherents of the Anglican Church, such as Tucker. Williams, a radical in politics, sought precisely to break the widely assumed link between the Dissenters and liberty.

In questions respecting liberty, the DISSENTERS are always distinguished: but in the author’s opinion, with no advantage to its interest. Where the forms of ecclesiastical government are retained

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Towers was the disciple of his mentor Richard Price who had engaged in a friendly exchange with Priestley on this matter in 1778’ (‘Joseph Towers and the Collapse of Rational Dissent’, p. 36). It might be said that Priestley’s idea of a rational Christianity did not require that man be a free agent in Price’s sense, but in Hobbes’s sense.


among the Dissenters, it is more unfriendly to liberty, and more malignantly oppressive, than that of the established church. The bold sects that have seceded from the general body, are in a state of anarchy; and the opinions of their leaders, prove nothing respecting the general body. It is justly apprehended, if the real friends of political liberty were to support the Dissenters, or to suffer them to take the lead in the reform of a vicious constitution, they would only substitute one evil for another, the TREACHEROUS, GLOOMY, AND ODIOUS DESPOTISM of puritanic oligarchy, for the REGULATED AND MODERATE OPPRESSION of the present establishment. It has been alleged, that the most distinguished writers among the Dissenters, pleaded the cause of liberty during the American war. So did Mr. Edmund Burke...

What is more important, perhaps, is that David Williams was a good example of a Dissenter who not only did not extend the right of private judgement to politics, but explicitly and emphatically objected to the possibility of such an extension as it was understood by Tucker. Williams's conception of 'intellectual liberty' through which, according to Dickinson, the Dissenters were advised to extend their arguments on toleration to political reform, was empty of theological premises, and in this sense was different from the right of conscience as was conceived by Kippis. If Williams's idea of intellectual liberty had an impact on the secularization of the conception of rights, that was not because he projected theological premises to political questions, but because his conception of intellectual liberty was from the start

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38 Williams, Lessons to a Young Prince, pp. 168-9; 'But the dissenters, as a body, have never been friends to the freedom of the human mind.' (D. Williams, The Nature and Extent of Intellectual Liberty, London 1779, p. 3n); '...they are not as men ... greater friends to religious improvements than other people...' ([D. Williams], Essays on Public Worship, Patriotism and Projects of Reformation, London, 1773, p. 48); also The Philosopher, Ist Conv., Part III, pp. 27-28; [D. Williams], A Letter to the Body of Protestant Dissenters, and to Protestant Ministers of all Denominations, London 1777, pp. 2, 5, 13, 15-16, 22, 40-41, 23, 31-32.


40 See Dickinson, Ibid.
constructed in purely secular terms. Williams placed his emphasis on the natural characteristics of man, and furthermore, regarded the good of the community as the ultimate justification of even intellectual rights. He did not speak of 'reason' with the reverence of Price, and he grounded the right to political participation on the notion of 'sensibility', a term betraying the utilitarian outlook of his thought. In contrast, it was the account of the Anglican Granville Sharp (of whose principles Price had 'so high an opinion') which bore close resemblance to the arguments of the Dissenter Richard Price. Sharp drew on theological premises to defend the right of private judgment in politics, while he did not regard the subscription to articles of faith as incompatible with liberty of conscience, of which he claimed to have been an ardent supporter. The same stance with respect to religious conscience and the establishment was adopted by John Saint John, who unlike Sharp, was one of the most virulent critics of rights to political participation propagated by Paine and his followers. Furthermore, William Lewelyn is a very good example of a Dissenting minister who in his writings expressed political ideas which were more conservative than those enunciated even by Edward Tatham.

The emphasis, on religious belief as a source of political argument and

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41 'We acquire the power of distinguishing virtue and vice, as we do that of separating wholesome and unwholesome food...' (Williams, *An Apology for Professing the Religion of Nature*, p. 21).

42 'To Granville Sharp, March 13 1780', Price, *Correspondence*, 2:60.

43 Sharp, *A Tract on the Law of Nature*, pp. 210-11n. Similarly Rous, although he had more advanced views on toleration than Sharp, was a 'churchman and friend to establishment'. See *A Letter to Burke*, p. 43.


inspiration tends to underestimate the importance of other sources of secular argument derived from the utilitarian or social contract tradition, and fails to account for both similarities and differences across the division between religious sects. It also fails to account for the different political affiliations of the Dissenters. It seems, further, that the very term religion has been given a quite broad and expanded signification, so that differences in moral argument have been seen as religious differences.

Throughout the writings of the Dissenters, religious and civil liberty went hand in hand. Because a frequent expression had been 'the cause of religious and civil liberty', we should consider what sort of relationship was seen to exist between religious and civil liberty. When the Dissenters linked religious and civil liberty, they referred to different things partly because the context of the argument was different and partly because in different contexts the term 'civil liberty' acquired a different signification. It is instructive in this respect to see how Bonwick described the connection. He held that Priestley's distinction between political and civil liberty was 'widely employed' (although, we might add, often only in name) and continued:

Most also acknowledged religious freedom as a third form of liberty. This, was a matter of profound concern for the radicals as many were Dissenters. It tended to overlap with political and civil liberty, but commonly was treated as distinct from civil liberty, which in turn

\[46\] e.g. Clark, *English Society 1688-1832*, pp. 42-58.

\[47\] Bonwick, 'English Dissenters and the American Revolution', pp. 90-91. Bradley asks: 'What is it, precisely, that moves one man to active support of reform, while his brother, holding doctrinally identical beliefs, remains quietistic?' (Bradley, 'Whigs and Nonconformists', p. 9 note 30) and concludes that 'Leading loyalist Dissenters illustrate the fact that there is no necessary connection between religious nonconformity and political radicalism.' (Religion, Revolution and English Radicalism, p. 124). Similarly Stromberg asserts that 'between religious radicalism and socio-political radicalism there is no necessary connection', R.N. Stromberg, *Religious Liberalism in Eighteenth-Century England*, Oxford 1953, p. 156.
was often held to include political liberty

It is this issue of a remarkable confusion over the relations between religious, civil, and political liberty that should be addressed. When Priestley, and many others, asserted that religious liberty should be enjoyed on the same grounds as civil liberty, what he had in mind was that religious liberty required the security assigned to any civil right. He only summarised the widely accepted view that religious liberty should imply a 'power of doing that by law which we now do by connivance'. It makes no difference if Priestley or Williams occasionally considered connivance and the liberal spirit of the time as a sufficient guarantee for religious liberty. A man may be enjoying a great deal of freedom; however, to the extent that his enjoyment is left to the conscientious discretion of others, he has no right to that which he in fact enjoys.

Religious liberty is truly a part of civil liberty in this sense. However, it seems incoherent to apply analogously arguments in defence of religious liberty to the domain of political participation. There is no logical continuity between extensive toleration or abolition of religious establishments, and an extensive political participation. A demand for toleration is a demand for bringing into existence a civil right, in the sense of creating a protected and inviolable space around the individual.

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48 Bonwick, English Radicals and the American Revolution, p. 17.

The demand is merely a way of separating one's own, which in this case is a sphere of religious activity. A labour theory of rights plays exactly the same role with respect to possessions, as the conscientious relationship with God plays with respect to religious activities. It does not make much difference in this sense that religious activities are described in terms of duty. The term highlights the importance of the subject for the individual. It would be meaningless if applied to the atheist, who yet was defended on the same ground of conscientious commitment. 'Mr. Locke was staggered at the thought of tolerating Atheism' but Priestley was not. The Papist, in his view, discharged his duties to the Antichrist and not to God, but this did not change the fact that he had an equal claim to liberty in matters of religion.

The theological assumption highlighting man's relationship to God (which served as a way of separating one's own against other men), rested on a distinction between matters of a temporal and a spiritual nature. The appeal to man's responsibilities to God in order to defend a right to political participation would remove precisely the distinction between spiritual and temporal matters which was formed on exactly the same ground of man's conscientious relationship to God. Through this distinction it was claimed that matters of religion were out of the reach

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50 'Christianity and conscience, my friend, are personal things...' (Priestley, A Letter to a Layman, Works, 21:33).


52 'I believe Popery to be the most considerable part (not the whole) of that Antichrist which God will destroy...' (Priestley, A Free Address to those who have Petitioned for the Repeal of the Late Act of Parliament, Works, 22:513.

53 'Integrity is the chief excellence of every moral agent, and claims our esteem and veneration, even in a Papist, a Mahometan, or a Heathen.' (A Free Address to Protestant Dissenters as such, Ibid., 22:267).
of a temporal sovereign. Political participation would not render the temporal sovereign spiritual but would only make the composition of the temporal sovereign body popular (democratic). It is hard to see how the theological premises which were used to defend religion against the encroachment of temporal authority, could equally be used to defend a kind of temporal authority against which religious activities had to be defended on the same ground. Brewer attributed such an argument to the Dissenters. However, because the secure enjoyment of religious liberty was the result of legislation—and therefore of political liberty as a share in the legislature—it does not follow that the Dissenters advanced the view that religious liberty could not be invaded by a sovereign people, or that it could only be secured under a popular sovereign. Not even the democratic organization of a religious society itself was conceived as a sufficient guarantee for religious liberty:

VARIABLE reformed churches have adopted various forms of church-government—but all are reducible to three—SIMILAR to civil governments. POPERY AND episcopacy ARE absolute monarchies—PRESBYTERIANISM is aristocracy. And some independent churches are democratical—but all adopt one grand error—PRODUCTIVE of two great evils—WHICH generate ten thousand more—ALL nefarious, THE great and fountain error is the considering of conscience as a subject of human government. THIS notion produces two great evils—1. LEGISLATION—NOW all human legislation is oppressive to conscience—AND it is immaterial where

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54 'This is hardly surprising. Dissenters enjoyed freedom of worship only at the expense of their civil rights. Though this did not in practice prevent them from holding public office or participating as citizens, they enjoyed this privilege by grace and not by right. The problem of religious freedom was almost necessarily a question of political liberty and, in seeking to obtain the one without sacrificing the other, many dissenters inclined to argue that both were inalienable natural rights protected by a sovereign people.' (J. Brewer, 'English Radicalism in the Age of George III' in Pocock (ed.), Three British Revolutions 1641, 1688, 1776, Princeton 1980, p. 328).
this power is lodged - IT is tyranny any where.55

Due to the different meanings of the term 'civil liberty' as well as the different sort of connection which was established between religious and civil/political liberty, it was not difficult to attribute to someone an argument which in fact he had never intended to make. Goodricke, for example, said that he was 'particularly surprized at Doctor PRICE for having put together these things, [religious and civil liberty] which the friends of Religious Liberty have justly been so careful to separate', and he quoted from Priestley's _Essay on the First Principles of Government_, the distinction between 'this life' and 'the life to come' to correct Price.56

This observation leads us to consider another sort of connection between religious liberty and political participation, which ultimately became prominent in the defence of political participation. This connection goes beyond the conventional distinction between civil and political rights or liberty, and directs attention to the common peculiar characteristics of religious and political liberty no matter in what other sense they differed. This common element emerges by considering religious and political liberty as part of what were commonly known as the rights of mind, that is, rights concerning the expression of opinions. The almost unique characteristic of such rights was that their most extensive exercise did not involve mutual injuries which would warrant civil restraints. Furthermore, their unconstrained exercise was deemed essential to the formation of the public interest. We shall consider this kind of relation

55 Robinson, _A Plan of Lectures_, pp. 39-40; 'THE RIGHTS OF LIBERTY ARE SUCH, as neither the violence of times, nor the power of magistrates, nor decrees or judgments, nor the AUTHORITY OF THE WHOLE PEOPLE, which in other things is SUPREME, can subvert, or weaken...' (Loft, _Elements of Universal Law_, p. 26).

56 Goodricke, _Observations on Dr Price's Theory_, pp. 92-94.
between political and civil liberty in chapter VIII in the context of analyzing the meaning of the right of private judgment. However, the right of private judgment had an immediate religious context and it is useful to consider it first in this light before we examine the way in which it was extended to politics. The right of private judgment in religion (or the sacredness of individual conscience as it was often called in this context) was usually defended on the basis of the distinction between spiritual and temporal matters. However, this distinction which dominated the arguments concerning toleration was an obstacle to the extension of the right of private judgment to politics. In the next chapter we shall see the limitations of this distinction and why it was eventually abandoned.
VII.- TOLERATION AND RELIGIOUS LIBERTY.

i. The Balance between the Sacredness of Religious Conscience and the Need for a Religious Establishment.

The controversy about religious toleration roughly revolved around the three following premises which every participant in the discussion at one point affirmed, although with different degrees of emphasis: a) Religion affects the eternal welfare of man and therefore religious conscience is too sacred to be placed under the guidance of other men. b) The proper sphere of civil authority is to regulate matters of temporal welfare. c) Religion influences man's social conduct.

Dissenters and more generally the friends of an unlimited religious liberty devoted much space to convincing public opinion that religious conscience is sacred and that it has to do with the most personal relationship between man and God. Nevertheless it does not seem that this was what their opponents disputed. The moderate and prevalent position was that a religious establishment was compatible with toleration. If we consider the premises on which that distinction was grounded it appears that much of the discussion advanced by the Dissenters about religious conscience was beside the point. The argument that man's eternal welfare was too valuable for him to sacrifice at any cost could not be convincing against the claim that the magistrate was concerned only with the influence of religion on civil welfare, and that as far as he interfered he did so by temporal penalties or rewards. Instead,

1 Radcliff, A Sermon Preached to a Congregation of Protestant Dissenters, pp. 6, 26-27.

2 Paley, The Principles, 2:336; [W. Paley], A Defence of the Considerations on the Propriety of Requiring a Subscription to Articles of Faith, London 1774, p. 45; [C. Hawtrey], A Letter to Earl Stanhop, Oxford 1789, p. 34; Speech on a Bill for the Relief of Protestant Dissenters, p. 31; also Williams, The Nature and Extent of
some could consistently argue that since eternal welfare is what counts the most, the Dissenters in fact retained all the freedom of conscience essential to the paramount objective of salvation by denouncing the temporal emoluments annexed to the establishment. The distinction between temporal and spiritual spheres could be used satisfactorily to defend toleration but not to challenge the religious establishment, although it was also used with that end in view.

Certainly there was much confusion about the meaning of toleration as opposed to religious liberty. The terminology was not consistent. Religious liberty seemed to imply the abolition of the religious establishment as such, while toleration seemed to presuppose the existence of an establishment which tolerated the other religious sects. The disagreement here between the Dissenters and their critics was direct. 'IN LIBERTY of CONSCIENCE', Price remarked, 'I include much more than Toleration. ... It is, therefore, presumption in any of them to claim a right to any superiority or pre-eminence over their brethren. Such a claim is implied, whenever any of them pretend to tolerate the rest'. There cannot be any 'proper judge in the case, when all

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*Intellectual Liberty*, pp. 29, 34.


are equally *parties*. In direct opposition Hawtrey asserted that '[a] right to a toleration is a contradiction in terms, for a toleration must be a matter of favour or courtesy, and not a matter of right'. In order to avoid such implications the Dissenters declared that 'even the term *toleration* should 'have been changed for that more wise and beneficial one, because more just, of *general liberty*'.

Our main concern is with the principles which sustained certain arguments. It is remarkable to note that the very distinction which the Dissenters used in order to separate the church from the state was employed by their opponents in order to elaborate the terms of and the need for their alliance. Criticizing the 'Hobbeist' and the 'Papist' (who supposedly differed only in points of ceremony) Warburton exploited the Lockean argument and affirmed that the care of the soul was not the province of the civil magistrate. Out of the distinction between soul and body, spiritual and temporal, sin and crime, Warburton envisaged the emergence of a religious and a civil society which were both sovereign facing each other (as their provinces did not overlap) but which exerted a different sort of authority over their

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7 Hawtrey, *A Letter to Earl of Stanhope* p. 4; also p. 39; Stewart, *The Total Refutation and Political Overthrow of Doctor Price*, p. 61.


members. The end of a religious society being purity of worship and the salvation of souls, required a conformity of inward disposition to outward practice. Force could not change the convictions of the mind, and when it was attempted, the purpose of religion was defeated. The only power, therefore, that a religious society could have over its members was 'simple expulsion' by virtue of which the religious association would not lose its identity and the individual would not prostitute his conscience since he was not debarred of his 'Right of worshipping God according to his own Conscience'. This was virtually the justification of the principle of toleration. Tucker—who described himself as a 'Friend to Establishments and equally a Friend to Tolerations'—had no difficulty in affirming that 'Hypocrisy ... is an Abomination in the Sight of God; and this must be wrong, whether the Religion, which the Hypocrite professes be true or false in itself'.

Although attempts were made to extend this argument from a defence of toleration to an attack on the establishment (by including in the causes of hypocrisy 'temporal punishments' and 'worldly emoluments'), the underlying assumption that law could not exact conscientious commitment but only add hypocrisy to guilt was a commonplace that was voiced by Anglicans and Dissenters alike. Moreover,


the Lockean framework was not particularly congenial to the pleas for disestablishment. It was exploited by Warburton, it was modified by Tucker, and it was employed directly by Burke to vindicate the establishment:

If the Church be, as Mr. Locke defines it, a voluntary society, &c, then it is essential to this voluntary society to exclude from her voluntary society any member she thinks fit, or to oppose the entrance of any upon such conditions as she thinks proper. For otherwise it would be a voluntary society acting contrary to her will, which is a contradiction in terms.¹⁷

On the other hand, the Dissenters appealed frequently to Locke when they sought to defy the religious establishment. They challenged, however, certain assumptions which, in fact, were not employed by their opponents when the latter were defending the establishment. In his Genuine Principles of All Religious Dissent, Liddon -to take an example- assumed that the claim of infallibility was the only justification of religious establishment. He remarked that there was 'no medium between the principles of liberty of conscience contended for by the Dissenters, and submission to the authority of Rome', because the 'reasons which intelligent Churchmen give for their separation from the Church of Rome, are the very reasons which Dissenters give for their separation from the Established Church'.¹⁸ The weak point here is that Liddon used this argument against the establishment and made his intention clear when he conceded that we 'do not then, as a body, dissent from the doctrines of the church.


¹⁸ Liddon, The Genuine Principle of All Religious Dissent, pp. v, iv, 10, 18; Thoughts on Intolerance, pp. iii-iv, 19; see also [F. Woolaston], The State of Subscription to the Articles of Liturgy of the Church of England, London 1774, p. 54; [J. Towers], A Dialogue between two Gentlemen, London 1772, pp. 5, 12, 15; Anon., Remarks on Dr. Balguy's Sermon, p. 35; Anon., The Scripture the only Test, London 1772, pp. 30-31.
Our dissent is, *a dissent from its constitution and government.*\(^{19}\) The supporters of the religious establishment, however, did not rest their case on any claim to infallibility\(^{20}\) and did not ignore the distinction between the temporal and spiritual worlds. Instead, they countenanced its existence on the grounds that religious institutions were an effective weapon of civil policy. The grand assumption behind the endorsement of a religious establishment was that religion thoroughly influenced man's social conduct by enforcing duties 'which otherwise seem[ed] merely speculative', fostered social ties, suppressed anti-social dispositions, and promoted the peace and order of society.\(^{21}\) In other words, religion was not only a 'mere


\(^{20}\) In fact, it was commonly argued that since all parties (subjects and the magistrate) were equally liable to doctrinal error, the magistrate should have recognized as state religion not what he thought was most acceptable to God but what the majority of his subjects thought so. For this would have been attended with less inconvenience and would have increased the beneficial effects of religious feeling on the public welfare. See Paley, *The Principles*, 2:339; Nares, *Principles of Government*, pp. 130-31; Warburton, *The Alliance*, pp. 197-8; Plowden, *Jura Anglorum*, pp. 87, 224.

intercourse with God', which made it 'only a Divine Philosophy in the Mind'. It was also the power which could cultivate social dispositions affecting directly man's civil conduct. This admission paved the way for viewing religion as a formidable weapon in the hands of the legislator for achieving civil goals. An 'aid so powerful should, most assuredly, be sought by every wise and prudent lawgiver'.

Although these authors primarily regarded religion as a vehicle of civil policy, by no means did they dispute the sacredness of religious conscience. The only real question, however, for them was whether the magistrate should exploit religion, given the fact that religion would influence man's temporal conduct, and the fact that the magistrate had to care about temporal welfare. In order to justify the religious establishment and also secure conscientious dissent, they drew a distinction between reward and punishment. Tucker—commonly viewed as the ablest advocate for the Church of England—was representative of a more general stance:

THE Magistrate hath undoubtedly a Right to encourage that System of Religion, which he esteems the most orthodox, and the best: Because every Individual has the same Right. But the Magistrate can have no Right, either in his public, or in his private Capacity, to persecute the Followers of any other System, provided they keep the Peace of Society, and offend not against good Morals. In one word, to reward is one Thing, to punish is another; Premiums may win, but Penalties ought not to compel; and Matters of Favour must ever be acknowledged to be of a different Nature from Matters of Right. This Distinction is certainly the Line, which ought always to be drawn in

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22 Warburton, The Alliance, p. 58; 'The abstracted and spiritual worship which you talk of, is something above the feelings and affections of human heart, is like platonic love, a false refinement.' (Williams, The Philosopher, Part III, p. 119); also Coxe, A Letter to Price, 29-30; cf: 'NATURAL worship resembles philosophical experiments - BUT revealed worship requires positive institute...' (Robinson, A Plan of Lectures, p. 18).

23 Nares, Principles of Government, p. 129; '...nothing solid can be formed in morality or politics, that has not true Religion for its basis.' (Ibid., p. x).
Tucker believed that the arguments in defence of religious liberty were advanced under a gross misunderstanding. Because religion was a personal affair between God and man—that is, not the business of civil authorities—it did not follow, he claimed, that no 'human Inventions' should ever have taken place in matters of religion. Allowing for the fact that the church was a divine institution, Tucker argued that the exercise of private judgement even in religion was a human act. Therefore, human inventions in religion were bound to be generated the very moment individuals concurring in their religious views agreed to form a religious society. Further, it was an essential feature of all societies to 'regulate the Behaviour of their own Members in such Things as relate to the Ends of their Institutions'. Those who happened at any time to disagree with the majority could peacefully depart from that society and 'erect a new one, more agreeable to their own Conscience'.

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24 Tucker, Letters to Kippis, p. 65. 'The matter therefore does not concern toleration, but establishment; and it is not the rights of private conscience, that are in question, but the propriety of the terms, which are proposed by Law as a title to publick emoluments; so that the complaint is not, that there is not toleration of diversity in opinion, but that diversity in opinion is not rewarded by Bishopricks, Rectories, and Collegiate Stalls.' (Burke, Speech on the Acts of Uniformity, Works, 10:16; 'Let Toleration she [the Church of England] allows to Dissenters be made absolute...' (Paley, A Defence of the Considerations, p. 45); also p. 31; Warburton, The Alliance, p. 86; Scurlock, Thoughts on the Influence of Religion, p. 52-53; Jones, Thoughts on the Resolutions, Works, 12:368; Williams, The Philosopher, 1st Conv., Part III, pp. 7, 109; Essays on Public Worship, p. 52.

25 Tucker, Letters to Kippis, p. 21; cf. p. 43; see also Nares, Principles of Government, pp. 131-2.


27 Ibid., p. 15. For the implications of this assumption see Hawtrey, Various Opinions of the Philosophical Reformers Considered, pp. 86-7; Anon., An Answer to Dr. Priestley's Letters to Burke, p. 20; Scurlock, Thoughts on the Influence of Religion on Civil Government, p. 48; Foster, The Establishment of the Church of England
In such a context Tucker developed an argument illustrating the nature of authority which a church could have over its members, based precisely on the importance and sacredness of religious conscience. But he also highlighted the dynamic process of informing private judgement. No Dissenter could dispute Tucker’s argument, without being himself forced to abolish his own notion of voluntary religious association. Tucker asserted that ‘in all Cases whatever, where the Individual is in a doubt[ing] State, and thinks, that much may be said on both Sides, it is natural, I had almost said it is necessary, for him to suffer himself to be guided by those of whom he has the best Opinion; that is by Authority’. But he also highlighted the dynamic process of informing private judgement. No Dissenter could dispute Tucker’s argument, without being himself forced to abolish his own notion of voluntary religious association. Tucker asserted that ‘in all Cases whatever, where the Individual is in a doubt[ing] State, and thinks, that much may be said on both Sides, it is natural, I had almost said it is necessary, for him to suffer himself to be guided by those of whom he has the best Opinion; that is by Authority’. However, when the individual was strongly committed to certain views, and his judgment clashed with the judgment of the Church authority, ‘mere Authority, as such’, could ‘have no Place against Conviction’. Cartwright captured the distinction between giving advice and being in a position to command in the words ‘desert of authority’ and ‘a right to authority’. It was desert of authority that the Dissenters conceded to their ministers, so that the argument which Tucker advanced was in principle perfectly compatible with what Dissenters tended to uphold. It might even be said that the unbounded right to private judgment faced its own limitations when it was applied to the internal relationship between the members and the minister of a dissenting sect, despite its general usage as being against the Church of England. Robinson, for example,

Defended, p. 14; B. Pye, Five Letters on Several Subjects Religious and Historical, pp. i-iii; Plowden F., Jura Anglorum, pp. 87-88; [R. Nares], A Controversial Letter of a New Kind to the Rev. Dr. Price, London 1790, p. 35.

28 Tucker, Letters to Kippis, p. 48, also p. 68.

29 Ibid., p. 50.

30 Cartwright, Take Your Choice, p. 3.
forgetting the sacredness of the right of private judgment, said that

if every Individual hath a natural Right to take those Liberties which his own private Judgment may dictate, every Society likewise hath a Right to do it; and if a Minister be considered as the Servant of his People, those who elect him upon arbitrary principles, may upon the same Principles dismiss him at any Time; for as the Connection between them was voluntary, their Dissolution is the same.\(^{31}\)

He claimed that the case would have been different if a Minister was considered 'as a public and acknowledged Servant of Christ'. Tucker did not seem to require more stringent conditions for membership in a religious society than did Priestley in his *Free Address to Protestant Dissenters on the Subject of Church Discipline*.\(^{32}\) Tucker's views on this subject were not the most original of his theoretical contributions, but they show that despite the inequities which the Dissenters suffered, their theoretical arguments were not unanswerable.

Many Dissenters, of course, did not subscribe to Tucker's distinction between reward and punishment. They maintained that to reward a particular religious sect without extending the same advantages to the other sects was no less a mode of punishment for them.\(^{33}\) However, such an argument could not rest on the sacredness of religious conscience, and could still receive formidable answers. Jones, for example, observed that the Protestant Dissenters were asking for privileges which they would not have allowed to the 'King himself, who cannot hold his Crown without conformity

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\(^{31}\) The title tells the whole story: *The Doctrine of Absolute Submission Discussed, or the Natural Right Claimed by Some Dissenters to Dismiss their Ministers at Pleasure Exposed, as a Practice Produced by Principles of Unrestrained Liberty Tho' Contrary to the Dictates of Reasoned Revelation*, pp. 21-22; see esp. pp. 7, 29.


to the Religion established’. \textsuperscript{34} ‘Dissent not satisfied with toleration, is not conscience, but ambition’ according to Burke. \textsuperscript{35} To the extent to which Kippis’s assurance that the Dissenters demanded only ‘legal security’ (upon which they would ‘thankfully retire to their private employments’) \textsuperscript{36} represented the Dissenters’ sincere objectives, there was no ground on which they could disagree with Tucker or Burke. The ground could definitely never be religious conscience, which, as such, was respected and secured under ‘a mere’ toleration. \textsuperscript{37} Warburton had gone as far as to argue that the religious establishment had nothing to do with the ‘support of Opinions’, but only with the ‘Necessities of the State’. The contribution to its maintenance was for a mere ‘Civil Purpose’. Between the ecclesiastic and civil authorities the ‘Difference is only accidental: Church Officers happen to have Religious Opinions; and Civil Officers, sometimes none’. \textsuperscript{38}

The Dissenters generally conceded that the magistrate had authority to intervene in religion when the safety of the state was at risk. But they did not explain why the safety of the state should take precedence over sacred individual conscience. Thus their position was somewhat problematic: The magistrate had a right even to lift toleration (that is, to punish and not merely to reward) whenever the safety of the state required it. What precisely empowered the magistrate to impose restrictions and

\textsuperscript{34} Jones, \textit{Thoughts on the Resolutions of the Protestant Dissenters}, Works, 12:366.

\textsuperscript{35} Burke, \textit{Speech on the Acts of Uniformity}, Works, 10:14; see also Anon., \textit{A Look to the Last Century; or the Dissenters Weighted in their own Scale}, London 1790, pp. 88-89, 141.

\textsuperscript{36} Kippis, \textit{A Vindication}, p. 96; see also Priestley, \textit{A Letter to Pitt}, Works, 19:123.

\textsuperscript{37} For an important departure see Priestley, \textit{A Letter of Advice}, Works, 22:451-3.

\textsuperscript{38} Warburton, \textit{The Alliance}, p. 125.
penalties when the public safety required it, and what incapacitated him from rewarding a religious sect for civil reasons (without punishing the others)? The Dissenters generally seemed reluctant to elaborate on the requirement concerning public safety. When the issue was forced upon them, they usually sought to exempt themselves from the accusation by pleading loyalty to the constitution.

Let us now focus on Price and Burke and see how critical the assumption concerning the influence of religion on man's attitudes was in determining the attitude towards the right to religious conscience.

**ii. The Balance Subverted in Two Opposite Views: Price and Burke.**

Price objected to the interference of any 'HUMAN AUTHORITY IN MATTERS OF RELIGION' because 'no human authority' could 'be established on the ruins of the divine'. Religion defined the sphere of man's most intimate relationship with his Creator. This was a relationship that obtained universally and without any reference to the idea of society, let alone to the provisions of particular civil societies. Though a man living in a civil society had to comply with certain

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39 'I am far from considering liberty of conscience as an indulgence of government. It is a right of nature, which no government can deprive men of, without being guilty of inhumanity and injustice. If the penal laws against Papists, were ever defensible, it must have been from political considerations, and a regard to the safety of the state. How far they were justifiable on that ground, I shall not now enquire.' (Towers, *A Letter to Dr. Samuel Johnson*, pp. 28-29).


regulations which his presence there required, he remained, so to speak, in a permanent state of nature against the magistrate as far as his religious commitments were concerned.\(^43\) This dominant line of argument confined the hands of the magistrate to civil matters and disallowed his intervention in anything concerning religion. On the other hand, religion did not appear to be as strictly personal an affair as the former argument suggested. Price explicitly claimed that ‘[r]eligion, to say the least of it, is a most useful engine of state,\(^44\) and one of the best supports of public order. If we consider it only in this light, it is the proper object of public encouragement’.\(^45\) This is an overlooked but revealing dimension in Price’s argument. Price explained in an extensive note that religion should be encouraged by those in

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\(^{44}\) See also Cartwright, *The Legislative Rights*, p. 25; cf.: ‘SHE [the Queen Elizabeth] made religion an engine of government...’ (Robinson R., *A Plan of Lectures*, p. 6); also p. 32; ‘The Civil Magistrate has every where contaminated Religion by making it an Engine of Policy...’ (S. Adams, *An Oration*, p. 34); ‘But with such men as Dr. Blackstone and Dr Warburton, religion must be governed by maxims of civil policy...’ Priestley, *Remarks on Some Paragraphs*, Works, 22:309.

