

# Jeremy Bentham and the British intellectual response to the French Revolution<sup>1</sup>

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The outbreak and progress of the French Revolution provoked a wide-ranging debate in Britain which encompassed such fundamental issues as the nature of civil society, the relative merits of different forms of government, and the legitimacy of the British Constitution. The leading protagonists in this debate were Edmund Burke and Thomas Paine: the former championing the *ancien régime* in France and the mixed monarchy of Britain as settled at the Glorious Revolution of 1688–9; the latter championing the doctrines of natural rights and the sovereignty of the people. The purpose of this paper is to attempt to locate the writings of Jeremy Bentham on the subject of the French Revolution within this debate, and to suggest, contrary to claims that Bentham was ‘converted’ to political radicalism at this time,<sup>2</sup> that if he was ‘converted’ to any thing, it was to political conservatism.

In July 1795, Bentham distinguished his own position from the two parties which were generally recognized as constituting the opposing poles in the debate: ‘The system of the democrats is absurd and dangerous: for it subjugates the well-informed to the ill-informed *classes* of mankind. Mr Burke’s system, though diametrically opposite, is absurd and mischievous for a similar reason, it subjugates the well-informed to the ill-informed *ages*’.<sup>3</sup> If Bentham did not wish to be identified with either the democrats (for whom Paine was regarded as the leading representative) or the Burkean conservatives, just where, in the landscape of British politics in the wake of the French Revolution, did he stand? An initially plausible response is that he

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<sup>1</sup> This article was first published in a French translation by Emmanuelle de Champs, in *Bentham et la France: Fortune et Infortunes de L’Utilitarisme*, ed. E. de Champs and J-P. Cléro, Oxford, Voltaire Foundation, 2009, pp. 67–82.

<sup>2</sup> M. P. Mack, *Jeremy Bentham: An Odyssey of Ideas 1748–92*, London, 1962, pp. 407–43. For other contributions to the debate on the nature of Bentham’s politics at this time see J. H. Burns, ‘Bentham and the French Revolution’, *Transactions of the Royal Historical Society*, 5th. ser., xvi (1966), pp. 95–114; D. G. Long, ‘Censorial Jurisprudence and Political Radicalism: A Reconsideration of the Early Bentham’, *The Bentham Newsletter*, xii (1988), pp. 4–23; J. E. Crimmins, ‘Bentham’s Political Radicalism Reexamined’, *Journal of the History of Ideas*, liv (1994), pp. 259–81; and P. Schofield, *Utility and Democracy: the Political Thought of Jeremy Bentham*, Oxford, 2006, pp. 78–108.

<sup>3</sup> University College London Library, Bentham Papers [hereafter UC], Box xliv, fo. 5 (8 July 1795).

stood with the reform-minded Foxite Whigs, who saw themselves as mediating between the extremes which they associated with Paine and Burke.<sup>4</sup> As Brooke Boothby, writing in a pamphlet dated March 1792 in defence of the Whigs, explained, the Whigs did not accept Burke's claim, made in *Appeal from the New to the Old Whigs*, that there was no medium between the republicanism of Paine and his own defence of the British Constitution as expounded in *Reflections on the Revolution in France*.<sup>5</sup> The Whigs had always mediated between the republicans on the one side and the adherents of absolute monarchy (whom Boothby characterized as 'Tories') on the other, and had, thereby, played the crucial role in maintaining Britain's mixed form of government:

There have always existed in greater or smaller degrees two descriptions of persons alike dangerous and unfriendly to the mixed government of England; those who desire a republican form, and those who wish to give the King a control over the laws; and these two parties have at all times been equally opposed by the constitutional whigs, esteeming the constitution such as it is fully adequate to civil liberty, and the best adapted to the genius of the nation ....<sup>6</sup>

Bentham's opposition to 'the system of the democrats' and to 'Mr Burke's system', assuming that these were to a recognizable extent equivalent to Boothby's republicans and Tories, suggests, at first glance, that he might have shared significant common ground with the Whigs.

A preliminary point to note is that many of the works which Bentham composed on the subject of the French Revolution—the major exceptions being *Necessity of an Omnipotent Legislature* (1791), *Jeremy Bentham to the National Convention of France* (1792–3), and *Nonsense upon Stilts* (1795)—were written between the late

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<sup>4</sup> One of the issues at stake in the debate was what it meant to be 'Whig'. Here, Whiggism is identified with the 'advanced' wing of the Whigs, led at first by Charles James Fox and later by Charles Grey, who maintained their commitment to reform through the French Revolutionary and Napoleonic Wars. Another group of Whigs, led by the Duke of Portland, and characterized by their opposition to the Revolution, first supported and then, in 1794, joined Pitt's government. See F. O'Gorman, *The Whig Party and the French Revolution*, London, 1967.

<sup>5</sup> B. Boothby, *Observations on the Appeal from the New to the Old Whigs, and on Mr. Paine's Rights of Man*, London, 1792, pp. 77–8.

<sup>6</sup> *Ibid.*, pp. 143.

autumn of 1788 and the summer of 1790.<sup>7</sup> These works, therefore, preceded much of the debate in Britain on the French Revolution, which began in earnest with the publication of Burke's *Reflections on the Revolution in France* on 1 November 1790, and erupted in full vigour following the publication of Paine's *Rights of Man. Part I* in February 1791. Bentham did not contribute directly to the so-called Burke-Paine controversy (though *Necessity of an Omnipotent Legislature* might be read as an oblique contribution to the related debate on the nature of the Glorious Revolution, while *Nonsense upon Stilts*, had it been published, would have contributed significantly to the conservative case against the Painite doctrine of natural rights).

From his earliest writings on France composed in the autumn of 1788 through to *Jeremy Bentham to the National Convention of France* of December 1792 or January 1793, Bentham saw his role as that of an Englishman with experience of parliamentary government offering advice to French legislators on how they might best conduct their affairs, in the sense of promoting the general happiness of the community for which they were responsible. While Bentham's attitude to politics can be reconstructed only indirectly in these formal writings, more direct evidence is provided in what Bentham termed 'rudiments', that is notes and jottings in which he sketched out ideas for further development. To anticipate the argument in the concluding section of this paper, what these rudiments show is that, as the French Revolution became more extreme, by the autumn of 1792 (the stoning to death of La Rochefoucauld in September 1792 appears to have been a crucial turning point),<sup>8</sup> Bentham had become convinced that no such reform should be undertaken in the prevailing circumstances. Indeed, his position in relation to Revolutionary France and the British Constitution seemed indistinguishable from the mainstream of conservatism, which united in support of Pitt's government.

A further point to note is that the contributors to the debate on the French Revolution tended to adopt one or other of three underlying moral theories, namely those of natural law, contractarianism, (including conservative versions of the

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<sup>7</sup> As well as the material in *Rights, Representation, and Reform: Nonsense upon Stilts and other writings on the French Revolution*, ed. P. Schofield, C. Pease-Watkin, and C. Blamires, Oxford, 2002 (*The Collected Works of Jeremy Bentham*, Bentham's major contributions were *Political Tactics* (see *Political Tactics*, ed. M. H. James, C. Blamires, and C. Pease-Watkin, Oxford, 1999, (CW)) and 'Draught of a New Plan for the organisation of the Judicial Establishment in France' (see *The Works of Jeremy Bentham*, ed. J. Bowring, 11 vols., Edinburgh, 1838–43, iv. pp. 285–406).

