



# Philosophers in Parliament: The Crises of Eighteenth-Century Constitutionalism and the Nineteenth-Century Liberal Parliamentary Tradition

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Philosophers in Parliament: The Crises of Eighteenth-Century Constitutionalism and the  
Nineteenth-Century Liberal Parliamentary Tradition

A dissertation presented

by

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to

The Department of Government

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**Philosophers in Parliament: The Crises of Eighteenth-Century Constitutionalism and the Nineteenth-Century Liberal Parliamentary Tradition**

**Abstract**

A crucial commitment of nineteenth-century French and English liberalism was to parliamentary government. Liberal authors including Benjamin Constant, John Stuart Mill, Francois Guizot, and Walter Bagehot all specifically advocated constitutional structures in which cabinet officials sat as legislative representatives, and required the “confidence” of the legislature to remain in office. This dissertation offers a historical account of how liberal political thinkers came to favor parliamentary government. It elucidates the arguments and normative commitments that influenced liberals to embrace parliamentary institutions, and demonstrates their continuing relevance to political theory. One particularly important liberal value was deliberation. Liberal authors were convinced that parliamentary government was more conducive to political deliberation than other forms of representative government, including American “presidentialism.”

The first half of the dissertation examines the origins of parliamentary liberalism in eighteenth-century Britain and France. In Britain, I argue, liberal theories of parliamentary government originated in debates over legislative patronage. Defenders of patronage, such as David Hume and Robert Walpole, argued for the value of the king’s ministers serving in Parliament. Opponents of patronage, such as Henry Bolingbroke, argued that Parliament had to be able to regularly and habitually force out ministers. Both sides of this debate found

themselves articulating a strikingly parallel idea: that the relationship between executive and legislature powers had to be worked out entirely *within* the legislature. I show that in France, this same idea became an important element of political thought because of the constitutional failures of the French Revolution. After 1789, the French National Assembly instituted a strict separation between legislative and executive power. As in the United States, executive officers were prohibited from sitting in the legislature. The legislature was also given no regular way of influencing ministerial appointments. The failure of such constitutional arrangements led political thinkers including Jacques Necker and Germaine de Staël to argue that the worst consequences of the French Revolution could have been avoided if France had adopted parliamentary-style institutions. A similar argument was advanced by Edmund Burke, who became a crucial figure in the liberal parliamentary traditions of both England and France.

The second half of the dissertation explores the sophisticated theories of parliamentary government that were expressed by nineteenth-century liberal authors such as Constant, Guizot, Bagehot, and Mill. I also detail the complex position of Alexis de Tocqueville—an admirer of American constitutionalism who preferred parliamentary government for France—within parliamentary liberalism. These liberal thinkers disagreed over the role of ministers in a parliamentary assembly; over how to deal with challenges like corruption and cabinet instability; and over whether democracy and parliamentarism could be compatible. But they were convinced that non-parliamentary forms of representative government were defective at promoting deliberation, and led to destructive conflicts between executive and legislature. Their arguments remain an important resource for Americans trying to understand the recurrent pathologies of our political culture and institutions.

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My parents and brother have been the greatest source of love and encouragement throughout my life. Graduate school has been no exception. I dedicate this dissertation to them.



*Note on Translations: Whenever possible, I have used the modern English edition of foreign language texts. For texts where there is no modern English edition, and which I have cited in the original language, all translations are my own.*

## Introduction

Why study the liberal political thinkers of late eighteenth and nineteenth-century France and England? Few answers to this question are more intriguing than the answer given by Carl Schmitt in 1925. Responding to a critic of his recently published book, *The Crisis of Parliamentary Democracy*, Schmitt argued that it was impossible to understand the nature of parliamentary government, or the challenges facing parliamentary governments in the twentieth century, without first studying older liberal authors. Schmitt wrote:

Like every great institution, parliament presupposes certain characteristic ideas. Whoever wants to find out what these are will be forced to return to Burke, Bentham, Guizot, and John Stuart Mill. He will then be forced to admit that after them, since about 1848, there have certainly been many new practical considerations but no new principled arguments. . . . what is specific to parliamentarism can only be gleaned from their thought.<sup>1</sup>

This statement was written by one of the twentieth century's most influential opponents of liberalism, a man who later joined the Nazi party, and was appointed by Adolph Hitler to high legal and academic positions.<sup>2</sup> And yet, like so much of Schmitt's thought, it raises difficult and important questions about the meaning and heritage of liberalism.<sup>3</sup>

There are two crucial institutional practices which make for a parliamentary government, or what Schmitt called "parliamentarism." First, cabinet ministers holding executive office also sit in the legislature. Second, parliament has a regular determination over who occupies those

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<sup>1</sup> Carl Schmitt, "On the Contradiction between Parliamentarism and Democracy," *The Crisis of Parliamentary Democracy*, tr. Ellen Kennedy, (Cambridge MA: 1985), 2

<sup>2</sup> For a study of Schmitt's thought in the context of Weimar politics see Ellen Kennedy, *Constitutional Failure: Carl Schmitt in Weimar*, (Durham NC: 2004).

<sup>3</sup> The conclusion of this dissertation will explore some significant ways in which my account of liberalism and parliamentary government differs from Schmitt's.

offices: ministers are dependent upon the legislature for their positions, and can be removed without recourse to impeachment.<sup>4</sup> Both of these practices were a matter of frequent discussion in eighteenth-century Britain. Yet they were noticeably rejected by the framers of the United States Constitution. In Article one of the American Constitution it is expressly written that “no senator or representative shall, during the time for which he was elected, be appointed to any civil office...and no person holding any office under the United States, shall be a member of either house.”<sup>5</sup> Moreover, after the president appoints his cabinet, Congress has no way short of impeachment to remove any high-ranking executive officials from office.