\(^{45}\) Price, *On Prayer, Four Dissertations*, pp. 266-7. Another remarkable passage obtains in his Sermon *On the Nature of True Righteousness*. Speaking about those who neglect religion he says: ‘Do they not know, that it is the design of religion to mend us in every relation, - to make us better masters and better servants, better parents and better children, and more industrious, peaceable, generous and worthy; and that a profession of religion which does not produce this effect, only renders us more inexcusable and wicked.’ (*Sermons on Various Subjects*, p. 259). For his conception of Prayer as instrumental to virtue see, *Four Dissertations*, pp. 231, 241, 269, 295; cf. pp. 235, 240. Cf. Liddon: ‘The religion is distinct from civil government, and yet by no means hostile to it: For, though it do[es] not acknowledge the power of the civil magistrate over the consciences of men, it teaches respect for his authority in civil affairs. (The Genuine Principles of All Religious Dissent, p. 13); ‘...I am far from denying that religious principles have influence upon mankind as members of civil society...’ Priestley, *Remarks on Some Paragraphs*, Works, 22:321; *A Free Address to Protestant Dissenters on the Subject of Church Discipline*, Ibid., 21:423.
power by their 'example'; by employing their influence to promote a conscientious regard to it in those forms of it which every one approves most; by leading the way in an attendance of its public services, and at the same time protecting alike all who are sincere in the profession of it.\footnote{Price, \textit{On Prayer, Four Dissertations} p. 267n.} However, the interesting element lies less in the specific form of public encouragement that Price countenanced,\footnote{Which lies somewhere between Priestley's and Tucker's position.} and more in the assumption from which he derived the idea of public encouragement. The assumption was that religion was one of the best supports of public order. Price suppressed this assumption in his more politically oriented writings where he emphasised religion as the sacred right of the individual. He maintained actually the contrary view there. It was not religion but atheism itself which was one of the best supports of public order:

\begin{quote}
\textbf{ATHEISM leaves us to the full influence of most of our natural feelings and social principles;} and these are so strong in their operation, that in general they are a sufficient guard to the order of society.\footnote{Price, \textit{Observations on the Importance of the American Revolution}, p. 38.}
\end{quote}

Price, of course, considered atheism absurd and repugnant to common sense. He believed that it could never gain ground if evidence of all different views were freely discussed.\footnote{Price, \textit{Importance of the American Revolution}, p. 38; \textit{Sermons by R. Price and J. Priestley}, p. 89; \textit{The Importance of Christianity, Dissertations}, pp. 366-7.} He was prompted, however, to make such a statement because he wished to take religion in any sense out of the province of the magistrate. By weakening the connection between the dispositions which religion cultivate and the social order, he undermined the sole logical ground upon which the magistrate's intervention could be justified. This was a very bold statement for Price to make given his deep religious
convictions.

The tension between religious conscience and the role of the state can be perhaps best illustrated by what Burke had to say on different occasions. Burke had gained much sympathy among Protestant Dissenters for having supported in Parliament their petition to gain relief from oppressive laws. In defending toleration he resorted to arguments identical to those advanced by Furneaux, Fownes or Price, which stressed the uniqueness of religious feeling and the sacredness of religious conscience. He declared his detestation for 'persecution for conscientious difference in opinion'\(^\text{50}\) in religious matters. Persecution in religion was due to the prevalence of a 'miserable' principle, namely 'You are wrong' and 'I am right'.\(^\text{51}\) Due to its singular nature, Burke argued, religion was the most improper object of persecution, because, for '[r]eligion, to have any force on men's understandings, indeed to exist at all, must be supposed paramount to Laws, and independent for its substance upon any human institution. Else it would be the absurdest thing in the world; an acknowledged cheat.\(^\text{52}\) It was always unjust then to 'claim a religious assent upon mere human authority'.\(^\text{53}\) Burke pleaded for universal toleration,\(^\text{54}\) which he regarded as the best


\(^{52}\) Ibid., 9:371.

\(^{53}\) Ibid.

\(^{54}\) 'Toleration is good for all, or it is good for none.' (*Speech on a Bill for the Relief of the Protestant Dissenters*, Works, 10:29).
support to Christianity.\textsuperscript{55} His arguments that inquiry and curiosity were the most effective security for Christianity could have been written by Price or Priestley.\textsuperscript{56} The only limitation on toleration which Burke recognised concerned atheism,\textsuperscript{57} as he took toleration 'to be a part of religion'.\textsuperscript{58}

Burke did not countenance restrictions on account of an 'ill-informed conscience' but because they were necessary to prevent civil strife.\textsuperscript{59} He sought to balance the demands of conscience and political considerations:

> If religion only related to the individual, and was a question between God and the conscience, it would not be wise, nor in my opinion equitable, for human authority to step in. But when religion is embodied into faction, and factions have objects to pursue, it will, and must, more or less, become a question of power between them.\textsuperscript{60}

Burke went even further. The approach to religion from the perspective of its civil consequences led him to the depreciation of the value of religious conscience as such.

> They who think religion of no importance to the state have abandoned it to the conscience, or caprice of the individual...\textsuperscript{61}

Burke's departure from religious liberalism was due to his diagnosis that the ultimate cause of political radicalism - in Burke's terminology 'anarchy' - was religious

\textsuperscript{55} Ibid., 10:25.

\textsuperscript{56} Ibid., 10:35.

\textsuperscript{57} 'At the same time, that I would cut up the very root of Atheism, I would respect all conscience...' (Ibid., 10:37).

\textsuperscript{58} Ibid., 10:35; cf. 38.

\textsuperscript{59} Ibid., 10:30.

\textsuperscript{60} Speech on the Petition of the Unitarians, Works, 10:49-50; 'This faction (the authors of the Petition) are not confined to the theological sect, but are also a political faction.' (Ibid. 10:48).

\textsuperscript{61} A Letter to Sir Hercules Langrishe, Works, 6:316-7.
liberality, which he tended to identify with atheism. Burke called for a 'religious war' against France and he elaborated on the idea of prescriptive religion which, of course, had nothing to do with his earlier claim that free inquiry was the best security for Christianity. Instead, as atheism became increasingly in his mind synonymous with free inquiry, religion itself was identified with the Church and the Church came to be identified with its hierarchical structure, a structure congenial to the institution of monarchy. Speaking of religion, Burke had church in mind. He was annoyed at discerning a tendency among the Dissenters toward eliminating the established church. What alarmed him even more was that they did not wish 'to set up a new one of their own.' Burke's insight here is remarkable in view of the often repeated accusation that the Dissenters wished to abolish the existing religious establishment in order to set up a new one favourable to their own religious ideas. Burke not only perceived an unwillingness on their part to set up an established church, but he also ascertained their incapacity of doing so. The reason was that the

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64 'The people, who compose the four grand divisions of Christianity, have now their religion as an habit, and upon authority, and not on disputation...' (*Letter to William Smith*, Works, 9:405); see also *A Letter to William Elliot*, Ibid., 7:363; *Reflections*, pp. 188, 198.


66 *Speech on the Petition of the Unitarians*, Works, 10:51.

67 'The Church of England is already in possession of the power which others are contending for.' (Anon., *A Look to the Last Century*, p. 105).
only principle they recognized was the right to private judgement. This principle abhored religious authorities and was inconsistent with the articulation of constant and known religious tenets which could serve the purpose of a church government:

We knew that Presbytery would prevail in Church Government. But we do not know what opinions would prevail if the present Dissenters should become masters. They will not tell us their present opinions; and one principle of modern dissent is, not to discover them. Next, as their religion is in a continual fluctuation, and is so by principle, and in profession, it is impossible for us to know what it will be.68

Burke's depreciation of the significance of religious conscience came in a context in which he advocated the strongest possible link between state and church:

An alliance between church and state in a Christian Commonwealth is, in my opinion, an idle and a fanciful speculation. An alliance is between two things that are in their nature distinct and independent, such as between two sovereign States. But in a Christian Commonwealth the Church and the State are one and same thing, being different integral parts of the same whole.69

Burke assumed that man was a religious animal, not in the sense that he was an inquirer after religious truth, but that his religious beliefs and prejudices held fast on his mind and determined his social attitudes. Religion was the leading principle in the mind of man; it had the motivational force of a passion and was 'among the most powerful causes of enthusiasm'.70 A change in the principles upheld by men would

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68 Ibid., 10:49; see also Jones, A Small Whole-Length of Dr. Priestley, Works, 12:419-20.

69 Burke, Speech on the Petition of the Unitarians, Works, 10:43-44; see also Reflections on the Revolution in France, O'Brien (ed.), Harmondsworth 1968, pp. 186, 190, 199, 223. Shebbeare argued that it is the highest of contradictions to allow the 'powers of religion' to be in combat with 'those of morality and human institutes', and another writer spoke of 'a monster, composed of contrary principles, whose, mutual opposition would destroy all motion'. See Shebbeare, An Essay, p. 49 (also pp. 58-60, 66) and Anon., An Answer to Dr. Priestley's Letters to the Right Hon. Edmund Burke, p. 22.

have a direct impact on government. Burke's contention that the atheism or the 'new fanatical Religion', was 'in the heat of its first ferments of the Rights of Man', found advocates, although those who defended the rights of man sought to show the irrelevance of the link which Burke sought to establish.

So far it has been argued that an established church accompanied by toleration was a compromise between two assumptions concerning the sacredness of religious conscience and the social effects of religion. It has been shown that the subtle equilibrium could be easily subverted when priority was given to one of the two assumptions at the cost of the other. The assertion of the sacredness of religious conscience was a compelling argument in defence of toleration but insufficient for

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71 Address to the King, Works, 9:193.

72 Reflections, p. 372; Thoughts and Details on Scarcity, Works, 7:376; Remarks on the Policy of the Allies, Ibid., 7:190; Reform of Representation, Ibid., 10:106; see also Nares, Man's Best Right, p. 18, 21-22, 47; W. Paley, Reasons for Contentment Addressed to the Labouring Part of the British Public, London 1792, p. 8.


74 Hawtrey, even exploited Priestley's remarks on continental atheism to vindicate the accuracy of Burke's stipulations. See Various Opinions of the Philosophical Reformers Considered, pp. 65, 82.

75 'It is not as Atheists, or Theists, but as political reasoners, that they are to be considered in a political Revolution. ... If Rousseau has any influence in promoting the Revolution, it is not by his Letters from the Mountains, but by his Social Contract.' (Mackintosh, Vindiciae Gallicae, p. 139). Cf.: 'Nothing is read here [in France] on these subjects [religion]; because nothing is wrote. We have seen nothing but Mr. Paine's Age of Reason; of which an immense edition in France was published, and not twenty copies were sold.' (Copies of Original Letters Recently Written by Persons in Paris to Dr. Priestley in America, 3rd ed., p. 25. This letter was written by Stone in Paris 12 Feb. 1798).
challenging the existence of a religious establishment. It was Joseph Priestley who first felt clearly the limitations of the traditional approach.

iii. The Distinction between Spiritual and Temporal Matters Abandoned: Priestley and Williams.

Priestley defended religious liberty as an aspect of his conception of civil liberty. He made an important distinction between the 'Christian' and the 'man'. To this distinction corresponded the distinction between toleration and religious liberty. The Dissenter, not as a dissenter but as a man, pleaded for religious liberty, which was something more than the 'humiliating idea of toleration':

As a Christian only, I acknowledge that I ought to be contented with the bare toleration of my religion, and be thankful for it. In this character I have nothing to do with the honours and emoluments of any state under heaven; and indeed, in this character merely, I have no occasion to ask for the toleration of any sentiments but my own, that is, the Christian. But when the Christian is satisfied, I cannot forget that I am likewise a man; and the generosity of the man, and of the Christian happily concur, in wishing for the toleration of all the modes of thinking in the world.

At best, then, the interest of the Dissenter in his capacity as a Christian was confined to the limits of toleration. He asked for security under law for the public profession of his religious sentiments. He found it unjust to be punished for

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76 'Religious liberty, is the immediate ground on which you stand, but this cannot be maintained except upon the basis of civil liberty.' (J.Priestley, An Address to Protestant Dissenters of All Denominations on the Approaching Election, London 1774, p. 3; A Free Address to Protestant Dissenters as such, Works, 22:292).

77 A Letter of Advice, Works, 22:450; 'You have hitherto preferred your prayer as Christians; stand forth now in the character of men, and ask at once for the repeal of all the penal laws which respect matters of opinion.' (Ibid. 22:442); cf. An Appeal to the Public on the Subject of the Riots in Birmingham, p. 22.
conscientiously discharging his religious duties. This idea of toleration was perfectly compatible with having an established religion. A Christian as such could not have asked for anything more. Priestley maintained that the Dissenters were ‘glad to purchase their religious liberty by their exclusion from civil offices, by the supporting of their own ministers, and contributing their full share toward the maintenance of the Establishment’.

However, the religious liberty that one should defend as a man and not as a Christian was something different from a mere toleration, for it was incompatible with civil establishments in religion. This was because setting up an established religion was a conspicuous manifestation of the state’s intervention in an area in which it should not intervene. Such an intervention would produce more harm than good and it was unjustifiable on Priestley’s conception of civil liberty. The defence of religious liberty, as of any other right, was premised on utility in combination with Priestley’s notion of individuality flowering in adversity. Priestley held that the most extensive interest of society was injured by not letting individuality flourish. His favourite

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79 ‘All this might be done, and yet the church be left in the full possession of her creeds, her subscription, her revenues, the seat of the bishops in Parliaments, and even the public universities, with every thing else that can be deemed necessary to the most complete establishment of any system of religion.’ (An Appeal to the Public, p. 105).

80 A View of the Principles, Works, 22:361; see also A Free Address to Protestant Dissenters as Such, Ibid., 22:274-6.

81 A Letter to Pitt, Works, 19:117; Letters to Burke, p. 111; Letters to the Author of Remarks, Works, 22:426; An Address to Protestant Dissenters of All Denominations, p. 34; An Appeal to the Public, pp. 57, 97-98.

82 ‘... you can never interfere with any advantage either to religion or to the state.’ (Letters to the Philosophers and Politicians, Works, 21:104).
maxim was that 'the more liberty is given to every thing which is in a state of growth, the more perfect it will become'. Civil power, he maintained, was 'an inflexible thing' and if matters of investigation in all aspects of human life became the object of law, uniformity would have been encouraged at the expense of truth. Based on such assumptions Priestley was able to challenge consistently the existence of a civil establishment in religion because the widespread distinction between reward (i.e. setting up an establishment by giving a priority to one religious sect) and punishment (i.e. not tolerating other sects) could not damage his argument. For Priestley could maintain that to the extent that reward encouraged uniformity it was no less detrimental to the interests of society than punishment. The novel element of Priestley's approach is that he did not build on the distinction between spiritual and temporal matters. Or more precisely he confined this distinction to a plea for toleration as the only legitimate claim of a Christian as a Christian.

Priestley claimed that the government's interference with matters of religion ought to be dependant on 'whether such interference of the civil magistrate appear[ed] to be for the public good'. He added that this issue was to be settled on the basis of 'fact and experience', for a priori reasoning was bound to be fallacious. It was

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83 First Principles of Government, pp. 259-60.


85 First Principles of Government, p. 110.

86 Letters to the Philosophers and Politicians of France, Works, 21:98; A Free Address to those who Have Petitioned for the Repeal of the Late Act of Parliament, 22:513; A Free Address on the Subject of Church Discipline, 21:403; An Outline of the Evidences of Revealed Religion, 21:172-3, 176; The History of the Philosophical Doctrine Concerning the Origin of the Soul, 3:385, 389 and throughout his philosophical writings. Compare the use of the words 'experiment' and 'experience'
not sufficient to say that the boundaries of state intervention should be determined by the conception of the public good, unless there was a shared understanding of its content. The need for an objective approach to the requirements of the public good sprung from the fact that people were trying to set the boundaries of something about which there were conflicting subjective views: 'For what the magistrate may think to be very just, and even conductive to the good of society, the subject may think to be wrong, and hurtful to it.'\(^7\) Dressing the well-known distinction in a utilitarian garment, Priestley claimed that the 'goodness of the religion, or the mode of it, [was] not to be taken into the question; but only the propriety (which [was] the same with the utility) of the civil magistrate as such, interfering in the business.'\(^8\)

This directed attention to the principle he developed in the hypothetical social contract. According to this principle, whatever the individual could do unaided by others fell beyond civil control.\(^9\) In the case of religion this principle took the more stringent form of whatever the individual could not do if aided by others. Priestley's argument here had a considerable affinity to Price's argument, as it placed due emphasis on the special nature of the spiritual communication with God and rested on the Lockian distinction between matters of this and the other world. State interference did not merely hinder but 'incapacitate[d]' the individual from discharging his

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\(^8\) First Principles on Government, p. 141.

religious duties. Religious duties and civil power were things 'incompatible'.

Priestley, however, wanted to take cognizance of current objections against this distinction and place religious toleration on a firmer basis than Locke. Useful as Locke's distinction between civil and religious matters was - allowing for the magistrate's intervention in the first but not in the second - it faced considerable theoretical limitations. First, Priestley conceded that, strictly speaking, religion '[was] a thing in which the temporal good of any state [was] not unconcerned'.

Second, the distinction was not helpful not because the underlying principle was false, but because its concession did not provide a safe guide for judging what class of actions fell in one or the other category: 'Also many things and rights are of a mixed nature, so that the magistrate may choose to call that a civil, which his subjects would term a religious concern.'

Priestley did not seek to find a way to bridge the disagreement between the subject and the magistrate. Additionally he did not put forward an enumeration of natural rights which would confine in advance the area of the magistrate's authority.

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90 Ibid., pp. 139-40.

91 'I was sensible that, though I have, I believe, advanced some new arguments, and of considerable strength, in favour of religious liberty, all preceding writers having, as far as I know, acquiesced in the arguments and limits of Mr. Locke...' (A Letter of Advice, Works, 22:458); '...I could endeavour to avail myself of other arguments of a more general and less exceptional nature, than Mr. Locke's, such as I have advanced, and, I flatter myself, sufficiently explained, in my "Essay on the First Principles of Government".' (Ibid., 22:476); '...we have no occasion to confine ourselves within the bounds of Mr. Locke's principles of toleration.'; 'Mr. Locke was staggered at the thought of tolerating Atheism...' (Ibid., 22:478); cf. A Free Address to Protestant Dissenters as Such, Ibid., 22:267).


93 Ibid.
Since Priestley was aware of how difficult it was to define the limits of supreme authority,\textsuperscript{94} he conceded to the magistrate powers which an account of natural rights would dispute. He acknowledged the magistrate’s legislative competence in regulating everything connected with the welfare of society,\textsuperscript{95} as well as the authority of judging which matters were of a civil or of a religious concern.\textsuperscript{96} There were no bounds to the authority of the magistrate apart from the injunctions enjoined by the public good. The similarity to Paley’s exposition is remarkable, as these were the very points stressed by Paley as well.\textsuperscript{97} Yet an important differentiation occurs. Paley had argued that his account of religious toleration could dispense with the distinction between civil and religious rights. He said that such a distinction was needed only by those who built their political theory on the untenable conception of social contract, in order to maintain that individuals upon entering civil society had not transferred their religious rights. According to Paley, thinkers (like himself and the like-minded)

\textsuperscript{94} ‘In some respects, however, it must be acknowledged, that the proper extent of civil government is not easily circumscribed within exact limits. That the happiness of the whole community is the ultimate end of government can never be doubted, and all claims of individuals with the public good are absolutely null and void.’ (\textit{First Principles of Government}, pp. 56-57); cf. \textit{An Appeal to the Public}, p. 46; ‘Magistrates therefore, who consult not the good of the public, and who employ their power to oppress the people, and a public nuisance, and their power is abrogated \textit{ipso facto}.’ (\textit{First Principles of Government}, p. 44).

\textsuperscript{95} ‘...allowing the magistrate to interpose his authority with respect to \textit{every thing} in which the good of the state is concerned...’.

\textsuperscript{96} ‘...what I should call \textit{religion}, allowing him to call it a business of a civil nature...’ (\textit{Ibid}).

\textsuperscript{97} ‘The legislator’s interference whether in religion or any other aspect of social life ‘is limited by no consideration but that of general utility’. There ‘is nothing in the nature of religion as such, which exempts it from the authority of the legislator, when the safety or welfare of the community requires his interposition.’ See Paley, \textit{The Principles}, 2:235.
who did not draw on the ‘arbitrary fiction’ of the social contract but grounded their theory on the recognition of the ultimacy of public expediency ‘found themselves precluded from this distinction’. Priestley seemed partly to agree with this argument, and was prepared to do away with the distinction between the civil and the religious realm, even criticising those who used the idea of social contract to elaborate this distinction. However, he retained the idea of social contract; not with the intention to indicate what category of rights had been transferred, but in order to give a more precise idea of the requirements of the public good. Priestley’s account of the social contract was not constructed on the distinction which Paley assumed was indispensable to any argument based on the idea of contract. On the contrary:

It is arbitrarily asserted, and therefore may be arbitrarily denied, that when men enter into society they surrender some of their civil, but none of their religious rights, and that the civil magistrate, being intrusted with the one, is under obligation to secure to us all the other; whereas it appears to me to be less exceptionable to say simply, without any regard to the distinction of things civil and religious, that men expect to be gainers by entering into society, and to obtain such advantages as numbers can give to individuals; that it would be absurd for them to expect such advantages as are always derived to communities from individuals, and that improvements in knowledge of all kinds are to be ranked in the latter, and not in the former class.

By removing the distinction between matters of religious and civil concern Priestley was able to extend consistently his argument in favour of free inquiry to ‘every subject of human investigation’. By premising his argument on the

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98 Ibid., 2:334-5.


conception of the public good, he could additionally attack the civil establishment of
religion not as an usurpation of individual’s conscience -for it was not- but as
incompatible with the most extensive good of society.

If Priestley did not wish to develop his argument on the basis of the distinction
between the religious and civil domains, Williams regarded this distinction as
completely irrelevant. He approached religious toleration only as an aspect of a
general toleration of opinions whether religious or not. He wanted to circumscribe and
define with precision the subject matter of toleration, and his account took the shape
of an attempt to interpret the right of private judgment. He did so because he thought
that the term had acquired a very loose meaning which facilitated protracted
misapplication. In order to place the right of private judgment in the right
perspective, Williams began with an account of the operation of the human mind.
The power of thinking, he believed, was generated by the interaction of material
causes which formed a ‘moral mind’. This, in turn, used the body as its instrument.
Williams delineated a two part procedure which consisted of, first, the formation of
thoughts and, second, the potential of action prompted by those thoughts. Making this
distinction he claimed that it was a misuse of words to demand toleration of opinions

101 ‘The right of private judgment, and all the blessings of civil and religious
liberty, I hold as sacred as any man in the world. But I am much mistaken, if the
nature of them has been perfectly understood.’ ([D. Williams], The Morality of a

102 Williams stressed his intention to stay away from the free-will controversy (The
Nature and Extent of Intellectual Liberty, pp. 18-19n) although his position does not
seem to differ substantially from Priestley’s determinism. See also An Apology for
as there could be no power in the world to restrict them: 

\textit{all or none of them must be free}; for no restraint can be applied which will not destroy the power of thinking}. \textsuperscript{104} Thus, while man was at 'perfect liberty' in anything relating to his thoughts he could not be at perfect liberty in everything relating to his actions. Actions 'must be limited by truth and falsehood, right and wrong, and other circumstances which may be deemed the interests of particular societies'. \textsuperscript{105} Considering the right to private judgment in his \textit{Morality of a Citizen}, he claimed that men were not likely to agree in their judgments and if the principle of acting according to private judgment was pursued by all, society could have not even subsist. He summarised his argument as follows:

\begin{quote}
You will observe, I do not controvert the right of private judgment. My position is, \textit{that private opinion, like private liberty, cannot always be acted upon, and must be given up in part, to public convenience}. I would submit, when I could not help it, to the laws of a state which I did not approve.\textsuperscript{106}
\end{quote}

This was the conclusion at which Williams arrived:

\begin{quote}
The question is not concerning thoughts; for they must be free; it is not concerning actions, for they must be limited: but concerning an intermediate matter, which is the declaration and avowal of thought and opinions.\textsuperscript{107}
\end{quote}

Following this distinction Williams advocated one of the most extreme views of toleration to appear in the writings of the eighteenth century. Toleration was unlimited

\begin{itemize}
\item \textsuperscript{103} \textit{The Nature and Extent of Intellectual Liberty}, p. 17.
\item \textsuperscript{104} \textit{Ibid.}, p. 20.
\item \textsuperscript{105} \textit{Ibid.}, pp. 17-18.
\item \textsuperscript{106} \textit{The Morality of a Citizen}, p. 13.
\item \textsuperscript{107} \textit{The Nature and Extent of Intellectual Liberty}, p. 24.
\end{itemize}
and not confined in scope to the sphere of religion but encompassed all other aspects of civil life:

I do not see, why thieves should not be allowed to preach the principles of theft; murderers of murder; seducers of seduction; adulterers of adultery; and traitors of treason.\textsuperscript{108}

It is remarkable that such an extensive and unlimited toleration was not conceived by Williams as an individual entitlement, as an 'unalienable Property' of the individual.\textsuperscript{109} On the contrary, it was the interest of the community which required its adoption. The very existence of criminal laws, Williams contended, presupposed that there were people who firmly believed that they should cheat, steal from, or murder their neighbours.\textsuperscript{110} Laws could not prevent the existence of such thoughts. They could only operate as a deterrent preventing these thoughts from becoming actions. However, to impose restrictions on the declaration of these thoughts was to reduce valuable information concerning potential threats to the community. The protection (and improvement) of the community then required that even the most dangerous opinions should be heard.\textsuperscript{111} We must underline the opposite role that the notion of public interest played in Williams's argument. The right of private judgment taken as a right to act according to one's thoughts was severely confined by an appeal


\textsuperscript{109} See e.g. [E. Law], Considerations on the Property of Requiring a Subscription to Articles of Faith, London 1774, p. 13; G. Walker, The Dissenter's Plea, Birmingham 1790, p. 3.

\textsuperscript{110} Williams, The Nature and Extent of Intellectual Liberty, p. 27; 'Some, who perceive these truths, say that it is unsafe for society to publish them; but I say it is unsafe not to publish them.' (Barlow, Advice to the Privileged Orders, Part I, pp. 87-88).

\textsuperscript{111} Williams, The Nature and Extent of Intellectual Liberty, pp. 24-25, 26-27.
to the idea of public interest. But the right of private judgment as a declaration of one's thoughts not only was not restricted in the above sense, but was regarded as conducive to the formation of the public interest. Williams was explicit about it:

...all men should be at liberty to declare all their principles and opinions; and ... every act which restrains that liberty is tyrannical, and injurious to a state,\textsuperscript{112} which is instituted for public happiness.\textsuperscript{113}

There was nothing special in the nature of religious activity that should warrant a different approach to religious toleration from that which he adopted concerning the toleration of all sorts of opinions.

It is useful at this point to be reminded of the argument in this and the previous chapter before we proceed to the next one. It has been argued that it is difficult to discern what is actually meant by the similarity between the Dissenters' religious and political principles, and different ways in which this connection might be understood have been indicated. It has been suggested that the argument concerning the extension of the right to private judgment from religion to politics should be also seen in the light of the fact that objections against having a civil establishment in religion could be easily taken as an attack against civil government (as such), because the religious establishment was an aspect of civil government. It has also been argued that although many Dissenters tended to defend toleration and challenge the establishment on the same principle of religious conscience, the moderate position

\textsuperscript{112} Cf.: 'The right of private judgment is, no doubt inviolable. But if he acts according to it, he injures the state, by disobeying some of its laws.' \textit{(The Morality of a Citizen,} p. 8).

consisted in a compromise between two assumptions concerning firstly, the civil impact of religion, and secondly, the sacredness of religious conscience. Contrasting Price and Burke it has been shown how an exclusive emphasis on one of the two assumptions (which they both held) could easily tip the balance in opposite directions. Finally, it has been claimed that when the limitations of the very distinction between spiritual and temporal matters were acknowledged, different kinds of arguments were adopted, such as an appeal to the public good. The redirection of emphasis to an analysis of the term ‘right to private judgement’ undertaken by Williams provides us with a good starting point for considering in the next chapter the sense in which the rights to religious liberty and to political participation are alike.
In this chapter we shall attempt to define the meaning of the right to private judgment. The right to private judgment included the right to act according to judgment, and the question became one of how far this right was meant to extend. It was primarily meant as an expression of judgment. This was the reason for the similarity between religious and political liberty. Those who defended political participation as a manifestation of the right to private judgment intended this right to equal in meaning the expression of a judgment. Due to this special form, the exercise of religious and political liberty was defended in so far as it would not be injurious to the rights of others. In this sense they found an affinity between religious and political liberty, which was so strong that features which seemed to differentiate these aspects of liberty were not seen as obstacles to connecting them. Both referred to an open declaration of views. The difference with political liberty was that it presupposed an institutional framework and a voting procedure through which private opinions could acquire a public dimension. This aspect, however, must also be seen in the context of the importance generally attached to public opinion as an informal but essential engine of the ‘constitution’.

i. The Right to the Formation of Private Judgment, to its Expression, and to Act according to it.

We have seen in the previous chapter that in order to circumscribe the subject matter of toleration Williams thought it necessary to define the meaning of the right to private judgment. In *The Morality of a Citizen*, he had adopted a narrow view and
distinguished between the right to private judgment and the right to act according to private judgment. He approved of the former idea while he regarded the latter as incompatible with the existence of civil society\(^1\) (in an argument reminiscent of current attacks on the idea of political participation).\(^2\) His analysis of the right to private judgment in *The Nature and Extent of Intellectual Liberty* was different. He distinguished there between judgment, its avowal, and acting in accordance with it. He argued that only the declaration of judgment was relevant to an argument concerning toleration.

Williams’s distinction was used by others. An anonymous pamphleteer divided liberty into the ‘Liberty of Thinking - of Speaking, which include[d] writing and printing, and of Acting’. He maintained that only the third kind of liberty needed investigation, for the first kind could not be restrained by any government and the second was enjoyed to an ‘admirable degree’\(^3\). Another author similarly asserted that human restraint could not extend to thoughts. He then went on to highlight the uniqueness of the freedom of speech which rested on the premise that it was necessary

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\(^1\) Williams, *The Morality of a Citizen*, pp. 7-13. e.g.: ‘The right of private judgment is no doubt inviolable. But if he acts according to it, he injures the state, by disobeying some of its laws. ... The first and simplest union in nature, I mean the conjugal, cannot be formed or preserved, on the common doctrine of the right of private judgment. ... But what is to become of the rights of private judgment...? They cannot be acted upon in any society, that ever existed, or perhaps ever will exist, in this world. ... I look upon it, therefore, as an indisputable truth, that no man can act in society from his own principles. ...men must either fly society, or submit to it.’

\(^2\) Compare the passage in the previous footnote with Tucker’s argument in *Treatise Concerning Civil Government*, p. 31.

\(^3\) Anon., *Licentiousness Unmask’d*, p. 7.
for the enjoyment of general liberty. John Martin also distinguished the three stages discerned by Williams (thought, expression, action), but he sought to eliminate the difference between the last two stages (expression and action):

I ask then, in plain terms, What do you mean by private judgment? Do you mean by it no more that this, namely, That it is the duty, as well as their native right of every man, to judge of persons and things according to the evidence before him, and the abilities which he professes? If this be all, where is the fool who denies it? Where is the foe who can possibly prevent it? The right of private judgment, in this view of it, is as secure, and consequently as lasting, as thought and reflection; for while they exist and are exercised, they cannot be violated. But, if by this favourite, this hackneyed phrase, you mean, that we ought in all things to be governed by our private judgment; if you mean, that all men have an indisputable right to express their private judgment of men and measures in whatever terms they please, and that they have an equal right to enforce it in such a manner as they shall approve; then you are contending for that which, though (what is called) fine sense may admire, common sense will never grant.