<sup>8</sup> See Bentham to the Marquis of Lansdowne, 10 September 1792, *The Correspondence of Jeremy Bentham*, vol. iv., ed. A. Taylor Milne, London, 1981 (CW), p. 394.

doctrine of natural rights), and utilitarianism.<sup>9</sup> Adherence to a particular moral theory did not distinguish conservatives from radicals in the 1790s, but rather their attitudes towards inequalities of property, rank, and power in civil society. There was, nevertheless, a relatively consistent approach adopted towards politics by the utilitarians, who tended to defend the British Constitution on the grounds of its proven track record in promoting the welfare of the country.<sup>10</sup> To identify Bentham's position with that of these conservatives is, however, problematic, for they were followers of William Paley's brand of so-called 'theological utilitarianism'. Bentham was always keen to distance himself from Paley, and particularly Paley's reliance on the will of God as the ultimate source of moral obligation.<sup>11</sup> Bentham would, perhaps, have regarded the moral and political stance of the theological utilitarians as too close to that of William Blackstone, characterized in Bentham's view by the phrase 'every thing is as it should be'.<sup>12</sup> In other words, they had not adopted the principle of utility as a critical, rational standard, but because it seemed to justify their own pre-existing sympathies and antipathies—it was simply in their interest to be conservative.<sup>13</sup>

While Bentham did not contribute publicly to the Burke-Paine controversy, his writings on and for France can be used to reconstruct his position in relation to certain key issues which were at stake. I will consider a number of issues which were regarded as important by the protagonists in the debate on the French Revolution—namely the confiscation of the property of the French Church, the British Constitution as a balanced constitution contrasted with the origin of government in the social compact, the nature of the Glorious Revolution of 1688–9, and the doctrine of natural rights—and then try to discern whether Bentham's views on these issues were consistent with any particular writer or recognizable group of writers, and in

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<sup>9</sup> Halévy's view that everyone who was writing at this time was in essence utilitarian (see E. Halévy, *The Growth of Philosophic Radicalism*, trans. M. Morris, corrected edn., London, 1952, pp. 153–4) trivializes the perception of the contributors, or at least the more astute contributors, to the debate, that there were real philosophical disagreements at the root of the controversy.

<sup>10</sup> See, for instance, Samuel Cooper, *The First Principles of Civil and Ecclesiastical Government, Delineated*, Yarmouth 1791, and Richard Hey, *Happiness and Rights. A Discourse upon several subjects relative to the Rights of Man and his Happiness. Rights are Means: Happiness the End*, York, 1792. With the problematic exception of William Godwin, it is difficult to identify utilitarians who might be described as politically radical.

<sup>11</sup> See P. Schofield, 'A Comparison of the Moral Theories of William Paley and Jeremy Bentham', *The Bentham Newsletter*, xi (1988), pp. 4–22.

<sup>12</sup> In the context of a discussion of the law of heresy, Blackstone had remarked that, following certain legislative amendments, 'Every thing is now as it should be': see William Blackstone, *Commentaries on the Laws of England*, 4 vols., Oxford, 1765–9, iv. p. 49.

<sup>13</sup> For the principle of sympathy and antipathy see Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, ed. J. H. Burns and H. L. A. Hart, London, 1970 (CW), pp. 21–33.

particular with the Whigs, for whom I will take Boothby and James Mackintosh to be the (self-proclaimed) representatives—although this identification is itself open to dispute in certain respects.

### **The confiscation of the property of the Church**

The reform of the French Church, which had begun in the National Assembly on 4 August 1789 with the clergy giving up their tithes and other feudal dues, and had then seen the confiscation of the estates of the clergy in return for an annual salary, had culminated in the Civil Constitution of the Clergy, promulgated on 24 August 1790.<sup>14</sup> According to Burke, the confiscation of Church property by the National Assembly was the central measure of the French Revolution. It violated the primary duty of society, which was to protect the property of its citizens: the state had no right to steal from one class of citizen (the clergy) in order to fulfil its posterior obligations to another (the public creditor).<sup>15</sup> The Revolution, claimed Burke, had been engineered by an alliance of the moneyed interest and the ‘Men of Letters’ against the landed interest and the Church. The ‘Men of Letters’, who wished to destroy the Christian religion, by pretending to have a zealous concern for the poor, and satirizing court, nobility, and priesthood, ‘served as a link to unite, in favour of one object, obnoxious wealth to restless and desperate poverty’. This unprincipled alliance of the very rich and the mob had produced the attack on ecclesiastical property, which was used to service the debt incurred by the ancient monarchy.<sup>16</sup> The confiscation, and the subsequent creation of a paper currency founded on an eventual sale of the church lands, was an attack on religion and landed property, the two institutions which, according to Burke, formed the basis of civil society, and upon which the British Constitution was founded.

In contrast, Paine had no hesitation in defending the Civil Constitution of the Clergy. He contrasted favourably the new and more equitable arrangements for the remuneration of the French clergy with the vast disparities which existed in the Church of England, ranging from the annual income of £10,000 enjoyed by the Bishops of Durham and Winchester down to the £30 typically paid to the poor curate. The lower and middling ranks of clergy in France had joined with the other oppressed

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<sup>14</sup> W. Doyle, *The Oxford History of the French Revolution*, Oxford, 1989, pp. 136–46.

<sup>15</sup> Edmund Burke, ‘Reflections on the Revolution in France’, in *The Writings and Speeches of Edmund Burke: Volume VIII: The French Revolution 1790–1794*, ed. L.G. Mitchell, Oxford, 1989, pp. 156–7.

<sup>16</sup> *Ibid.*, pp. 157–73.

classes to obtain redress, in their case against those members of their corporation who had enjoyed enormous incomes from richly endowed benefices.<sup>17</sup>

James Mackintosh steered something of a middle course between Burke and Paine. He argued that the confiscation was justifiable in that it did not constitute an attack on private property. The land occupied by the Church was not the property of its members. The clergy were servants of the state, who received salaries for the performance of certain duties. Had they received their salaries in money, no one, observed Mackintosh, would have questioned the right of the state to regulate them. The fact that the clergy were paid by the grant of land did not nullify the right of the state to take back possession of that land, and introduce a different mode of payment. The land held by the clergy was, therefore, distinguishable from private property, which was held for the benefit of the individual proprietor, who enjoyed unlimited rights over it. Nor was the property of the Church equivalent to that owned by a private corporation, which was a voluntary association for the benefit of its members, each of whom was an absolute sharer in the property. The priesthood was a corporation, but endowed by the state, and established for the benefit of others. Its members had no separate, and the body no collective, right of property. They were merely entrusted with the administration of the lands from which their salaries were paid.<sup>18</sup> The distinction between private and ecclesiastical property drawn by Mackintosh rested on his distinction between ‘those *fundamental* acts which constitute society’ and which were ‘essential to the social state’, and ‘those public acts’ which were ‘subsequent and subordinate’. Private property belonged to the former category, while the formation and endowment of public corporations belonged to the latter.<sup>19</sup>

Bentham, writing in the autumn of 1789 before Burke had highlighted the issue, commented on the confiscation of Church property in the context of a wider discussion in which he recommended the appropriation of collateral successions as a means of solving the financial problems facing the French state. The key objective was to raise resources for the state, while avoiding the pain which would result from

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<sup>17</sup> Thomas Paine, *Rights of Man: being an Answer to Mr. Burke's Attack on the French Revolution*, London, 1791, pp. 92–3. Page references are to the version of the text which appears in Thomas Paine, *Political Writings*, ed. B. Kuklick, Cambridge, 1989.