While the fundamental elements of parliamentary government were not incorporated into the American Constitution, they were defended by prominent French and English liberal authors. Benjamin Constant, John Stuart Mill, and Francois Guizot all advocated a legislature in which ministers sat as elected representatives, and were politically responsible to parliament. So did that great proto-liberal Edmund Burke. Even Alexis de Tocqueville, a genuine admirer of the American constitutionalism, believed that in European states, parliamentary government was the superior option. These liberal authors did more than advocate parliamentary government, they also actively participated in it. Constant, Guizot, and Tocqueville were all elected as representatives to the French Chamber of Deputies. Burke and Mill both served in the House of Commons. Nor was it only the most canonical liberal thinkers who supported parliamentary institutions. Other liberal advocates of parliament government included Paul Pierre Royer-

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<sup>4</sup> These two features are identified by Karl Loewenstein as characteristic of parliamentary government. See Karl Loewenstein, “The Balance between Legislative and Executive Power: A Study in Comparative Constitutional Law,” *University of Chicago Law Review*, vol. 5, no. 4, (1938), 590. Loewenstein therefore notes that the “conceptual model” of the American constitution is opposed to that of a parliamentary regime (ibid.).

<sup>5</sup> The United States Archives, “Constitution of the United States,” [http://www.archives.gov/exhibits/charters/constitution\\_transcript.html](http://www.archives.gov/exhibits/charters/constitution_transcript.html)

Collard, Prosper de Barante, Duvergier de Hauranne, Francis Jeffrey, Henry Brougham, the Third Earl Grey, George Cornwall Lewis, and Walter Bagehot. With the exception of Bagehot (who was a failed candidate for office), every one of these figures spent considerable time in parliament.

Despite the recently revival of interest in Carl Schmitt, the relationship between parliamentary government and liberalism is rarely discussed in the history of political thought.<sup>6</sup> Kari Palonen has explored changing conceptions of parliamentary government across the nineteenth and twentieth centuries—including theorists such as Walter Bagehot and John Stuart Mill.<sup>7</sup> Other scholars including Pierre Rosanvallon, J.A.W. Gunn, and Pasquale Pasquino have distinguished rival French accounts of parliamentary government during the Restoration and July Monarchy.<sup>8</sup> But the centrality of parliamentary government as a political context for liberal thinkers, and as a political commitment of liberal theory is not in any way reflected in scholarship.<sup>9</sup> The parliamentary character and context of liberalism goes repeatedly unexamined, even by commentators writing specifically about liberal theories of representative government.

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<sup>6</sup> Scholarly works that mark the wave of Anglophone interest in Schmitt include John McCormick, *Carl Schmitt's Critique of Liberalism: Against Politics as Technology*, (Cambridge UK: 1997); Duncan Kelly, *The State of the Political: Conceptions of Politics and the State in the Thought of Max Weber, Carl Schmitt, and Franz Neumann*, (Oxford: 2003); and the edited volume *Law as Politics: Carl Schmitt's Critique of Liberalism*, ed. David Dyzenhaus, (Durham NC: 1998).

<sup>7</sup> See Kari Palonen, "Parliamentarianism as a European Type of Polity: Constructing the Parliamentarianism versus Presidentialism Divide in Walter Bagehot's English Constitution," in *The Meanings of Europe: Changes and Exchanges of a Contested Concept*, ed. Claudia Wiesner and Mieke Schmidt-Gleim, (New York: 2014), 74–90.

<sup>8</sup> See Pierre Rosanvallon, *La monarchie impossible : les Chartes de 1814 et de 1830*, (Paris: 1994); J.A.W. Gunn, *When the French Tried to be British*, (Montreal: 2009); and Pasquale Pasquino, "Sur la théorie constitutionnelle de la monarchie de Juillet," in *Francois Guizot et la culture politique de son temps*, ed. Marina Valensise, (Paris: 1991), 111-122.

<sup>9</sup> It is striking, for instance, that in the impressive *Cambridge History of Nineteenth-Century Political Thought* there is no entry on parliament or parliamentary government. See *The Cambridge History of Nineteenth-Century Political Thought*, ed. Gareth Stedman-Jones and Gregory Claeys, (Cambridge UK: 2013).

The aim of this dissertation is to invigorate the study of liberalism's relationship to parliamentarism. By "liberalism" I mean the self-conscious tradition of political thought that developed in Europe at the turn of the nineteenth-century, becoming an extraordinarily influential force in European politics. This tradition was committed to very broad (and ambiguous) values like "toleration, liberty and constitutional government," which still remain meaningful today.<sup>10</sup> But it was also enmeshed in the particular conflicts and struggles of that period. This is testified to by the recent scholarly interest in liberalism and imperialism.<sup>11</sup> It is also evinced by the fact that so many liberal political thinkers were parliamentary representatives. Why did French and English liberals advocate parliamentary government? What were the different ways that liberals conceived and theorized parliamentary institutions? How was their thinking shaped by their active participation in parliament as elected representatives? In addition to answering these questions, I intend to demonstrate that they are of continuing relevance and importance for political thought today.

The historical argument of this dissertation is that liberal theories of parliamentary government emerged out of an effort to grapple with a series of political challenges and crises that afflicted legislative bodies during the eighteenth century. The most dramatic of these crises occurred during the French Revolution. A score of political thinkers including Edmund Burke, Jacques Necker, Benjamin Constant, and Germaine de Staël all argued that the excesses of the French Revolution were determined by the fact that France had failed to institute constitutional

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<sup>10</sup> Duncan Bell, "What is Liberalism," *Political Theory*, vol. 42, no. 6, (2014), 687. Bell's article is a very useful account of the different approaches to categorizing "liberalism" over the last century.