In order to make his attack on the right of private judgment more effective, Martin presented the expression of the judgment and its enforcement as being inseparable. Thus he objected to ‘the supposed right of every man’s expressing and enforcing his private judgment, when, where, and how he please[d]’. It might be claimed that the elimination of the intermediate stage between thought and action (i.e. the expression of thought), can be justified on the grounds that the expression of thought is in itself an action. Whatever is the case, such an

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5 Compare the different senses discerned here (in bold print) with the analysis of Paine’s argument in section iv.


elimination was useful for confining the limits of toleration.\textsuperscript{8} It was even more useful for showing the irrelevance of the expression ‘right to private judgment’ to the arguments of those who uncritically had adopted the term.\textsuperscript{9} Charles Hawtrey was one of those who were very much annoyed by the popularity of this term, and he used exceptionally virulent language. He said that to claim a universal right to conscience was as ridiculous as to claim a universal ‘right of men to feel pleasure or pain, when they were the subjects of either!’, for, as he continued, it was ‘nature’s establishment as much and as truly as the sensations of pleasure or pain’.\textsuperscript{10}

The right he has from nature; it is properly his own; and, while he is capable of thinking, it is a right which it is impossible to deprive him of. What then are these men contending for? They are contending for a right which, it is universally acknowledged, every man has, which every man is actually in possession of, and which all the powers of the earth combined cannot take away.\textsuperscript{11}

And further down:

Liberty of conscience is a term very much in use among men, and a great deal of evil has been effected by the use of it. But it is most foolishly misapplied; for liberty is a freedom from restraint where restraint is possible, which in the business of conscience it is not. No man, no earthly power, can restrain conscience, which will be what it is, whether this pretended liberty be given or withheld. What then is this liberty of conscience? It is a folly, it is a nothing, it is an idle unmeaning misapplication of one word to another, in order to raise a sound which shall make it seem to be that which is not.\textsuperscript{12}

\begin{itemize}
  \item See Dawes, \textit{An Essay on Intellectual Liberty}, pp. 13, 24, 55.
  \item Hawtrey, \textit{Various Opinions of the Philosophical Reformers Considered}, p. 72.
  \item \textit{Ibid.}, p. 70. Cf. the distinction between the will and the execution of the will in Anon., \textit{Civil Liberty Asserted}, p. 30.
  \item Hawtrey, \textit{Various Opinions}, p. 73. Cf.: ‘The matter of laws in general are all human actions, internal and external; thoughts, and words, as well as deeds...’
\end{itemize}
In their attempt to interpret the meaning of the right to private judgment critics of the rights of man, such as Hawtrey, pointed to a confusion between the inherent powers of man and the notion of a right. Let us consider in more detail the distinction between power and right.

**ii. Power and Right.**

The term 'power' had considerable flexibility and acquired several different meanings. Price spoke of 'moral powers' in the context of articulating his notion of moral agency which provided the foundation of his conception of natural rights, but he also spoke of the power of the people to punish their governors. Yet no clear distinction seems to exist between power and right as the two words were often used synonymously.13 Burlamaqui, who defined a right as a power to use one's 'liberty' and natural 'strength' in a way 'approved by reason'14 cautioned that one should not 'confound a simple power with right'. He acknowledged the terminological difficulties and he claimed that, at any rate, the main point was to be able to distinguish between

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13 '...they have the power to model as they please...' 'There is nothing that requires more to be watched than power.' '...their power to legislating for themselves...'; '...when lost, a people have always a right to resume.' '...have a right to emancipate themselves as soon as they can...' '...must be enjoyed as a right derived from the Author of nature only ... If there is any human power which is considered as giving it...' '...the liberty for which I have pleaded, is "a right or power in every one..." '...they must have a right to emancipate themselves as soon as they can.' '...they have a right to modify it as they please...' '...to resist abuses as soon as they begin.' 'The right to resist power when abused...' in Price, *Observations*, pp. 12, 18, 25, 25, 26; *Additional Observations*, pp. 4, 11, 29, 26; *A Discourse*, pp. 28, 34. The terms 'force', 'foreign force' 'power' as used in *A Free Discussion* (pp. 13, 39, 141) were intended to convey the idea of physical power but in a quite different sense from physical power in the sense of physical strength.

the 'physical' and 'moral' senses of the words 'right' and 'power'. However, it is precisely this distinction between power in a normative and a physical sense that became problematic. Rous concluded that as the people had power, they had the right to proceed with all the modifications respecting government they thought fit; and in Gisborne there were senses of 'power' which overlapped with 'a right' as, for example, when physical force was exercised to protect a primary right. The ambiguity of the terms as they were frequently used in the political pamphlets of the late eighteenth century can be fully appreciated by considering the following two passages. Thelwall observed in a cynical manner that when a people wills grand renovations:

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\text{to feel the will is also to be conscious of the power: and, when the will and the power cooperate, sophists may string syllogisms, like beads upon a rosary; but while they are reasoning, the thing is done.}
\]

Oswald appeared to be more outspoken, but his extreme language is misleading:

\[
\text{Let us not be deceived, for it is force alone that can vindicate the rights of the people. Force is the basis of right, or rather right and}
\]


\[16\] 'I therefore conclude that the people have the right, as unquestionably they possess, the power, of changing their Government...' (Rous, *Thoughts on Government*, p. 30); also Williams, *The Philosopher*, 1st Conv. Part I, p. 45; cf. 'The Doctor [Price] therefore, by substituting power for right, has sadly wasted his time, for whatever arguments conclude against the former, can by no possible means be brought against the latter.' (Anon., *Civil Liberty Asserted*, pp. 57-58).


force are one. The will of God is right, for his power is almighty; and on the invincible power of the people the rights of man stand upright. The force of the people consists in that strong sentiment of right which God himself has implanted in the human heart, or rather it is God himself that acts within us; "for in God we live, and move, and have our being." Hence the will of the people and the will of God are one: *Vox Populi, vox Dei*.

These extracts speak for themselves, and would countenance the view that the champions of the rights of man failed to ‘distinguish Power from Right’. However, the critics of natural rights made also similar transitions from power to a right. Moreover, since some of those critics (such as Nares) could conceive of ‘a natural power of the people operating through the legislative assembly’, why could they not allow the same meaning to the term ‘natural power’ when it was used by their opponents? The confusion between power and right was directed principally against Paine, and the term power was taken to imply physical force in the sense of brute strength. Boothby maintained that in a ‘pure state of nature’ of the sort Paine


21 ‘Pure nature has furnish us with no rights, though she has with powers to acquire them...’ (Elliot, *The Republican Refuted*, p. 40); ‘... and Civil Liberty can be maintained without either right or power?’ (Anon., *Civil Liberty Asserted*, p. 61; cf. in the same work: ‘I trust every candid man’s mind will revolt at hearing number and power recommended as the just means of annihilating right.’ *Ibid*, p. 83; see also pp. 57-58, 87, 91); ‘...the power which the people at all times had to new-frame their Constitution, is improved to a right.’ (Smith, *Rights of Citizens*, p. 45); ‘Hence in society power is given where nature had denied strength...’ (Hawtrey, *Various Opinions of the Philosophical Reformers*, p. 51); also Barwis, *Three Dialogues Concerning Liberty*, p. 80.

delineated, 'right and power seem[ed] to be perfectly equivalent terms',\(^{23}\) and they signified only 'rights of the carnivorous to devour the frugivorous animals and theirs to consume the vegetate world; rights proved by their teeth and claws and the conformation to their stomachs'.\(^{24}\) Such a conception of rights, Boothby thought, was less suitable for defending the inalienable character of the right to political participation than for asserting the inalienable rights of animal functions:

> Whether from timidity or prudence the author of "Rights of Man" has not carried his principles to their fair extent. He has left untouched a thousand rights necessarily flowing from the imprescriptible and unalienable equality of man in society. The right to *eat*, for example, is at least as natural and imprescriptible as the right to legislate; it is somewhat more necessary, and of as ancienst and divine original; and when dressed out in a philosophical uniform makes, in my opinion, just as good a figure. Man is an organized entity whose vitality consists in the action and re-action of solid and fluid parts according to the laws of animal motion, which require to be frequently supplied and renewed by the adscitition of elements, taken into the mouth, mastigated by the teeth, ingurgitated by the gullet, received into the stomach; and there by trituration fermentation, and the rest of the chemico-mechanical process of digestion, prepared and assimilated for the purpose of continuing animality; and without which by the natural and imprescriptible laws of animation life must cease; the right therefore to *eat* is "one of those natural rights which appertain to man in right of his existence..."\(^{25}\)

The argument that Boothby advanced to ridicule Paine's conception of rights actually was employed by Thelwall to articulate his conception of distributive justice. Although Thelwall drew heavily on Rousseau to elaborate a conception of moral rights

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\(^{23}\) Boothby, *Observations on Mr. Paine's Rights of Man*, p. 160. 'So that at last, all this cloud of dust, which has been raised by the puffing advocated, for the NATURAL RIGHTS OF MEN, settles into this *identical* proposition, only that man in a state of nature, *can* do a thing, when he has a *power to do it*...' (Cooper, *The First Principles*, p. 45; also p. 69. The same argument had been used also against Price. See e.g. Anon. *Civil Liberty Asserted*, pp. 11, 138.

\(^{24}\) Boothby, *Observations on Mr. Paine's Rights of Man*, p. 118.

established by society on the principle of reciprocity, he did not abandon the conception of natural rights, of which he said: 'Natural, or original right is (if I may so express myself) merely physical: that is to say, it consists in the mere powers and means of the individual'. He maintained that his conception of natural or physical rights was to be understood as applying 'simply to wants created by nature, and the means furnished by nature for their supply'. The almost natural implications of such a conception of rights appeared a few pages later:

You have a right to the gratification of the common appetites of Man ... and your right [is] inalienable. ... and nothing in existence - no, not even your own direct assent, can justify, take them away.

And distribution, with respect to the common necessaries of life, to be impartial, must be equal: for all have mouths, and all ought to be fed...

In fact Thelwall did nothing more than to drive to its full implications the idea of natural rights resting on man's natural features. It appeared to him that to satisfy the body was as natural - and more pressing, as Boothby claimed - as satisfying the mind. Spence pushed this logic further in his defence of the rights of infants:

As if they had not a right to the milk or our breasts? Nor we a right to

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27 *Ibid.*, p. 41. 'They are determined by man's 'wants, his faculties, and his means...' *(Ibid.,* p. 38); 'Did man and his faculties exist from eternity? - then a universe, conformable to those faculties, has, likewise, eternally existed. The natural wants and the natural means are still coeval...' *(Ibid.,* p. 39).


29 Note even here the duty not to alienate the right. See section iii.


any food to make milk of? Nor we a right to nursing, to cleanliness, to comfortable clothing and lodging? ... Nay, does nature provide a luxuriant and abundant feast for all her numerous tribes of animals except us?  

Such a conception of rights, however, was not held by Paine, in the First Part of the *Rights of Man* partly because at that stage he was not concerned with distributive justice; when he was concerned with distributive justice he put forward a much more elaborate and tenable argument.  

Paine’s conception of natural rights as it was delineated in the First Part of the *Rights of Man* (as we shall see) forms part of preceding endeavours to link the right of religious worship to the right to political participation as expressions of what was commonly called ‘the rights of mind’. However, although Paine connected religious worship to political participation, Tucker connected religious worship to animal functions:

> THERE are two Kinds of Rights, and only two belonging to human Nature which are strictly and properly unalienable. These are the Functions of Nature; and the Duties of Religion. And they are in no other Sense unalienable, but because they are inseparable from the Subject to which they belong, and cannot be transferred to another.

Tucker made this connection in order to assail the inalienable right of political participation, which was alienated the very moment a system of representation was adopted as we have already seen. He insisted that inalienable rights were those rights which could not ‘be delegated, or transferred even with the Consent of the Parties, supposing it possible that such Consent could be obtained. For this, and nothing but

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this, can be an unalienable Right'.\(^{35}\) Tucker's remarks were penetrating. However, the tendency throughout his writings to identify animal functions with rights,\(^{36}\) in order to make his point concerning the nature of an inalienable right, facilitated the confusion between power and right, that is, between what a man can do and what he ought to do. He said, for example, that a man

\textit{ought not}, for instance, to give up the Right of Eating and Drinking; \textit{Indeed he Cannot}, because these are personal Things, where no Substitute can officiate for him; and for the same Reason he ought not surrender to any one his Right of thinking and judging for himself in the Affairs of Religion; because this likewise is a personal Thing between God and his own Conscience; and he can neither be saved nor damned by Proxy.\(^{37}\)

The relation of rights to animal functions became a subject of considerable discussion. An anonymous pamphleteer complained that people continuously were talking about natural rights without having any clear idea about the import of the phrase. In his opinion, 'properly speaking' natural rights were 'the faculties of body and mind' which were 'truly unalienable' because were only at the disposal of God and inseparable from man's existence. Thus, the unalienable rights of man were 'very few; life, limbs, and faculties'.\(^{38}\) William Jones was more explicit and contended that natural rights were 'the rights of eating, drinking, sleeping, hunting, fishing, propagating his species, whipping his children, and defending himself against wild

\(^{35}\) Tucker, \textit{Four Letters on Important National Subjects.} p. 53; also \textit{Treatise}, pp. 34, 36.

\(^{36}\) J.G.A. Pocock seems to ignore this dimension because he associates Tucker's conception of inalienability exclusively with the nature of moral as opposed to political action. See \textit{Virtue, Commerce, and History}, p. 173.


\(^{38}\) Anon., \textit{Civil Liberty Asserted}, pp. 44-45.
men and wild beasts'. Robert Hall, who was not amongst the critics of the idea of natural rights, similarly connected them to physical powers and religious worship:

The power to move our limbs and to worship God are a specimen of rights which may properly be termed natural; for, as philosophers speak of the primary qualities of matter, they cannot be increased or diminished. We cannot conceive, the right of using our limbs to be created more complete by any human agreement or compact.

Priestley constructed an argument based on this connection to criticize the implications which Burke derived from his conception of man as 'a religious animal'. Priestley contended that man was also constitutionally and necessarily an eating and a sleeping animal; but does it therefore follow that civil government has any thing to do with his eating or sleeping? And if not, neither has it any right to prescribe to him in matters of religion, merely because he is by constitution a religious animal. Man is a thinking and reasoning animal; but must all his thinking and reasoning be subject to the control of the state?

Priestley received the response that in the instances he had 'adduced, of eating, sleeping, thinking, reasoning, and laughing too, if any man eat's drinks, or laughs to the injury of society, the civil government not only has a right, but exerts its right to controul him'. Even Tatham felt the need to clarify that animal functions such as sleeping, willing and the rest were not proper rights.

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40 Hall, An Apology for the Freedom of the Press, p. 53.

41 Priestley, Letters to Burke, p. 56.

42 Anon., An Answer to Dr. Priestley's Letters to Burke, p. 22.

43 Tatham, Letters to Burke on Politics, p. 39; cf.: 'It is no more rebellion, than it is to breathe.' (Allen, Oration Upon the Beauties of Liberty, p. 20, also p. iii); 'It would be thought a ridiculous idea for any one to give up the natural use of his legs, upon acquiring a carriage, or of his arms, on obtaining a servant.' (Northcote, Observations on the Natural and Civil Rights of Mankind, p. 41); cf. Plowden, Jura Anglorum, p. 68; see also Anon., The Political Crisis, p. 5 (and his response to
We have seen so far that the distinction between power and right was not sufficiently clear. On the contrary many thinkers connected power and right in various different contexts, such as the discussion of welfare-state rights, or the discussion of religious toleration and political participation. We have noted, in particular, that Tucker connected religious worship to animal functions in order to break the link between religious worship and political participation which, as he thought, his opponents sought to establish. The central element in Tucker’s account was the meaning of an ‘inalienable’ right which led him to disregard the distinction between a normative requirement and a physical need. We shall now proceed to consider the argument of his opponents. It will be shown, that their treatement was not unlike Tucker’s in the sense that they approached the nature of an inalienable right through the notion of man’s duties to God and through a conception of man’s inherent powers.

iii. Duties to God, Natural Properties, and Inalienable Rights.

The idea of one’s duty to the use of his own rights\(^4\) (as opposed to one’s duties as correlative to another’s rights, and therefore as a precondition for another’s having a right) was expressed frequently and referred precisely to the inalienable character of the right.\(^5\) The most obvious example of an inalienable right was the


\(^4\) ‘The first is the duty of man with respect to the use of his rights.’ (Gisborne, *The Principles*, p. 152).

\(^5\) ‘By the duty of men, with regard to the disposal of rights, is meant their duty with respect to the voluntary modification, abridgement, or relinquishment of their rights, when no force is exercised, or known to be meditated against them... It will be sufficient to observe generally, that those rights, which no man can resign without endangering the accomplishment of the principal purpose of his being, cannot in any case by resigned without offending God...’ (*Ibid.*, pp. 166-7); ‘...the duties of
right to one's religious creed,⁴⁶ but this conception encompassed liberty in other important aspects, and in particular political liberty.⁴⁷ Although Price often linked moral with civil liberty, he linked religious with civil/political liberty in the context of emphasising the inalienable character of both rights, that is, in those cases 'in which compacts [were] not binding'.⁴⁸ The argument highlighting the inalienable nature of the right (that is, the duty of the right-holder not to alienate his right) was often illustrated in the context of delineating the nature of the social contract. It formed part of the discussion about what sort of powers or rights the individual would surrender or retain on entering civil society. Thus, parallel to the argument emphasising man's relationship to God ran an argument constructed on the basis of natural capacities and properties, which was discussed in the context of illustrating the nature of the social contract.

The writers on toleration spoke profusely of the duties every man owed to God, which could not be fully discharged if civil authorities constrained the free exercise of these duties by imposing contrary duties. Furneaux employed the idea of a correlation between rights and duties and considered the existential dilemma of maintaining the "common right" of innocent persons, and of relieving the oppressed ... are in a peculiar manner, sacred to God, and, therefore, unalienable from the people, and not to be suspended..." ([G. Sharp], An Address to the People of England, London 1778, pp. 32-33).


⁴⁸ Civil Liberty is, in this respect, on the same footing with Religious Liberty. As no people can lawfully surrender their Religious Liberty ... so neither can any civil societies lawfully surrender their Civil Liberty ...' (Price, Observations, p. 25; see also Additional Observations, p. 28).
every man at perceiving that he could not discharge his duties to God when faced with contrary duties imposed by the magistrate. Since man is ‘accountable to God alone’, he wrote, ‘it follows, that as his judging and acting for himself in matters of religion is, with respect to his fellow men, a right which he holds independent of them; so, with respect to God is a duty which he owes to him’. The emphasis on the duties man owed to God gives the impression that those duties generate a right against others. If this is the case, however, a difficult problem emerges. If man’s duties to God provide the foundation of rights against others, it follows that the private judgment of an individual (containing his discernment of the duties he owes to God) will put other individuals under duties. The consequence is that rights and duties will fluctuate according to momentary changes of an individual’s private judgment. For to give a description of the content of the duties to God is to give a description of the series of duties to God as they are understood by every man for himself. It rather seems that the statements concerning the duties owed to God did not serve the purpose of grounding the right itself by imposing duties of non-interference with others. The uniqueness of the right to private judgment rests with its inalienability, and this feature was further emphasised in the context of considering the rights which were retained by the individual and those which were surrendered on entering civil society. Thus according to Furneaux the right of private judgment:

> is a right essential to our nature: whatsoever other rights, therefore, we are supposed to resign on entering into society, this we cannot resign; we cannot do it, if we would; and ought not, if we could.\(^{50}\)

And Fownes agreed that:


such is the nature of this right; and in this respect, it stands upon a foundation peculiar to itself, that it CANNOT be given up. Property may be resigned, transferred, or submitted to the regulation of others. ... Cases may occur, in which a man may sacrifice life itself, and the sacrifice may merit the highest applause. But his CONSCIENCE, he cannot resign.^^

The duties to God and the emphasis on man's inherent powers underlined one and the same thing, namely, the inalienability of the right. Fumeaux's account of the social contract is conventional and fairly typical. He maintained that feeble individual power was inadequate for defence when one was wronged and every individual wished to secure his right to self-preservation by the combined power of the community. The foundation of rights was not particularly discussed. It was beyond a doubt that they derived from the natural properties with which God endowed man. The individual, being in full possession of his rights in a state of nature, did not waive his rights on entering civil society but only the 'personal exercise of the right of self-preservation'^53, where this was feasible and when deemed necessary for procuring security.

But with respect to religious liberty, he cannot give up the exercise of that, any more than the right itself; indeed the giving up the exercise is giving up the right, for the former is personal as well as

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51 Fownes, An Inquiry into the Principles of Toleration, p. 17; see also Kippis, A Vindication of the Protestant Dissenting Ministers, p. 82.

52 There is however an essential difference. The duties an individual owes to God may count as moral constraints not to alienate the right. However, the emphasis on man's natural attributes, obviously lacks a normative justification. The argument I advanced in the third chapter is relevant here. I have argued that the emphasis on man's natural properties was accompanied by a description of the internal constitution of man as a way of introducing the normative perspective in the distinction between reason and passions.

There is a distinction here between a right and its exercise (reminiscent of the distinction between right and power) which was reproduced by Fownes as well:

Admit the right to impose, and you admit the power to enforce. For what avails the right, if the power to exercise it be denied?\textsuperscript{55}

It is illuminating to compare these passages with Paine’s classical formulation of the nature of natural rights:

The natural rights which he retains, are all those in which the power to execute is as perfect in the individual as the right itself. Among this class, as is before mentioned, are all the intellectual rights, or rights of the mind: consequently, religion is one of those rights. The natural rights which are not retained, are all those in which, though the right is perfect in the individual, the power to execute them is defective. They answer not his purpose. A man, by natural right, has a right to judge in his own cause; and so far as the right of mind is concerned, he never surrenders it: But what availeth it him to judge, if he has not power to redress? He therefore deposits this right in the common stock of society, and takes the arm of society, of which he is a part, in preference and in addition to his own. Society grants him nothing. Every man is a proprietor in society, and draws on the capital as a matter of right.\textsuperscript{56}

Let us now focus on Paine’s argument.

\textit{iv. The Nature of Natural Rights.}

Paine had regarded the ‘unity of man’ as the source of natural rights.\textsuperscript{57} He believed that every civil right originated from a natural right ‘pre-existing in the individual’ but he contended that there was a certain class of natural rights which did

\textsuperscript{54} Ibid., p. 22.

\textsuperscript{55} Liddon, \textit{The Genuine Principles of All Religious Dissent}, p. 28.


\textsuperscript{57} Ibid., p. 66.
not change their nature to become civil rights, for they were not thrown into the common stock of society but were retained by the individual. The question refers to the inalienable character of some natural rights and the critical issue is what makes them so - that is, in what sense they differ from civil rights.

Paine elaborated his answer in his controversial statements in which he considered whether the power of execution was defective or as perfect in the individual as the right itself. The word 'power' has a different meaning in the succeeding uses made by Paine. It is not clear in what sense the object of power is distinguished from the object of the right. 'Natural rights are those which pertain to man in right of his existence' and what seems to pertain to man in right of his existence are powers or capacities enabling him to exist and operate.

Speaking of the pure natural rights, that is, those which are retained by the individual Paine says they 'are all those in which the power to execute is as perfect as the right itself'. Here the term 'power' seems to refer to something distinct from, although co-extensive with, the right. But if the right is different from the 'power to execute' it, and is to have any object at all, this must be the inherent and internal physical properties of man. In the context of interpreting the right of private judgement these properties amount to mental operations leading to the the formation of judgment in the mind. The power to execute (the right) then refers to the power / right to follow the judgment or to act according to the judgment, which forms the first sense of power/right (power 1). The second sense of power/right that has also emerged is the power/right to form a judgment (power 2). This sense of power/right, (power 2), however, is equally applicable to both natural and civil rights - that is, both natural

58 As it has been seen this was not characteristic only of Paine.
rights which are retained and which are not retained. Discussing civil rights Paine says that 'as far as the right of mind is concerned, he never surrenders it'. Civil rights are those which are not retained, and therefore in order to reconcile this position with the above statement, we must assume that what is not transferred is the power of forming a judgment (power 2) and what is transferred is the power to act according to this judgment, (power 1) since the individual undertakes to follow the judgment of society no matter how it differs from his own judgment. What is therefore never surrendered is a power that can be surrendered only by being destroyed, as Williams and Hawtrey claimed. This is exactly the power that Paine calls natural right.

But why in his conception of civil rights does Paine believe that the individual is under necessity to surrender his power to act according to his own judgment (power 1) since he does not surrender his power to form the judgment (power 2), given the fact that when he can do both perfectly he is in full possession of his natural rights and need not surrender anything?\(^\text{59}\) An attempt to answer this question provides us with a third notion or sense of power that Paine held. He says that the individual is under necessity to part with the right to follow his private judgment (power 1) because he cannot do this with security, because he lacks the power to

\(^{59}\) Paine was challenged on that point: 'It would, indeed, be hard to deny a man's having a right to do that which he cannot avoid doing; or to insist upon his surrendering that, which is impossible to be surrendered. But so far as to judge means to ascertain the guilt or innocence of the party judged, (and this is what we usually understand by the word,) the civil man is not allowed to exercise any such right; yet, why he should surrender it, does not appear from Mr. Paine's system; since the power accompanied this right "perfect in the individual as the right itself." the power of forming an opinion is as perfect as the right of forming one...' (Smith, Rights of Citizens, p. 81); 'It is not distinctly and emphatically that right, which, above all others, he has relinquished?' (Saint John, A Letter from a Magistrate, p. 23); see also Boothby, Observations on Mr. Paine's Rights of Man, p. 113; Anon., Letters to Thomas Paine, pp. 25-26.
It is imperative that we distinguish the third notion of power from the other two, and if we compare the two statements referring to natural and to civil rights we will observe that behind the verbal similarities different senses of power emerge. When Paine in describing the character of natural rights says that they are 'all those in which the *power* to execute is as perfect in the individual as the right itself', the notion of power he invokes is the power to act according to judgment (power 1). But when he attempts to mark their contrast with civil rights and says about the latter that they 'are all those in which, though the right is perfect in the individual, the power to execute them is defective', the notion of power he invokes is not the same as in the above statement. Power here denotes the physical force to resist the exertion of physical force on the part of others: 'But what availeth him to judge, if he has not power to redress?' Therefore the 'power to execute' that is 'defective', which is mentioned in the discussion of civil rights, is not the same as the 'power to execute' that is 'perfect' in the discussion of natural rights. It is a 'power to redress' wrongs, and it is this power that every individual lacks, so much so that he is unable to secure effectively his power to act according to his judgment and therefore seeks the combined force of society for assistance. This is a critical point, for if the word 'power' denotes different ideas in the two statements above, there is no common ground for comparing natural and civil rights in order to maintain their distinction.

Having identified the three distinct notions of power, we may turn to consider how each of them relates to the distinction between natural and civil rights. Power in the second sense obviously is inadequate for distinguishing natural from civil rights, as Paine claims with respect to the latter that the right in the mind is never
surrendered. More plausible is the attempt to maintain the distinction on the basis of the third sense of power, and this might have been Paine’s intention. However, certain unhappy consequences attend such an attempt. For if the line separating natural from civil rights is drawn by considering the areas in which an individual has sufficient power to withstand violent attacks, we must assume that an individual is in possession of such a power with respect to his natural rights and lacks this power with respect to his civil rights. This would mean that the individual does not surrender his natural rights because he does not stand in need of having them secured by the combined force of society. The direct implication is that if an individual is offended by another individual in the exercise of the natural rights that he retains, he does not have any ground on which he may demand the protection of civil authority against his having being wronged. In other words, if an individual’s property (civil right growing out of a natural right) is attacked, civil society ought to place at his disposal its superior combined force and protect him; but if the exercise of his right to religious worship (pure natural right explicitly indicated by Paine) is hindered, civil authority should not offer its protection. To distinguish natural from civil rights along this line means only to undermine the theoretical justification of any claim made by the individual to be protected by civil society in the exercise of his natural rights, as it is assumed that civil society is formed to establish security and natural rights can never be insecure.

Considering now the other sense of power (power 1) we identified, we may still say that in isolation it does not offer the proper ground for distinguishing Paine’s natural from civil rights. For in both cases the power to follow the judgment (power 1), once this judgment has been formed (power 2), is equally perfect. The solution seems to be provided by a combination of considerations appertaining to the first and
third senses of power. The difference between natural and civil rights lies in the fact that although the perfect power to follow the judgment (power 1) is equally possible with respect to both natural and civil rights, the perfect and unbounded exercise of this power with respect to natural rights never puts in danger the security of others, and therefore the problem of being in need of resorting to power in the sense of physical force to sustain violence (power 3) is not raised. And it is not raised because due to the special character of natural rights its full exercise is not inconsistent with the full exercise of the same power by all others. The essential feature of natural rights is that their full exercise is not harmful to others. Paine regarded religious worship as an instance of a natural right in this sense, and if we compare his argument with those employed in defence of toleration (this will be our next step) we will notice that the defence of the right to private judgment in religious matters rested on the same assumption, namely, that the most extensive religious liberty is equally compatible for all. This is because religious activities as far as they relate to others take the form of expressing opinions, and a free expression of views cannot injure others. If we take the right to political participation out of the context of the state of nature which enabled its opponents to equate it with animal power, it will be abundantly clear that what the advocates of the rights of man argued for was a right to give an opinion. Thus Sharp claimed that 'every man has a right to judge for himself, and to declare his sentiments, as far as plain conclusions of reason and common-sense will fairly warrant, and such only are referred to in the following Declaration of the Natural Rights of popular Representation in the legislature'.

Cartwright expected all men to 'exercise their independent judgments; being in matters of opinion, ever ready to

60 Sharp, A Declaration of the People's Natural Right, pp. 1-2.
take counsel, but disdaining to receive command'. And Paine contended that 'every man has a right to give an opinion but no man has a right that his opinion should govern the rest.' It is this particular form that the right to political participation takes on, that led its advocates to regard it as compatible with everyone having the same right. It is in this sense that Mackintosh contended that men 'retain a right to a share in their own Government, because the exercise of this right by one man is not inconsistent with its possession by another, which is evidently the only case where the surrender of a natural right can be exacted by society'. Mackintosh reluctantly adopted the language of natural rights and he claimed that '[g]ranting their existence, the discussion is short'. In his short discussion he postulated that '[n]o greater sacrifice is therefore necessary than is prescribed by this object, the resignation of powers that in their exercise might be injurious to ANOTHER'. Paine seemed to think that it was self-evident that the exercise of what he called 'intellectual rights' could not be injurious to others, so he added the provision concerning the rights of others when he referred to other possible natural rights apart from the intellectual rights: 'Natural rights are those which appertain to man in right of his existence. Of this kind are all the intellectual rights, or rights of mind, and also all those rights of acting as an individual for his own comfort and happiness, which are not injurious to

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the natural rights of others'. The right to the expression of opinions has been treated as the only instance of a right the exercise of which cannot be injurious to others. This was what was especially stressed in the arguments concerning religious toleration.

v. The Extent of the Right to Private Judgment.

The writers on religious toleration would agree with Hawtrey's remarks that it is meaningless to defend powers which were inherent in man.

If religious liberty is confined to inward sentiments, and does not comprehend the actions which flow from them, I mean those which are not injurious to society; it then amounts only to this futile notion, that the Magistrate is to tolerate what, while it is concealed, he hath no power over.

Thus they interpreted the right of private judgment broadly to include the right to act according to private judgment. The claim, however, that all have an equal right to act according to their private judgment could be taken as entailing conflicting demands. D.O. Thomas, for example, interpreted Price as saying that every one ought to do what he thinks he ought to do. If this is the case, he claimed, the exercise of one's right

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65 Paine, Rights of Man, p. 68. Cf.: '...they would begin by distinguishing between those rights they could individually exercise, fully and perfectly, and those they could not. Of the first kind are the rights of thinking, speaking, forming and giving opinions, and perhaps are those which can be fully exercised by the individual without the aid of exterior assistance; or in other words, rights of personal competency.' (in the, The Papers of Thomas Jefferson, 24 vols., Princeton N.J. 1950-90, 13:4).


67 Fumeaux, An Essay on Toleration, p. 30; cf. his definition of the right to private judgment Ibid., p. 42; see also Fownes, An Enquiry into the Principles of Toleration, p. 80.
could not but conflict with the exercise of the same right held by others. Having in mind an important passage in the *Review*, where Price defended the principle of religious liberty, Thomas indicated the problem arising from Price's assumptions:

Let us ... suppose that *A* is sincerely convinced that he ought to do action *x*, and that *B* is sincerely convinced both that *A* ought not to do *x*, and that he should prevent *A* doing *x* if he gets an opportunity to do so.\(^68\)

It is sufficient to substitute a concrete instance which was much debated in the texts concerning religious liberty, to show that Thomas's formulation, quite plausible as it seems, fails to capture the argument that Price and others advanced with respect to the right of private judgment. Let us suppose that *A* is sincerely convinced that he ought to worship God in a different way from that adopted by the established church, and *B* is sincerely convinced both that *A* ought not to worship God in a different way than that adopted by the established church, and that he should prevent *A* from worshipping God in a different way if he gets an opportunity to do so. What we should ask is whether *B*'s attempt to prevent *A* could possibly be considered as part of his right to follow the sincere convictions of his own mind.