<sup>18</sup> James Mackintosh, *Vindiciae Gallicae. Defence of the French Revolution and its English Admirers, against the accusations of the Right Hon. Edmund Burke; including some strictures on the late production of Mons. de Calonne*, 2nd edn., London, 1791, pp. 82–91.

<sup>19</sup> *Ibid.*, pp. 91–2 n.

the disappointment of expectations. Collateral relations tended to have no expectation of inheriting property, and hence would suffer no disappointment if they did not do so. Bentham went on to apply these principles to what he termed the ‘victory of the nation over the Clergy considered as a body’, namely the decision taken by the National Assembly on 2 November 1789 to confiscate the property of the clergy. While not opposing the measure in itself, he argued that existing incumbents should not be disadvantaged. To deprive existing clergy of their incomes would be to create disappointment. The proper way to proceed would be to appropriate the property at the death of each incumbent. The incumbent would not, of course, have any natural heirs, and hence no one would experience any pain of disappointment. A further potential problem with any measure of confiscation was the creation of insecurity amongst proprietors in general. Such insecurity would not, however, be generated in this case.

Strip the Clergy merely because they are an overpaid class of stipendiaries, and the mischief, great as it is, stops [...] with them. Strip a class of proprietors only because they are wealthy, the mischief spreads over the whole community: for as nobody could say where the boundary line betwixt moderate and immoderate wealth would ultimately rest, for then no proprietor could deem himself safe from the like fate, and universal uproar and destruction would be the consequence.<sup>20</sup>

A clear distinction could be drawn between the property of the clergy and that of the laity.

Bentham’s position was opposed to that of both Burke and Paine. The former opposed the confiscation outright, while the latter supported it on the grounds that the wealthy clergy were merely another category of unjust oppressors. Bentham agreed with Mackintosh that the property of the clergy constituted a salary paid by the state, and that the state was justified in confiscating it. Bentham, however, wished to see adopted a more moderate strategy in which present incumbents would be permitted to enjoy their benefices undisturbed during their lifetimes. While the positions of

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<sup>20</sup> Bentham, *Rights, Representation, and Reform (CW)*, pp. 214–17. It is worth noting Bentham’s approach here is consistent with the approach he adopted in relation to the property of the clergy in *Church-of-Englandism* composed twenty-five years later. The ‘euthanasia’ of the Anglican Church would involve the confiscation of benefices upon the death of the existing incumbents.

Bentham and Mackintosh may not appear too far apart, there were, however, deeper theoretical disagreements between them. First, Bentham would have rejected Mackintosh's distinction between fundamental acts and subordinate acts, a product of the latter's implicit contractarianism. Hence, for Mackintosh, the existence of the three corporations of priesthood, judiciary (as represented by the Parlements), and nobility were abuses or corruptions which had been engrafted onto the French state subsequent to its original establishment. The National Assembly, in undertaking radical reform, had restored the government to its first principles.<sup>21</sup> Bentham saw no value in the restoration of some supposedly uncorrupt and virtuous original state of affairs—his vision was forward-looking, taking the present state of affairs, and proposing such reforms as appeared to be dictated by the principle of utility in order to produce a better future. Nor would Bentham have rested his justification of private property on an original contract, whether or not the contract was considered as possessing transcendent validation, in the form either of natural law or natural rights.

Bentham's utilitarian justification for private property rested on his conception of security as a crucially important component of human well-being. In another respect, the implications of Bentham's utilitarianism were potentially much more radical than Mackintosh's contractarianism, namely in relation to the very existence of an established church. Bentham advocated the separation of legislation from theology, and with it the rejection of any official church establishment.<sup>22</sup> This put him at odds with Burke and other conservatives, as well as with the Whigs, and allied him with Paine.<sup>23</sup> Having said this much, there is, arguably, considerable ambiguity in Mackintosh's thought, in that he did accept, in certain contexts, the validity of utilitarian considerations. For instance, he came close to utilitarianism when he used such language as the following: 'It was time [...] that Legislators, instead of that narrow and dastardly *coasting* which never ventures to lose sight of usage and precedent, should, guided by the *polarity* of reason, hazard a bolder navigation, and

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<sup>21</sup> *Vindiciae Gallicae*, pp. 105–9.

<sup>22</sup> See Schofield, *Utility and Democracy*, pp. 176–93.

<sup>23</sup> The defenders of the established Church were not, however, agreed in their justifications for its existence. For Burke and others, an established Church was as vital for the well-being of society as the state itself, and the Anglican Church was legitimated by prescription. For the anonymous author of *The Civil and Ecclesiastical Systems of England Defended and Fortified*, London, 1791, the organization of the Anglican Church was adapted to complement the mixed form of government, while for Robert Nares, *Principles of Government deduced from Reason, supported by English experience, and opposed to French Errors*, London, 1792, the Anglican Church rested on the evident approval of the majority of the people.



discover, in unexplored regions, the treasure of public felicity'.<sup>24</sup> And, as we shall see, he explicitly rested his doctrine of natural rights on a deeper utilitarian foundation.

### **The balanced constitution v. the social compact**

In criticizing the measures of the National Assembly, Burke's intention was to show that the new regime in France did not, as many had optimistically assumed, represent an attempt to replicate the constitutional structures found in Britain. Burke and other conservatives, as well as the Whigs, accepted the standard doctrine that the British constitution, characterized by a mixed form of government consisting of monarchy, aristocracy, and democracy (or republic), located in King, House of Lords, and House of Commons respectively, combined the strengths and excluded the weaknesses of each form of government taken separately. William Paley, whose *Principles of Moral and Political Philosophy* constituted a conservative textbook during these years, pointed out:

The *Government of England*, which has been sometimes called a mixed government, sometimes a limited monarchy, is formed by a combination of the three regular species of government; the monarchy, residing in the King; the aristocracy, in the House of Lords; and the republic being represented by the House of Commons. The perfection intended by such a scheme of government is, to unite the advantages of the several simple forms, and to exclude the inconveniences.<sup>25</sup>

John Young explained that the legislative authority was lodged in the three estates of King, Lords, and Commons, each having different powers. Under this mixed form of government, the country enjoyed the advantages of monarchy, aristocracy, and democracy without being subject to the inconveniences of any.<sup>26</sup> Charles Edward de Coetlogon stated that the advantages of monarchy, aristocracy, and democracy had

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<sup>24</sup> Mackintosh, *Vindiciae Gallicae*, p. 117.

<sup>25</sup> William Paley, *The Principles of Moral and Political Philosophy*, London, 1785, pp. 455–7.

<sup>26</sup> John Young, *Essays on the following Interesting Subjects: viz. I. Government. II. Revolutions. III. The British Constitution. IV. Kingly Government. V. Parliamentary Representation & Reform. VI. Liberty & Equality. VII. Taxation. And VIII. The present war, & the stagnation of Credit as connected with it*, Glasgow, 1794, pp. 41–7.

been blended in the British constitution,<sup>27</sup> and John Bowles observed that the constitution blended together all three simple forms of government, securing the advantages and escaping the inconveniences they produced separately.<sup>28</sup>

The standard doctrine further maintained that the mixed constitution was complemented by two further devices, that of the separation of powers and that of the balance of powers. The separation of powers, explained Paley, referred to the way in which the executive, legislative, and judicial powers of the state were distributed amongst different individuals and institutions, and was intended to secure the happiness of subjects. In Britain, the executive power was lodged solely in the King; the legislative, though lodged in King, House of Lords, and House of Commons, was peculiarly associated with the latter, since it was there that laws usually originated; and the judicial was lodged in independent magistrates. The balance of powers referred to the mutual checks imposed on the constituent parts of the legislature, and was intended to secure the preservation of the government. The main function of the Lords was to mediate between King and Commons, thus ensuring that the constitution did not degenerate into royal despotism on the one side or popular anarchy on the other.<sup>29</sup> According to Burke, the beauty of the British constitution lay in the balance of powers:

The whole scheme of our mixed constitution is to prevent any one of its principles from being carried as far, as taken by itself, and theoretically, it would go. [...] To avoid the perfections of extreme, all its several parts are so constituted, as not alone to answer their own several ends, but also each to limit and controul the others: insomuch, that take which of the principles you please—you will find its operation checked and stopped at a certain point. The whole movement stands still rather than that any part should proceed beyond its boundary.<sup>30</sup>

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<sup>27</sup> Charles Edward de Coetlogon, *The Peculiar Advantages of the English Nation*, London, 1792, pp. 4–16.