<sup>11</sup> See for instance Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France*, (Princeton: 2006); Karuna Mantena, *Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism*, (Princeton: 2006); and Duncan Bell, *The Idea of Greater Britain: Empire and the Future of World Order, 1860-1900*, (Princeton: 2011).

structures based on Britain. Instead, imitating the recently formed American Constitution, France prohibited ministers from serving in either the National Assembly of 1789 or the Legislative Assembly of 1791. In a more extreme step even than the United States had taken, the king's ministers during the early French Revolution were appointed entirely at his discretion. The assembly had no means of influencing who the king chose for ministerial office, short of impeachment or extra-constitutional measures. The failure of the French Revolutionary constitutions led liberal thinkers to prefer a parliamentary legislature like that of Britain. Liberal political thinkers in both France and England argued that a parliamentary legislature was less likely to be at war with the other branches of government, to bring down the constitution, or to tyrannize citizens than a legislature which was sharply separated from an independent executive.

Nearly as important as the French Revolution in shaping the development of liberal theories of parliamentary government were debates over corruption. The long debate over legislative patronage in eighteenth-century England has generally been examined as a final manifestation of classical republicanism. There is certainly some truth to that interpretation. But one crucial fact which is often missed is that this debate continued for another hundred years—in both France and England—and shaped the development of liberal thought throughout the nineteenth century. Corruption would be vigorously opposed by nineteenth century authors such as Walter Bagehot, Thomas Macaulay and Charles Rémusat who were manifestly not adherents of republicanism. In this dissertation I will treat the eighteenth century debate over patronage not as the last gasp of republicanism, but rather as one of the principle origins of parliamentary liberalism. It was in the course of defending the use of legislative patronage, I will argue, that figures such as David Hume and Robert Walpole articulated the value of having the king's ministers serve in the legislature. It was in the course of attacking patronage, on the other hand,

that authors such as Henry Bolingbroke expressed the need for there to be a regular opposition within parliament—one able to force ministers out of office, and offer a different political agenda in their place. Despite making such radically opposing arguments about the significance of patronage, both sides of this eighteenth-century debate found themselves articulating a strikingly parallel idea: that the relationship between executive and legislature powers was a matter to be worked out entirely within the legislature.

This idea would be dramatically confirmed by the collapse of the French Constitution of 1791, a constitution that had set up the executive and legislature as entirely independent, disentangled powers. Liberalism thus cohered around the conviction that political structures like England's, in which conflict and cooperation between legislative and executive functions were worked out within the legislative assembly, offered the only responsible way to organize representative government in modern European states. But liberals continued to disagree over the basic question that had divided Hume and Walpole from Bolingbroke. Was legislative patronage necessary for parliamentary institutions? Or was it destructive of them? Important liberals including Germaine de Staël, Francis Jeffrey, the Third Earl Grey, and most prominently Francois Guizot would reiterate the arguments of Hume and Walpole, and defend the use of patronage in a parliamentary legislature. Benjamin Constant, Alexis de Tocqueville, Walter Bagehot and John Stuart Mill, on the other hand, would side with Bolingbroke on this issue. They would maintain that there was absolutely no place for corruption in a parliamentary regime. Corruption, I will argue, was no less fundamental and no less generative a challenge for liberal theorists of parliamentary government than the French Revolution was.

## Ministers and the Veto

There is one potential objection to this dissertation which it would be best to deal with upfront. A skeptical, yet historically informed reader might deny that there was any actual thing called “parliamentary government” during most of the period I will be examining. It was not until the late nineteenth century, this skeptic might argue, that there was an agreed upon conception of what parliamentary government looked like as a political regime. Perhaps, retrospectively, it is possible to see that that figures like Benjamin Constant and James Mackintosh were theorists of “parliamentary government.” But this is not how they would have explained what they were doing.

Historians such as Alain Laquièze and Denis Baranger have indeed persuasively demonstrated that it was not until the 1850s in England, or until the 1870s in France, that the modern framework of parliamentary government truly came into being.<sup>12</sup> But what they are specifically referring to is a settled convention of cabinet responsibility: the practice that a ministry leaves office as soon as it loses a majority in the House of Commons. Although the first efforts towards this convention can be seen under Walpole, during much of the period examined in my dissertation, the nature of cabinet responsibility was still a matter of controversy. There

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<sup>12</sup> See Denis Baranger, *Parlementarisme des origines*, (Paris: 1999); Alain Laquièze, *Les origines du régime parlementaire en France: 1814-1848*, (Paris: 2002). Baranger’s book synthesizes and builds upon older historical sources from the mid-twentieth century that brought out the reality of eighteenth-century parliamentary institutions in England. See for instance Iain Christie, *Myth and Reality in Late-eighteenth-century British Politics: And Other Papers*, (Berkeley: 1970), 55-108; Lewis Namier, *Crossroads of power: Essays on Eighteenth-Century England*, (New York: 1963); and Michael Roberts, *Swedish and English Parliamentarism in the Eighteenth Century*, (Belfast: 1973).



was disagreement over whether the king had the right to keep ministers in office against strong parliamentary opposition.