Price would not have any difficulty in conceding that the legal restrictions affecting the Dissenters were advocated on conscientious grounds. The question is if such an appeal to conscience would have been seen by Price and others as an example of his exercise of his right to his private judgment. The plea of conscience was indeed an argument employed to justify the imposition of the Test and Corporation Acts and Mauduit, in considering such claims, argued that an appeal to conscience did not

\(^{68}\) Thomas, *The Honest Mind*, p. 120.
justify the invasion of others’ rights,\textsuperscript{69} even if the conscientious inquirer pleaded that his interference was intended to advance ‘the Cause of God’ and believed that by acting so he was ‘doing him good Service’.\textsuperscript{70} Andrew Kippis similarly argued:

\textbf{Whatever religious principles any man may pretend to, whatever pleas of conscience may be urged by him, if he hurts his neighbour in person and property, if he disturbs his fellow-creatures in the exercise of their rights and privileges, he ought to be restrained and punished.}\textsuperscript{71}

In a similar vein Fownes claimed that if a man’s ‘\textbf{judgment should unhappily lead him to make any thing a part of his religion}, which is injurious to others, and contrary to the fundamental laws of society; he so far still falls under the animadversion of the magistrate.\textsuperscript{72} He elaborated more comprehensively on the meaning and extent of the right to religious liberty and pressed the case as far as it would go by raising the following question, which is reminiscent of Thomas’s formulation:

\textit{If any doubt then can remain upon this head, it must be this; why a person who thinks himself authorised to impose his sentiments on others, should not be suffered to \textit{act} according to HIS judgment, as}

\textsuperscript{69} ‘\textit{BUT we cannot in Conscience assent to this} has been the Language of some ... So far therefore as Conscience is concerned in retaining the Obligation to subscribe, Conscience must be concerned in enforcing it: and if the Plea of Conscience be brought for keeping up this Sword of Justice still hanging over their Heads, surely the Dissenters have just Cause to tremble, lest the same Plea of Conscience may be hereafter urged for the letting it fall on them.’ (I. Mauduit, \textit{The Case of the Dissenting Ministers Addressed to the Lords Spiritual and Temporal}, 3rd ed., London 1772) pp. 31-32; cf. pp. 6, 28).

\textsuperscript{70} \textit{Ibid.}, pp. 32-33.

\textsuperscript{71} Kippis, \textit{A Vindication of the Protestant Dissenting Ministers}, pp. 84-85.

\textsuperscript{72} Fownes, \textit{Appendix to an Enquiry into the Principles of Toleration}, Note I, p. 114.
well as others be suffered to act according to THEIRS?\textsuperscript{73}

A man may ground his attempt to prevent others from doing what they think they should do according to their own conscience on his most sincere conscientious commitments. Fownes believed that no real difficulty could arise,

because his following his judgment, in this case, is destructive to all the right, which others have to follow their judgments; because the liberty, which he takes, is breaking in upon that liberty, which ought to be preserved in the same extent to all; and because no imaginary right, which he may arrogate to himself of obliging others to be directed by his judgment, can annul the real rights of others to be guided by their own. Every attack, which he makes upon their person liberty or estate, for this purpose, is an INJURY, which comes within the limits of the civil power...\textsuperscript{74}

Furneaux also could 'not understand' how the enjoyment of one's own religious liberty could 'injure that of others'. He believed, however, that the imposition of one's own sentiments upon others 'would be an injury, which the Magistrate should prevent or punish'.\textsuperscript{75} The term 'injury' has a specific meaning in these discussions for 'all injuries imply, in the very notion of them, some rights of which they are violations'.\textsuperscript{76}

Price and many others never thought that any unbounded right one might have had over his own religious convictions could have led to a conflict between rights. For as the unbounded right was extended to one's own religious sentiments and not to another's, the right of the one did not seem that it could be opposed to the right of

\textsuperscript{73} Ibid., p. 113.

\textsuperscript{74} Ibid., p. 113.

\textsuperscript{75} Furneaux, An Essay on Toleration, p. 23; see also p. 42. See also Price, Observations, p. 13; Additional Observations, p. 12; A Discourse on the Love of Our Country, pp. 20-21.

\textsuperscript{76} Fownes, An Enquiry into the Principles of Toleration, p. 5.
others. A distinction must be made then between conflicting rights and conflicting views. There is no need for bringing about a conscientious agreement between individuals in order to eliminate the possibility of conflict, for, after all, if such an agreement obtains there is no point in claiming rights. Price thought that the consequence of conscientious inquiry was disagreement rather than agreement, for ‘few persons who really think for themselves will agree in all things’. In the case of disagreement, Price maintained, ‘you may exercise that mutual candour, which is of more value than any agreement in speculation’. Priestley used even more robust language. He claimed that one still remained within the sphere of the proper exercise of his right even by announcing opinions which were highly provocative to the feelings of others:

For that a man who reviles the opinions of another, doth thereby deny him liberty of conscience, is to me utterly incomprehensible. If my friend entertain a foolish and absurd opinion, cannot I endeavour to laugh him out of it, without denying him his right to hold it? Then every man that laughs is a persecutor.

It seems that the primary reason for regarding the most extensive religious liberty as not infringing the rights of others is that one’s right to private judgment as far as it relates or has any impact on others takes the shape only of an open declaration of views. This is what was meant by ‘acting according to judgment’, for, as we saw, other sorts of actions were regarded as possible ‘injuries’.

vi. The Importance of ‘Opinion’.

The affinity between religious toleration (or toleration generally) and political

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participation is due to the fact that both involve an expression of opinion. Although religious liberty had been much defended as the private concern of the individual, one can easily see its public dimension as the necessity of resorting to argument in order to attain truth. Priestley claimed that it was not sufficient for one to think merely for oneself: 'Christianity expressly requires a public profession of important truths, and even an earnest contention for them'.²⁹ It is not at all incompatible to claim that religious liberty is the right, property or private concern of the individual and that it has also a public significance. Religious liberty is a private concern in the sense that religious matters ought not be the object of law, but religious liberty has a public significance in the sense that religious matters ought to be the subject of open discussion and public deliberation. Thus the liberty of the press and religious freedom could be directly connected and be seen as two aspects of the same kind of freedom.³⁰ What holds true about religious opinions holds true about opinions in general, an observation which Williams and Priestley had been particularly keen on making, when they eliminated the distinction between 'civil' and 'religious' rights. In his Lectures on History and General Policy, Priestley contended:

Indeed one of the most valuable rights of men, as individuals, and the most important to the state itself, is that of giving their opinions, and endeavouring to inform others, where either their own interest, or that of the public, is concerned. It is the only method of collecting and increasing the wisdom of the nation. It is therefore for the interest of the whole that, in a state of society, every man retain his natural powers of speaking, writing, and publishing his sentiments on all subjects, especially in proposing new forms of government, and censuring those who abuse any public trust. It is the easiest and best


³⁰ See J. Brown, Thoughts on Civil Liberty, pp. 153-4; Hall, An Apology for the Freedom of the Press, pp. 6-12.
Thomas Spence defended himself in his trial by making the following observations:

It is really a curious Trial Gentlemen. What is this Plan of mine but a Law unpassed. Every Bill brought into the Parliament is only a Theory till assented to by the Legislature.

This proposed Law of mine Gentlemen, is no more a Libel on former Laws and Customs, than other proposed Laws. Now I might have put my Plan into a Form of an Act of Parliament, if that would have been more safe.®

Regarding his book as 'nothing but a new Bill' he proposed, Spence quoted passages from Priestley concerning the freedom of the press,® concluding that it 'is enough for an Individual that he propose the Public Good, and if the Public will not practise it afterwards he is guiltless'.® This is, in effect, the same rationale produced for the right to political participation. Citizens assembled together would exchange views and the 'opinion of every individual (making some allowances for oratory) would have its weight in proportion to its solidity'.® It is remarkable that the same arguments employed in defence of the right to political participation were often used in defence of the liberty of the press, the palladium of English liberty. It was widely held that the

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® Priestley, Lectures, Works, 24:222.

® Spence, The Important Trial, pp. 61, 62; Compare with Priestley's attempt to underrate the fact that the Act of William and Mary was the law constitutionally enacted: 'The Act of William and Mary, which, in fact, declares the doctrine of the Divine unity to be blasphemy, only express the opinion of William and Mary, and of those English Lords and Commons who, if they may be said to have any opinion at all about the matter, happened to think as William and Mary did.' (Priestley, A Letter of Advice, Works, 22:462); cf. Thelwall, Sober Reflections, pp. 113-4.

® Spence, The Important Trial of Thomas Spence, pp. 62-63.

® Ibid., p. 64.

® Cartwright, Take Your Choice, p. xiv.
people could secure effectively their civil liberties only by exercising their political liberty. But the same argument was also used to describe the effects of free speech. According to Pultney, 'the liberty of the press' was 'essential to general liberty'⁶⁶ and according to another writer 'the free use of speech and writing' was the 'lasting security of our public and private rights'.⁷ It was 'absurd', Towers claimed, 'to suppose, that public liberty c[ould] subsist, where there [was] not freedom of speech, and the freedom of the press'.⁸ The liberty of the press was believed by many to have even a decisive advantage over political liberty especially in the form of direct political participation. Unlike political participation which often had a pejorative meaning due to its common association with the tumults attending the operation of popular assemblies, the freedom of the press was described as 'perhaps the best medium for conveying without clamour the deliberate opinions or the appeals of reasonable men to the People on matters of general concern'.⁹ This was not only the view of one of Price's admirers, but also the view of one of his critics. John Gray pointed out the defects of political liberty and compared them with the convenience and effectiveness of the freedom of the press:

Though the powers of legislation stop with these 200,000 persons, yet there is not a subject in the whole empire, either male or female, or even under age, who may not give a deliberate opinion upon affairs of government ... I mean by the liberty of the press, of which precious

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⁶⁶ W. Pultney, *The Effects to be Expected from the East India Bill*, London 1783, p. 35.

⁷⁷ Anon., *An Essay on the Rights of Every Man in a Free State to Speak and Write Freely*, p. 2; also p. 4; see pp. 48-49 for a statement similar to Spence above.


⁹⁹ H.R.H., *Dr. Price and the Rights of Man*, p. 6n.
liberty Doctor Price does not say a word...\(^9\)

Of course, it was not true that Price did not say a word about this 'precious liberty'. Apart from the trial by jury all the rights Price enumerated as 'sacred and inviolable' in his *Discourse on the Love of our Country* were the so called 'intellectual rights', and among them the freedom of the press.\(^{91}\) Tatham, who was well aware of how essential free speech was to the radical cause, stated that the political reformers were more jealous of the right to free press than of any other right. In this connection he quoted Price's complaint that one of the "encroachments on the security of our Liberties is the additional burdens lately thrown on the freedom of the press".\(^{92}\) It was, however, the author of the *Sequence to Common Sense* who, in considering how personal liberty and property could be secured, virtually substituted the freedom of the press ('the Heart of the Body-politic') for political liberty:

All nations, in proportion as they enjoy a FREE-PRESS, enjoy the inestimable blessings of personal Liberty, and proprietary possession. Some have it perfect and unlimited for instance, BRITAIN, and BRITISH AMERICA: Britain and America are, therefore perfectly and without limitation, a free people.\(^{93}\)

The same author went as far as to declare that historical events such as, the Reformation and the Glorious Revolution were brought about by the \('\text{liberty of the}\)...


\(^91\) 'That the right of private judgment, liberty of conscience, trial by jury, the freedom of the press, and the freedom of election ought ever to be held sacred and inviolable...' (Price, *A Discourse*, Appendix, p. 12).


\(^93\) Philadelphus, *A Sequence to Common Sense*, p. iii; also pp. x, xi.
Although the right of free speech was closely associated with the right to political participation in the sense described in the preceding paragraphs, an essential difference between the two ideas still occurs. The result of public deliberation when this takes the form of the exercise of the right to free speech, and other similar rights enjoyed under a universal toleration of opinions is that some views will become prevalent and will be adopted by a large number of persons who have been convinced about their validity. As a consequence a great deal of public pressure may be exercised on governors. The outcome, however, of public deliberation in a legislative assembly is the law, and as such is binding on all. Despite this clear difference there is a reciprocal relationship between public opinion and the law. David Hume had enunciated the view that the authority of the civil magistrate was 'founded on opinion' and that although men were 'much governed by interest; yet even interest itself, as all human affairs, [were] entirely governed by opinion'. Hume spoke as an observer, and in the same sense Bentham pronounced that government ultimately was grounded on a habit of obedience. Burke also as a less detached observer affirmed that men were governed by prejudices, which was another word for

94 Ibid., p. xiii.


opinion. The view that government rested on opinion—whether 'opinion' was taken to imply reflective reason, prejudices, or habits of thought—was held also as a part of political legitimacy. Although Nares cited with approval Burke's *Letter to the Sheriffs of Bristol* to vindicate his view that popular opinion was not the measure of right and wrong, Burke had also said that 'If any ask me what a free government is, I answer that, for any practical purpose, it is what the people think so; and that they, and not I, are the natural, lawful, and competent judges of this matter'. Burke popularised the view that government ought to reflect public opinion or what he often called 'the sense of the people'. Nares indeed recognised that 'the best expedient yet devised' for providing the sanction of public opinion was 'that of representation' since only the people could judge whether they were oppressed or not. However, he did not think that this conclusion warranted the extension of the franchise, presumably because not each individual judgment was necessary to the formation of general opinion. The 'general sentiments' of the people 'may be collected fairly from the tendency of the

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100 Burke, *Letters to the Sheriffs of Bristol*, *Works*, 3:183. Cf. Paine: 'The circumstances of the world are continually changing, and the opinions of men change also; and as government is for the living, and not for the dead, it is the living only that have any right in it.' (*Rights of Man*, p. 45).


elections' of an unreformed electoral system.\textsuperscript{103} The English Parliament, although it might not be said that it expressed 'perhaps, the General Will', still paid 'a sufficient deference to the General Opinion'.\textsuperscript{104} What the advocates of political participation appeared to have done further was only to elaborate a theoretical structure enabling them to turn into a matter of strict constitutional concern the widely accepted idea that all government rests on opinion,\textsuperscript{105} in order to give an institutional outlet to the 'sense of the people' in a more literal way than their opponents would allow.\textsuperscript{106} That transition was not particularly difficult. Cartwright, in the same work in which he made Price's 'excellent Observations on Civil Liberty' his authority, and advocated 'popular representation' without which a people 'are cattle, not men',\textsuperscript{107} explained that 'government must depend on PUBLIC OPINION'.\textsuperscript{108} In this very same work he also enshrined a conception of public opinion quite similar to Burke's: a notion of 'public opinion' that begot 'second nature', in which was contained


\textsuperscript{104} Nares, \textit{Principles of Government}, p. 36.


\textsuperscript{108} Ibid., p. 56; also p. 87.
'[a]ntiquity, the customs of our ancestors, the habits, the prejudices, the earliest and latest education of the people'. Since Nares acknowledged that representation was the best device for obtaining the sanction of public opinion, Cartwright and others proposed measures which in effect would not allow refractory elements to distort the way in which public opinion was reflected in government, which would ever be the case when representatives once elected felt 'themselves too independent on the opinion and good will of their constituents'. Indeed it might be said that the greater the departure from a conception of direct political participation, and the more effort made to disjoin the sovereign of the people from the actual exercise of government, the stronger would be the link between political liberty and the rights enjoyed under a complete toleration of opinions, as both represented aspects of the way in which public opinion would have an effective control on those entrusted with power.

It has been argued that the main reason why the right to private judgment in religion and in politics were closely associated lies in the fact that acting in accordance with judgment had the same meaning as expressing the judgment. This

109 Ibid., pp. 65-66.

110 Cartwright, Take Your Choice, p. ix; also p. xvi; The Legislative Rights, Second Preface [unnumbered p. iii].

111 Compare, for instance Priestley's argument in Lectures on History p. 243 with "...no country can suffer much, or long, whatever be its form of government, if the people have the liberty of speaking and writing, and have an unrestrained right of petitioning and remonstrating. In this case justice and truth, being often presented to view, will at length be heard and attended to. This is a great security in the English government, and prevents many abuses which would otherwise take place in it." (Ibid. p. 235). Consider also Adams, Observations on Paine's Rights of Man, p. 7; Towers, Remarks on the Conduct, p. 12. See further C.A. Sheehan, 'The Politics of Public Opinion: James Madison's "Notes on Government", The William and Mary Quarterly, 3rd series, Vol. 49, 1992, pp. 617-20.
was conceived as a natural right because the exercise of such a right by all was believed to be mutually compatible, as such exercise could not injure anyone. It has been shown that writers on toleration thought it inconceivable that one’s right to act in accordance with his private judgment could be injurious to the rights of others as far as this right took the shape of an open declaration of views. They confined the meaning of the right to act according to private judgment to this sense, for they did not regard as a necessary part of the right to act according to judgment actions ensuing from a convinced conscience which might injure others. At the same time they claimed that the free expression of views could not amount to an injury, no matter how annoying to others the views openly expressed were. The right to political participation as an aspect of ‘intellectual rights’ took on the same shape, and its defence as a natural right was that its exercise was compatible with a similar right held by all. It has been shown that an appeal to the duties owed to God and an appeal to man’s powers and attributes are different ways—which often coexisted in the same writer—of establishing the inalienable character of certain rights. This was a further reason that brought political and religious liberty closer, because as the emphasis on duties associated with the spiritual nature of the second kind of liberty abated, both aspects of liberty were justified by an appeal to natural attributes. By removing the distinction between political and religious matters one could easily perceive the affinity between toleration of any sort of opinions and political participation, to the extent that the latter acquired almost the same form. Such a similarity increased as political participation was separated from the actual exercise of government.
IX.- THE DISTINCTION BETWEEN POLITICAL AND CIVIL LIBERTY

i. ‘Political’ as Opposed to ‘Civil’ and ‘Political - Civil’ as opposed to ‘Natural’.

The ‘Liberomania’\(^1\) which infected many people after the publication of Price’s *Observations on the Nature of Civil Liberty* rendered liberty the subject of extensive discussion. However, as David Williams observed with bitterness several years later, this did not lead to a better theoretical understanding of the idea of liberty. Williams believed that the root of the evil lay in the terminological confusion between civil and political liberty. By deliberately blending these two distinct notions, the friends of the administration during the Anglo-American Crisis managed to convince the people that the adopted policy was not a violation of civil liberty, and obscured the fact that what was at stake was not civil but political liberty. The victims were the ‘honest, but feeble advocates of the people’ who were unable to counteract such sophistries, as they themselves were perplexed about the distinction between civil and political liberty.\(^2\)

The distinction between political and civil liberty was only one dimension of multiple differentiations of aspects of liberty. Not many years after the American Crisis a large range of terminological distinctions (often overlapping in meaning) was in currency. Capel Lofft might give us an idea of the state of discourse on liberty:

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\text{LIBERTY IS THE FULL POWER OF ACTING ACCORDING TO NATURE. Liberty is either physical or civil. Physical liberty is either proper or improper. Civil liberty is either individual or political. Physical liberty in general is the simple power of acting according to nature; not hindered by any external impediment. That is liberty in an improper and figurative sense ... as the liberty of a stone ... Proper liberty ... is an higher species of physical liberty; as it constitutes}
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manners, it is denominated moral liberty. Moral liberty is the power of doing according to one's will, without impediment from external force, or evil dispositions. Civil liberty in its fullest sense is one species of moral liberty; and constitutes one of its general branches; being the power of a nation to do according to its will without any external force, or internal pravity of constitution; and is called political. Civil liberty in a special sense is that which relates to the security of the individual in his person and property: and here the species has appropriated the name of the genus; this being generally termed with a kind of exclusive appellation civil, though sometimes also personal liberty.³

The author continued his definitions and throughout he invoked the names of Price, Montesquieu, Cartwright, Priestley and others. Although in the above extract he ended up dividing civil liberty into political and civil proper (so to speak), elsewhere he had divided liberty into 'POLITICAL LIBERTY' and 'Private Political liberty (in a negative sense)',⁴ giving definitions different from those quoted above, but having the same distinction in mind. It was not uncommon to designate political participation as civil liberty,⁵ and Price's share of terminological imprecision was not insignificant since - followers apart - his pamphlets (unlike Priestley's) received numerous replies in which his opponents had at least to adopt his terminology in order to expose his fallacies. It was also not uncommon to give a definition of civil liberty under the heading 'political liberty', and if there was an individual responsible for this, it must have been Montesquieu.⁶

The terms 'civil' and 'political' had different meanings in different contexts.

³ Lofft, Elements of Universal Law, pp. 141-2.

⁴ Ibid., p. 14.

⁵ e.g. T.D., A Letter to the Rev. Dr. Price, p. 12; S. Adams, An Oration, compare pp. 16-17 with pp. 21-22; Cartwright, Take your Choice, p. 34. By 1796 Cartwright, used exclusively the term 'political'. See The Constitutional Defence, pp. 25, 49, 61.

⁶ See e.g. Boothby, Observations on Mr. Paine's Rights of Man, p. 165; cf. p. 115.
Thus, for example, in discussions concerning religious toleration 'civil' or 'political' could mean 'positive'. In this sense 'positive' meant the opposite of 'spiritual'. However, 'civil' or 'political' liberty or rights could be regarded as being of a divine origin and, therefore, not of a 'civil' nature in the previous sense (i.e. positive or legal).\(^7\) Furthermore, 'civil' or 'political' liberty could acquire a similar meaning when opposed to 'natural liberty',\(^8\) while 'political' liberty could be also opposed to 'civil' liberty, but without either of them opposed to 'natural' liberty. Partly as a result, and partly because of this multiple frame of reference certain analogies were facilitated. Identical phraseology could be applied to describe natural liberty (i.e. liberty enjoyed in the state of nature) and political liberty (in the sense of political participation).\(^9\) The typical assertion was that a man should be his own governor in civil society. Now, even those who did not approve of such ideas did, nonetheless, favour the identification of liberty in a state of nature with political liberty in order to read back the inconveniences attending a state of nature (where the individual was his own legislator) into the state of civil society if man were to prescribe rules to


\(^8\) '... his NATURAL, is for the most part less, than his POLITICAL freedom.' (Cooper, *The First Principles*, p. 39) cf.: 'The natural liberty of a social being is in society ...' (Cartwright, *An Appeal*, p. 20. The argument here has no Burkean connotations as it seems. It was intended only to show that political liberty was a civil condition as opposed to civil liberty which could be enjoyed by a person alone).

\(^9\) e.g.: ‘Civil or political Liberty, properly so called, is to a nation what physical liberty is to a man in a state of solitude; it consists in the power of ‘self-government’ ...’ (Cartwright, *An Appeal*, p. 20 cf. pp. 15, 50).
himself. However, such a common rhetoric ignored the role of civil liberty as part of the transition from one state to the other first in a way of limiting individual freedom, and secondly in its relation to political liberty. On the other hand, if the question was how much liberty should be left to a man as an individual, another kind of association was made between civil and natural liberty (which in certain respects was reminiscent of the connection between political and natural liberty). Priestley’s argument provides a good framework for considering the confusion which could arise from the twofold frame of reference of ‘civil’, that is, ‘civil’ as opposed to ‘natural’ and ‘civil’ as opposed to ‘political’.

ii. Priestley’s Definitions.

Apologizing for his innovation in *Essay on the First Principles of Government*, Priestley proposed the following definitions:

POLITICAL LIBERTY, I would say, consists in the power, which the members of the state reserve to themselves, of arriving at the public offices, or, at least, of having votes in the nomination of those who fill them: and I would chuse to call CIVIL LIBERTY that power over their own actions, which the members of the state reserve to themselves, and which their officers must not infringe. Political liberty, therefore, is equivalent to the right of magistracy, being a claim that any member of the state hath, to have his private opinion or judgment become that of the public, and thereby control the actions of others; whereas civil liberty, extends no further than to a man’s own conduct, and signifies the right he has to be exempt from the control of the society, or its agents; that is the power he has of providing for his own advantage and happiness.¹⁰

The term ‘civil’ was used by Priestley purely as a way of differentiating between the idea of one’s literal control over oneself and the power to influence the legislature. ‘Civil’ as applied to liberty was used without any reference to either a

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social or pre-social condition for it could refer to both. It signified for Priestley the absence of intervention in any sense, whether in a hypothetical state of nature or in civil society through absence of respective legislation in certain areas of social life. Although it sounds strange to say that in a state of nature individuals enjoy civil liberty, according to the specific meaning Priestley attached to the words 'civil' and 'political', he could consistently claim that it 'is a man's civil liberty, which is originally in its full force, and part of which he sacrifices when he enters into a state of society'.

Modern readers may feel more comfortable with Priestley's definition than with those of many of his contemporaries because it contained the kind of distinction which retained its significance even when it was no longer fashionable for people to speak about the state of nature. In the eighteenth century, however, the contrast between the state of nature and civil society was too vivid and constituted a major concern among those who participated in the debate on rights. The terms 'civil' and 'political' thus were largely used synonymously and both in opposition to 'natural'. Paine, for example, was believed to be unaware that all rights were 'political or civil not natural rights'. Price also supposedly imagined that 'natural liberty and political liberty might exist together' without realising that 'Civil Liberty' was the

\[11 \text{Ibid., p. 10.}\]

\[12 \text{Elliot, The Republican Refuted, p. 40; "...every natural right ... must have existed ab origine mundi and every political or civil right, ab origine societatis." (Ibid. 10); "Civil" may be used interchangeably with "social" with exactly the same meaning as above. See Jepson, Letters to Thomas Payne, pp. 23, 26, 55, 67.}\]
result of certain abridgements 'of *Natural Liberty*'.\(^{13}\) So in the case of Priestley, people encountered his definitions already having in mind such identifications. Unlike Price, Priestley himself had delivered his definitions of liberty in the context of a discussion of a (hypothetical) state of nature.

Let us consider the arguments of the anonymous author of *Political Crisis* and Edward Tatham, both of whom criticised each other and commented on Priestley's definition of liberty. The former used 'political' and 'civil' synonymously and as opposed to 'natural'.\(^{14}\) But he also felt the need to differentiate between 'political' and 'civil' liberty. Since, in his opinion, Locke 'first attempt[ed] to distinguish between civil and political liberty, and afterwards confound[ed] them together', he sought enlightenment in Priestley's definitions.\(^{15}\) Prompted, however, by the common identification of 'civil' with 'political' as opposed to 'natural',\(^{16}\) he blurred the boundaries which he intended to clarify when he quoted Priestley's definitions. Thus while he appealed to Priestley to shed light on the different ideas involved in political and civil liberty, he obliterated the very distinction Priestley sought to establish, and claimed that a 'people may be said to enjoy their civil and political liberty, when they personally vote for a king, or for any other magistrate; or ... entrust that right'

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\(^{13}\) Gray, *Doctor Price's Notions of the Nature of Civil Liberty*, p. 13; also pp. 6, 9; also Anon., *Civil Liberty Asserted*, pp. 38, 140; Stewart, *A Letter to the Rev. Dr. Price*, p. 50.

\(^{14}\) See Anon., *The Political Crisis*, pp. 6, 12, 21.

\(^{15}\) Ibid., pp. 21-22. (He slightly misquoted the first definition).

\(^{16}\) The author was trying to maintain the distinction between civil and political liberty and at the same time to consider the passage from the liberty in the state of nature to liberty in civil society.
For Tatham the distinction between state of nature and society was a cardinal one and in this context he misconstrued in a different way Priestley's argument. Tatham believed that Priestley's definition of political liberty rendered every man a king, since all men were alleged to be equal. Still more interesting is what he said about Priestley's civil liberty: since every man reserved for himself as much of his natural rights as he thought fit, he was 'in fact a king, without the trouble of an election - king of himself'. Tatham presented both Priestley's civil and political liberty as unlimited natural liberty, and then attacked the idea of natural liberty which was an easier target. He stressed that in conditions of civil society liberty was derived from law. Thus 'all liberty ... must be civil' and 'natural civil liberty' was 'a contradiction in terms'. Whether there was a disagreement or not, the fact is that Priestley and Tatham were speaking about different things. Priestley was primarily concerned with the amount of control on personal life and gave to 'civil liberty' the meaning of 'personal freedom'. In the common contrast between 'civil' and 'political' liberty it was argued that civil liberty could exist under a despotic form of government, because 'a great part of human actions may be left uncontrouled' under such a regime. As a consequence, according to Priestley, civil liberty was to be enjoyed in any state to a certain degree. However, according to Tatham's

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17 Ibid., p. 22; cf. p. 24; contrast p. 51.

18 Tatham, Letters to Burke on Politics, p. 66.

19 Ibid., p. 37.

20 The words here belong to Robert Hall who was immensely influenced by Priestley's conception of liberty, but preferred the term 'personal freedom'. See Hall, Christianity Consistent with a Love of Freedom, p. 13.
interpretation of Priestley, Priestley’s ‘civil liberty’ was ‘destroying all government whatever: for every government among men, whatever be its origin or form, consist[ed], in a power over the civil actions and rights of men’.\textsuperscript{21} What Tatham said about Priestley’s civil liberty was what Shebbeare said about Price’s political liberty.\textsuperscript{22} The common element was that civil or political liberty was identified with natural liberty, meaning an unlimited liberty in a state of nature. The contrast between civil society and a state of nature introduced a distinction between civil/political and natural liberty\textsuperscript{23} which was the main obstacle to the clarification of the distinction between civil and political liberty, that is, the liberty of man as a citizen and as a private person.

A special characteristic of Priestley’s exposition is the priority he gave to civil rather than to political liberty. This was clearly reflected in the very terminology in which he couched his definitions.

Political liberty was perceived by him as the power one has to control the actions of others, and civil liberty as the power over his own conduct. An acute critic could not miss the opportunity to test the logical consistency of Priestley’s definitions. William Jones observed that Priestley substituted ‘power and liberty for one another’, and then he produced ‘two sorts of power, which annihilate each other’. Since Priestley defined political liberty as ‘a power over the actions of others’, and civil liberty as ‘a power over our own actions’ which could be effected by our being

\textsuperscript{21} Tatham, \textit{Letters to Burke on Politics}, p. 67.

\textsuperscript{22} Shebbeare, \textit{An Essay on the Origin}, pp. 91, 105, 133.

\textsuperscript{23} The main element of this contrast was liberty in relation to restraint. This dimension shall be considered in the next chapter.
exempted from the control of society and its agents, he produced 'a power of ruling, and a power of not being ruled; which in effect leave all power in equilibrio; and so amount to nothing'.

Priestley did not intend to say anything of the sort. His objective was to clarify the language applied to liberty by people who used the terms 'promiscuously', but his phrasing made Jones's interpretation plausible. What was the reason that prompted Priestley to adopt the distinction between 'one's own' and 'others' in such a way that could render his definition meaningless? It was merely the reverse of the reason which led Price to claim that 'to be guided by one's own will is an idea particularly applicable to political liberty'.

While it is not literally true that by having a share in the legislature a man governs himself (as long as unanimity is not attained) or that he governs all the others (as long he is not the only person enjoying political liberty), the divergence in the way of describing political liberty only reveals a different attitude as to its value. Political liberty, for Priestley, was essentially a bargaining power of the individual against his fellow-citizens (in a direct democracy) or his governors, so that his wishes could not be ignored with impunity.