<sup>28</sup> [John Bowles], *A Protest against T. Paine's 'Rights of Man'*, London, 1792, pp. 23–6.

<sup>29</sup> Paley, *Moral and Political Philosophy*, pp. 470–80.

<sup>30</sup> 'An Appeal from the New to the Old Whigs', in *The Works of the Right Honourable Edmund Burke. A New Edition*, 12 vols., London, 1808–13, vi. pp. 258–9. See also Francis Plowden, *Jura Anglorum. The Rights of Englishmen*, London, 1792, pp. 154–5.

The standard doctrine was that the role of each branch of the mixed constitution was related to the attributes which were associated with each simple form of government considered in itself. Civil government required a combination of power, wisdom, and goodness. Monarchy provided power and the aristocracy provided wisdom, while the democracy ensured that these were directed towards the good of the whole.<sup>31</sup> The analogy between the attributes of the respective elements of the British constitution and those of the divine Trinity was, again, standard doctrine.<sup>32</sup>

All of this was rejected by Paine, for whom the legitimacy of government was determined by its origin: 'To possess ourselves of a clear idea of what government is or ought to be, we must trace it to its origin. In doing this we shall easily discover that governments must have arisen, either *out* of the people, or *over* the people'. A legitimate government was one that had arisen out of the people, in other words a government founded by means of the social contract, albeit not one entered into by governors and governed, but one entered into by each individual acting in his own sovereign right.<sup>33</sup> Hence, the constitution preceded the government: 'a government is only the creature of a constitution. The constitution of a country is not the act of its government, but of the people constituting a government'. The government was bound to act in accordance with the constitution, in the same way that a court of law was bound to act in accordance with the laws subsequently made by that government. As far as Paine was concerned, England did not have a constitution. The English government originated in the Norman Conquest, and consequently arose over the people: 'and though it has been much modified since the time of William the Conqueror, the country has never yet regenerated itself, and it is therefore without a constitution'.<sup>34</sup> In contrast, the French were in the very process of forming a government which originated out of the people. The National Assembly was 'the personal social compact', its members consisting of the delegates of the nation with the authority to form a constitution. Future assemblies would have authority only to legislate 'according to the principles and forms prescribed in that constitution'.<sup>35</sup>

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<sup>31</sup> See Isaac Hunt, *Rights of Englishmen. An Antidote to the Poison now vending by the Transatlantic Republican Thomas Paine, Secretary for Foreign Affairs to the American Congress during the American War. In reply to his whimsical attacks against the Constitution and Government of Great Britain*, London, 1791, pp. 43–9; *Observations on Doctor Price's Revolution Sermon*, London, 1790, pp. 4–5.

<sup>32</sup> Blackstone, *Commentaries on the Laws of England*, i. pp. 50–2.

<sup>33</sup> Paine, *Rights of Man*, pp. 80–1.

<sup>34</sup> *Ibid.*, pp. 81–2.

<sup>35</sup> *Ibid.*, pp. 82–3.

Paine drew out the implications of this for the branches of the British Constitution. Applauding the abolition of aristocratic titles in France, he recommended the same measure in Britain.<sup>36</sup> Noting that in France, the king was merely an official, while sovereignty was in the nation, he made the point that, in Britain, the king was the source of sovereignty, and the House of Commons was merely ‘a grant or boon’ received by the people from the king.<sup>37</sup>

Paine elicited a mixed response from the reform-minded Whigs. On the one hand, he found an ally in his dissatisfaction with the theory of the mixed monarchy in Mackintosh, who came down in favour of a simple representative legislature. He presented three arguments against a constitution of mutual control. First, he appealed to the notion of the general will. The social body was a unity, and a unity could have only one will. A division of the legislature, whereby the national will as manifested by the nation’s representatives might be negated, was a usurpation of popular sovereignty. Second, a senate would be dominated by sectional interests opposed to the national will. Third, the so-called government of balance and control which was supposed to exist in Britain was illusory. The Lords and Commons, which were supposed to control each other, were in fact both dominated by the same class of men, the rich, whose interest it was to protect their own privileged situation.<sup>38</sup> On the other hand, Paine was criticized by Boothby for his argument that a constitution preceded government, and the related doctrine of the sovereign of the people. To Paine’s view that ‘a constitution is a thing antecedent to government, and a government is only the creature of a constitution’, Boothby retorted that a constitution was an aggregate composed of all the laws, institutions, and establishments by which a country was governed, and as such the constitution could not ‘be antecedent to’ the elements of which it was composed.<sup>39</sup> In similar vein, in response to Paine’s claim that ‘the constitution of a country is not the act of its government, but of the people constituting a government’, Boothby pointed out that to speak of a ‘country’ or a ‘people’ was to assume the existence of an already existing constitution.<sup>40</sup>

Burke had taken a similar view to Boothby when he had opposed the notion of the sovereignty of the people with the argument that the only authority possessed by

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<sup>36</sup> *Ibid.*, pp. 89–92.

<sup>37</sup> *Ibid.*, pp. 96–7.

<sup>38</sup> Mackintosh, *Vindiciae Gallicae*, pp. 262–9.

<sup>39</sup> Boothby, *Observations*, pp. 126–7.

<sup>40</sup> *Ibid.*, pp. 127–30.

man in society was that resulting from the institutions of society. A people could only exist, be known, and have a right to act through these institutions, which were formed by agreement, the social compact. When this compact was destroyed, there was no longer a people. Men who once had a corporate existence became nothing more than a number of separate individuals. This was a state of 'rude nature', where there was neither majority nor minority, nor power in any one person to bind any other. The power of a majority was legitimate only if an association was produced by unanimity, and if the act of the majority was thereupon recognized as the act of the whole, and thus binding on the whole. Hence, should men dissolve their government in order to remodel their community, each man had a right to remain an individual. Any number of individuals who agreed had a right to form a separate and independent community. If any one was forced to associate with another, this was conquest and not compact. Burke's point was that the people of France, granted that they had dissolved the compact on which their old government had rested, had no right to form a new one on the basis of the will of the majority. The majority had no right to create or alter the government. Such a right belonged to the whole community, in which the natural aristocracy, or the assembly appointed to represent it, acted in its proper place, with its proper weight, and without being subjected to violence. But in this case, added Burke, it was doubtful whether any rash or desperate changes could ever be made.<sup>41</sup>