While there was no agreement about cabinet responsibility before the second half of the nineteenth century, it would be going much too far to suggest that British and French political thinkers showed no coherent or unified commitment to parliamentary institutions before then. I will contend that this unity came from the *other* crucial institutional feature of a parliamentary regime: not that parliament has the power to remove ministers at will, but rather that ministers have a constitutional right (and public expectation) to sit in parliament. The idea that ministers ought to sit in the legislature was among the defining liberal commitments in the era following the French Revolution. It was instantiated in both French and English political institutions during that period. Moreover, insofar as liberals supported the practice of ministers sitting in the legislature, they were self-consciously departing from a clearly alternative constitutional model. This alternative model was one in which the executive's ability to intervene in the legislative process arose not through his ministers being present in the legislature, but rather through his veto power. In the words of Montesquieu, who most exemplified this alternative approach, "executive power...should take part in legislation by its faculty of vetoing."<sup>13</sup>

As Eric Nelson has persuasively demonstrated, the United States followed Montesquieu—to a degree that Montesquieu himself would have found difficult to imagine.<sup>14</sup> The presidential veto became the principle way that American presidents attempted to shape the

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<sup>13</sup> Montesquieu, *The Spirit of the Laws*, ed. Anne Cohler et. al., (Cambridge UK: 1989), 164

<sup>14</sup> Eric Nelson, *The Royalist Revolution: Monarchy and the American Founding*, (Cambridge UK: 2014). Nelson notes the fact that Montesquieu construed the veto entirely as a defense weapon the monarch could use to defend his position from violent attacks by parliament (ibid., 18). It was not a proactive instrument for shaping a legislative agenda, which it would become for so many American presidents.

actions of Congress.<sup>15</sup> But the constitutional trajectories of England and France are quite different. In England, over the course of the eighteenth century, the veto simply stopped being used. As Adam Smith noted in his 1763 *Lectures on Jurisprudence*, “the king has ...the power of putting his assent or negative to a bill,” but “being altogether unpopular,” this power “has gone into disuse. The king has always given his assent to every bill since William III’s time.”<sup>16</sup> Smith’s chronology was technically incorrect: the royal negative was last used in 1708, by Queen Anne. But the significance of his statement remains unchanged. Over the course of the eighteenth century, the veto ceased being an essential part of how the Crown participated in the legislature.

In France, the veto did not drop quietly out of use. To the contrary, it was used excessively during the early Revolutionary era. Over the course of a mere six months in 1791 and 1792, Louis XVI refused his assent to four different measures passed by the Legislative Assembly. Just as Smith would have predicted, this step proved “altogether unpopular.” Louis XVI’s use of the negative incited the rage of both the legislature and the people. It was a crucial step in the demise of the short-lived French Constitution of 1791, and the overthrow of the monarchy. After 1799, France would adopt parliamentary constitutions modelled on England, in which the veto was of no significance.

French and English liberals recognized and defended their respective nations’ turns away from the veto. As liberals rejected the veto as the executive’s tool for participating in the legislative process, the exact role of ministers in the legislature emerged as a central question for

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<sup>15</sup> It is important to remember that even when an American president does not exercise the veto, the credible threat of doing so can work to constrain the legislature, by making a supermajority necessary.

<sup>16</sup> Adam Smith, *Lectures on Jurisprudence*, ed. R.L. Meek, et. al., (Indianapolis: 1982), 269

nineteenth-century liberalism. Many liberal authors thought that the presence and influence of ministers in the assembly was a substitute for the veto—an alternative means for the king to influence the legislative process. The most important author in this tradition was Jacques Necker. But other liberals denied that ministers were in parliament to give the executive a greater voice in the legislative process. Some (notably Tocqueville) claimed that ministers were in parliament primarily so parliament could effectively monitor and control the monarch's actions. Benjamin Constant, on the other hand, argued that ministers were not even servants of the Crown at all, but independent actors. Yet these different liberal camps were united in their rejection of the veto power as the most significant way in which the executive was involved in the legislature. They rejected the constitutional paradigm of 1791, which was in so many respects the paradigm of the American constitution.

Along with motivating liberals to turn against the veto, the events of 1791 also suggested to many liberals that it was necessary to rethink the basic concepts of eighteenth-century constitutionalism: the concepts of “separation of powers” and “checks and balances.” Here, however, there even less agreement than there was about the proper role of ministers in the legislature. One influential tradition which was exemplified by Jacques Necker, Francois Guizot, and Walter Bagehot—though which had earlier roots among Walpole and his adherents—argued that parliamentary institutions were at odds with the traditional theory of the separation of powers. Since ministers governed with the assent of both the monarch and the legislature, they achieved a kind of *harmony* or *fusion* between different political powers—and not merely their separation. But there were other liberals who were committed to parliamentary institutions, such as Henry Brougham and Benjamin Constant, who continued to utilize the metaphor of “separation of powers.”

A similar disagreement occurred around the concept of “checks and balances.” It was possible to argue, as Francis Jeffrey did, that parliamentary government was a system of “checks and balances” between different constitutional powers, only the checks and balances all occurred within the popular branch of the legislature. On the other hand, Benjamin Constant and Francois Guizot both denied that the fundamental political conflicts in a parliamentary regime, or the primary restraints on political actors, came from distinct constitutional powers clashing with each other. They therefore maintained that parliamentary institutions transcended the older theory of checks and balances. Liberals were united in their turn away from eighteenth-century constitutionalism of the French Revolution—and in particular, away from the veto—yet they never agreed upon a single constitutional metaphor to capture the parliamentary regime that they favored, a regime in which the veto could safely enter into “disuse.”<sup>17</sup>

### A Deliberative Assembly

This dissertation argues that liberal theories of parliamentary institutions emerged out of the eighteenth-century English debate over patronage, a debate in which authors from both sides converged around the idea that the relationship between executive and legislative powers had to be settled within the legislature. That idea became a core component of liberal thought after the dramatic collapse of the French Constitution of 1791. But I will also contend that liberal theories of parliamentary government were shaped throughout by a crucial normative commitment. This