Unlike civil liberty, political liberty was necessarily a 'civil' condition because it supposed the existence of a government in which individuals were interested in having a share. It was not, however, equally necessary that political liberty should occur in every civil society. Unlike Rousseau, Priestley's argument was not that political liberty was the recompense for the total surrender of original liberty. He did not also argue like many of his English contemporaries who believed that the part which was sacrificed from original liberty was exchanged for the acquisition of

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25 See below p. 236.
political liberty. A part of original liberty was necessarily sacrificed to establish government 'and political liberty is that which he may, or may not acquire'. This depended, according to Priestley, on the sort of bargain into which an individual would have entered: 'For he may either stipulate to have a voice in the public determinations, or, as far as the public determination doth take place, he may submit to be governed wholly by them.' A rational individual, however, would have realized that it was for his advantage 'to lose as little' of his civil liberty, 'and to gain as much' of his political liberty. 

Taken to its logical extreme the statement is a description of despotism. For according to Priestley's definitions of civil and political liberty, only a despot could have an overall control over his own actions, at the same time that he could control the actions of all the others. However, Priestley only wished to stress that a rationally motivated individual would wish to acquire an extensive power of negotiation to ensure that some matters would remain non-negotiable, that is, would not be placed under public direction. In Priestley's exposition political liberty was an individual's power of negotiation, to guarantee (if used rationally) an extensive space of personal freedom. If an individual was governed wholly by others but still enjoyed a significant amount of civil liberty, it was immaterial that he had no share in the legislature:

'It is comparatively of small consequence, *who*, or *how many* be our governors ... [b]ut whether a people enjoy more or fewer of their natural rights, under any form of government, is a matter of the last importance: and upon this depends, what, I should chuse to call, the *civil liberty* of the state, as distinct from its *political liberty*. 

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The exercise of political liberty could possibly be followed by a severe contraction of civil liberty so that individuals could retain little control over their life. On the other hand, it was also possible for those who did not have a share in government to enjoy extensive civil liberty. It could be the result of the 'spirit of the times' or merely the result of the governors' indulgence. But in this case 'civil liberties, or private rights, will be precarious, being at the mercy of others. Political liberty is therefore the only sure guard of civil liberty, and it is chiefly valuable on that account. Price and Priestley were in solid agreement that political liberty was the only safeguard against invasions on civil liberty, although Priestley's frequent statements that political liberty did not always lead to civil liberty might weaken this association. However, his examples were intended to clarify the conceptual distinction between the two kinds of liberty and not to undermine their link. Ancient democracies presented cases where political liberty produced oppression. But this was more because of the particular shape of their liberty, which was a direct involvement in the administration. In modern states political liberty could profitably take on other forms. So Priestley's examples did not establish that political liberty was necessary for protecting civil liberty, but only that the two types of liberty were not conceptually the same, and further that some forms of political liberty were more effective than

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29 As in ancient republics, Lectures on History, Works, 24:238.


33 Ibid., p. 241.
others. David Williams, who unlike Priestley, insisted on the importance of political liberty as much as Price and Rousseau, had the same sentiments about ancient republics as Priestley, and provided similar historical cases where the one kind of liberty was not accompanied by the other.  

Unlike Price and Rousseau, however, who described political liberty as a kind of self-mastery or self-government, for Priestley political liberty had an exclusively instrumental value. From this initial position it was not difficult for him to move from forms of direct political participation to indirect ways of securing civil liberty. For what could make the passage from the idea of direct participation to the idea of representation problematic, was only the moral quality of the experience of personal involvement. This dimension is clearly reflected in Price's -almost Rousseauean- apprehension of the dangers accompanying the territorial extent of modern states. As modern states could not allow for extensive direct involvement in political life, Price believed that 'a diminution of Liberty necessarily' arose. For Price the adoption of representation was a concession whereas for Paine the representative system was 'preferable to simple democracy even in small territories'. Paine criticised Rousseau in this connection, and Paine's position reflected the sentiments of Williams or

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34 See e.g. Williams, *Lectures on Political Principles*, pp. 109, 140, and 210-11.


36 'Athens, by representation, would have outrivalled her own democracy' (Paine, *Rights of Man*, p. 181).

iii. Montesquieu and Price's account of liberty in 'Additional Observations'.

In the opening sentences of the theoretical section of the Observations Price remarked that he had placed civil liberty last, that is, after physical, moral and religious liberty, because he meant 'to apply to it all' he had to say about the other kinds of liberty. He concluded the same section by repeating that although his subject was civil liberty it was incumbent upon him to give the 'enlarged view' of liberty as he had done. In Additional Observations he reasserted his basic belief that 'all the different kinds of liberty run up into the general idea of self-government'.

In applying his basic conception of liberty as self-government to civil liberty, Price contended that in every free state 'every man is his own legislator'. He could claim later that he was happy to find the same view held by Montesquieu, and he

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39 Price, Observations, p. 3.

40 Ibid., p. 6.

41 Price, Additional Observations, p. 2.

42 Price, Observations, p. 6.

43 'I have said in the Observations on Civil Liberty, that "in a free state every man is his own legislator", I have been happy in since finding the same assertion in Montesquieu...’ (Price, Additional Observations, p. 9). Price interpreted Montesquieu’s passage in the following way: ‘As in a free state, every man who is supposed a free agent, ought to be his own governor; so the legislative power should reside in the whole body of the people.’ (Ibid., p. 9n). In the Cambridge edition of the Spirit of the Laws the relevant passage reads as follows: ‘As, in a free state, every man, considered to have a free soul, should be governed by himself, the people as a body should have
had reason to be happy, as it was to Montesquieu that many of his antagonists turned to challenge his views. Since according to Price and Price's view of Montesquieu, liberty was self-government, it was 'too imperfectly defined when it [was] said to be "a Government by LAWS, and not by MEN"'. There were people who would share Price's conviction that government by law was not enough. Shebbeare, for example, declared that 'liberty consists not in being governed either by laws or men, because all nations are so governed: but in being governed by just laws alone'. If laws were good, argued others, it was immaterial who was their author. For Price, however, the main criterion of liberty was the composition of the legislature. He continued by observing that '[i]f the laws are made by one man, or a junto of men in a state, and not by COMMON CONSENT, a government by them does not differ from Slavery'. Price's definition entails that a man subject to certain laws must be considered free at one moment and a slave the next, without any change in the laws to which he is subjected but only in the persons who initially enacted or subsequently kept in force these same laws. He modified this position elsewhere by placing together the two requirements so that 'the truth is, that a government by law is or is not liberty, just as the laws are just or unjust; and as the body of the people do or do not legislative power.' (Spirit of the Laws, Bk. XI, Ch. vi, p. 159).


45 See, for example, Hume, Essays, p. 94; Priestley, Lectures on History, Works, 24:285, 288; Anon., Experience Preferable to Theory, p. 18.

46 Shebbeare, An Essay on the Origin, p. 29, also pp. 70, 106.

47 Tatham, Letters to Burke on Politics, pp. 37, 70, 81; Tucker, Treatise, p. 140.

participate in the power of making them'.\textsuperscript{49} He could maintain such a view only upon the optimistic assumption, common among radicals, that the people might occasionally make some mistakes but would never oppress themselves.\textsuperscript{50} What was particularly characteristic of Price's attitude was that he sought to unite the distinct ideas of civil and political liberty into a single definition, by making participation in the legislature part of the conception of liberty. Indeed, whenever he drew attention to the two distinct ideas of liberty, civil and political, it was always at the expense of the latter (that is, what most people would accept as liberty).

Price made a 'bewilderingly complex treatment of liberty',\textsuperscript{51} and the obscurities of his account is especially apparent in his discussion of civil and political liberty. Given also the moral value he attached to liberty in general\textsuperscript{52} Price might be taken to mean that civil liberty can not be achieved without political liberty; or that even if it is enjoyed it is precarious if not accompanied by political liberty; or lastly that it is not valuable as such if it is not attained through political liberty.

Price often changed his terminology regarding political and civil liberty. He said that in circumstances such as those obtaining in England, due to unequal representation, 'it will be an abuse of language to say that the state possesses Liberty' and continued:

\begin{quote}
\textsuperscript{49} Price, \textit{The General Introduction and Supplement to the Two Tracts on Civil Liberty}, p. xii.

\textsuperscript{50} Paine, \textit{Rights of Man}, p. 198; Priestley, \textit{Letters to Burke}, pp. 3-4; Mackintosh, \textit{Vindiciae Gallicae}, p. 265; Williams, \textit{Lessons to a Young Prince}, p. 22.


\textsuperscript{52} Price, \textit{Observations}, p. 6.
\end{quote}
Private men, indeed, might be allowed the exercise of Liberty; as they might also under the most despotic government; but it would be an indulgence or connivance derived from the spirit of the times, or from an accidental mildness in the administration.\(^53\)

Price here made a contrast between political and civil liberty, but without defining the liberty which private persons exercise. A few lines below he said that 'in general, to be free is to be guided by one's own will, and to be guided by the will of another is the characteristic of Servitude. This is particularly applicable to political liberty'.\(^54\)

Why is this particularly applicable to political and not to civil liberty? Priestley or Williams would disagree. Within certain limits circumscribed by law, civil liberty would dictate that an individual literally has the 'power of acting as he pleases',\(^55\) or, in whatever areas of life the law does not reach, the individual has a full power over his own actions.\(^56\) On the other hand an individual participating in the law-making process makes known his will but as an individual certainly he does not follow it.

In *Additional Observations* Price again changed terminology in his effort to relate and distinguish political and civil liberty:

A distinction should be made between the *Liberty of a state*, and its *not suffering oppression*; or between a *free government*, and a


\(^{55}\) Williams commenting on Montesquieu remarked that '[t]he author therefore justly defines liberty as it relates to the citizen, to be the power of acting as he pleases, within the limits of laws. But he should have denominated it civil, not political liberty.' (*Lectures on Political Principles*, p. 135).

\(^{56}\) The 'LIBERTY OF ACTING, or FREE AGENCY' in this sense could apply to the liberty a man enjoys in a state of nature despite all its inconvenience and to the more limited liberty of civil society. See Stewart, *A Letter to the Rev. Dr. Price*, p. 8.
government under which freedom is enjoyed. Under the most despotic government liberty may happen to be enjoyed. But being derived from a will over which the state has no control, and not from its own will; or from an accidental mildness in the administration, and not from a constitution of government; it is nothing but an indulgence of precarious nature, and of little importance.  

Price has gone as far as to claim here that the liberty an individual enjoys is of little value if it is not the result of political liberty. He seems oblivious to the fact that only as private persons individuals could enjoy the religious liberty which he so highly valued. The argument that private liberty ought not to be the product of connivance or indulgence, employed here by Price, was used in defence of religious liberty. It was claimed that religious liberty had to be secured by law. It was not claimed that religious liberty had to be secured by a law enacted by specific individuals. (Indeed such a line of argument could be dangerous, as there were people ready to claim that the Dissenters could wait until they themselves become legislators to gain their liberty). It was an argument showing the importance of civil liberty.

Apart from this dimension, the distinction between political and civil liberty is still clear in the above passage. However, there are two problems in Price's account. The first is that political liberty (designated here as 'free government' or 'liberty of a state') had a double frame of reference. The same conception of liberty as self-government was used to justify on the one hand the claims of the colonies against the mother country, and on the other to propagate electoral reform within a community. Price thus tended to use the same argument for relations between states and constitutional arrangements within a state, without realizing that the one did not necessarily entail the other. Secondly, Price took cognizance of other definitions of

57 Price, Additional Observations, p. 3.
liberty, elements of which he incorporated in his own argument. As a consequence he further multiplied the internal divisions of 'civil liberty' (which was itself his fourth main division of liberty as such). The authors to whom he paid particular attention were Priestley and Montesquieu. Consider the following extract:

To sum up the whole - Our ideas of Civil Liberty will be rendered more distinct by considering it under the three following views: - The Liberty of the citizen - The liberty of the government - And the liberty of the community. A citizen is free when the power of commanding his own conduct and the quiet possession of his life, person, property and good name are secured to him by being his own legislator in the sense explained in p. 1058. A government is free when constituted in such a manner as to give this security. - And the freedom of a community or nation is the same among nations, that [sic] the freedom of a citizen is among his fellow-citizens. - It is not, therefore as observed in p. 3, the mere possession of Liberty that denominates a citizen or a community free; but that security for the possession of it which arises from such a free government as I have described; and which takes place, when there exists no power that can take it away. - It is in the same sense that the mere performance of virtuous actions is not what denominates an agent virtuous...59

By 'liberty of the community' it is clear that Price meant national independence. Given the structure of his new formulation as well as his assurance that his definition of the 'liberty of the citizen' contained both Priestley's political and civil liberty, one may wonder what distinct idea is conveyed by the 'liberty of the government'. The 'liberty of the citizen' contains three notions: a) the power over one's own conduct, b) a share in the legislature, and c) the security of the first through the second. Price almost establishes a causal relation between the first and the second. A citizen is free only if his private liberty is secured through political participation.

58 That is, 'either by himself personally, or by a body of representatives...' (Ibid., p. 10). It is at this point that he subjoined a footnote where he said that Priestley's distinction between political and civil liberty 'forms a very proper subdivision of the liberty of the citizen here mentioned' (Ibid., p. 14n).

59 Ibid., pp. 13-14.
In his definition of the ‘liberty of the government’ he said that ‘[a] government is free when constituted in such a manner as to give this security’. This means that a government is free when the liberty of its citizens (the power they have over their own actions) is protected through their political participation, which is purely a repetition of the ‘liberty of the citizen’.

Why did Price introduce in *Additional Observations* such a superfluous new category of liberty? He had read many pamphlets directed against the *Observations*, whose authors drew a great deal on Montesquieu in order to refute him. The result was that Price placed more emphasis on the idea of security in *Additional Observations*, without modifying his argument in essentials. It also seems that in making the division between the liberty of the citizen (which contained both Priestley’s political and civil liberty) and the freedom of government, Price suggested something close to Montesquieu’s division between political liberty with respect to the citizen and political liberty with respect to the constitution (the latter of which contained, in turn, elements of political and civil liberty).

In Book XII entitled ‘On the Laws that form Political Liberty in Relation to the Citizen’ Montesquieu defined the liberty of the citizen as his security and connected this idea with the ‘goodness of the criminal laws’. In Book XI entitled ‘On the Laws that form Political Liberty in Relation with the Constitution’ Montesquieu defined ‘Political liberty in a citizen’ as ‘that tranquillity of spirit which comes from...

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60 Price mentioned among the numerous answers that of Hey, Lind, Goodricke, Ferguson, Cooper, Wesley, Fletcher, and the author of *Experience Preferable to Theory*. See Price, *Additional Observations*, pp. xiv-xv note.

61 The chapter bears the title ‘On the Liberty of the Citizen’ and the definition is: ‘Political liberty consists in security or, at least, in the opinion one has of one’s security.’ (Montesquieu, *Spirit of the Laws*, Bk. XII, Ch. ii, p. 188).
the opinion each one has of his security..."\textsuperscript{62} Is there any difference between 'political liberty in relation to the citizen' and 'political liberty in a citizen in relation with the constitution'? Both are described in terms of a sense of security and Williams, who followed Montesquieu in defining liberty in similar terms, was aware that 'inconveniences, must arise from applying the phrase political liberty, to the security against abuse of power ... and to the security which is the object of an individual, as a member of society'.\textsuperscript{63} When Montesquieu gave titles to Books eleven and twelve he must have had precisely this distinction in mind. However, despite the broad division into two categories, one of the categories contained also elements of the other.\textsuperscript{64} This is the case with Montesquieu's argument in the very context of considering political liberty (in a citizen) in relation to the constitution (i.e. political liberty) where he combined the notions of political and civil liberty despite the fact that he had established a different category of political liberty in a citizen (i.e. civil liberty). Consider the passage:

Political liberty in a citizen is that tranquillity of spirit which comes from the opinion each one has of his security, and in order for him to have this liberty the government must be such that one citizen cannot fear another citizen.

When legislative power is united with executive power in a single person or in a single body of the magistracy, there in no liberty, because one can fear that the same monarch or senate that makes tyrannical laws will execute them tyrannically.\textsuperscript{65}

\textsuperscript{62} \textit{Ibid.}, p. 157.


\textsuperscript{64} See also, Dybikowski, 'David Williams and the Eighteenth Century Distinction Between Civil and Political Liberty', p. 24; Gunn, \textit{Beyond Liberty and Property}, p. 238.

\textsuperscript{65} Montesquieu, \textit{Spirit of the Laws}, Bk. XI, Ch. vi, p. 157.
In the first sentence Montesquieu defined liberty as security and his argument was that the government had to be constituted in such a way that one citizen would not be afraid of another citizen. In the second sentence in which Montesquieu began to state how the government should be constituted to accomplish this end, he shifted terms. Under such a constitution it was no longer the case that one citizen did not fear another citizen, but one citizen did not fear the 'monarch' or the 'senate'. The link between the two sentences seems to be that one citizen would not fear another citizen when government would be such that he would not fear the governors. Even according to his own understanding of the terms 'civil' and 'political', Montesquieu established a causal link between political and civil liberty within his category of political liberty. Price had done something similar in the new category of liberty of the government by putting in one sentence the two requirements, namely, 'that security for the possession of it which arises from such a free government'. He demanded present security under law so that one citizen would not be afraid of another, and security for the future stemming from political participation so that his present security would not be diminished. If Price's account appeared more confused than Montesquieu's, it is because he envisaged a stronger relation between the two, and grounded liberty on participation (which might also be a serious threat to civil liberty).

It is remarkable that Price cited Montesquieu's authority in support of the view that liberty is self-government and not in reference to ideas with which Montesquieu's

66 'POLITICAL RIGHT', Montesquieu had said, refers to the laws 'concerning the relation between those who govern and those who are governed' whereas 'CIVIL RIGHT' refers to the 'laws concerning the relation that all citizens have with one another'. See Ibid., Bk. I, Ch. iii, p. 7.
name has been most notably associated (as did Price's opponents). Nevertheless, Price did not ignore the importance of Montesquieu's observations concerning the need for dividing power, but he believed that those observations could only give a description of the best possible government, (and the British constitution was such a government in his eyes) which was not the same as a free government. He insisted that his intention in the account of liberty he set forth

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\text{has been merely to shew what is requisite to constitute a state or a government free, and not at all to define the best form of government. These are two very different points. The first is attended with few difficulties. A free state is a state self-governed in the manner I have described. But it may be free, and yet not enjoy the best constitution of government.}
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This is a crucial point, because in the responses to Price there was a tendency to define free government as the good government. According to Price, apart from liberty there are many other elements necessary for the constitution of a good government such as 'wisdom, union, dispatch, secrecy and vigour'. Delolme, who followed Montesquieu, was recommended by Price as an instructive account of the way in which all these elements must be combined to make up the best, but not freest in Price's sense, government.

However, it was not always easy for Price to stick to the distinction between good and free government in the above sense. No matter how close he came to the

\[67\] Unlike Montesquieu, himself, Price does not seem to make any distinction between the mixed constitution and separation of powers.

\[68\] Contrast with editor's note 5 in Price, Correspondence, 2:189.


\[70\] Price, Additional Observations, pp. 8-9 and p. 9n.
idea of security Price had a unique preoccupation with the experience of political participation. Thus even when he defined liberty as security against oppression and sought to contrast good and free governments, he also spoke of a 'just security against oppression', and redefined good government as free government, maintaining that '[o]ne government is better than another in proportion as it gives more of this [just] security'.


Williams developed his ideas by commenting on Montesquieu, whom he criticized for confusing political and civil liberty. As Locke had listed 'rights which oppressive governments may not dispute', so Montesquieu, by giving a definition of liberty as acting according to law (which prescribed what we ought to will), did not address the crucial issue of how law was enacted. In making such a criticism Williams did not apparently realise that he was following the same path of blurring boundaries between the two ideas which he wished to separate. However, he had a second objection. Montesquieu had said that liberty was 'the right of doing what the laws permit' while he should have said that it was 'the right of doing what the laws

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71 Ibid., p. 15.
72 Williams, *Lectures on Political Principles*, pp. 131, 135.
73 Williams, *Lessons to a Young Prince*, pp. 51-52.
74 The reference is to Montesquieu's definition in Bk. XII, ch. iii of the *Spirit of the Laws*.
do not expressly forbid'. 76 Williams explained that Montesquieu’s definition assumed that government at its institution took possession of all the powers and property of men, and dealt out portions of liberty in the exercise or enjoyment of them: whereas government can be reasonably instituted, only as the instrument to prevent the consequences of interfering interests; or to restrain the powers of men within those bounds, where they can exercise them without reciprocal detriment. Governments, regulations, or laws have been formed in consequence of the excesses of liberty; as physic was invented in consequence of irregularity or intemperance. 77

Williams admired Hobbes 78 and there are Hobbesian elements in this passage, but there is an ambiguity about the meaning of liberty which is similar to that found in Hey’s argument to be considered later. Are there any rights and duties antecedent to civil governments or is it that individuals exercise their liberty as far they have the power to do so? Mackintosh had defended natural rights against Burke without seeming to have said anything different from Williams:

Were his [Burke’s] opinions true, the language of laws should be permissive, not restrictive. Had men surrendered all their rights into the hands of the Magistrate, the object of laws should have been to announce the portion he was pleased to return them, not the part of which he is compelled to deprive them. The criminal code of all nations consists of prohibitions, and whatever is not prohibited by the law, men every where conceive themselves entitled to do with impunity. 79

Unlike Hey, however, Williams did not insist on that point as he did not wish to lay much emphasis on his disagreement with Montesquieu on civil liberty. His main

76 Ibid., p. 138.

77 Ibid., p. 139.

78 Ibid., pp. 12, 14; cf. p. 8.

79 Mackintosh, Vindiciae Gallicae, p. 212.
preoccupation was with political liberty and his exposition here oscillated between Montesquieu and Rousseau. He seemed willing to combine in one definition of liberty the ideas of the separation of powers and of popular sovereignty. He made a strange compromise in adding to the traditional executive and legislative powers a 'popular' power:

Political Liberty has a reference merely to the grand divisions of the state; the popular, the executive, and the legislative; and consists in their freedom from the incroachments of each other. Thus a community has no political liberty, whose executive power influences or commands the legislature; or where the people have no regular and practicable method of checking and controuling all the branches of government, when they transgress their proper boundaries. A society therefore may enjoy civil liberty, i.e. all interference of individuals with each other may be regulated by laws; while no method may be ascertained to regulate the interference of the several branches of government, or the encroachments of any or all of them on the happiness of the whole people.\(^80\)

Two criteria were used in the above definition of political liberty. On the one hand it was claimed that the several powers should not interfere with each other. On the other hand a certain superiority was attached to the popular element. But it is not clear whether the 'popular' branch was the same as the 'people'; whether its task was to confine the other two to their appropriate channels of operation; or whether it had itself to be confined to its proper sphere and not to interfere with the other powers. It is also not clear what its proper sphere of action was and by what sort of power it was to be superintended. The ambiguity about the role of the popular power is essential. The executive and the legislative are constitutional powers through which governmental functions are exercised. The power of the people is not a branch of government in the same sense, and in considering the way in which the popular

element was brought to bear on government and its official divisions, Williams came later to elaborate a distinction between the actual exercise of government and popular control over its agents, a distinction which had received little attention among natural rights theorists, because of their emphasis on the idea of contract in the state of nature.

Williams's initial indecisiveness vanished in subsequent pages. While he retained the idea of different powers, checks and limitations were to operate only in one direction: the executive and legislative powers were clearly placed under the control of the 'power of the people; regularly and fairly obtained'.

...to have a will; to delegate legislative and executive powers, which would be free and uncontrolled, within certain limits, but would be checked, corrected, or annihilated, when passing those limits, they oppressed and injured the community they were intended to serve.

There are two reasons why Williams was dissatisfied with and abandoned Montesquieu's doctrine of the separation of powers. First, it was closely connected with an admiration of the English Constitution, for which Williams's contempt surpassed even Paine's. And as everybody knew, 'Thomas [was] not a Montesquieu'. Similarly, Williams announced that the 'pleasing descriptions' of Montesquieu, Sidney, Locke, Blackstone or Delolme made reference to something which 'never had an existence'. ‘The government of England - FOR ENGLAND

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81 Ibid., p. 61.

82 Ibid., p. 55; also p. 82.

83 Boothby, Observations on Mr. Paine's Rights of Man, p. 131; also Parsons, Thoughts on Liberty, p. 13; Smith, Rights of Citizens, p. 105-6. The view that England had no constitution was attributed to Hume by Brand, A Defence of the Pamphlet Ascribed to John Reeves and Entitled "Thoughts on the English Government", London 1796, pp. 76-77.

84 Williams, The Morality of a Citizen, pp. 21-22; 'Englishmen had learnt their political creeds from these romances copied into political breviaries ... See
HAS NO POLITICAL CONSTITUTION was as simple as all European monarchies or even Turkey. He described the balance of power as an 'imaginary thing, which never actually took place in Europe', contending that the only difference between the English government and others was that it exercised its will 'by influence not by fear'.

The second major reason for abandoning the doctrine of the separation of powers was his idea that social science had to establish the true principles of social organisation. Montesquieu had failed as a social scientist. He had derived principles from facts and, even worse, had constructed his theoretical model on a

Blackstone's Introduction copied from Montesquieu; and Delolme's Constitution of England copied from both.' (Letters on Political Liberty, p. 13 and p. 13n); 'See a plausible romance, called "The Constitution of England" by De Lolme. It has been well received, because it is flattering to the vanity of the country...' (Lessons to a Young Prince, p. 136n).


Williams, Lessons to Young Prince, pp. 26, 177; Lectures on Political Principles, Dedication [unnumbered p. ii].

Williams, The Philosopher, 1st Conv., Part II, p. 50; 'But the idea of balance and counter-balance arising from the division, are puerile and fantastical.' (Lectures, p. 149; also pp. 133-4; Lessons, p. 20).

Williams, The Morality of a Citizen, p. 23.

Williams, Lectures, p. 89; also p. 182.

Ibid., pp. 21, 48.

Ibid., p. 108; see also pp. 23, 40, 131, 192.
misinterpretation of facts. What he proposed as principles were only descriptions of contingencies where evils canceled each other in order to mitigate the harm. This was par excellence the case with the 'term for caprice' the 'fluctuating or undefinable point, called moderation', which was at the core of Montesquieu's doctrine of the separation of powers. Montesquieu's ideas presupposed an inherently defective organization of the body politic:

The head, the limbs, of such a body - its deliberative and executive powers - would have no occasion for the imaginary balances recommended by Montesquieu - as the natural body is not assisted or imported by stays, steel-collars, and cork-rumps: - These are the indications and aids of deformity; which no real anatomist would recommend in the production or education of a vigorous, useful, and beautiful body.

The 'unscientific' character of Montesquieu's teaching was also apparent in his metaphysical notions concerning certain passions as animating principles of various forms of state. Montesquieu did not inquire into the merits of the particular forms and passions whose cultivation he encouraged, and his argument was as profound as to say that 'the existence of an ideot [sic.] depended on the preservation of his insanity'.

As virtue was the result of social and intellectual intercourse, so liberty was the result of constitutional organization and not the effect of any whimsical spirit that may

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93 Williams, Lectures, p. 133; also p. 141.

94 Williams, Lessons, pp. 66-67.

95 Lectures, p. 30.
occasionally actuate it'. Liberty was 'susceptible of order', it did not necessarily 'occupy only small spots'; and 'the extent of free communities' was 'relative to the capacity and talents employed in their construction'.

Any number of men may be arranged, so as to form a general judgement or will: without forcing them out of their situations and employments; or producing any of those tumults and dangers, which attend the assemblies even of the smallest democracies.

Political liberty was not necessarily unfriendly to economic prosperity, and did not entail anarchy. In basing political liberty on popular will, Williams took care to stress that the expression of the people's will could never take the form of meddling in the affairs of government. A popular sovereign, like the power of a 'Lord Paramount' when he appointed officers, did not 'not act by interference in the business of delegated departments; but by requiring an account, or correcting abuses'. Most probably, Williams derived the idea from Rousseau but modified it to stress accountability and not direct participation. Although Rousseau wished to separate the idea of government from sovereignty, the description and enumeration of the conditions necessary for democracy as a form of government were almost identical to those referring to the operation of the people in their capacity as sovereign.

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96 Ibid., pp. 141-2.
97 Ibid., p. 36; cf. p. 74.
98 Ibid., p. 108.
99 Ibid., p. 102; also p. 107; see also Letters, p. 52.
100 Letters, p. 53.
101 See for example Nares, Man's Best Right, p. 44.
Therefore it was very easy to confound the boundaries between sovereign and government - and indeed not many paid attention to Rousseau’s attempt to clarify their relationship. Williams, like Priestley, wished to make clear that the actual regulation of public business must always be conducted by identifiable persons. But the persons entrusted with those powers, while they ‘fully govern individuals, or any divisions of the society, are subject to the whole; accountable for the discharge of their offices.’ There is a clear distinction here between sovereign and government to which the distinction between political and civil liberty corresponds. Delegated powers were ‘uncontroled’ within certain boundaries and between certain intervals until those regular moments when the people exerted ‘the whole strength and power of the community’. Williams really meant that those who were entrusted with power had to carry on with the administration of public affairs undisturbed. Only Burke’s ‘vulgar idea of Democracy’ supposed that the people had to be invested with the executive power. Similarly Williams believed that there was no need to espouse the nonsensical doctrine of virtual representation in order to dismiss the idea of general or particular instructions from constituents, which would reduce the ‘representative into a post-boy’. It was sufficient and necessary for the people to ‘have their sense, inclination and judgment expressed and enforced by the abilities of their actual

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104 Williams, Lectures, p. 226.

105 Williams, Letters, pp. 70-71; also Lectures, p. 147.

106 Williams, Lessons, p. 118; see also Lectures, p. 140.

107 Lectures, pp. 150-53.
representatives'. However, the supreme authority rested always with the people and, as he was to reaffirm in the Lessons to a Young Prince, a work written under the spell of Rousseau, various faculties might be delegated but 'THE ACTUAL SOVEREIGNTY OF A STATE CANNOT BE REPRESENTED OR DEPUTED'.

Following Rousseau again, Williams went so far as to pronounce that the 'act which constitutes government is not, cannot be, even a contract; it is the will, the arbitrary law, of an absolute sovereign'. According to Williams, Rousseau mixed up 'profound truths and brilliant sophisms' in the Social Contract but unfortunately his 'genius' deserted him when he entered the issue, most critical and beneficial to society, namely, how the general will was to be collected. Williams himself found a way of solving, or escaping, the problem in the 'diagram of the Constitution of Alfred' which indicated that there was no need to assemble the whole nation in order to obtain the general will.

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108 Letters, p. 78; see also p. 81.


110 Ibid.; see p. 22 for the reproduction of Rousseau's exposition.

111 Ibid., p. 50.

112 Ibid., p. 118; cf. The Philosopher, 1st Conv. Part I, p. 34.
Philosophers have distinguished between various senses of a right. The most important senses are a Hohfeldian 'privilege' and 'right'. These two senses correspond to what Hart called a 'liberty-right' and a 'right' or to what Raphael called a 'right of action' and a 'right of recipience'.\(^1\) A right in the first sense means that A is under no duty. A right in the second sense means that others are under duty to A. Hobbes's notion of right in a state of nature has been regarded as the typical illustration of a right in the former sense, although several reservations have been expressed as to whether it is appropriate to use the term 'right' in this case. One author has argued that Hobbes's right of nature - 'is not a right at all', as 'the word "right" seems too strong to describe' moral liberties which do not entail moral claims against others.\(^2\) The same author, however, also observed that what Hobbes was 'speaking of is quite properly called a right'. The cause of the discrepancy was not verbal, and the author's contradictory statements was the result of his having abandoned in the course of developing his argument the initially adopted definitions of the meaning of liberty and a right.\(^3\) The distinction between a right and liberty was an essential feature of the

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critique of natural rights in the eighteenth century, despite the fact that the words 'right' and 'liberty' were often used synonymously (whether they referred to a state of nature or to a state of civil society). We shall consider the arguments of Lind and Hey to show that while, as part of their criticism, they formed conceptual distinctions and formal definitions, they were then unable to integrate them into their own argument without changing the meaning of the initial distinctions.

i. Lind and the 'Partial Absence of Coercion'.