William Cusac Smith, who allied himself with Burke, and in particular with his views on prescription, adopted Rousseau's device of the general will, which he interpreted as the general will of the nation as manifested in the fundamental constitution of the state. He contrasted the general will with the will of the majority, which allowed him to oppose the doctrine of the sovereignty of the people. Referring to Paine's argument that one generation could not bind another, Smith noted that it was impossible to distinguish one generation from the next. It made no sense to talk about the right of each generation to legislate for itself, since a generation was a non-entity, and, therefore, did not have rights. Indeed, successive generations were so intimately connected that what was established by one did not infringe the rights of another. Rather, the basis of such establishments rested upon something compounded of parental authority and the acquiescence of children. In time, the rising generation became the parents themselves. Nature, in demonstrating the way in which

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<sup>41</sup> Burke, 'Appeal from the New to the Old Whigs', *Works*, vi. pp. 208–15, 219–28.

permanency could be reconciled with change, had pointed out an object for imitation, and directed that establishments should be durable. The almost instinctive reverence which men had for old institutions, which represented an accumulation of wisdom and experience, reinforced the lesson.<sup>42</sup> Like Burke, Smith was keen to emphasize the point that established institutions represented the accumulated legislative wisdom of many generations, and that the present generation should exercise caution when contemplating anything more than ‘gradual’ improvement:

Old establishments *should not* be suddenly overturned; because their advantages come attested by the concurrent approbation of those ages through which they have descended; a testimony to which *we* have nothing equivalent to oppose. Establishments *should* endure occasional improvement in their descent, else that accumulated approbation of successive generations (which alone should give them authority) is wanting. They stand sanctioned by the single opinion of that age which established them; the single opinion of any succeeding age to the contrary is therefore an equipoise, and their whole weight is gone [...].<sup>43</sup>

Bentham agreed with Paine and Mackintosh to the extent that he believed that it made very little sense to claim that the division of powers, into which he subsumed the doctrines both of the separation and the balance of powers, was the key to good government. Bentham had, as early as *A Fragment on Government* published in 1776, ridiculed the idea that the mixed form of government, just because it was mixed, manifested the qualities of power, wisdom, and goodness.<sup>44</sup> Rather, the key to good government, as he had also maintained in *A Fragment on Government*, was the degree of dependence of the governors on the governed.<sup>45</sup> His criticisms of the division of powers was developed in material written in the autumn of 1789.<sup>46</sup> Nevertheless, he was, as we shall see, prepared to agree with Paley, Burke, and other conservatives that

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<sup>42</sup> [William Cusac Smith], *Rights of Citizens; being An Inquiry into some of the Consequences of Social Union, and an examination of Mr. Paine's Principles touching Government*, London, 1791, pp. 10–21.

<sup>43</sup> *Ibid.*, p. 40.

<sup>44</sup> Jeremy Bentham, *A Comment on the Commentaries and A Fragment on Government*, ed. J.H. Burns and H.L.A. Hart, London, 1977 (CW), pp. 461–73.

<sup>45</sup> *Ibid.*, pp. 485.

<sup>46</sup> See Bentham, *Rights, Representation, and Reform* (CW), 405–18; Schofield, *Democracy and Utility*, pp. 233–40.

the British Constitution represented the best form of government that had ever existed. And again, while critical of the theory of the mixed form of government, this did not mean that Bentham saw any merit in the constitutional theory espoused by Paine, with its condemnation of the British Constitution.

### **The nature of the Glorious Revolution**

An important debate, intimately related to—or rather an aspect of—the debates surrounding the British Constitution, concerned the nature of the Glorious Revolution of 1688–9. Indeed, it was Richard Price’s pamphlet celebrating the Glorious Revolution—with its claim that the people had at that time demonstrated their right to choose their own governors, to cashier them for misconduct, and to frame a government for themselves<sup>47</sup>—that constituted Burke’s ostensible target in *Reflections on the Revolution in France*. The Whigs tended to side with Price against Burke. Mackintosh agreed, in large measure, with Price’s interpretation of the Glorious Revolution. He argued that, at the Revolution, there was a genuine election of a monarch (more strictly a line of monarchs), which constituted a choice made on the part of the people. The deposition of James II went to show that the people had a right to cashier their governors for misconduct, in that it established a principle that a similar result would follow if a similar abuse reoccurred.<sup>48</sup>

Boothby’s interpretation of the Glorious Revolution was very close to that of Mackintosh, although, unlike Mackintosh, he did wholeheartedly support the balanced constitution. Furthermore, he used the debate on the Glorious Revolution to distinguish the position of the Whigs both from what he regarded as the Toryism of Burke and from the republicanism of Paine. Where there was any conflict between King and people, noted Boothby, the Tories would side with the former, and the Whigs with the latter. Burke’s strategy was to undermine the Whigs by associating sympathy with the French Revolution with opposition to the British Constitution. The Whigs, explained Boothby, denied that association, but rather combined support for the overthrow of despotism in France with support for the mixed monarchy at home, and further maintained that the French Revolution drew its inspiration from the British Constitution.<sup>49</sup> It was Burke who had reneged on Whiggism, and, by siding

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<sup>47</sup> Richard Price, *A Discourse on the Love of our Country*, London, 1789, p. 34.

<sup>48</sup> Mackintosh, *Vindiciae Gallicae*, pp. 295–303.

<sup>49</sup> Boothby, *Observations*, pp. 6–11.

with monarchy, adopted Toryism.<sup>50</sup> His Toryism was evident in his interpretation of the Glorious Revolution. Burke, like the Tories, had argued that the Glorious Revolution was a matter of necessity—the necessity being the preservation of the Church of England.<sup>51</sup> In contrast, the Whigs argued that the invitation to William and Mary was a strict exercise of a right always possessed under the English constitution, that is to fill the throne made vacant by a breach of the King's contract in a manner most likely to secure the constitutional rights and liberties of the people. The nation retained the same right to fill the throne should the same circumstances arise again.<sup>52</sup>

In response to Burke's argument that there was no right to alter the Revolution settlement, Paine argued that the measures enacted at the Glorious Revolution were not binding, and were the product of an illegitimate government. Distinguishing between what, in his view, the English parliament of 1688 had a right to do—a right they possessed by 'delegation'—and what it had no right to do—a right possessed by 'assumption'—Paine argued that it was this latter right, namely that of 'binding and controlling posterity to the end of time', which had been exercised in the declaration made in the Bill of Rights by the two houses of parliament that they 'submit themselves, their heirs and posterity, forever' to the line of succession therein laid down,<sup>53</sup> and in the Act of Succession of 1701 which, according to Burke, bound the nation 'to the end of time'. Paine retorted:

There never did, nor ever can exist a parliament, or any description of men, or any generation of men, in any country, possessed of the right or the power of binding or controlling posterity to the 'end of time', or of commanding forever how the world shall be governed, or who shall govern it [...]. Every age and generation must be as free to act for itself, *in all cases*, as the ages and generations which preceded it. The vanity and presumption of governing beyond the grave is the most ridiculous and insolent of all tyrannies.

Neither the parliament nor the people of 1688 had any right to bind succeeding generations: 'Every generation is and must be competent to all the purposes which its

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<sup>50</sup> *Ibid.*, pp. 13–19.

<sup>51</sup> *Ibid.*, pp. 154–68.

<sup>52</sup> *Ibid.*, pp. 50–4.