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<sup>17</sup> For a more extended account of the complexities of relating parliamentary government to the theory of separated powers see M.J.C. Vile, *Constitutionalism and The Separation of Powers*, (Indianapolis: 1998), 220-288.

was the commitment to *deliberation*. Just about every liberal author I will be examining in this dissertation conceived of parliament as the indispensable space for political debate and discussion. Parliament's fundamental role was to ensure that political power was only exercised following a conversation in which speakers on both sides of a decision had the opportunity to speak and be listened to.<sup>18</sup>

According to Walter Bagehot, “the distinguishing quality of Parliamentary Government is, that in each stage of a public transaction there is a discussion.”<sup>19</sup> Bagehot was seconded by Henry Brougham, an influential British liberal thinker and politician, who declared, “the making of laws, and the conduct or control of the public affairs, implies great deliberation and the full discussion of the subject propounded.”<sup>20</sup> In the words of Francois Guizot, “common deliberation on common affairs is the principle, as well as the most simple, form of political liberty,” while “parliament has...become the great national council in which all the national interests are debated and regulated.”<sup>21</sup> John Stuart Mill argued that parliament was “a place where every interest and shade of opinion in the country can have its cause even passionately pleaded, in the face of the government and of all other interests and opinions.”<sup>22</sup> It was “a place of adverse discussion for all opinions relating to public matters, both great and small.”<sup>23</sup> A similar sentiment

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<sup>18</sup> This was not a novel idea within parliamentary life. Kari Palonen documents the importance of theories of deliberation (based in classical and renaissance ideas of rhetoric) in the formation of parliamentary procedures. See Kari Palonen, *The Politics of Parliamentary Procedure: The Formation of the Westminster Procedure as a Parliamentary Ideal Type*, (Opladen: 2014).

<sup>19</sup> Walter Bagehot, *The English Constitution*, in *Collected Works*, vol. 5, ed. Norman St John-Stevan (Cambridge MA: 1974), 223

<sup>20</sup> Henry Brougham, *The British Constitution*, in *Works of Henry Lord Brougham*, vol. 11, (Edinburgh: 1873), 30

<sup>21</sup> Francois Guizot, *The Origins of Representative Government in Europe*, tr. Andrew Scoble, (Indianapolis: 2002), 378.

<sup>22</sup> John Stuart Mill, *Considerations on Representative Government*, in *Collected Works*, vol. 19, ed. J.M Robson, (Toronto: 1977), 432

was expressed by Benjamin Constant.<sup>24</sup> For Burke, as well, famously “parliament is a deliberative assembly.”<sup>25</sup>

In several important respects, the nineteenth-century liberal account of parliament as a deliberative assembly is similar to contemporary theories of deliberative democracy. There are also substantial and important differences. The most obvious difference is that the liberal authors I will be examining in this dissertation were not (with the possible exception of John Stuart Mill) *democrats*. They did not support universal suffrage, even for men. They certainly did not believe that the duty political actors had to offer arguments to one another, and listen to each other, was in any way a *democratic* duty.<sup>26</sup> Nineteenth-century liberals were also not concerned, for the most part, with policing the boundaries of deliberation by prohibiting arguments that did not accord with “public reason.”<sup>27</sup> But like today’s deliberative democrats, they were convinced that the exercise of coercive power was illegitimate when it wasn’t fully justified in public debate and discussion. They thought that by forcing those in power to explain and justify their actions, deliberation prevented unnecessary or arbitrary infringements upon liberty. But it accomplished this without weakening the strength of political authority. In a parliamentary assembly, the officers of the government were given an opportunity to state their goals and reasons; while the interests and concerns of the people were voiced by representatives.

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<sup>23</sup> Ibid.

<sup>24</sup> See, for instance, Benjamin Constant, *De la liberté des brochures, des pamphlets et des journaux*, (Paris: 1814), 8

<sup>25</sup> Edmund Burke, “Speech at Conclusion of the Poll,” in *Writings and Speeches*, vol. 3, ed. Warren Elofson and John Woods, (Oxford: 1996), 70

<sup>26</sup> For important arguments in this vein see Dennis Thompson and Amy Guttmann, *Why Deliberative Democracy*, (Princeton: 2004), 64-124; and Dennis Thompson and Amy Guttmann, *Democracy and Disagreement*, (Cambridge MA: 1996), 52-94.

<sup>27</sup> For a critique of deliberative democracy in this regard see Bryan Garsten, *Saving Persuasion: A Defense of Rhetoric and Judgment*, (Cambridge MA: 2006) 180-191.

The *raison d'être* of this process, according to John Stuart Mill, was “to enable the benefits of popular control to be enjoyed in conjunction with the no less important requisites...of skilled legislation and administration.”<sup>28</sup>

The liberal convergence in favor of parliamentary institutions was guided by this ideal of deliberation, no less than by the historical events of the French Revolution. Liberals argued that parliamentary institutions fostered and enhanced political argument and discourse. They *fostered* political deliberation by placing ministers in the assembly, and forcing them to repeatedly defend and justify all their actions and appointments, against the critical objections of representatives—and at the price of losing their offices. This was a process that engaged the public as well as its representatives. According to Benjamin Constant, parliament’s effort to ensure the “responsibility” of ministers in power kept “alive in the nation—through the watchfulness of her representatives...a spirit of inquiry, a habitual interest in the maintenance of the constitution of the state, a constant participation in public affairs, in a word a vivid sense of political life.”<sup>29</sup> In a parliamentary government, the public’s control over the executive was worked out through regular debate and discussion in the legislature, rather than through intermittent elections, or through rare and explosive events like impeachment.