Although John Lind derived his conception of liberty from Bentham, his writings cannot simply be taken as those of Bentham. Despite this, his Three Letters to Dr. Price was one of the best argued rebuttal of Price's arguments. Lind accused Price of having confounded liberty and a right because there was no law in nature to establish a natural right. As a utilitarian Lind believed that what had been called natural law expressed only people's opinion about what was proper and expedient and, therefore, what law ought to have been established. As a legal positivist he believed that a right was a legal term because there was no observable law in nature. However, the assertion that there is no law of nature is logically independent of the fact that liberty and a right mean different things to the extent that they stand in a different relation to the idea of law. The analytical relationship between a right and law is not affected by the belief in positive law. The Hofheldian distinctions, for example, while they were developed in a legal context, have been widely used in a moral context. Even leading legal positivists have conceded that 'by analogy' the formal

footnote

characteristics of civil law might be extended to other kinds of pre-civil law.

In the eighteenth century a major contrast developed not only between civil law and natural law but also between natural law and positive divine law. Unlike natural law, positive divine law was often considered as real law. That was because it expressed the Will of God (i.e. the supreme sovereign of the universe), and was promulgated in the Sacred texts known to all. Lind echoed such arguments which were intended to undermine the status of natural law. The analytical distinction he elaborated, however, between liberty and a right was not affected by his belief in positive law. Lind himself appealed to the apostle:

_right, Sir, is a mere legal term; "where no law is, there is no transgression"; so says an apostle._ With equal truth he might have said. - "where no law is, there is no right"

Lind made clear that the conception of a right presupposed the idea of law, and distinguished it from the idea of freedom. Without law a man could enjoy possession but could not claim any property: He ‘may be free, but without law, he cannot have the right to freedom’.

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5 This distinction was used by Marcilius in similar way as in eighteenth century. See B. Tierney, ‘Marcilius on Rights’, _Journal of the History of Ideas_, Vol. 52, p. 9.

6 "Law", as is justly observed by Mr. De Lolme, "is the expression of will". - The law of nature then must be the expression of will - but of whose will? of Nature’s? - But what is Nature? Or is it the expression of the will of God, who is sometimes called the Author of Nature? But if this be the case, where is the difference between this and what is called the Law of Revelation?” (Lind, _Three Letters_, pp. 22-23n; see also p. 69).

7 Cf. Allen, _Oration upon the Beauties of Liberty_, p. vii.

8 Lind, _Three Letters_, p. 21; cf.: ‘... the expression "a right" is a purely legal term so that where there is law there is no right’ (Hart, _Essays on Bentham_, pp. 61-62).

According to Lind Price did not realise that 'the terms Liberty, Self-determination, Self-direction, Self-government, conveyed only negative ideas'.

What then is Liberty? Clearly nothing more nor less than the ABSENCE of COERCION. I use the term coercion, because it comprises constraint and restraint: by the former a man may be compelled to do, by the latter to forbear, certain acts. Liberty, thus defined, might not inaptly be divided into physical and moral; coercion may be physical or moral. I call physical coercion the operation of some extraneous, physical cause or agent; which operation takes place during the time of another's doing, or forbearing to do, an act and irresistibly compels that other to do or to forbear it. The absence of this physical coercion I call physical liberty. Moral coercion I call the threat of some painful event, to take place after, and in consequence of our doing, or forbearing to do certain acts. The absence of this moral coercion I call moral liberty.¹⁰

He added that moral coercion was produced by the prescription of law and physical coercion by the penalties incurred as a consequence of acting in defiance of the prescription of law.¹¹

According to this formulation a man is free when no moral and physical coercion are imposed upon him by law. This means that a man is free when there is no law. Given the fact that all laws are coercive, they can operate only by placing individuals under moral and (when executed) physical coercion, as a consequence of which individuals cease to be free. If this is the case, is it then possible in conditions of civil society to retain the idea of freedom in the way defined above, which entails the absence of coercion and therefore the absence of law which imposes coercion?

And can you seriously imagine, sir that a full and perfect liberty that is a total absence of coercion, of constraint and restraint; is among the things to which every member of society should have an established unalienable right? ... if by society you mean, as it appears you do mean, a state of government. Such a state implies law. All

¹⁰ Lind, Three Letters, pp. 16-18.

¹¹ Ibid., pp. 18-19.
Laws are coercive; the effect of them is either to restrain or to constrain. They either compel us to do or to forbear certain acts. The law which secures my property is a restraint upon you; the law which secures your property is a restraint upon me. By what magic then is it that you contrive to bestow on every member of society an unalienable right to be free from restraint which is one of the two cements, by which, and by which alone, society is held together.\(^{12}\)

The main contrast in this passage is between a state of nature and a state of civil society. Lind maintained that civil society and perfect liberty were incompatible ideas.

But what is the difference between 'liberty' and 'a full and perfect liberty', and especially what can be opposed to 'perfect liberty'?

Liberty we have said is the absence of coercion. **Perfect liberty would be a total absence of coercion; Civil liberty means not this. It means a partial absence of coercion;** and that enjoyed by one or more of that class of persons in a state of civil or political society, who are called subjects; and with respect only to others of the same class. **How is this liberty created by law? to whom and against whom is it given?** It is given to that subject, or class of subjects, upon whom the law does not operate, and against all other subjects upon whom the law does operate.\(^{13}\)

Although Lind did not use the term 'right', here the idea of a right is expressed by the words 'partial absence of coercion' which was given as a definition of civil liberty. The terms 'perfect liberty' and 'civil liberty' correspond to the conceptual distinction between liberty and a right. Liberty as initially defined presupposes the absence of law, while liberty as defined here has to be 'created by law', and what is created by law is a right and not liberty.

If in describing liberty in conditions of civil society Lind had retained unchanged the initial definition of liberty as the absence of coercion, then 'civil liberty' should refer to those activities, goods, or things for the regulation of which


no law has been enacted in civil society, and not to the activities regulated by law. In this sense ‘partial absence of coercion’ as opposed to ‘total absence of coercion’ should signify the fact that some but not all aspects of human life have been exempted from the regulation of law; such a notion would be exactly what Priestley meant by civil liberty. With respect to those areas of civil life where the law is silent, all individuals are under no duty; that is, they are not under coercion. The only difference here from a condition of perfect liberty is that in this case all individuals are under no duty in all areas of conduct. However, Lind’s formulation of civil liberty does not allow for areas in which all individuals are under no duty (although this would be the only notion of liberty consistent with his initial definition). This is because the ‘total absence of coercion’, implied in perfect liberty, refers in fact to a state of nature where no law exists to impose coercion, whereas the ‘partial absence of coercion’ does not refer to those spheres of activity in civil society which are not regulated by law, that is, a minimum state of nature within civil society. Instead, it refers to liberty enjoyed in civil society by those upon ‘whom the law does not operate and against all other subjects upon whom the law does operate’. It refers to a conception of a right, the kind of civil liberty which Bentham believed ‘required a massive invasion

14 This of course does not necessarily imply a commitment to the view that the legislator is incapacitated by a conception of inviolable rights from regulating these aspects. For this would mean to confound the conception of sovereign with how much the sovereign has in fact intrude on individuality.

15 As the ‘legislator has no individual person in contemplation’ (Remarks on the Principle Acts, p. 29n) all that is meant by ‘the law operates’ and ‘the law does not operate’ is that there may be a subject or a class of subjects whose conditions do or do not place them in the category to which the regulations of law are applicable.
of liberty\textsuperscript{16} to be established.

\textit{ii. Hey and the 'Liberty of the Peaceable'.}

Hey preferred to describe liberty as the absence of restraint\textsuperscript{17} and not also the absence of constraint as did Lind in following Bentham. Admitting that Hey's exposition was not clear, Rosen has assumed that Hey probably opted for the 'narrower' conception of liberty as 'it was more compatible with the constraints imposed by law and fitted more easily into a utilitarian theory'.\textsuperscript{18} Thus liberty as defined by Hey as the absence of restraint 'would be compatible with most operations of government' such as taxation, and 'with a conception of civil liberty in which negative duties would secure rights to person and property'.\textsuperscript{19} The problem with this explanation is that negative duties securing rights to persons and property are not imposed by constraint (as in taxation) but by restraint. For in this case the law does not say, as in taxation, 'do' (i.e. pay the money) but it says 'do not' (i.e. touch another's money). The existence of such a law, therefore, is incompatible with Hey's notion of liberty as the absence of restraint, since negative duties are imposed by restraint. It could be objected that a law imposing negative duties is compatible with Hey's narrow conception of liberty, because Hey would say that one is still free so

\textsuperscript{16} F. Rosen, 'Thinking about Liberty' (Inaugural Lecture delivered at UCL, 29 Nov. 1990), p. 8.

\textsuperscript{17} Hey, \textit{Observations on the Nature of Civil Liberty}, p. 8; \textit{Happiness and Rights}, pp. 156, 199.


\textsuperscript{19} \textit{Ibid.}, pp. 29-30.
long as one is not in chains. To anticipate such an objection we should pay some attention to what Hey meant by the term 'restraint'. Hey's conception of liberty was narrower than Lind's in the sense that it did not include the absence of constraint and not in the sense that Hey adopted a narrower interpretation of the term 'restraint'. When he said that the idea of liberty was 'merely negative' and was 'only the absence of restraint' he subjoined the following footnote:

To avoid ambiguity, it should be observed that Restraint sometimes means only such restraint as actually prevents an action form being done. But it is here used in a more extensive signification: so that a person would be said to be restrained from doing any action, if he was merely forbidden to do it; although the prohibition should not produce its effect of hindering the action.20

Hey's conception of restraint was not restricted to physical confinement incapacitating one of acting, which could be the effect of enforcing legal penalties in the case of disobedience. A mere prohibition of civil law was taken by Hey as a restraint. Therefore, to the extent that the laws securing person and property operate through the imposition of restraint, they are incompatible with Hey's conception of liberty. Now it is difficult to say why Hey refused to include in his definition of liberty the absence of constraint. Bentham criticised Hey convincingly on that point.21 We should add that Hey's refusal to include constraint is absolutely incomprehensible even in the background of his own assumptions. Hey was simply confused on the issue of constraint and restraint as it can clearly be seen by his commentary on Lind's conception of liberty:

The author of this letter makes Liberty to be the Absence of Coercion; and observes that Coercion comprises Constraint and Restraint. But it

20 Hey, Observations, p. 8n.

21 See Rosen, Bentham Byron and Greece, pp. 29-30.
seems to me, that Constraint is understood to include something more than a mere deprivation of liberty. If a person by violence puts a pen into my hand, and then constrains or forces me to write certain words and sentences, I am indeed deprived of the liberty of holding my hand still, or of moving it the way I chuse; but that is not all, - I am forced into one particular action; which is something more: there is a positive violence exerted upon me. With all due respect therefore to so accurate a writer as Attilius, and to the friend from whom he professes ... to have received his definition of liberty, I still am inclined to think that the common notion of liberty is merely Absence of Restraint.

Hey did not gave an example where the imposition of constraint was compatible with the idea of freedom, to show why he refused to integrate the absence of constraint into his definition of liberty. Instead, in his example the imposition of constraint presupposed a deprivation of liberty, whatever was the cause of this deprivation. The only reason Hey gave for excluding constraint from his definition was that it implied a ‘positive violence’. If this was the case then the reason for which he included restraint must have been that restraint implied a negative violence. But this is nonsense, since it is difficult to see what one person could do to another to restrain him, except perhaps by being indifferent to him. There was a confusion in Hey’s argument about the meaning and implication of the terms ‘negative’ or ‘positive’ when applied to the idea of liberty and when applied to the ideas of constraint and restraint. Liberty was something negative only because it implied an absence. This idea could not be affected by any assertion as to whether restraint or constraint were negative or positive. Thus the question could not be whether constraint was something negative or positive, but whether its absence would produce something negative. Accordingly, liberty was a negative idea because the absence of restraint implied something negative and not because restraint ‘unlike constraint’ implied something negative.

Hey exhibited a peculiar anxiety lest he depart from the common meaning of liberty as a negative idea, by letting positive elements sneak into his definition. This
led him to misunderstand Bentham's definition. But the problem was not confined only to constraint versus restraint. The same anxiety was manifested in his persistence in retaining the words 'absence of restraint' even when his argument presupposed the presence of restraint. If he adhered always to these words, Hey probably felt, he would have continued to describe liberty as a negative idea no matter how much he had altered the context in which 'absence of restraint' took place.

Unlike Lind, who divided liberty exclusively into moral and physical with the only point of reference civil law (that is, law in civil society), Hey thought it appropriate to divide liberty into as many categories as one could wish, provided that one retained the idea of absence of restraint. Liberty thus could properly be divided in terms of both sorts of restraints and sorts of actions. Hey possibly introduced the double criterion as a concession to Price, in order to remain close to Price's divisions of liberty while meeting his argument. In this sense it might be said that Hey's framework was more flexible than Lind's, and could accommodate aspects of liberty which were much discussed in the eighteenth century. For example, religious toleration could be seen as civil liberty in terms of the types (civil) of restraints which had to be absent in order to produce it. It could also be regarded as religious liberty with reference to the kind of activity which one freely enjoyed as a consequence of the absence of those restraints. Accordingly, the absence of religious restraints on civil matters (Hey gave the example of working on Sundays) could be termed either civil liberty or religious liberty, according to which one of the two criteria one employed. Hey's double criterion of approaching liberty is not without problems, which we shall ignore in order to concentrate on his discussion of liberty taking as the criterion only

Hey defined natural, moral, religious, civil liberty as the absence of restraint imposed by natural, moral, religious, and civil laws. Given his definitions, it would have been more accurate for him to say that natural, moral, religious, civil (and so on) liberty is the absence of natural, moral, religious, civil (and so on) laws so that the respective restraints are not imposed. Bringing a law into existence means bringing respective restraints into existence. And obviously this is what Hey had in mind when he asked Price:

*Does not every law of Civil Society, every law of Morality and religion, restrain self-government?*

A question which led him to observe:

*Our Liberty in general must increase by the removal of any restraint whatever, and decrease by the addition of any. The greatest degree of this liberty must be the absence of all restraint.*

Which in turn means:

*The greatest degree of it would be, to have no Civil Laws at all.*

Therefore *any* law diminishes liberty.

Despite his caution to proceed step by step without changing the common meaning of liberty as an absence of restraint, he arrived at a point where he did change the meaning, though not the words 'absence of restraint':

*To have no Civil Liberty, is, to be confined and directed in every*

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23 "...by natural Right of walking out implies that the laws of Nature *forbid others* to detain me; whereas my natural Liberty of walking out should seem to imply nothing more than this negative idea, that the laws of Nature *do not forbid me* to walk out." (Ibid., p. 14); "...we may define Natural Liberty, as before, that *Liberty which the laws of Nature allow, or the absence of restraints imposed by the laws of Nature.*" (Ibid., p. 15).

24 Ibid., pp. 23, 26, 27 respectively.
action, however trifling, by the laws of Civil Society. And the nearer we approach to this state, the less is our Civil Liberty. Nothing need be said to shew that it may possibly be too small. There is one species of liberty which cannot be too great: the greatest degree is the best: --- I mean, the absence of restraints imposed by the arbitrary violence of individuals, or, that Liberty which the violence of individuals allows to the peaceable citizen. This cannot be excessive; for the restraints imposed by arbitrary Violence cannot be too few: --- it were best if such restraints were entirely removed. 25

The first passage is a continuation of his argument that liberty is the absence of law. This definition is identical in meaning with Priestley’s conception of civil liberty. Hey spoke about liberty in civil society, arguing that the less the amount of legislation the more the liberty of the individual. Such a liberty could never be ‘too small’. Hey probably felt that he was too close to the idea of the state of nature. Civil society differed in that it provided some sort of protection. Thus Hey introduced the second passage where liberty was produced by law. If Hey was more cautious in terminology his two passages together would have been not unlike Hart’s account of a liberty-right within a protected periphery established by rights and duties. 26 However, Hey was silent in the second passage about rights and duties. He insisted on the words ‘absence of restraint’, and in fact reiterated (in italics) the very phrases he had used to define liberty as a negative idea. At the same time, he also referred to ‘arbitrary violence’ and ‘peaceable’ citizens, terms which would make sense only in the perspective of a law, a norm to specify what was violent and peaceful conduct. This was, in effect, the gist of the contention against the advocates of the rights of man in the state of nature. It was claimed that they confounded liberty and a right:


...the idea of *jus* must pre-cede that of *injuria*\(^{27}\)
...and when *injuries*, not being defined by law, the individual about to do the act would himself have to judge whether it would be injurious; i.e. hurtful. Would he ever determine that building his hut, &c ... he was doing any thing injurious to the rights of others?\(^{28}\)
... law alone is to determine what is hurtful.\(^{29}\)
... till some rules of action ... were prescribed, - there could be no MEASURE of the RECTITUDE, or DEVIATION of men's actions.\(^{30}\)

Hey agreed with these arguments.\(^{31}\) By using, therefore, words such as 'arbitrary violence' or 'peaceable citizens', he supposed the existence of a law.

Hey may have thought that he consistently employed his conception of liberty as a negative idea - the absence of restraint - when he was talking about the 'absence of restraints imposed by the arbitrary violence of individuals'. But this is deceptive. Restraint was necessary to attain this end. The absence of restraints imposed by the arbitrary violence of individuals is effected by the imposition of restraints on all individuals in order to prevent them from attempting to impose arbitrary violence. The law therefore decreases the liberty of all by means of imposing restraints on the potentially violent in order to free the peaceful from the restraints forced upon them by the actions of the potentially violent. It is the restraints on the violent (therefore restraints on potentially anybody and not necessarily every body) which produces the liberty of the peaceful (therefore liberty for potentially anybody although not necessarily everybody). When Locke said that law 'enlarges Freedom' he meant the

\(^{27}\) Smith, *Rights of Citizens*, p. 85.

\(^{28}\) Ibid., pp. 93-94 note 2.


\(^{31}\) Hey, *Happiness and Rights*, p. 129.
freedom of those who are 'free from restraint and violence of others' since the others
cannot do what they 'list'. ^2 Hey said that law diminished freedom, but increased the
liberty of the peaceful because it freed them from the restraints imposed by the actions
of the violent. The two positions amount to the same thing. However, Hey did not
criticize Locke directly but Montesquieu. Montesquieu, he believed, had confused
liberty with a right and then with the effects of a right, which was security. ^3 Hey
actually had done the same. ^4 One could render Hey's ideas in different words and
attribute those ideas to Montesquieu. Thus, in giving the gist of Montesquieu's
argument, Ferguson claimed 'that nothing can give a more complete freedom from
unjust restraint, than the perfect security that we cannot be wronged'. ^5 Mackintosh
contended that when men had 'security against wrong' they were 'more free, even in
the most obvious and grossest sense of the word; than if they were altogether
unprotected against injury from each other', ^6 and an anonymous author claimed that

^2 Locke, Treatise, II, para. 58, p. 306.

^3 'But he [Montesquieu] seems to have gone beyond the mere idea of Liberty. If
I might be allowed to hazard such a conjecture as the following, I should say that he
seems first to have confounded Liberty with the Right to it, and afterwards to have
substituted instead of the Right these good Effects which it produces; namely, Safety,
and Tranquillity of mind derived from it.' (Hey, Observations, p. 35).

^4 This has not generally been appreciated by commentators. See Gunn, Beyond
Liberty and Property, p. 246; Dybikowski, 'David Williams and the Eighteenth
Century Distinction between Civil and Political Liberty', p. 20; J. Ph. Reid, The

^5 Ferguson, Remarks on a Pamphlet, pp. 7-8.

52; 'So that, upon the whole, he becomes freer to follow his own will, and is less
controuled in his actions than he was before.' (Hey, Observations, p. 55); cf.: 'In the
state of nature] man has no bounds to his rights, but no security in the exercise of
them; in the other,[civil society] his rights are limited by compact, that is, by the
restraints the law of the Government imposes upon him. but he enjoys or ought to
"he who is protected in the peaceable enjoyment of his rights, is a Freeman, and enjoys Civil Liberty". These ideas were expressed by Hey in terms of the greatest absence of restraints on the peaceable. The only difference between him and those writers is that the latter insisted on the presence of restraints.

Hey maintained that 'the restraints imposed by arbitrary violence cannot be too few' and 'it were best if such restraints were entirely removed'. He probably meant that it would be best if individuals obeyed the law so that one individual would not encroach upon another’s legitimate pursuits. But his utterance may also have meant something completely different. If an appeal to a law is necessary to determine what is or is not violence, the possibility of removing arbitrary violence is proportional to the multiplication of laws. The possibility of removing arbitrary violence entirely would require the maximum quantity of legislation enacted and enforced to regulate all possible spheres of human activity.

So far we have considered the failure of Lind and Hey to employ consistently their initial definition of liberty throughout their argument. If we now turn to relate their expositions to the arguments they were challenging, it seems that the whole discussion about whether liberty was a negative idea boils down to the old distinction between political and civil liberty (since Lind and Hey failed to retain the conception of liberty as a negative idea in their own account of civil liberty). But from this perspective the meaning of ‘negative’ is already different. The terms ‘positive’ and ‘negative’ have been used to distinguish liberty from a right by relating them to the

enjoy, perfect security within those limits.’(Anon., Rights upon Rights, p. 6).

37 Anon., Civil Liberty Asserted, p. 17; see also pp. 30-31.
presence or absence of corresponding positive or negative duties (duties to do or to forbear). But they have also been conventionally and less coherently used to classify liberty (or rights) in diverse categories, by differentiating the rights to life, locomotion, free speech, property, from one another or from political participation, or all these taken together from welfare-state rights. Due to this double frame of reference, terms such as positive or negative in each of these two contexts mean different things.\(^{38}\)

While liberty as a negative idea presupposes the absence of a duty whether the duty is positive or negative, what is often called negative liberty presupposes the presence of negative duties.\(^{39}\) On the other hand it is easy to confound a positive duty (to do) with ways in which a positive duty may be discharged.

Price clearly possessed a conception of liberty as a negative idea. This was liberty in the state of nature, or what Lind called 'perfect liberty', which Price

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\(^{38}\) Compare: '...a right to receive something from him, even if the something is simply the facility of being left alone.' (Raphael, Human Rights, Old and New, p. 56) with '...the right to work, and the right to participate in government, are claims to be given the opportunity for work and for political activity.' (Ibid, p. 59). Compare now: 'All rights were claim rights: they all required other men to act in some way toward, the claimant, to grant him something.' (R. Tuck, Natural Rights Theories, Cambridge 1979, p. 15); 'A right to have something correlates with either a negative service duty to abstain or a positive duty to provide' (Tully, A Discourse on Property, John Locke and his Adversaries, Cambridge 1982, p. 73, also p. 84; also Finnis, Natural Law and Natural Rights, Oxford 1980, p. 200) with 'A third and much stronger sense of right is invoked when the term is use to indicate that a person ought to be empowered to do something or that he ought to be given something. ... [it] is not just to lay upon others the obligation not to interfere, but to lay upon them the positive duty of enabling the person who has the right to enjoy it.', '...the rights to be empowered to do something or to be given something - are our political rights...' (Thomas, The Honest Mind, pp. 113, 117); 'Unlike a right to life and limb which we ... described as purely negative, a right of property looks more positive...' (Stoljar, An Analysis of Rights, p. 100; see also C. Gould, Rethinking Democracy, Cambridge 1990, pp. 40-42, 81-83). See further J. Austin's comments, Lectures in Jurisprudence or the Philosophy of Positive Law, 2 vols., London 1885, 1:346-7.

\(^{39}\) In this connection compare Hey's argument in Observations, p. 14 and in Happiness and Rights, p. 130.
erroneously expected to survive in civil society. Not only did a major part of Lind's argument presuppose that Price had defined liberty in negative terms, but it was all too frequently complained that Price had offered an account of 'unrestrained Liberty', or that he had always conceived of 'liberty in contradistinction to Restraint'.

The second kind of liberty which emerged in Lind's account of the partial absence of coercion, and in Hey's argument concerning the greatest liberty of the peaceable, was a right created by law through the imposition of correlative duties. Price, of course, possessed such a conception of liberty. It was liberty under law and not men, which he called liberty of private persons or a state under which freedom was enjoyed.

For Price the merely negative liberty granted by law to the citizen when it prohibits coercion is not enough for real freedom. If the law allows and protects such liberties, this, is not free government but merely government under which liberty happens to be enjoyed...

In calling Price's civil liberty 'negative liberty' in the context of juxtaposing it to political liberty, Hart did not have in mind the sense of liberty as a negative idea as defined by Bentham and (initially) by Lind. Now, if we turn to Lind's argument we shall notice that while the contrast between liberty in a state of nature and liberty in civil society had produced the incoherent idea of the 'partial absence of coercion', in the subsequent contrast between civil and political liberty Lind was less ambivalent.

40 Goodricke, Observations on Doctor Price's Theory, pp. 81, 84.

41 Ferguson, Remarks on a Pamphlet, p. 2; also pp. 3, 7-8; Anon. Licentiousness Unmask'd, p. 19; Stevenson, Letters, pp. 43, 49, 58; Tucker, Treatise, p. 76; Hey, Happiness and Rights, pp. 160-61.

He retained the word liberty in the broad category of 'civil or political liberty' and claimed that it 'is produced by a positive operation of law' which prevents individuals from coercing each other.\textsuperscript{43} The reference to the positive operation of law was made in order to differentiate it from '[c]ivil or political Security' which could not be created in the same way because it 'is to operate against these very persons in whose hands the power is lodged.'\textsuperscript{44} Such a conception of security was to be procured through an appropriate distribution of power. Setting aside liberty as a negative idea, Lind's argument was that civil liberty was established by acts of the legislature so that individuals could claim freedom from injury from each other but never against the law-maker. Let us compare this view with the following assertion made by Cartwright, a disciple of Price, who attacked Lind:\textsuperscript{45}

But cannot parliament take away part of our civil liberty for the better preservation of the remainder? No: not a iota of liberty can parliament touch.\textsuperscript{46}

It is difficult indeed to find a more straightforward and thorough disagreement between two authors referring to the same concept. Yet the opposite views are not about the same concept. Cartwright and Lind used the opposite terminology. By 'civil or political liberty' or 'liberty' Cartwright meant political participation.\textsuperscript{47} Cartwright insisted on the need to restrict 'our words to determinate meanings, with care and

\textsuperscript{43} Lind, \textit{Three Letters}, p. 87.

\textsuperscript{44} \textit{Ibid.}, p. 88.

\textsuperscript{45} See Cartwright, \textit{An Appeal} pp. 86-87; \textit{The Constitutional Defence}, p. 58n.

\textsuperscript{46} Cartwright, \textit{An Appeal}, p. 19.

\textsuperscript{47} 'Civil or political liberty, properly so called ... consists in the power of self-government' (\textit{Ibid.}, p. 20); 'Whatever is short of political liberty, is not liberty, but mere legal protection.' (\textit{Ibid.}, p. 16).
precision' although he conceded that in a 'general and popular sense' we might 'say truly that legal protection is amongst our rights and liberties'.

Despite the reverse terminology Cartwright's argument is similar to Lind's in many important respects:

*Political liberty* ought to be distinguished from *legal protection*. They whose property and persons are defended by the laws of a country, against all persons except the legislator, have legal protection; and such legal protection was remarkably complete under the late king of Prussia, the most perfect despot in Europe; who suffered none but himself, the sole legislator, to injure his subjects; but political liberty, besides making legal protection certain, instead of precarious, defends a people even against the legislators themselves; for if those who made laws are annually chosen by the people, they are dependant on the people; they are then the servants, instead of the masters of their country; and they will of course by its defence against unnecessary wars, unnecessary taxes, and unnecessary restrictions on personal liberty; nor will they enact oppressive laws of any kind.

According to this passage, legal protection operates against all but the legislator. Political liberty secures legal protection. Political liberty does not do so by limiting the power of the legislature, but only by making it in the immediate interest of the legislators not to enact oppressive laws. Behind this association lies the same idea which led Lind to claim that liberty and security must be produced in different ways, although what is different here is the terminology. Cartwright might have been inaccurate in denominating political participation as liberty and not security. However, liberty was too sacred a word to do away with, and at any rate even if the word 'security' was not preferred, the idea still was that political liberty secured legal

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48 *Ibid.*, p. 20. cf.: 'In England the law is every where supreme and, governs all. The king ... [t]he nobles ... [e]very subject of Great Britain in his political station and occupation, is governed and protected by the law: therefore every Briton is free.' (Tatham, *Letters to Burke on Politics*, pp. 73-74; also p. 84).


50 '...so a self-governed nation ... might even wisely abridge the legal protection of its citizens.' (*Ibid.*, p. 20).
protection. In passing now to Lind’s conception of civil liberty, we might reverse the case and say that since, in this context, liberty was not any longer the pure idea of absence of coercion, there is no reason why the term ‘liberty’ should be preferred to the term ‘protection’ adopted by Cartwright. Lind’s civil liberty and Cartwright’s legal protection are produced by the positive operation of the law; they regulate relationships between subjects; and their extent in both cases is at the discretion of the legislature.

iii. Liberty as Utility.

‘True liberty’, ‘rational liberty’, ‘lawful liberty’, ‘liberty at perfection’ as opposed to ‘licentiousness’ or ‘antinomian’ liberty, were current expressions employed to point to a necessary relation between liberty and law. Usually, however, these phrases were the first step before transforming liberty into security, utility, virtue, good government and other related concepts. Thus Tatham claimed that ‘liberty consists in obedience to the law’, and added immediately that ‘to live in subjection to the state should not be deemed slavery but safety’, and further that this ‘useful and substantial LIBERTY’ was discerned in ‘all those social and civil advantages which constitute the public good’.

As we have seen, Ferguson and Hey upheld the same idea, although they

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51 Anon., The Duties of Man in Connexion with his Rights, pp. 10, 47; Anon., The Pamphlet entitled "Taxation no Tyranny" Candidly Considered, p. 87; B. Boothby, Observations on the Appeal from the New to Old Whigs, London 1792, p. 165; Brown, An Essay, p. 131; Burke, A Letter to a Noble Lord, Speech at his Arrival at Bristol, Works, 8:15, 3:8; Cartwright, The Constitutional Defence, p. 4; Plowden, Jura Anglorum, p. 28; Shebbeare, An Essay on the Origin, p. 89; Tatham, Letters to Burke on Politics, p. 84.

52 Tatham, Letters to Burke on Politics, p. 71.
framed it in different and even opposite terms. While Hey had argued that liberty was the opposite of restraint, and then invented the 'liberty of the peaceable' to leave room for restraint, Ferguson claimed from the beginning that if 'Liberty be opposed to Restraint ... it is inconsistent with the great end of civil government itself'.53 Because the imposition of restraints was necessary to implement the great end of civil government, which was happiness, Ferguson inferred that liberty was not opposed to restraint. Exactly the same idea, however, could have been expressed without describing the means of happiness or virtue as liberty, or indeed by describing it as submission.54 A remarkable ambiguity surrounded the triangle connecting liberty, restraint, and happiness. Is liberty the same as happiness,55 or is it necessary in order to attain happiness to subject liberty to restraints?56 And if this is the case,57 does it follow that because the restraints are just and appropriate, happiness itself exists in submission to restraints?58 It was said that liberty 'when prudently checked, is of the first blessings of life'.59 But it was not clear what was actually the cause of its being

53 Ferguson, Remarks on a Pamphlet, p. 3.

54 See Hey, Happiness and Rights, pp. 182-3, 185; Johnson, Taxation no Tyranny, p. 250; Goodricke, Observations on Dr. Price's Theory, pp. 87-88.


56 Goodricke, Observations on Dr Price's Theory, 85; also Boothby, Observations, p. 162.

57 Barwis, Three Dialogues Concerning Liberty, pp. 10-11.

58 Ibid., p. 14; also p. 20.

59 Anon., The Duty of the King and Subject, p. 11.
a blessing: the amount that remained unchecked, the check itself, or the fact that the check would make sense in prudential terms. In the general context of the debate many different answers were given.