<sup>53</sup> See Burke, 'Reflections on the Revolution in France', *Writings and Speeches*, viii. pp. 70, 74.



occasions might require'. It was absurd to claim, as Burke did, that a law made by men who were now dead could bind people who had not yet been born—one non-entity could not bind another non-entity—and that there could never be a power to alter that law. It was true, admitted Paine, that laws made by one generation did remain in force through succeeding generations, but this was because the living continued to give their consent to them: 'A law not repealed continues in force, not because it *cannot* be repealed, but because it *is not* repealed; and the non-repealing passes for consent'. Paine concluded that the laws of the parliament of 1688 were null because they purported to be immortal: 'The nature of them precludes consent. They destroy the right which they *might* have by grounding it on a right which they *cannot* have. Immortal power is not a human right, and therefore cannot be a right of parliament. The parliament of 1688 might as well have passed an act to have authorized itself to live forever, as to make their authority live forever'.<sup>54</sup>

Bentham would have agreed with Paine in his opposition to the enactment of un-repealable laws—it is here that his criticism of Burke for subjecting the well-informed to the ill-informed ages is pertinent—but would have thought that Paine's further claim that, since the parliament of 1688 had no authority to bind succeeding generations, its laws were, therefore, null and void, was incoherent. Bentham, however, in contrast to most of the participants in the debate on the French Revolution, did not think that anything of significance turned on the nature of the Glorious Revolution. The question was not whether the British government was legitimate because of what happened or did not happen in 1688–9, but whether the British government promoted the well-being of the community. To those who argued that the Glorious Revolution constituted the social compact on which the British Constitution was founded, Bentham had already pointed out, in *A Fragment on Government*, that the question as to whether the people owed obedience to their government should not be determined on the basis of whether the governors ruled in accordance with a contract, whether real or imaginary, but whether resistance would be conducive to the happiness of the community.<sup>55</sup> The same argument told against Paine's view—and indeed the views of Mackintosh and Boothby (and, as we shall see, Fox) to the extent that they agreed with Paine on this point—that it was the way

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<sup>54</sup> Paine, *Rights of Man*, pp. 53–8.

<sup>55</sup> Bentham, *Fragment on Government*, pp. 482–92

in which a government originated which determined, or at least had a bearing on, its legitimacy.

### **Natural Rights**

The question of natural rights was, of course, a central element in the debate on the French Revolution—in particular whether natural rights had ever existed, and if so, what was their precise content. The debate was given focus by the second Article of the French Declaration of Rights, which stated: ‘The final end of every political institution is the preservation of the natural and imprescriptible rights of man. These rights are those of liberty, property, security and resistance to oppression’. Paine’s interpretation of the doctrine of natural rights began with ‘the unity of man’, the fact that mankind partook of a common nature. When man was created by God, there were no artificial distinctions: ‘Man was his high and only title, and a higher cannot be given him’. Each man was born equal with the same natural rights. This principle remained true through all successive generations, because man continued to be of the same nature. Civil rights originated out of natural rights, and just as men remained equal in the latter, so they should have been equal in the former. Natural rights were those which man possessed by virtue of his existence, namely intellectual rights and rights of acting in any way not injurious to the natural rights of others. Civil rights were those which man possessed by virtue of his being a member of society—they were founded on some natural right pre-existing in the individual, but which a man, through the exercise of his individual power, was incapable of securing. After entering society, man retained those natural rights of which the individual’s power to execute was as perfect as the right itself. Among these were intellectual rights. The natural rights not retained were those of which the individual’s power to execute was defective, though the right remained perfect. A man had a natural right to judge in his own cause, and so far as the intellectual right was concerned, he never surrendered it. But natural man did not have the power to gain redress, without which the right of judgment was of no value. Man, therefore, deposited his right of judgment in society, which did have the power to gain redress. Society gave nothing to man which he did not already possess, but each man was a ‘proprietor’ in the ‘common stock of

society’, and ‘draws on the capital as a matter of right’. In short, man entered society to secure his natural rights, and its benefits belonged equally to each man.<sup>56</sup>

Burke opposed the doctrine of natural rights on the grounds that civil rights were not, in any meaningful way, founded on natural rights. Paine argued that civil rights were no more than natural rights exchanged, but Burke insisted that men could not, under the conventions of civil society, claim rights which did not even suppose its existence—the rights a man might be said to possess in a state of nature were irrelevant to any discussion of the rights which he possessed in civil society. Burke argued that what he termed the first fundamental right of natural man, namely to judge in his own cause was given up in civil society. Man abdicated all right to be his own governor. In a great measure, he also abandoned the right of self-defence, the first law of nature. He could not enjoy together the rights of an uncivil and civil state: ‘That he may obtain justice, he gives up his right of determining, what it is in points the most essential to him. That he may secure some liberty, he makes a surrender in trust of the whole of it’. Natural or unsocial man gave up all his rights on entering society, and in return gained civil rights. The end of a community, according to Burke, was to secure the ‘real rights of men’. These included their right to justice, to the produce of their industry, to the acquisitions of their parents, to the nourishment and improvement of their children, and to religious instruction in life and consolation in death. Each man had a right to do for himself whatever he could without harming the rights of others. Men had equal rights, admitted Burke, but not to equal things. The share of power, authority, and control which, it was claimed by Paine, each individual ought to have in the management of the state was not a right of man in civil society.<sup>57</sup>

Paine did, however, receive support from Mackintosh on the question of the existence and function of natural rights. Man gave up a portion of his natural rights upon entering society, argued Mackintosh, in order to gain protection from injury at the hands of others. Apart from the portion thus relinquished, each man retained his

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<sup>56</sup> Paine, *Rights of Man*, pp. 43–50.

<sup>57</sup> Burke, ‘Reflections on the Revolution in France’, in *Writings and Speeches*, viii. pp. 109–12. William Cusac Smith supported Burke’s line of argument. Even if one accepted the existence of a state of nature (Smith was sceptical whether such a state had ever existed (*Rights of Citizens*, p. 108)), and of the institution of a social compact as a means of transfer from a state of nature to a state of civil society (Smith argued that this process was likely to have been gradual, and not effected in a single moment (*ibid.*, pp. 118–22)), he denied that every civil right grew out of a natural right. On the contrary, the two were frequently incompatible (*ibid.*, pp. 80–96).

natural right in full integrity and vigour, and it was fallacious, therefore, of Burke to deny that man in a social state was precluded from any appeal to natural right. One of the rights which men in society retained was that of ‘a right to share in their own Government, because the exercise of the 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’. According to Burke’s logic, all governments, including tyrannies, were equally legitimate, for if it was government itself which determined the rights which men possessed in societies, it was government which set its own standard.<sup>58</sup> But there was more to it than Paine recognized, for Mackintosh’s ultimate justification for natural rights was, in essence, a version of what would today be termed indirect utilitarianism. All rights, whether natural or civil, claimed Mackintosh, were founded on general expediency—on a utility that was paramount and perpetual. But once particular rights had been established, they formed the criteria of moral rectitude—the question then was not whether an action was useful, but whether it was right. No subordinate expediency could then justify the infraction of these rights.<sup>59</sup>

Boothby was much less sympathetic towards Paine than Mackintosh, albeit not so hostile to the French Declaration of Rights as Burke. He agreed with Burke’s critique of the doctrine of natural rights, stating that in a pure state of nature, as was assumed to have existed prior to the formation of society, the rights of every individual must have been co-equal with his natural powers, capacities, and wants. After the formation of society, his rights were determined by the laws and institutions of the society into which he was born. Such social rights would vary with circumstances, and could not, therefore, be reduced to any definite or immutable principles. When Paine asked whether Burke meant to deny that man had any rights, the latter would probably have answered that he was satisfied with the civil rights secured to him by the laws of the society to which he belonged.<sup>60</sup> As far as the French Declaration of Rights was concerned, while arguing that the philosophical principles which underlay it were at best problematical and obscure, Boothby was prepared to admit that this uncertainty created little practical mischief. In effect, what the Declaration called for was the long-established rights of Englishmen: that all men

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<sup>58</sup> Mackintosh, *Vindiciae Gallicae*, pp. 203–13.