If parliamentary government fostered political deliberation by forcing ministers to regularly justify all their actions before parliament, it *enhanced* political deliberation by making argument and discussion in the legislature a meaningful contest for power and office. To gain and hold their positions, ministers had to continually propose and articulate a political agenda

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<sup>28</sup> Mill, *Considerations*, 432.

<sup>29</sup> Benjamin Constant, *Principles of Politics Applicable to all Representative Governments*, in *Political Writings*, ed. Biancamaria Fontana, (Cambridge UK: 1988), 239

that was able to win support in parliament. Parliamentary discussion was elevated by the expertise and experience that those holding high executive offices brought to the debate; it was energized by the ambition of their competitors, who were seeking to gain ministerial office for themselves. Parliamentary institutions motivated individuals with political ambition to put all their energy into debate and discussion as a path to ministerial office. They thus channeled political ambition away from more dangerous goals like usurpation, and away from demagoguery.

For all of these reasons, theorists such as Necker, Constant, Mill, and Bagehot maintained that the presence of ministers in the assembly elevated the quality, scope, and effectiveness of political deliberation. Yet the challenges and crises that legislative bodies faced during the eighteenth and nineteenth centuries—challenges and crises, I am arguing, which also fundamentally conditioned the liberal turn to parliamentary government—led many of these same liberals to question whether parliament could actually live up to their high ideal of political deliberation. As I noted earlier in this introduction, liberals were uniformly worried that legislative bodies would act rashly and tyrannically, without engaging in anything like a thorough deliberation. They also feared that ministers would gain support through corruption rather than through discussion—using patronage in place of arguments to win over a majority of representatives. There was also the constant possibility that discussion and deliberation alone might not be enough to create clear and durable legislative majorities in parliament. This last prospect was especially frightening in a parliamentary government, because the highest executive office needed parliament's confidence to hold their positions. There was the frightening specter of executive offices going completely unfilled, or of a continual and chaotic



shuffling from one cabinet to the next, if parliament was unable to reach a consensus through debate and deliberation.

The concern that parliament would fail to function as a deliberative body led many liberals to stridently oppose the use of patronage within parliament. They saw patronage as an instrument which ministers could use in lieu of argument and deliberation to win over a parliamentary majority. But that same fear of parliament failing to genuinely govern through deliberation is also what led other liberals to support patronage. For Germaine de Staël, or the nineteenth-century Scottish liberal Francis Jeffrey, patronage emanating from the Crown served as a check against parliament rashly following the popular will—a claim traceable back to David Hume. According to other liberals, such as Guizot, ministers had to make use the offices at their disposal if they wanted to create a clear and durable parliamentary majorities. Guizot certainly believed in the necessity of deliberation. But like Robert Walpole, he thought that realistically, to win support for their administrations, ministers had to be able to appeal to the private interests of representatives as well as to reasons and arguments. Guizot was opposed on this point by Constant, Tocqueville, and Mill, who all believed that argument and deliberation were the only legitimate basis for achieving a majority in parliament. The debate over patronage in nineteenth-century liberalism sprang from the eighteenth-century British debate over patronage, but it was always guided by the ideal of parliament as a deliberative body.

## Scholarly Contexts

By focusing on the specifically parliamentary character of nineteenth-century liberalism I hope for this dissertation to complicate existing scholarly debates over liberalism and representative government. If there is a single phrase that captures the dominant paradigm within which political theorists have generally thought about the history of French and English liberalism, that phrase would have to be “the confrontation between liberalism and democracy.” A guiding question for scholars, over the last several decades, has been whether there was a necessary conflict between the liberal commitment to *representation* in the age following the French Revolution, and demands for a more *democratic politics*. The themes of democracy and representation will enter into this dissertation as well. But by emphasizing the specifically parliamentary character of liberalism, I hope to show that these themes were less determinative of liberal thought than we usually assume.

Scholars have used two different approaches to study the interplay between representation and democracy in liberal thought. Some scholars have explored the conceptual relationship between representation and popular sovereignty. Others have examined the history of how liberals responded to demands for a democratic suffrage. Commentators who have focused on the conceptual relationship between democracy and representation have generally come to the more cheerful conclusion. According Pierre Rosanvallon, Marcel Gauchet and Nadia Urbinati, it was eminently possible in nineteenth-century liberal thought to reconcile popular sovereignty with a constitutional order that was based in the delegation of power through

representation.<sup>30</sup> There may even have been what Bryan Garsten calls “fundamentally democratic reasons” for representative government.<sup>31</sup> The scholars who have considered how nineteenth-century liberals responded to demands for greater popular participation have brought less welcome news. This is that just about every canonical liberal thinker in France and England after 1800 was opposed to anything approximating universal (male) suffrage. This holds true for liberals inspired by republicanism such as Constant and Sismondi, as well as for *doctrinaires* like Royer-Collard and Guizot.<sup>32</sup> John Stuart Mill supported universal suffrage but famously sought to temper it through plural voting. Even Alexis de Tocqueville voted in 1841 against extending the suffrage in France.<sup>33</sup>

A central question for the liberal thinkers explored in this dissertation was whether a democratically elected parliament could possibly live up to their ideal of a “deliberative assembly.” The figures I will be examining varied markedly in how they responded to that question. John Stuart Mill believed that, when properly constituted, parliament could be both democratic and deliberative. On the other end of the spectrum, Edmund Burke vehemently

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<sup>30</sup> See Pierre Rosanvallon, *La Démocratie inachevée: Histoire de la souveraineté du peuple en France*, (Paris: 2000); Nadia Urbinati, *Representative Democracy: Principles and Genealogy*, (Chicago: 2006); as well as Nadia Urbinati, *Mill on Democracy: From the Athenian Polis to Representative Government*, (Chicago: 2002); and Marcel Gauchet, *La condition politique*, (Paris: 2005), 277-384. For a more pessimistic take on whether liberalism and popular sovereignty can be reconciled, see Richard Tuck, *The Sleeping Sovereign: How Democracy became Possible in the Modern World*, (Cambridge UK: 2015).