In the context of the antithesis between the state of nature and civil society, conservative thinkers were prone to identify happiness with law:

... that society is best, by the organization of which the members of it are most happy and as societies cannot be organised without law, laws must be therefore necessary for the happiness of men.®

An attempt to be more specific about the relation between law and happiness usually contained a range of ideas, each leading in a different direction:

THE end and object of all government is the happiness of society. The happiness here meant consists not in the rude and boisterous direction of our own actions, but in the security of our natural and civil rights ... [produced] by laws ... which, though they restrain our natural liberty of action in some respects, form the safeguard of what remains. The sacrifice is small, and in the service of the law, is perfect freedom.®

The perfect freedom of which the author spoke was what was left after the sacrifice of the (small) amount of original natural liberty which was made in order to produce the general happiness. The criterion thus of 'perfect freedom' was the amount of freedom that was given up, in conjunction with the reason for which it was given up. Of course, it is difficult to meet with an argument countenancing sacrifice without providing a reason for doing so. However, the tension between the pursuit of public happiness and the level of the restraints on natural liberty is clearly brought out, when

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® See Ibid., p. 6; Shebbeare, An Essay on the Origin, p. 89; also p. 115; Scurlock, Thoughts on the Influence of Religion, p. 5.

®® Anon., Letters to Thomas Paine, p. 16; also p. 28.

we do not compromise as our author did and say that the ‘sacrifice is small’, but consider the possibility of a large amount of sacrifice required by the common good. According to the double criterion adopted, no matter how extensive the restrictions on natural liberty are, as far as they are justifiable in terms of the general welfare, their product would still be called ‘perfect freedom’. This is the kind of argument pursued by Hey and Paley, but not by Priestley.

There is, however, another dimension in the above passage concerning the way in which happiness and security are connected. The author maintained that our happiness did not consist in directing our own actions but in the security of our rights through law. Yet another ‘liberty of action’ emerged, that which ‘remain[ed]’ and was secure, and from the context we may assume that happiness consisted in the exercise of that kind of liberty. Behind these two different aspects of directing our actions there was an implicit but abundantly clear (in fact typical) clash between political and civil liberty. Political liberty was presented as an unlimited power to direct our actions (in other words as the liberty of the state of nature, or natural liberty) while civil liberty was depicted as a limited power to direct our actions. In this way an easy contrast could be made between unlimited and limited liberty which would obscure the qualitative difference between civil and political liberty. As long as this was the dominant context of reference, happiness was not considered within the conception of civil liberty, but only in the contrast between political/natural liberty on the one hand, and civil liberty on the other. As a result happiness was often perceived to consist in the very act of obeying the law instead of following one’s own will. Such a conception was exemplified in its more serious form by Robert Nares, but was encountered generally in conservative thinkers addressing themselves to the ignorant
multitude. When, however, the argument tended to focus on civil liberty itself, (independently of the above contrast) the relationship between happiness and the operation of law would take on a more credible form, as it is observable in the way in which Hey modified his exposition. We shall consider the transformation of liberty into utility in the perspective of the distinction between political and civil liberty.

Price and his followers had set out a conception of political liberty according to which if a man was not self-governed he was a slave. Hey juxtaposed to this conception of (political) liberty a conception of civil liberty. Subjection to the laws to which one did not have a share was not slavery, according to Hey, for it was 'always implied in Slavery an idea of excessive subjection':

A man is a slave to his Prince, when his actions depend more upon the will of his prince than the purposes of Civil Society require. In fact, it necessitated the transition from civil liberty as it was initially defined to the 'liberty of the peaceable citizen'. Excessive subjection, however, did not refer to the burdens imposed by the quantity of laws, as Hey's definitions would suggest, since it was argued that restraints enhancing the general happiness did not diminish liberty. The idea goes back at least to Hutcheson, who claimed that if 'indeed civil liberty meant an exemption from the authority of the laws, the best regulated states would allow least liberty'. At the time Hey was writing there were even more straightforward

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63 Hey, Observations, p. 39; see also Happiness and Rights, pp. 113-4.

64 Cf.: 'Liberty and restraint are opposed each to the other. What then are the limits of that restraint, which forms a part of civil liberty?' (Gisborne, The Principles of Natural Philosophy Investigated, p. 345).

ways of making this point, as the remarkable statement by Dawes\(^{66}\) that men are 'slaves' when 'UTILITY among them is limited'.\(^{67}\) Such ideas should be contrasted with contemporary current assertions that no matter how well a negro was treated, he did not cease to be a slave. The idea of choice was employed in the context of defending political liberty precisely in order to make a contrast between being free and being well-governed.\(^{68}\) Thus when Johnson rendered civil liberty the equivalent of the 'comforts of life', one of his respondents reacted as follows: 'I beg leave to tell him, that in the choice of evil is freedom.'\(^{69}\)

It is probable that Hey was led to transform liberty into utility because he lacked a conception of political liberty. Political liberty (being itself justified on various grounds) was in itself a conception of legitimacy, so that necessary (or even unnecessary) restrictions on civil liberty could be justified by only reference to the idea of a body politic governing itself (although occasionally unwisely). The absence of a conception of political liberty in Hey's argument - let alone his attempt to respond to a conception of political liberty through a conception of civil liberty - created a vacuum of legitimacy with respect to the amount of restraints on civil liberty. Utility came to bridge the gap. From this point of view it is useful to compare

\(^{66}\) The author was impressed by 'the superingenuous writer of the fragment of government' although he could not stomach his attack on the 'celebrated' Blackstone, and at any rate he was pleased (at that time) with Price's performance. See M. Dawes, A Letter to Lord Chatham, pp. 16 (written as 61), 35-36 and pp. 20-21, 55, 58-59.

\(^{67}\) Ibid., p. 38.

\(^{68}\) e.g. Cartwright, The Legislative Rights, p. 138; Day, The Letters of Marius, pp. 12-13; consider also Gisborne, The Principles of Natural Philosophy Investigated, pp. 349-50.

\(^{69}\) Anon., Tyranny Unmasked, p. 36; see Johnson, Taxation no Tyranny, p. 182.
Hey with Lind, who did possess of a conception of political liberty as security (although not similar to the sense that was meant here). However, the fact that he did possess a conception of political liberty, apart from its specific form, makes the difference. The difference seems to be that when the idea of utility is applied to a conception of political liberty the argument is simply utilitarian. But when it is applied to civil liberty a confusion between liberty and utility is further likely to be involved. Williams and Lind were in total disagreement as to how political liberty (security) was to be achieved, but they applied the utilitarian logic here and not to civil liberty. Lind confined the discussion of civil liberty to the relation between liberty and law. And whereas he only confounded liberty and a right in his polemic against the state of nature, Hey further confounded liberty and utility.

Paley pursued Hey’s logic further. Again his first attempt to transform civil liberty took place in the context of challenging ‘popular phrases’ such as ‘a free people’, ‘a nation of slaves’, or claims that an ‘era of liberty’ was brought about by a revolution. In the spurious example of a prisoner - who did not lose his civil liberty by being in prison - the prisoner happened to be a citizen of the ‘freest republic’. Paley himself suspected the irrelevance of this allusion to the argument he was making, and he replaced this ‘dubious’ example (of the subject of the ‘freest republic’) with that of a subject in quarantine. In this way he abandoned his attack on

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70 ‘Civil or political Security, I apprehend, consists in this; that the man, or body of men, in whose hands government ... is lodged, shall so use this power, as may produce the greatest happiness of the greatest number.’ ‘Political or constitutional liberty, according to my idea, consists in the security which the whole community has reserved, that its government, formed of three, seven, nine, or any magic number of powers, cannot with impunity pursue any interests separate from those of the public.’ (Lind, Three Letters, p. 87; Williams, Lectures on Political Principles, p. 234).

political liberty to resume it later under a different shape, and on different grounds (namely, by distinguishing liberty from its safeguards).

In explicating his definition of civil liberty, Paley started his discussion by considering liberty in relation to restraint. He then arrived at a notion reminiscent of Hey’s greater liberty of the peaceable. In Paley’s words ‘it is possible that the liberty of the individual may be augmented by the very laws which restrain it’. At that point the contrast was between natural and civil liberty, but civil liberty had not yet been transformed into utility. It only conveyed the ideas of a right and security, that is, of the ‘safe, exclusive, unmolested enjoyment’. But then he shifted ground to make civil liberty equivalent to utility by declaring that the degree of ‘actual liberty’ was in reverse proportion to the degree and severity of useless restrictions - and still more openly - that it was ‘not the rigour, but the inexpediency of laws and acts of authority, which ma[de] them tyrannical’. The transformation of civil liberty into utility forced Paley to substitute for his former distinction between natural and civil liberty a new distinction between personal liberty and civil liberty. The very introduction of personal liberty, in fact, betrayed Paley’s tactic and the way in which he transformed civil liberty into utility. The idea of the absence of restraint which was initially employed to convey the meaning of ‘natural liberty’ was reintroduced in the notion of ‘personal liberty’. Thus in this new contrast ‘personal liberty’ meant the absence of restraint or constraint and ‘civil liberty’ the absence of useless restraint. Since the emphasis was not on the absence of restraint but on the sort of restraint,

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72 Ibid., p. 166.

73 Ibid., pp. 167, 169.

74 Ibid., p. 168.
'civil liberty' also meant the presence of beneficial restraint. In other words, under the terms 'personal' and 'civil' liberty, there was a contrast between liberty and utility clearly manifested in Paley's example of prison.

A citizen of the freest republic in the world may be imprisoned for his crimes; and though his personal freedom be restrained by bolts and fetters, so long as his confinement is the effect of a beneficial public law, his civil liberty is not invaded.75

However, Paley again changed the meaning of civil liberty. The conclusion he derived from this and a similar example was the following:

And if this be true of the coercion of a prison, that it is compatible with a state of civil freedom, it cannot with reason be disputed of those more moderate constraints which the ordinary operation of government imposes upon the will of the individual.76

The inference is invalid. In the former passage one could see a contrast between liberty and utility under the names of personal and civil freedom. In the latter passage the meaning of civil freedom changed because the criterion of its definition also changed. The criterion became the amount of restraint or constraint imposed and not the benefits resulting from restraint or constraint as before. Let us assume that an individual was sent to prison in execution of a law detrimental -and not beneficial as in Paley's example- to the interest of the community. The individual was not imprisoned because he acted contrary to the public interest, but only because he broke an existing law. Yet in this case he lost his personal and civil liberty. The former because he was confined to prison; the latter because the law was pernicious to the general welfare. But if this was the case every law-abiding individual who was not in prison would have lost his civil liberty without any act of his own. Thus in the first

75 Ibid., p. 168.
76 Ibid., p. 169.
passage there could be no connection whatsoever between being confined to prison or not, and enjoying civil liberty or not, since the enactment of a law detrimental to the public interest deprived all subjects whether in prison or not of (a portion of) civil liberty. Paley's argument (namely that, since civil liberty was compatible with confinement to prison, it was even more compatible with the less severe constraints of ordinary functions of government) is untenable, because civil liberty meant different things in the two instances. If civil liberty was compatible with confinement to prison, it was because it meant utility. However, in the second passage the argument was constructed on the basis of the extent of coercion and not its quality.

Priestley could not agree with Paley. He did not present a conception of liberty as an argument about the limits of liberty. Apart from the fact that in Priestley's view the common good was better served by an extensive individual freedom, he always insisted on highlighting the tension between the liberty of the individual and the pursuit of public happiness:

But whatever be the blessings of civil society, they may be bought too dear. It is certainly possible to sacrifice too much, at least more than is necessary to be sacrificed for them, in order to produce the greatest sum of happiness in the community. Else why do we complain of tyrannical and oppressive governments?

When men like Lawrence Parsons claimed that 'Happiness was the end for which all men entered into society', they did so in order to present liberty as the cause of

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77 '...every man may be secured in the enjoyment of as much of his natural rights as is consistent with the good of the whole community.' (Priestley, An Address to Protestant Dissenters of all Denominations, p. 9).

78 Priestley, First Principles of Government, p. 94.
unhappiness. Priestley, on the other hand, while he would regard society as a source of (further) happiness for the individual, never claimed that individuals establish civil society to be given happiness, but only to attain security to pursue their happiness. The 'proper object of civil government' is 'the security of men's persons and property'. Priestley did not embark on an attempt to define liberty in the manner of Hey. Yet his arguments contained the distinctions Hey sought to make without his confusions. In his early definitions in First Principles of Government, (where Priestley was concerned with clarifying the ideas of political and civil liberty) he gave a definition of civil liberty implying the absence of law. At that time he spoke of security only in the context of the social contract. In his Lectures he referred to 'personal liberty' and 'personal security', two ideas corresponding to Hey's 'civil liberty' and 'liberty of the peaceable' in the passages we have considered in detail. In fact Priestley also spoke about the 'peaceable citizen' but did so in terms of security and not in terms of absence of restraint as Hey had done: 'For in what part of the world could a peaceable citizen have had less protection of law, or enjoy less security, which is the great end of all civil government'.

Personal security, or a freedom from violence and insult, is certainly the most important object of all civil government, and it cannot be desirable to live where that is not firmly established...

Let us now turn to Hey. As we have seen the underlying idea in his exposition of the

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81 Priestley, An Appeal to the Public, Dedication, p. ix.

82 Priestley, Lectures on History, Works, 24:425; see also 24:221.
'greatest liberty of the peaceable citizens' was legal security, which in vain he endeavoured to render in terms of the absence of restraint. In his *Happiness and Rights* he expanded on the theme of security. His conception of the link between security and utility resembles very closely the ideas which Rosen has suggested were of central importance to Bentham. In criticizing interpretations of Bentham as illiberal,\(^3\) Rosen has claimed that unlike some of his contemporary utilitarians, such as Hey and Paley, Bentham did not confound liberty and utility and he replaced liberty with security. But he regarded security 'as the main end of legislation, and as a component of the principle of utility itself. Security established the framework within which each person realizes his or her own happiness'.\(^4\) This was the direction towards which Hey himself was moving, so that Rosen's argument about Bentham (with the necessary qualifications) might not be inappropriately extended to Hey as well:

> The most satisfactory idea that I have been able to form, upon those Rights which are considered as existing antecedently to Society and human Laws, and as guiding the labours of the Legislator, is this; to include them under one general conception, a Claim to all the Happiness which the Legislator's sagacity can supply. Under which we must include, as perhaps the principal part, all the mediate and immediate Means of Happiness; the placing men in such a situation as will best enable them to effect their own Happiness. For Happiness dropt into our lap, without an exertion of our own.\(^5\)

\(^3\) See F. Rosen, 'Elie Halévy and Bentham's Authoritarian Liberalism', *Enlightenment and Dissent*, No. 6, 1987, pp. 59-76.


\(^5\) Cf. Rosen: 'The legislator, for Bentham, could not maximise the pleasures of each individual in a society, ... as he could not possibly know what gave pleasure ...' ('The Origins of Liberal Utilitarianism', *Ibid.*; also *Bentham Byron and Greece*, pp.
is not a thing which Experience teaches us to look for in this world. And, amongst the Means of Happiness, those Rights which are conferred by social union or civil Laws hold a distinguished place. If any person doubt whether the Laws of Society be the sole foundation of Property yet there seems scarcely room to doubt that they make the Security of Property, And on this Security each man is inabled to construct that plan of life, which he thinks likely to produce the greatest Happiness placed within his reach; and to pursue a variety of measures, tending to his Happiness, which, without such Security, he might have attempted in vain. Yet the various civil Rights, created with a view of securing the Properties, Persons, and Lives, of men, are but Means of Happiness.86

The interesting feature is that Hey has abandoned here the earlier framework. Liberty is not related directly to restraint and happiness, an endeavour which required distinctions of kinds of liberty that proved difficult to maintain consistently. It is useful to compare this extract with a passage from Boothby. In both places the expression ‘means of happiness’ occurs. However, Boothby retained the earlier framework of the approach to liberty, and the difference between his argument and that of Hey is considerable:

Liberty is one of the means of happiness, but not happiness itself. It is only good as it gives the power of enjoying the good which we possess; where there is nothing to enjoy it is useless; where it can only be employed in doing evil to ourselves or others it is pernicious. A man cast away upon a barren rock would willingly exchange his liberty for confinement in the King’s Bench prison; and to shut up an idiot or a madman is an act of humanity. Civil liberty therefore consists as much in the restraint as in the exercise of natural Liberty; and must be considered as secondary to happiness; and made subordinate to all laws and institutions for the good of the whole; lest by sacrificing every thing else to its preservation it should become nothing but the permission to be miserable.87

The initial juxtaposition of liberty to happiness was only superficial and the argument

35-36).


87 Boothby, Observations on Mr. Paine’s Rights of Man, p. 161.
ended up by making liberty entirely subordinate to happiness. Meanwhile the discussion revolved around the way in which the two notions were related. This took the familiar shape of distinguishing natural liberty from civil liberty, taking as the criterion the presence or absence of restraint. But the sense in which happiness was related to restraint was ambiguous. At last it became clear when liberty was described as ‘a permission to become miserable’, which was another way of saying that one might be constrained to be happy. It is this particular point that was stressed by Robert Nares.

Nares similarly defined liberty initially as ‘the power of acting without any species of restraint: of effectuating whatever the will suggests’. If this is what was meant by liberty it could not be ‘an absolute good’ for the will might suggest to act ‘foolishly or wickedly’, and this could not be ‘conducible to the proper happiness of any man’. No doubt the ‘restraint of will without just reason is indeed an evil; with it, the advantage far outweighs the pain of constraint’. The advantages of submission seemed to be so many and as compelling that the ‘just reason’ required was provided too easily. Liberty itself then was reduced to ‘the power of following the dictates of the will in all indifferent matters, and of acting in all others according to the laws of wisdom and of goodness’ for only in this way can ‘liberty’ be of any ‘good’.

Whatever the merits of these expositions, their incoherence was due to the fact that civil liberty was used against political liberty.

We have considered the attempts of John Lind and Richard Hey to define

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liberty as a negative idea, and their failure to make use of this idea in their own account of civil liberty. The failure was manifested in the incoherent notions of 'partial absence of coercion' and of the 'liberty of the peaceable' for Lind and Hey respectively. The passage from the one idea to the other signified a transition from a conception of absence of duties to a conception of presence of correlative negative duties, although Hey and Lind differed significantly in particulars. The distinction between political and civil liberty is essential to a better understanding of some definitions of liberty. It has been shown that Lind's discussion of whether liberty was a negative or a positive idea resulted in a distinction between political and civil liberty. In such a context the terms 'positive' and 'negative' could have only a different meaning. Moreover, similarities in the arguments could be concealed in divergent terminology often employed to render a conception of civil and political liberty, as the comparison between Lind and Cartwright has indicated. It has also been suggested that it was easier to transform civil liberty into utility in the context of an attack on certain conceptions of political liberty, without at the same time elaborating an alternative conception of political liberty. This process was facilitated by the identification of political with natural liberty, and then the juxtaposition of it to a conception of civil liberty. Hey's confusion between liberty and utility has been compared with the positions of Paley and Priestley, who argued in opposite directions. It has been suggested that Hey moved in a different way from Paley, and when he lowered the tone of his polemic against his opponents, he connected the ideas of utility and security (in a way including liberty) in a more successful and convincing way than in his earlier argument.
XI.- OMNIPOTENCE AND THE GOLDEN RULE.

i. Unlimited Power: The Point of Concurrence.

In the dispute with the colonies many writers tried to mitigate the constitutional crisis and underplay the theoretical importance of the questions involved. One of them affirmed that 'the matter of right was neither disputed, nor even considered' and complained that 'a vain phantom of unlimited sovereignty' was being pursued rejecting the advantages of 'a moderate, useful and intelligible authority'. Usually accumulating evidence from precedents and charters, those authors distinguished between internal and external taxation and differentiated taxation from laws regulating commerce and other aspects of legislation. Although even by 1776 there was still room for arguing from the point of view of a different interpretation of charters and precedents, by degrees the controversy focused on matters of principle. In Johnson's words '[t]he question is not how much we shall collect but by what authority the collection shall be made'. Many friends of the Colonists as well as friends of the

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1 J. Shipley, A Speech Intended to have been Spoken on the Bill for Altering the Charters, of the Massachusetts Bay, London 1774, pp. 6, 24; 'I never heard one man of sense and knowledge, in the laws and British constitution, call the parliamentary authority arbitrary. The power and authority of parliament is not to be questioned.' (F.A. Considerations on Behalf of the Colonies, p. 36).

2 Dickinson, Letters form a Farmer in Pennsylvania, p. 23; Dulany, Considerations on the Measures, p. 21; Rokeby, Considerations of the Propriety of Imposing Taxes, pp. 3n, 33-34, 38, 41; Franklin, The Examination of Doctor Benjamin Franklin before an August Assembly, 1776, pp. 6, 11 (compare p. 9 with p. 16); Anon. Taxation, Tyranny, p. 26.

3 eg. Anon., The Plain Question upon the Dispute with the Colonies, 2nd ed., London 1776, pp. 7-12.

4 Johnson, Taxation no Tyranny p. 255. Cf.: 'Acquiescence and right are ever different things. The colonies may have acquired in many of our laws both of policy and commerce over them, for reasons best known to themselves.' (Anon., Tyranny Unmasked, p. 60); '...and if they had preferred the laws of Scotland, those of Ireland,
Administration concurred with him, though, of course, for different reasons. The friends of the administration struck at the root of the matter when they sought to abolish as meaningless the distinction between internal and external taxation. They could not accept that there was a difference between raising taxes for revenue, regulating commerce, and enacting penal laws. Taxation was included in legislation.\(^5\) Behind this identification lay the belief that the Americans and their friends misconceived the idea of government. Taxation, as any other aspect of legislation, was the manifestation of the right of the supreme legislative authority. Such a right was inherent in any state, however it was governed. This admission could not leave much room for further argument except to deny that America formed part of the same state as England. If, however, England and America were communities of the same state, they were equally under the jurisdiction of the same supreme legislature. When subordinate communities defied the decrees of the supreme legislator in any state, it was argued, the latter had a very limited choice consistent with its nature. It could either recognise the claimants as an independent state, or, exact obedience.\(^6\) Thus, the

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same framework could accommodate arguments countenancing submission by force and those which supported the recognition of independence, that is, both Johnson's and Tucker's positions. More problematic was Price's solution in relation to his assumptions. For, he wanted to maintain the unity and integrity of the empire, while he had assigned full legislative competence to a community within the state. 7 At any rate it should be observed that the disposition to compromise which was built around the distinction between taxation and other forms of legislation was abandoned even by many radicals. As early as 1769 Priestley had asserted that 'eventually' there was 'no difference' between 'imposing taxes and regulating commerce'. 8 It was increasingly argued by radicals that 'taxation' was 'a part, and included in the general idea of legislation'. 9 The attempt to forge an exclusive link between representation and taxation while ignoring outside other aspects of legislation was regarded by Sharp as well-meaning but theoretically untenable. 10 The radicals sought to break such a connection in order to be able to extend the arguments advanced in favour of the colonists' claims to the internal political situation of England.

Conservative thinkers who articulated the doctrine of legislative supremacy or

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7 See esp. Anon., Experience Preferable to Theory, p. 95.


9 Cartwright, American Independence, Note 2 to Letter I p. 5; also Anon., Tyranny Unmasked, p. 67.

10 Sharp, A Declaration of the People's Natural Right, pp. 18-20.
‘omnipotence’ insisted that their opponents committed a fallacy. These opponents considered the justification of inherent and indispensable functions of government to be dependant upon its particular form. But the proponents of the doctrine of legislative supremacy held that ‘Representation is only a Modification of Government’, while ‘LEGISLATION and TAXATION ... always exist in the same supreme power ... universally, constantly and invariably, while that Power preserves its Dominion’ whether in a Monarchy, Aristocracy, Democracy, or a mixture of the three.\(^{11}\) Therefore, ‘[i]n all forms of government, so long as the powers exist, the degree of power is the same; in all, alike absolute’.\(^{12}\) Or as Johnson put it

> IN sovereignty there are no gradations, There may be limited royalty, there may be limited consulship; but there can be no limited government. There must in every society be some power or other from which there is no appeal, which admits no restrictions, which pervades the whole mass of the community, regulates and adjusts all subordination, enacts laws or repeals them, erects or annuls judicatures, extends or contracts privileges, exempt itself from question or control, and bounded only by physical necessity.\(^{13}\)

The idea that ‘a supreme and uncontrollable power must exist somewhere in every state’\(^ {14}\) figured prominently in the writings of authors who defied the American claims, but it was reasserted with as much vehemence during the years of the French Revolution. ‘[I]f any thing ought to be despotic in a Country it is its Government’

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\(^{11}\) Stewart, *A Letter to the Rev. Dr. Price*, pp. 36-37.

\(^{12}\) Anon., *Experience Preferable to Theory*, p. 10; also p. 37.


\(^{14}\) Macpherson, *The Rights of Great Britain Asserted*, p. 3; see also pp. 5, 8, 24, 29, 32, 36, 50, 67, 69, 76; ‘...the supreme power in all governments should be lodged somewhere...’ (*Licentiousness Unmask’d*, pp. 13, 27); also Anon., *Licentiousness Unmask’d* p. 26; also pp. 13, 27; *The Honor of Parliament*, p. 12).
Burke declared, and in stronger language Samuel Cooper observed that there 'MUST be an UNCONTROLABLE ABSOLUTE POWER, somewhere EXISTING in the STATE'. Those who believed, he continued, that a popular government, a mixture of various forms, or several divisions of power would render government more democratic they do not realise that 'the ABSOLUTE POWER STILL EXISTS, though it be ever so much divided, and subdivided'.

Radicals and conservatives, however, could easily reverse roles when the supreme legislative power was in different hands. An appeal to natural justice on the issue of the confiscation of the Church property in France was made by former friends of legal and civil rights. They received, on the occasion, replies such as those they were accustomed to give to the champions of natural rights. Woolsey, for example, wrote in a reply to Burke:

I cannot tell what you or others dream, nor what you call right: but this I know, that if the Parliament call any thing right, 'tis in vain for either you or your fellow dreamers to call it wrong. The late tax on the shopkeepers is an instance of this sort. - The Parliament took

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16 Cooper, The First Principles, p. 129; '...the despotic or arbitrary power, which MUST ALWAYS EXIST SOMEWHERE...’ (Ibid., p. 179); Elliot also claimed that 'Every legislature (not government, Mr Paine) is necessarily invested with an arbitrary power, which, if it abuse, its constituents are reduced to the painful alternative of submission, or of resorting to the rude but sovereign decrees of nature.' (The Republican Refuted, p. 51).

17 Cooper, The First Principles, p. 182.


19 e.g. Rous, Thoughts on Government, p. 60.

20 Bear in mind that authors such as Cooper or Tatham came to identify moral right or wrong with political right or wrong to emphasise that these distinctions are promulgated by the legislator.
away the property of a particular description of men; and although all partial\textsuperscript{21} taxes may be deemed censurable, yet no one, I believe, ever questioned the right of the Parliament to do this. But you'll say, this was a tax, and therefore right. It may be so - and you need only to clap the same appellation upon the proceeding of the National Assembly respecting the clergy, and that will be right too.\textsuperscript{22}

The author here recognized the same supreme legislative authority in the English Parliament and in the French National Assembly, that is, in legislative bodies capable of functioning. It was, however, the vaguer idea of the sovereignty of the people which came to be identified with the radical cause. According to Price if there was to be any omnipotent power in the state this had to rest with the people,\textsuperscript{23} and according to Paine 'wherever the sovereignty is, there must the freedom be'.\textsuperscript{24} The change in the locus of the power was not followed by a significant change in the adopted political vocabulary. For Paine sovereign power meant 'a power over which there is no control'\textsuperscript{25} and the language of John Adams was the same as the language of Johnson or Macpherson: 'It is a maxim, that in every government there must exist somewhere, a supreme, sovereign, absolute, and uncontrollable power; but this power resides always in the body of the people...'\textsuperscript{26} The similarity of expression was highlighted by statements like: 'there can be but one will or monarchy which is will

\textsuperscript{21} See the argument below.

\textsuperscript{22} Woolsey, \textit{Reflections upon Reflections}, London 1790, p. 26; cf. p. 10.

\textsuperscript{23} Price, \textit{Observations}, p. 15.

\textsuperscript{24} Paine, \textit{Dissertations on Government}, \textit{Writings}, 2:134.

\textsuperscript{25} \textit{Ibid.}, 2:133.

\textsuperscript{26} Adams, \textit{A Proclamation}, \textit{Works}, 1:193; also \textit{An Answer to Pain's Rights of Man}, pp. 42-43: 'The power must exist somewhere, and I cannot see the reason why it should not exist for the benefit of the people.'
of the people\textsuperscript{27} or that such a will could do anything but what was ‘naturally impossible’\textsuperscript{28}.

Despite such declarations, the prevalent feeling among the supporters of America at the time was that the very idea of legislative supremacy implied the complete enslavement of individuals. They argued that the power which could take from an individual such a trifling amount as one penny, could take his last penny.\textsuperscript{29} Government thus was described as an institution of slavery as far as it had that power, whether it exercised it in a moderate way or not. In those writings where such views were expounded there was no clear distinction between sovereign and government. Moreover, the arguments and the illustrative examples which were employed gave the impression of ignoring the essential difference that existed between the acts of individuals and those of the legislator. Thus a legislative body raising taxes without the consent of the individuals was considered similar to a pick pocket stealing the property of other individuals.\textsuperscript{30} The acts of the legislator and the acts of common individuals were placed upon a par. Since individuals had property and rights antecedent and against government, the difficult task was to reconcile the idea of


\textsuperscript{30} e.g. Cartwright, \textit{Take Your Choice}, p. xxx.
sovereign individuals with the idea of government which implied a sovereign power over individuals.\textsuperscript{31} This was at least, the typical frame of analysis that was adopted by the opponents of the doctrine of natural rights who so often pointed out that the rights of man were incompatible with any idea of government. They themselves placed the emphasis on the interest of the persons who exercised the power and argued that the security of individuals against arbitrariness could not arise by limiting the power of the legislature but by distributing power in a certain way. John Lind set out this position in very clear terms, but such ideas, occasionally in a more vague shape, constituted an important line of argument throughout the debate over American taxation. They were espoused not only by the friends of the administration but by pro-American authors who were known as champions of natural rights.

\textit{ii. The Qualifications of ‘Omnipotence’}.

Before we examine some of the implications of this stance, we should consider first how the notion of legislative supremacy was understood. This is necessary because the extreme phraseology adopted by conservatives or radicals on various occasions might easily lead to false impressions. Some writers preferred to undermine the idea of legislative supremacy without launching a direct attack. One author, for example, claimed that there was no doubt that the King, Lords, and Commons had the power to ‘determine without controul’ everything relative to the welfare of the community, thus reaffirming in familiar words the doctrine of legislative supremacy. He was, however, quick to add that they were ‘supreme to do justice’ but ‘not

arbitrary to enslave'. Another writer acknowledged the idea of legislative supremacy but not of an 'indiscriminately absolute supremacy in government' which was something beyond an Englishman's understanding. He conceded that the supreme legislature had the power to 'extend or contract all privileges' but only in order to promote the 'the good and happiness of the people' and 'that alone'. Thus the supreme legislature 'can do all the things ... to better the people, but it can do nothing to make them worse in freedom and happiness'. The author seemed to confuse the idea of supremacy with the legitimate basis of legislation. Nevertheless, his position indicates that the attack on the idea of legislative supremacy was often indirect. In clearer terms, Junius conceded that the legislature was 'supreme' but only in the sense of being 'the highest power known to the constitution' in relation to other subordinate powers. Thus the word 'supreme' was 'relative, not absolute', for legislative power was still limited by natural justice and the principles of a particular constitution. It was objected to the 'venerated authorities' of Tucker, Johnson, Shebbeare and Wesley, that 'there may be an Acknowledgement of Sovereignty: where Submission is not absolute and unlimited' for there had to be a 'Medium between a State of Nature, and absolute Submission to the Will of others'. It was possible to acknowledge 'supreme Authority' without sacrificing the 'Principles of Representation', and thus

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32 His argument then would become circular in view of the further assertion that '[w]hether or not is any Tyranny in Parliament's Taxation of America, can only be decided, therefore by candidly considering its right. See Anon., *The Pamphlet Entitled "Taxation no Tyranny" Candidly Considered*, pp. 55, 2; also p. 50.