<sup>59</sup> *Ibid.*, pp. 214–19.

<sup>60</sup> Boothby, *Observations on the Appeal from the New to the Old Whigs*, pp. 118–19.

should be equally bound by the law; that every man should have the power of doing everything which the law did not prohibit; that no man should be imprisoned or otherwise molested but as the law prescribed; that there should be religious toleration and liberty of the press; that taxes should be equally distributed, and imposed by the representatives of the people; that the agents or ministers of the government should be liable to public impeachment; and that property should be inviolable.<sup>61</sup> In short, the Declaration of Rights was an attempt to grasp and express the principles of the Glorious Revolution.

It is tempting to argue that Bentham was closer to Burke on the question of prescription than he was prepared to acknowledge, especially if the Burkean position is reconstructed from a utilitarian perspective: namely, that the laws and institutions inherited from the past had a tendency to enshrine utility.<sup>62</sup> But this is to underestimate the differences between them, since, for Bentham, the mere existence of an institution did not in itself constitute anything like a sufficient ground for supporting its continuance: on the contrary, an existing institution was just as, if not more, likely to be a depository of absurdity than of wisdom. Yet this is not to say that utilitarianism was incompatible with a prescriptive defence of the British Constitution. For William Paley, the existence, particularly the long-continued, existence of institutions did form a reason in favour of its preservation, in that they were likely to have proven themselves conducive to general expediency. But finally, there was a core of truth in Paine's claim, echoed by Bentham, that Burke, despite his protestations to the contrary, did commit himself to the notion of unrepealable laws—namely in relation to what he considered to be the fundamental laws of the constitution, which were, in turn, based on the ultimate unrepealable law, the natural law.

It is worth noting that Fox put forward a doctrine of natural rights which, at an abstract level, was very similar to that of Paine. In a debate on religious toleration on 11 May 1792, in which he criticized Burke's attack on the doctrine of natural rights, Fox argued that the 'pure principles of toleration' were founded on the fundamental, inalienable rights of man. Man did give up some portion of his natural rights when entering society, but this was done in order to institute a government for the

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<sup>61</sup> *Ibid.*, p. 175.

<sup>62</sup> For such an interpretation see J. R. Dinwiddy, 'Utility and Natural Law in Burke's Thought: A Reconsideration', *Studies in Burke and His Time*, ii. (1975).

protection of the remainder. In the case of religious rights, to ask a man to relinquish them was to ask the impossible—no state could compel it, and no state ought to require it, because it was not in the power of man to comply. With Burke no doubt in mind, Fox continued:

But there were those who said, although a man could not help his opinions, yet that, unless under certain restrictions, they ought not to be made public; for that whatever rights a man naturally had, he gave them all up when he came into society, and that therefore religious liberty, among the rest, must be modified for the good of society; so that by the liberty of man was meant nothing more than that which was convenient to the state in which he lived, and under this idea penalties on religion were deemed expedient. This he took to be a radical error, and for the reason ... that it was not in the power of man to surrender his opinion, and therefore the society which demanded him to make this sacrifice, demanded an impossibility. What then did this lead to—that no man should be deprived of any part of his liberty, with respect to his opinions, unless his actions derived from such opinions were clearly prejudicial to the State.<sup>63</sup>

While Fox agreed with Paine regarding the existence of natural rights in a state of nature, and that government was established in order to secure at least some of those pre-existing natural rights, he departed from Paine in his claim that the British Constitution did, in fact, do precisely that. The rights of man, stated Fox in the famous Commons debate of 6 May 1791 on the Quebec Act, were the basis and foundation of every rational constitution, including the British Constitution: ‘If he knew anything of the original compact between the people of England and its government [...] it was a recognition of the original inherent rights of the people as men, which no prescription could supersede, no accident remove or obliterate’. He welcomed the fact that the new constitution of France, like that of Britain, had been founded on the rights of man.<sup>64</sup> In the debate on 30 April 1792 in which Charles Grey gave notice of his intention to bring forward a motion for parliamentary reform, Fox took the opportunity, on the

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<sup>63</sup> *Parliamentary Register*, xxxiii. pp. 17–20.

<sup>64</sup> *Ibid.*, xxix. pp. 332–5.

one hand, to distance himself from Paine, who, he said, advocated a change in the form of government, but, on the other hand, to express his support for moderate and temperate reform.<sup>65</sup> As for the danger of innovation, he thought that the greatest innovation that could be made in the constitution would be a vote that there should be no innovation. The greatest beauty of the constitution was that it allowed perpetual improvement, which time and circumstances rendered necessary. The French Revolution had been justified because the old government had been so detestable that it was not possible to introduce improvements.<sup>66</sup>

Bentham gave short shrift to all these arguments, which assumed that natural rights, in some form or other, had some form of existence. His own fundamental ground for opposing the doctrine of natural rights was ontological: natural rights simply did not exist. Rights were the product of a legal system, which itself was the product of human legislators. The proponents of natural rights either assumed that the rights in question simply existed, or that God had created them. Neither view was tenable. Furthermore, to claim that such rights were imprescriptible was to make a further nonsensical claim: hence, 'Natural rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, nonsense upon stilts'.<sup>67</sup> In order to make any sense of the French Declaration of Rights, it had to be interpreted as a series of moral claims, but even then it was full of absurdities and inconsistencies.<sup>68</sup>

## Conclusion

In relation to the issues considered here, Bentham was not in close agreement with any of the major contributors, nor did he belong to any one of the parties, involved in the debate generated by the French Revolution. On the one hand, he rejected the doctrine of the rights of man, which put him at odds with radicals such as Paine and Price, and reform-minded Whigs such as Mackintosh, Boothby, and Fox himself. On the other hand, he rejected the doctrine of prescription which underpinned the writings of Burke and many other conservatives. From another point of view, on the one hand while agreeing with Burke's rejection of natural rights, and on the other hand, while agreeing with Paine's rejection of prescription, he did so for different reasons. Unlike both Burke and Paine, and many of the other contributors to the

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<sup>65</sup> *Ibid.*, xxxii. pp. 468–9.

<sup>66</sup> *Ibid.*, pp. 469–70.

<sup>67</sup> *Rights, Representation, and Reform (CW)*, 330.

<sup>68</sup> See further Schofield, *Utility and Democracy*, pp. 51–77.

debate, he did not think that the historical origin and subsequent development of a government had any bearing on the question of its legitimacy, and hence saw no relevance in the controversy surrounding the Glorious Revolution.

Nevertheless, it appears from the notes and jottings written in late 1792 and 1793 that, by this time, whatever the theoretical disagreements just mentioned, Bentham was much closer to the conservatives than to the radicals, or even the Whigs, if conservatism is understood in terms of opposition to alteration of the British Constitution in the circumstances then prevailing. Referring to himself, he wrote:

No man in the three kingdoms has a fuller comprehension of the imperfections of the law: no man a more painful and indignant sense of them: no man has been more assiduous in investigating them, nor more successful in discovering them: no man less sanguine in his expectations of seeing them voluntarily amended. It is with this body of grievances before my eyes that I say notwithstanding—No change in Constitution—no Reform of Parliament.<sup>69</sup>

It is important to note that Bentham clearly distinguished political reform from legal reform. He never wavered in his support of the latter, but the former was not, at that time, desirable.<sup>70</sup> He wrote:

I am no enemy to improvement, or if the word please better to innovation. I am a projector—an avowed advocate for projectors: I am as far as wishes and endeavours go an innovator: my whole life has been, and what remains of it will be, devoted to the pursuit.