<sup>31</sup> Bryan Garsten, “Representative Government and Popular Sovereignty” in *Political Representation*, ed. Ian Shapiro, (Cambridge UK: 2009), 92.

<sup>32</sup> For studies of liberal responses to the suffrage see Pierre Rosanvallon, *Le sacre du citoyen: Histoire du suffrage universel en France*, (Paris: 1992); Alan Kahan, *Liberalism in Nineteenth-Century Europe: The Political Culture of Limited Suffrage*, (New York: 2003); Aurelian Craiutu, “Guizot’s Elitist Theory of Representative Government,” *Critical Review*, vol. 15. no. 3-4, (2003), 261-284; and Robert Saunders, *Democracy and the Vote in British Politics, 1848–1867: The Making of the Second Reform Act*, (Burlington VT: 2011). This topic is also treated extensively in Greg Conti’s forthcoming dissertation, *The Politics of Diversity in Nineteenth-Century Britain*.

<sup>33</sup> Tocqueville’s shifting position on the French suffrage is examined in Robert Gannett, “Tocqueville and the Politics of Suffrage,” *Tocqueville Review*, vol. 27, no. 2, (2006), 209-226.

rejected any expansion in the suffrage whatsoever. Most of the figures I will be examining fit somewhere between Mill and Burke. Benjamin Constant, Thomas Macaulay, and Francois Guizot supported a suffrage that incorporated the middle-class, but expressly excluded the poor and working classes. Walter Bagehot, along with numerous other liberals in the lead up to the Second Reform Act of 1867, sought to integrate some members of the working classes into the English electorate—without going all the way to an across the board democratic franchise.

But although these disagreements over the suffrage were of tremendous historical significance, I will contend that they did not determine the way that liberals thought about parliamentary institutions. To take but one example: John Stuart Mill would have been truly horrified by Benjamin Constant’s argument that the working class ought to be entirely excluded from the suffrage.<sup>34</sup> In *Considerations on Representative Government*, Mill contended that ideally, half of all members in the House of Commons should be representatives of the lower and working classes.<sup>35</sup> Yet—to a degree that scholars have failed to properly emphasize—Mill’s account of parliamentary government, and of the relation of ministers to the legislature is Constant’s account. Mill’s whole theory of parliamentary government is far closer to Constant than it is to Tocqueville, as I will show in chapter five of the dissertation. Yet when it came to democracy and the suffrage, Mill was closer to Tocqueville than he was to Constant. The discussion within liberalism over the meaning and value of parliamentary government cuts across the different liberal positions that were taken with respect to democracy. These

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<sup>34</sup> This is an argument Constant makes at several points. See for instance Benjamin Constan, *Principles of Politics Applicable to All Governments* (1810), ed. Etienne Hoffman, tr. Dennis O’keefe, (Indianapolis: 2003), 170-179, 182-192; and Benjamin Constant, “Pensées diverses sur les élections,” in *Oeuvres complètes*, t. 11, ed. Etienne Hofmann, (Berlin: 2011), 420-421.

<sup>35</sup> Mill, *Considerations*, 447

discussions intersected. But the logic of the liberal engagement with parliament was not determined by the debate over the suffrage.

I will contend that a similar relationship holds true between liberal theories of parliamentary government, and the issue of representation more broadly. Generally speaking, liberals in Britain and liberals in France subscribed to quite different views about political representation. In Britain, well into the nineteenth century, liberals continued to draw on the medieval theory that parliament was representative only insofar as it served as a *mirror* of the people. The meaning and significance of this theory in the seventeenth and eighteenth centuries has been thoroughly explored by Quentin Skinner and Eric Nelson.<sup>36</sup> Its core idea is that only an elected assembly could, in the words of Francis Jeffrey, possibly “contain[s] a sufficient number and a sufficient variety of persons, to make it certain that every class, and every part of the country, will there have an advocate and expounder of its views and sentiments”<sup>37</sup> Parliament was only representative when its composition was an “express image” of the nation in its manifoldness. This theory of representation often led British liberals to defend an electoral system with differing suffrage qualification in different districts, so that each social class was sure to have representatives in parliament.

All of the British figures who are explored in this dissertation—from Burke through Mill—subscribed in some way to this view of parliamentary representation. When Mill claimed, in defense of proportional representation, that “those who are to form the deliberative body...ought to be the *express image* of the wishes of the nation,” he was almost exactly

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<sup>36</sup> See Quentin Skinner, “Hobbes on Representation,” *European Journal of Philosophy*, vol. 13, no. 2, (2005), 155-84; and Nelson, *The Royalist Revolution*, 60-107.