35 Anon., *A Full and Impartial Examination to Wesley's Address*, p. 9.
secure ‘Dependence and Inferiority, without Vassalage and Slavery’. However, there was an awareness of how difficult it was to ‘fix the ne plus ultra of supremacy on the one hand, and of submission on the other’.

The disposition to compromise is even more striking when it was made by more conservative authors who happened to be ardent supporters of the doctrine of parliamentary supremacy. Despite their declaration that the English parliament was omnipotent, they tended to argue that the English sovereign ought to be obeyed not because it was sovereign but because it was English, that is, the sovereignty of the ‘excellent’ English Constitution. Fletcher, a forthright proponent of the doctrine of omnipotence, shifted his ground from the statement that ‘a right of taxing the subjects with, or without their consent, is an inseparable appendage of supreme government’ to the remark that parliament had not ‘laid disproportionable and unreasonable taxes’. Thus obedience was due to the sovereign ‘in all things which are just and reasonable’. This was indeed the position of those who did not press the case for parliamentary supremacy. In similar vein, Goodricke observed that ‘the supreme

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37 Philadelphus, A Sequence to Common Sense, p. 44.

38 Stevenson, Letters in Answer to Dr. Price’s Two Pamphlets, pp. 23-24; cf. pp. 8, 10, 13, 18, 20. See also Watson, Cursory Remarks on Dr. Price’s Observations, p. 4. For an argument along the line of the superiority of the centre over the periphery see The Duty of the King and Subject, pp. 20, 26-27.

39 Fletcher, A Vindication, p. 19, also p. 14; see also American Patriotism, p. 11.

40 Fletcher, American Patriotism, pp. 8, 10; see also A Vindication, p. 8.

41 Who also claimed that the English legislature was bound ‘by the known established laws of reason, justice, and mercy’ (Anon., The Pamphlet Entitled “Taxation no Tyranny” Candidly Considered, p. 16).
Legislative, as such, is absolute, resistible, uncontrollable, and omnipotent' in relation only to the community for it is 'always limited by natural law' and 'it may be limited by constitutional law'.

The most thorny issue was the relationship between the idea of legislative supremacy and the constitution. Lind's announcement that the legislative power was not the creature but the creator of the constitution, or Nares's even bolder declaration that legislative authority 'is of so great extent, that it can at any moment change the constitution' were not representative of the general stance. It suffices to consider the amount of qualifications which commonly accompanied similar expressions. People lowered their tone when they touched upon the issue of the relation between the parliament and the constitution. It was relatively easy to claim, like Shebbeare, that it was high treason to deny the right of the legislature to transfer 'even now' the Crown to the family that it pleased. However, more difficult questions were also raised: could, for example, the supreme authority of the nation, that is the English parliament assume permanently the executive power of the state? This question received a negative answer by as different thinkers as the anonymous author of Tyranny Unmasked, and Edward Tatham. The significance of convergence lies in the fact that the former condemned the notion of legislative

42 Goodricke, p. 44n. For these ideas he cited the authority of Locke (para. 150)


46 Anon., Tyranny Unmasked, p. 51.

47 Tatham, Letters to Burke on Politics, p. 43.
supremacy\textsuperscript{48} while the latter professed that the legislature in whatever hands was located was 'omnipotent upon earth' responsible only to God and to 'no other power whatever'.\textsuperscript{49}

It was exceedingly difficult to be theoretically consistent and at the same time loyal to the received principles of the Constitution. More specifically, it was difficult to probe into the foundations of government held to be universally valid, and within the same theoretical framework, to be faced with the problem of justifying the Glorious Revolution and condemning the French. The most striking instance in this sense can be found in the exposition of Samuel Cooper, whose declaration that any disobedience to the legislature was the equivalent of high treason was often quoted. In considering the widely assumed 'excellence' of the English Constitution Cooper insisted that an Englishman's duty to obedience 'does NOT arise FROM THAT EXCELLENCE; but because, from the NATURE of ALL GOVERNMENTS however DIFFERENT in their CONSTRUCTION, OBEDIENCE is UNIVERSALLY DUE to EVERY LEGISLATURE'.\textsuperscript{50} The exploration into the universal principles of government led him to assert that the subject's duty to obey the laws was held 'without any contract, -direct or implied, - any stipulation, - or condition of any RESISTANCE whatsoever, in any case whatsoever'.\textsuperscript{51} However, some concessions

\textsuperscript{48} For whom it meant the 'supreme executive Power of the Law' (Anon., \textit{Tyranny Unmasked}, pp. 22-3).

\textsuperscript{49} Tatham, \textit{Letters to Burke on Politics}, p. 45.

\textsuperscript{50} Cooper, \textit{The First Principles}, pp. 186-7.

\textsuperscript{51} \textit{Ibid.}, p. 84.
were necessary to account for the Glorious revolution.\textsuperscript{52} Contrary to the exceedingly stringent conditions of political obligation which he laid down in the theoretical part of the book, he avowed that obedience to the laws was generally due ‘unless such laws are destructive of some particular constitution, by making a breach in the compact, between the GOVERNED and the GOVERNORS, in that PARTICULAR FORM of government’. This was only the case where ‘that VERY CONSTITUTION’ authorised ‘PEOPLE’s DISOBEDIENCE’.\textsuperscript{53} The appeal to the concept of social contract, was made while having in mind the Glorious Revolution. Despite the fact that the principles of government were supposed universal, the principles of revolution were not applicable to all countries: They ‘were only a GLORIOUS MANIFESTATION of the PARTICULAR RIGHTS of BRITONS’.\textsuperscript{54}

\textit{iii. The Logical Prerequisite of Government.}

Although the notion of ‘omnipotence’ was held in conjunction with several qualifications as those considered above, legislative supremacy meant primarily the logical prerequisite to the idea of government. It was not a Tory, conservative or totalitarian idea.\textsuperscript{55} John Gray who insisted that taxation was the inherent right of the

\textsuperscript{52} Although Cooper like Burke or Tucker, did not primarily regarded it as the manifestation of the rights of the people at large. See Cooper, \textit{The First Principles}, p. 189; Tucker, \textit{Four Letters}, p. 102; \textit{A Treatise}, p. 95; Jones, \textit{A Letter to the Church of England}, Works, 12:309-10.

\textsuperscript{53} Cooper, \textit{The First Principles}, pp. 152-3; a different version is given in p. 190; cf. Hawtrey, \textit{Various Opinions of the Philosophical Reformers Considered}, pp. 22-23.

\textsuperscript{54} Cooper, \textit{The First Principles}, p. 207.

\textsuperscript{55} Consider the exchange between Donald Green and P. O’Flaherty (Green, \textit{The Politics of Samuel Johnson}, 2nd ed. Athens and London 1990 pp. 212-5; O’Flaherty, ‘Johnson as Rhetorecian: the Political Pamphlets of the 1770s’, \textit{Studies in Burke and
legislator and believed that its compulsory nature had not received sufficient attention in England, held that legislative supremacy 'only means that the supreme power of the state can admit of no other power to controul its operations relative to the well-being of the society over which it presides'. Such a conception of supremacy was often accompanied by the idea of trust, which is now more generally associated with the doctrine of natural rights. Thus Gray affirmed that the above notion did not imply an unlimited right to pillage and continued:

Parliament has not a right to a half - penny of the subjects money, unless as FIDUCIARY or trustee for the public. As trustee or sovereign superintendent of the welfare of the whole community, it has a right to I don’t know how much, from every subject of the empire; and none but itself is the judge of the how much...

Similarly Tucker, in his notion of a quasi-contract, sought to reconcile the fact that the public power by its very nature had to be supreme and uncontrollable, and at the same time lay under a moral obligation to advance the good of the governed. Tucker believed that ‘there must be some Covenant or other supposed or implied as

\[\text{his Time, Vol. 11, 1970, pp. 1776-83) and especially O’Flaherty’s ‘A Reply to Donald Greene’, Ibid., pp. 1589-90; See also Greene, Samuel Johnson, Boston 1989, pp. 111-2.}\]

56 Gray, Doctor Price’s Notions of the Nature of Civil Liberty, pp. 24-34, 41n, 75, 119.

57 Ibid. p. 39.

58 Ibid. p. 58.

59 ‘IN all Societies there must be a dernier Resort, and a Ne plus ultra of ruling Power.’ (Tucker, Tract V, p. 12; also pp. 39-40).

60 ‘... as all Governments whatever are so many public Trusts for the Good of the Governed; - therefore there is a Contract implied, though not exprest,[sic] a quasi, thro’ not an actual Contract always subsisting between all Sovereigns, and every one of their Subjects.’ (Ibid. p. 203; also pp. 139, 141, 146, 163, 303, 240).
a Condition annexed to every Degree of Discretionary Power, whether expressed or not'. Precisely because the idea of government was a combination of the notions of legal supremacy and trust, the supreme power, which was by its nature 'discretionary', was necessarily 'indefinite' but not 'infinite'. The same ideas were propagated by Goodricke, who described government as a 'discretionary trust' arguing that the 'most absolute degree' of civil power was 'a trust' 'for the security and promotion of the general welfare'. The only idea that the phrase 'omnipotence of Parliament' conveyed was that there was 'no civil or legal power in the state superior to it'. That is, there was no other power which could legally annul the acts of the Parliament. Similarly another writer who also stated that 'a supreme legislative authority over the whole must exist somewhere' expressed the view that this discretionary power lay under moral obligations. No doubt those obligations could not be enforced by constitutional means against its will without involving a logical contradiction:

There can be no limitation of supreme power but what is founded in moral rectitude. The principles of limitations can exist no where but in itself; for to suppose a supreme power capable of being limited by any exterior power, is to say, that a supreme power is not a supreme power,

61 Tucker, Treatise, p. 160.

62 Ibid, p. 108. Tucker might have borrowed his vocabulary from Bentham, who held that 'of the supreme governor's authority, though not infinite, must unavoidably, I think, unless where limited by express convention, be allowed to be indefinite.' (Bentham, A Fragment on Government, p. 97).

63 Goodricke, Observations on Dr. Price's Theory, pp. 37, 41.

64 Ibid., p. 43n.

65 Anon., Civil Liberty Asserted, p. 46.
which is nonsense.\footnote{Ibid. p. 59; cf. p. 89.}

As Jenyns maintained 'if Parliament can impose no Taxes but what are equitable, and if the Persons taxed are to be the Judges of that Equity, they will in effect have no Power to lay any Tax at all'.\footnote{[S. Jenyns], \textit{The Objections to the Taxation of our American Colonies}, London 1765, p. 10.} It was, as Nares observed on another occasion, the same as to raise 'a sovereign to judge the Sovereign'.\footnote{Nares, \textit{Principles of Government}, 94; see also Anon., \textit{Licentiousness Unmask'd}, p. 16.} This idea seemed self-evident. In fact, one author wondered why he had spent 'so much time in so plain a case' since every sensible man could recognize that 'a power which the supreme legislative power cannot controul, is a solecism in government'. At the same time he did recognize moral limitations to the exercise of such a supreme power, although no constitutional remedy could be provided: 'I say, in \textit{honour} bound, because the \textit{power} or \textit{authority}, can in neither case be restrained or limited. This being all the security which, from the nature of government, can be given, must content them.'\footnote{Anon., \textit{Experience Preferable to Theory}, pp. 37, 98.}

These authors did not countenance passive obedience in any sense for they readily admitted the right to revolution as an extra-constitutional way of providing a remedy.\footnote{e.g. Gray, \textit{Doctor Price's Notions}, p. 42; Anon., \textit{Civil Liberty Asserted}, p. 93.} Instead, they insisted only on the idea of supreme power as a corollary to the idea of government. However, given the fact that this power was by definition unlimited, but also under certain moral obligations, the question was what security should the subjects have that those obligations would be discharged. The solution that
was proposed focused on the similarity of interests that ought to connect the subjects with the persons invested with the exercise of legislative power. This could often take the form of the application of the golden rule to politics.

**iv. The Golden Rule as Identity of Interests.**

It has often been pointed out that the golden rule of the Gospel, enjoining men to treat others as they would wish to be treated by them, was a constant and common point of reference. It figured very often in the writings of the radicals as the only principle of a free and just government. Their opponents accused them as frequently of failing to comply with it. There were, however, deeper reservations about the way in which the golden rule had been used in moral discourse and political writing. Hutcheson had objections to its having been taken as the primary source of all other moral principles, while Bentham criticised its particular application by the drafters of the French Declaration. It is interesting, however, to pay some attention

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74 Bentham's point was that it was difficult to apply the golden rule to such an hierarchical structure as government without undermining its hierarchical structure. See
to a certain way in which the golden rule was applied to politics, and in particular the role it played in accompanying the concept of supreme legislature. Those who took for granted the idea of parliamentary supremacy often held that things had to be so constituted that representatives could not injure others without at the same time injuring themselves.\(^{75}\) Thus the statement that no earthly power ‘could limit the SUPREMACY of this SUPREME SENATE’ was often accompanied by the view that it would have been an ostensible act of tyranny ‘[i]f ever our Parliament should reach out its Hand to create one Tax in America which we did not pay in Common with them’.\(^{76}\) How could Americans feel secure about their life and property given the doctrine of parliamentary supremacy? The answer was ‘in a word’ that they could reckon upon ‘the best of all securities, our own interest’.\(^{77}\)

The golden rule expressed the idea that an identity of interests had to be created between the governors and the governed. In this sense it illustrated the way in which the security of the subjects, whose happiness life and property were nominally at the disposal of the governors, could be achieved. The writings of Josiah Tucker exemplify the case very well. As already mentioned Tucker upheld the idea of legislative supremacy as the logical prerequisite to the idea of government. Parallel

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\(^{75}\) See e.g. Anon., *Civil Liberty Asserted*, pp. 76-77.


to this, he advanced another argument in which he made an explicit appeal to the golden rule. He maintained that the leading idea of Religion and Morality was that ‘whatever ye would that Men should do unto you, do ye even so unto them’. He then made a direct application of this principle to politics: ‘Apply now this Maxim to the Affairs of Government, and see the Effects of it, were it universally to take Place - Liberty would then subsist without Licentiousness; Subordination would be preserved without Tyranny and Oppression and both the Governors and the Governed would in all Respects be the safer, the better, the happier for each other’. Tucker extended this idea to account for the relationship between voters and those who lacked the right to vote. His refusal to recognize the universal right of suffrage was followed by an argument about the need to distribute the right to vote in such a way as to secure the non-voters:

Though it would be highly absurd, to admit indiscriminately every individual Moral - Agent to be a voter, yet true Policy requires that the Voters should be so numerous, and their Qualifications respecting Property be so circumstanced that the actual Voters could not combine against the Non-Voters, without combining against themselves, against their nearest Friends, acquaintances, and relations.

Priestley, who like Tucker, was aware that the ‘proper extent of civil government is not easily circumscribed within exact limits’ presented another remarkable example. He claimed that the plainest rule of life was that ‘every man should so what he would wish others to do’. In defending the emancipation of the

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78 Tucker, Sermons on Political and Commercial Subjects, p. 12 in Four Tracts together with two Sermons but separate pagination.
79 Tucker, Treatise, p. 275.
Catholics he endorsed again the strict adherence to the rule ‘viz, to do all others as we would that they should do to us’.\(^2\) There is nothing uncommon here, but the impressive element is the area to which Priestley also applied the golden rule. He advised his fellow subjects as follows: ‘If you make any terms with your future representatives, do not forget to require of them, to do by others as they would have others do by them.’\(^3\) The realization of the content of the moral rule presupposed a similarity of condition and interest. For, as he explained, the ‘more things we have in common, the more we consider others in the same light with ourselves’.\(^4\) This psychological interpretation of the golden rule was reasserted by Priestley’s disciple, Robert Hall, who several years later stressed the importance of the ‘conjunction of interests and of feelings’. He contended that only when the representatives were ‘animated by the same sympathies, and affected by the same interests’ as the people, they could fulfil their proper role.\(^5\) This idea was employed par excellence on the issue of American taxation. Priestley conceded to his opponents that it was true that Leeds, or Manchester were not represented in the English parliament although they were taxed by it. Yet, an essential difference still obtained, he contended, between the habitants of these places and the Americans because ‘those who tax Leeds, Manchester, &c. always tax themselves at the same time, and in the

\(^2\) Priestley, A Free Address ... in Favour of the Roman Catholics, Works, 22:514, 403.

\(^3\) Priestley, An Address to Protestant Dissenters of All Denominations, p. 15.

\(^4\) Priestley, A Free Address to Protestant Dissenters Works, 21:432; cf. 435.

same proportion'. This became one of the commonest arguments. From this perspective it was widely argued that when an English Member of Parliament taxes an American he 'CANNOT TAX HIMSELF ALSO, because he has no property in America to be taxed' while the only security that an American can have is that the persons who 'take an active part in the disposal of his property, must at the same time dispose of an equal proportion of their own.' Rokeby believed that there was no such security since not even the property of 'a single actual Elector' would be affected by taxation in America. If one compares these arguments with those employed by British loyalists one finds that there was no disagreement as to the principle that was adopted but only a difference in terms of factual assumptions.

Johnson, a cardinal exponent of the rights of parliament, believed that the 'reason why we place any confidence in our representatives is, that they must share in the good or evil which their counsels shall produce.' In a similar vein Lind asserted that '[t]hose who direct our public measures have I know infinitely more to lose than I have. If not on their virtue, on their interests I rely that they will calculate for me.' He believed that there was a 'reciprocality of interests' between legislators and subjects as the former could not tax the latter without also taxing themselves. A

86 Priestley, An Address to Protestant Dissenters of All Denominations, p. 12; also The Present State of Liberty in Great Britain and her Colonies, Works, 22:374; First Principle of Government, p. 43.

87 Anon., A Constitutional Answer to Wesley's Calm Address, p. 11.

88 Evans, A Letter to Wesley, p. 13.

89 Rokeby, Considerations of the Propriety on Imposing Taxes, p. 10.

90 Johnson, Taxation no Tyranny, p. 219.

91 Lind, Three Letters, p. 162.
kind of security would necessarily arise from ‘their being themselves a part of the persons taxed, at the same time that they are the taxers’. William Pultney echoed similar views when he asserted that since the people and their representatives had the same interests, the latter could ‘not betray the people without, at the same time, betraying themselves’. However, his exposition was also more revealing. He countenanced the admission of American representatives ‘to a seat in the British House of Commons, and a vote in all questions’ adding ‘(except as to taxes imposed here)’. His statement in the parenthesis could be the best proof that the two communities had hardly the same interests. Thus it was not entirely true that the ‘most specious plea of America, for refusing to submit to parliamentary taxation, was, its being imposed by persons whose own interest, as well as that of their constituents, was entirely different from hers.’ For when the taxation of the Americans by the British was justified on the basis that those imposing taxes and those who were taxed were bound by common interests, the same assumption should allow the Americans, at least, to have a say in determining the taxes imposed in Britain.

92 Lind, Remarks on the Principal Acts, pp. 77, 84.

93 Pultney, The Effects to be Expected from the East India Bill, pp. 30-31.


95 Somerville, Observations on the Constitution and Present State of Britain, pp. 36-37.
CONCLUSION.

The doctrine of the rights of man is a mixture of theoretically heterogenous elements. From this point of view it has been considered in relation to the conception of moral agency and to utilitarianism. The first three chapters have been devoted to the discussion of the conception of moral agency and its central idea, free will. The idea of free will made its appearance in the formulations of the doctrine of natural rights, since the latter were generally defined as those rights which belonged to individuals in virtue of their natural properties, namely, reason and free will. However, there was a clear ambivalence as to the meaning of free will. No clear distinction was made between the two different senses in which the term could be understood, that is, as the freedom of man to act according to his will, or as the freedom of the will to determine itself. This ambivalence, which is very apparent in the use of 'free will' in the political writings defending natural rights, indicates the connection between the theoretical foundation of natural rights and the metaphysical controversy over free will and necessity. The connection of this debate with political ideas provided the defence of the rights of man with a strong moral dimension.

Richard Price was the most notorious among the political thinkers who sought to establish a link between moral and metaphysical ideas, on the one hand, and political ideas on the other. In the opening pages of his influential political tract, Observations on the Nature of Civil Liberty, Price set out in a summary form his earlier philosophical views revolving around the idea of moral agency. Price's conception of 'physical liberty', which his opponents often mistakenly denounced as the unlimited liberty of the state of nature, referred to his conception of free will as prerequisite of moral agency. The great difficulty with Price's divisions of liberty
(physical, moral, religious and civil) is that (given the premises of his moral and
metaphysical theory) he could not maintain a conceptual distinction between physical
and moral liberty in order to justify their separation into two distinct categories.
'Moral' and 'physical' liberty did not constitute different kinds of liberty but were
inextricably linked to make up together the conception of moral agency. Civil and
religious liberty in turn were only derivative ideas. They did not constitute distinct
definitions of liberty but only important categories to which the idea of liberty was
applied. However Price was rarely consistent, and his argument respecting political
and civil liberty, in particular, does not fit always in one and the same pattern.

It has been argued that Price's failure to prove the existence of free will at the
ontological level did not destroy his main argument since the conception of free will
at the phenomenological level could meet the requirements of his moral theory. The
conception of the internal constitution of man which accompanied his discussion (and
other similar discussions) was congenial to the articulation of a conception of man as
his own legislator. The normative relationships which the notions of a right and a duty
create were reflected in the distinction between reason and passions, which reproduced
the image of a governor and a subject. The consideration of the role the idea of free
will played in Price's moral theory has enabled us to dispel some confusions about the
character of his doctrine of natural rights.

We have also tried to indicate the connection between the rights of man and
utilitarianism. As a starting point in our approach we have taken the arguments of
Josiah Tucker. Although Tucker intended to attack the whole 'Lockian republic', as
he called it, the assumptions on which he rested his attack indicate that his leading
opponent was Richard Price and those who tended to argue like him. Tucker
postulated, that behind the doctrine of natural rights lay a conception of moral agency, or personality. Under this assumption Tucker presented a unified picture of the arguments of his Lockean opponents. He then sought to test the logical consistency of the idea of moral agency when it was applied to politics. According to his opinion, this idea was incompatible with both the representative system and the principle of majority rule, which were the two assumptions that his opponents took for granted. Tucker sought to connect this discussion with the need for changing the rationale of the foundations of government. He claimed that the only rational end of government was the public good, but he also established a thorough contrast between the idea of public good and the notion of rights conceived of as individual entitlements. It has been seen in particular that the conception of virtual representation (which is usually taken only as the quintessence of the conservative response, and is regarded as a theoretically weak idea) was linked in Tucker’s mind with the transition from the idea of natural rights to the idea of the public good.

It has been seen further that the questions which Tucker raised and the theoretical connections he made were the current topics in the refutations of the majority of writers who challenged Price’s ideas. Such extensive objections did not make the champions of natural rights worry. Whenever they sought to respond to the criticisms they received, and in particular, to the criticism concerning their inability to justify the principle of majority rule on the assumption of moral agency, they did not seem aware of the nature of the criticism against them. This has been interpreted here as an indication of the fact that the doctrine of the rights of man was permeated by the idea of moral agency (at whatever level the term is understood) to a lesser degree than Tucker or Hey had assumed. Indeed, in his defence of Locke against the
invectives of Tucker, Towers resorted to Priestley and not to Price. He quoted Priestley's famous statement that the general happiness of the greatest number was the ultimate source of political legitimacy, in order to highlight the similarity between Tucker's conception of quasi-contract (suitable to the conception of public good as the sole foundation of government) and the Lockean ideas propagated by those whom Tucker set out to challenge. In this context we have seen how often utilitarian ideas were customarily conveyed under natural rights phraseology, and we have also suggested that the conception of public good apart from its republican usage was often meant as a utilitarian principle.

In the next three chapters we have dealt with another major issue, namely, the right to private judgement in religion and politics. It has been argued that it is very difficult to understand the precise meaning of (what is known as) the extension of the right of private judgement from religion to politics. The connection between religion and politics could be understood in many different ways, and it was often not clear whether people meant the existence of an inherent link between certain religious and political views, or whether they had in mind a contingent relationship between the Dissenters's religious commitments and a certain stance in politics (for reasons other than their religious principles). The accusation that the Dissenters derived their political radicalism from their religion, although it would find ample textual evidence, was disputed by leading Dissenters who explained away their political radicalism in terms only of their position as a minority in the state. The association between the Dissenters' religious tenets and their political radicalism seems also to be weakened by considering the arguments of persons (e.g. Granville Sharp, George Rous or William Lewelyn), whose political and religious affiliations would disprove the above
In considering, more specifically, religious liberty in the context of the distinction between civil and political liberty, the picture is equally complicated. Religious liberty seemed to be a part of civil liberty in the sense that religious liberty had to be enjoyed as a civil right and not because of good will. However, the argument concerning the extension of the right of private judgment from religion to politics alluded to the similarity between religious and political liberty, and not between religious and civil liberty. It was political liberty that was the controversial issue and stood in need of a theoretical foundation, since, as it was often conceded, even a despotic state would allow some civil liberty to its citizens. Now it is difficult to connect religious and political liberty because they lead to different and sometimes opposite theoretical demands. Religious liberty requires the absence of interference and can be fully enjoyed by the individual, while political liberty has an apparent social dimension. Its enjoyment means that one acquires a share in the power of redirecting the boundaries of individual liberty, and consequently of religious liberty. This is more or less the application of conventional ideas about political and civil liberty to eighteenth-century discussions. However, despite the obvious dissimilarities between political and religious liberty, there is a kind of connection which has been suggested here, and which seems essential to the eighteenth-century debate about natural rights. This connection refers to the common characteristic of religious and political liberty as rights concerning the expression of opinion.

To substantiate this claim we have considered the right of private judgment in defence of religious liberty and have compared the arguments advanced in this context with the classical formulation of natural rights by Paine. We have distinguished
between three categories, namely, the formation of judgment, its expression, and action in accordance with it. No doubt it was problematic to describe the power of the mind to form a judgment as a right. However, we have indicated that natural rights were believed to be those rights which related primarily to the expression of opinion. This was the only category of rights whose universal exercise to the same degree was deemed perfectly possible. From this vantage point the defenders of the rights of man sought to separate the expression of thought from other actions prompted by one's private judgement which could constitute an injury, and therefore were violations of existing rights. The fact that natural rights included primarily rights whose exercise concerned the expression of opinion, has been obscured by two factors. The first is the connection between power and right which in its most aggressive form was adopted by Paine's opponents, who equated natural rights with animal strength. The second is the prevalent inability to distinguish property (as a right) from the object to which it was applied.

A further important dimension in this connection was that rights concerning the expression of opinion were deemed essential to the articulation of the public interest. What was true about religious opinion was also true about political or scientific opinion. The element which seemed to separate religious liberty was that its defence also rested primarily on the distinction between spiritual and temporal matters. This distinction became problematic even in the arguments defending religious liberty. Its elimination helped to establish a closer link between religious liberty and other spheres of free expression of opinion. This was attempted by Priestley and was taken further by Williams who placed the expression of religious, scientific, and political opinion within the same framework of a universal toleration of every kind of opinion.
The reason which led to the abandonment of the Lockean distinction between temporal and spiritual matters was that it was not suitable for attacking the religious establishment whose defence in turn rested on the premise that religion influenced civil behaviour. The distinction between spiritual and temporal matters, the consideration of the social effects of religion, and the belief that the magistrate should care only about the temporal welfare of his subjects were the three shared assumptions which carried the whole controversy concerning religious toleration. It has been seen how the emphasis on the sacredness of individual conscience at the expense of the assumption concerning the influence of religion on man’s civil conduct, could be combined to defend the disestablishment of religion and not only religious toleration. On the other hand, the emphasis on the civil dimension of religion at the expense of the sacredness of religious conscience could lead to the identification of religion with the church and the latter with the state. We have shown this by considering the accounts of Price and Burke respectively and the way in which they managed to subvert the subtle balance between the sacredness of religious conscience and the existence of a religious establishment.

In chapter nine we have considered the distinction between political and civil liberty. The terms ‘civil’ and ‘political’ liberty meant different things in different contexts. One of these contexts was the contrast between civil society and the state of nature which dominated the arguments about natural rights. This discussion tended to obscure the distinction between political and civil liberty because ‘civil’ and ‘political’ had the same meaning in this context, as both terms were opposed to ‘natural’. By considering the reception of Priestley’s definitions we have seen how the different context of discussion could lead to confusion and misinterpretation of the distinction.
between civil and political liberty. Priestley's definitions have also been approached in terms of the value he attached to civil liberty. This was reflected in the wording he used and specifically in the description of civil liberty as a power over one's own action, and political liberty as a power over the actions of others. Both propositions are highly contestable if they are seen outside the evaluative context into which Priestley placed them. The superiority of Priestley's formulation of the distinction between civil and political liberty over Price's has been taken for granted. However, particular emphasis has been placed on the way in which Price modified in successive stages his definitions in his Additional Observations. The majority of Price's opponents drew on Montesquieu to refute him. Price exhibited a familiarity with Montesquieu's ideas, although he tended to stress other dimensions of Montesquieu's argument than his opponents. Price never abandoned the definition of liberty as a form of self-determination, but in Additional Observations he stressed more the idea of security and provided a curious new distinction which can make sense only if set against the background of Montesquieu's argument concerning the liberty of the citizen in relation to the constitution. Unlike Priestley and Williams who stressed the conceptual distinction between political and civil liberty and then established their link by arguing that the first was needed to secure the second, Montesquieu had established this link within the category of civil liberty. This was also what Price more clumsily tried to do. We have also considered Williams's critique of Montesquieu in his attempt to articulate his own ideas. We have seen that his account oscillated between the conception of the separation of powers and popular sovereignty. While at an early stage of his argument, he sought to compromise those requirements by adding to the traditional divisions of power, the 'popular' power, he finally abandoned
Montesquieu's doctrine. The highly innovative element in Williams's exposition was not only that he stressed the idea of security but also that he placed great emphasis on the importance of the distinction between the sovereign and administration. This distinction placed political liberty on a firmer basis. It highlighted the fact that political liberty did not mean the absence of government as conservative authors tended to argue by confounding the boundaries between political and civil liberty, or by interpreting political liberty as the direct administration of state affairs by the multitude. Thus political liberty could survive attacks on the idea of direct political participation which were very common.

The distinction between political and civil liberty has also been an important parameter in our discussion of the analytical approach to liberty. We have considered in detail John Lind's and Richard Hey's critique of Price's conception of liberty, as they were the most vigorous and theoretically interesting treatments of the idea of liberty among the replies to Price. It has been argued that their attempt to distinguish between liberty and a right, when applied to Price's argument, reflected again the distinction between political and civil liberty. We have shown this by following in detail the way in which the conception of liberty as a negative idea (which presupposed the absence of positive or negative duties) was transformed into a 'negative' conception of liberty (which supposed the presence of negative duties) and which was akin to idea of civil liberty. It had also been argued that liberty could easily be transformed into utility. One of the main reasons for this transformation was the absence of a conception of political liberty, or the attack on a certain conception of political liberty without its replacement by another (based e.g. on the idea of security). Utility could replace political liberty as a principle which could justify
restrictions on civil liberty. The transformation of civil liberty into utility could lead
to strange results such as the description of restraint as happiness. It has been seen that
when Hey abandoned the traditional approach to liberty as absence of restraint which
in the form of civil liberty became the presence of beneficial restraint, he managed to
give a more coherent account of liberty as security in a framework within which the
individual could build his happiness according to his own view of it.

We have finally seen that an attempt to overcome the difficulty of allocating
natural rights, while retaining the conception of a sovereign as a logical prerequisite
to the idea of government, could take the form of the emphasis on the idea of interest.
A nominally unlimited sovereign could provide security for the individual when a
similarity between the interests of the subjects and the persons who carried out
legislation could be established. We have seen the way in which the golden rule was
applied to politics to highlight the need for establishing an identity of interests
between governors and subjects. Although the idea of security was also present in
natural-rights arguments, the advantage it possessed in this context was that it could
be used without rendering it necessary to defy the idea of an ‘omnipotent’ legislature
in the state.
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