The longer I live the less reason I expect to see any considerable part of my projects to take effect in my life time.

It is with this way of thinking and turn of mind that I stand forth and say notwithstanding—No change in the constitution.

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<sup>69</sup> UC clxx. 173 (1793).

<sup>70</sup> For Bentham's distinction between political and legal reform at this time see Schofield, *Utility and Democracy*, p. 117.



He preferred the mixed monarchy of Britain to any other form of government, and was even prepared to defend the existence of the House of Lords, having three or four years earlier been quite willing to consider its abolition.<sup>71</sup> Echoing the comments made by Fox in his speech of 30 April 1792, he claimed that the great virtue of the British Constitution was its capacity for improvement.<sup>72</sup> He was also prepared to criticize the republican or democratic form of government, both because of the lack of intelligence amongst the people, and because of its tendency to anarchy and war, a common theme of conservative writers.<sup>73</sup> As for the lack of intelligence, the acquisition of the necessary knowledge to make laws was a long and difficult process, and was beyond the capacity of the ordinary person, yet in a democracy, ‘every man must be equal to the whole business of government’. This was to ignore the benefits of the division of labour. It was better to ‘employ one man to make laws for you as you employ another man to make shoes’, for just as you thereby got better shoes, you would also get better laws. And just as it was cheaper for a man to buy shoes from a shoemaker than to make them himself, it was also cheaper to employ others to make laws than to make them himself. The people were ‘all *will*’, and lacked ‘reason’ and ‘understanding’; they were ‘intolerant’ and ‘too ignorant to doubt’, and would brook no disagreement; they were interested only in personalities, and not in the real merits of measures. As for the tendency to anarchy and war, Bentham noted that energy was the characteristic feature of the republican: ‘This energy is in plain English the propensity to cut throats—the appetite for blood’. In France, extermination had become ‘the business and the amusement of life. [...] All virtue is swallowed up in

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<sup>71</sup> UC clxx. 176 (1793).

<sup>72</sup> UC clxx. 178.

<sup>73</sup> Conservative thinkers repeatedly emphasized the dangers of democracy, which they regarded as all too liable to degenerate into anarchy. They argued that the most inveterate problem experienced by democracy arose from the very principle on which it was founded, namely the equality of all the members of the state. The possession of wealth, abilities, or reputation—the source of public virtue, industry, and exertion—were incompatible with republican citizenship. The essence of the democratic state was contest—all were forced into competition. Internally, the energies of men were directed towards the struggle for executive power, while externally it was aggressive, and indeed more prone to war than even an absolute monarchy. The confusion created by internal discord and foreign aggression gave ambitious men the opportunity to establish arbitrary rule, whether the despotism of one man or the oligarchy of several. The liberty of a democracy degenerated into licentiousness, which was then transformed into slavery. See [William Young], *The Rights of Englishmen; or the British Constitution of Government, compared with that of a Democratic Republic*, London, 1793, 8–17; *The Interests of Man in opposition to the Rights of Man: or, An Inquiry into the consequences of certain political doctrines lately disseminated*, Edinburgh, 1793, pp. 18–22; William Lewelyn, *An Appeal to Men against Paine’s Rights of Man*, Leominster, 1793, pp. 60–3; Charles Watkins, *Reflections on Government in general, with their application to the British Constitution*, Spilsbury, 1796, pp. 12–13.

ferocity'.<sup>74</sup> A democratic government was characterized by ignorance, violence, extravagance, discontent, frequent wars, and danger of violent revolution from wars, and 'From violence an alternation and mixture of anarchy and oppression'.<sup>75</sup> All this was in stark contrast to the security provided under the British Constitution, where government was conducted by the well-informed classes and ministers with the necessary expertise took the lead in legislation, and the representative system did not require all MPs to be returned by the suffrage of the ill-informed classes. Moreover, the limited duration of parliaments, the ability of the people to exchange opinions, and the responsibility of the executive, provided security against bad government.<sup>76</sup>

In the 1790s Bentham did not see himself as some sort of political agitator, but rather, as David Lieberman has pointed out, as a 'projector'.<sup>77</sup> His role was to devise schemes for legislators—schemes founded on the universal standard of the principle of utility, but sensitive to the political, social, and economic constraints which legislators faced (for instance, he attempted to incorporate the National Assembly's commitment to the popular election of judges into his scheme for a new judicial establishment for France)<sup>78</sup>—which was very much a continuation of his efforts earlier in the 1780s to promote himself as a codifier to various sovereigns in Europe. Furthermore, he continued through the 1790s and beyond in his role as 'projector'—most notably in his project for the panopticon prison scheme, but also in his attempts to reform the poor laws and establish industry houses on the inspection principle, and in his proposals for financial reform which he finally abandoned in 1801.

Mary Mack, having claimed that Bentham was converted to political radicalism in 1790, then suggests that, in the light of government suppression of radical activity, he became politically quiescent for tactical reasons, and that, when he began to write on parliamentary reform in 1809, he picked up where he had left off twenty years earlier.<sup>79</sup> Mack's view is untenable. In 1792–3 Bentham wrote: 'Security stands before equality: because where there is most inequality, no man's condition, the condition of the lowest is not so bad, but that want of security may make it worse'.<sup>80</sup>

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<sup>74</sup> UC xliv. 2.

<sup>75</sup> UC xliv. 5 (8 July 1795)

<sup>76</sup> UC cliv. 4.

<sup>77</sup> D. Lieberman, 'Economy and Polity in Bentham's Science of Legislation', in S. Collini, R. Whatmore, and B. Young, eds., *Economy, Polity, and Society: British Intellectual History 1750–1950*, Cambridge, 2000, pp. 107–34.

<sup>78</sup> See Schofield, *Utility and Democracy*, pp. 92–3.

<sup>79</sup> Mack, *Jeremy Bentham: An Odyssey of Ideas*, p. 441.

<sup>80</sup> UC clxx. 51 (1792–3).

In the 1790s Bentham was pursuing a strategy of promoting security—through panopticon, poor law reform, and financial reform—in response to what he saw as the threat to social order emanating from France. This was not a ‘tactical withdrawal’<sup>81</sup> from radical politics, but a sincere contribution to the attempt to maintain, and indeed extend, the benefits enjoyed under the British Constitution. The implications of seeing Bentham’s ‘projects’ from this political perspective in these years will need to be worked out, but at least this interpretation, I suggest, provides the correct framework for doing so. Furthermore, it allows us to see that Bentham’s ‘transition’ to radical politics was a process which occurred over a number of years, and in which the rejection of the panopticon prison scheme loomed large. It is amongst the mass of papers associated with that scheme that we need to look to shed more light on the factors which led Bentham to political radicalism, and in so doing transformed the ideological background against which British political life would develop in the nineteenth century and beyond. And one final comment: his lack of close agreement with any of the other strands of thought which manifested themselves in the 1790s may help us to understand why Bentham, when in the 1810s and 1820s he came to advocate parliamentary reform and then representative democracy, was prompted to take the bold step of forming his own political party—the Philosophic Radicals.



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<sup>81</sup> See Burns, ‘Bentham and the French Revolution’, pp. 110–12.