<sup>37</sup> Francis Jeffrey, “Cobbett’s Political Register,” *Edinburgh Review*, vol. 10, no. 20, (1807), 408

reiterating Burke, who declared that the “the virtue, spirit, and essence of a House of Commons consists in it being the *express image* of the feelings of the nation.”<sup>38</sup> The idea that the legislature had to serve as an “express image” in order to count as representative did have several proponents in France as well, I will show, such as Auguste de Staël and Sismonde de Sismondi. But for the most part, French liberals appealed to a very different understanding of legislative representation. After the rupture of 1789, the idea of returning to a representative assembly in which different social orders had their own particular representation was difficult for liberals—the defenders of the legacy of 1789—to countenance. When Henry Brougham claimed that a legislature had to represent “all the great classes in the community...in the combined ratio of the importance of the classes and the numbers comprised in them,” he was stating something close to the standard liberal view in England.<sup>39</sup> But, as Pierre Rosanvallon has documented, such a claim was not prominent in France until the end of the nineteenth century, when proportional representation was able to make headway as a more democratic approach to ensuring a socially representative parliament.<sup>40</sup>

The British approach to representation was often explicitly rejected in France. Francois Guizot argued before the Chamber of Deputies that in the more equal society created by the

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<sup>38</sup> See John Stuart Mill, “Recent Writers on Reform,” *CW*, vol. 19, 358; compare with Edmund Burke, *Thoughts on the Cause of the Present Discontents*, in *Writings and Speeches*, vol. 2, ed. Paul Langford and William Todd, (Oxford: 1981), 292. Eric Nelson points out that Burke was inconsistent in how he understood the representative function of the House of Commons. At certain moments, like in this passage, Burke argued that “all parts” of the British government were equally representatives of the people, but nonetheless that the *virtue* of the House of Commons was to have a special “sympathy” with the people’s “opinions and feelings” that none of the other branches were capable of possessing (*ibid*). At other moments, however, Burke makes the much stronger argument that the other branches of the British government are not even representatives of the people at all—only the House of Commons. For this important observation see Nelson, *The Royalist Revolution*, 279.

<sup>39</sup> Brougham, *The British Constitution*, 95.

<sup>40</sup> See Pierre Rosanvallon, *Le Peuple introuvable. Histoire de la représentation démocratique en France*, (Paris: 1998), 86-100, 137-154.

French Revolution, it was illegitimate for different classes to have their own particular representation.<sup>41</sup> Germaine de Staël claimed that “representation is not like a geometrical operation” which “gives the image of the people in miniature.”<sup>42</sup> Rather, De Staël argued, it was merely an institution through which one individual delegates authority to another individual to look after his interests. “A single man...charges many persons with his interests. ...political representation is absolutely nothing but the political application of this daily practice.”<sup>43</sup> The most important exponent of this view of representation was Emmanuel Sieyès.<sup>44</sup> But it was also reiterated by Constant in his famous lecture on the liberty of the ancients and the moderns. Through representation, Constant argued, “the nation” delegates “a few individuals to do what it cannot or does not wish to do herself.”<sup>45</sup> In *Democracy in America*, Tocqueville expressed a nearly identical claim about the nature of political representation.<sup>46</sup> The opposition of French liberals to the British model of representation certainly did not lead them to support democracy. But it meant that they tended to support more uniform property requirements for the suffrage, and to justify restrictions on the suffrage in terms of *capacity* rather than in terms of *diversity*.

Just as the liberal commitment to parliamentary government cut across different beliefs about democracy, it likewise cut across these rival theories of representation as well. British

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<sup>41</sup> Francois Guizot, “Discussion sur la proposition de M. Ducos, relative à l’extension des droits électoraux,” in *Histoire parlementaire de France*, t. 3, (Paris: 1863), 555

<sup>42</sup> Germaine de Staël, *Des circonstances actuelles qui peuvent terminer la Révolution et des principes qui doivent fonder la république de France*, in *Oeuvres complètes*, ser. 3, t. 1, ed. Lucia Omacini, (Paris: 2009), 299.

<sup>43</sup> Ibid.

<sup>44</sup> For a discussion of this feature of Sieyès’ thought see Michael Sonenscher, “Introduction,” in Emmanuel Joseph Sieyès, *Political Writings*, (Indianapolis: 2003), vii-lxiv.

<sup>45</sup> Benjamin Constant, “The Liberty of the Ancients Compared with that of the Moderns,” in *Political Writings*, 325

<sup>46</sup> Alexis de Tocqueville, *Democracy in America*, vol. 1, ed. Eduardo Nolla, tr. James Schleifer, (Indiapolis: 2012), 96-97.

structures of parliamentary government were embraced by figures such as Necker, Constant, De Staël, and Guizot who rejected the standard British theory of parliamentary representation. Despite the different underlying views about representation in France and England, similar debates emerged in both nations about patronage, and about the role of ministers in the legislature. The British view of parliament as a mirror of society did open up possibilities for thinking about the legislature in England that were more difficult to express in a French idiom. For instance, both James Mackintosh and John Stuart Mill thought that a legislature which was *perfectly* socially and intellectually balanced was the answer to the problem of legislative overreach and usurpation. But for the most part, I will contend, the French and English liberal commitment to parliamentary government had a meaning and significance that cannot be reduced either to an underlying theory of representation, or to an underlying response to the coming of democracy. The aim of this dissertation is to recover that important dimension of liberal thought.

This will primarily require a careful historical treatment of liberal authors, as well as of their political contexts. But recovering the parliamentary dimension of French and English liberal thought can also make nineteenth-century liberalism far more relevant to contemporary politics. This is especially true for citizens of the United States. The liberal turn in favor of parliamentary government after the French Revolution was motivated precisely by the thought that regimes structured along the lines of the American constitution are prone to debilitating constitutional conflict and gridlock, and do not properly foster political deliberation and discourse. These argument was inspired by events in France—a constitutional monarchy—rather



than by events in the United States—a constitutional republic. But over time, they would equally be applied to America, and to other constitutional republics.<sup>47</sup>

During the period examined in this dissertation, liberal thinkers did not generally think that America would be prone to kind of crises that France had suffered during the Revolution. The reasons that they gave varied. Macaulay noted the comparative absence of class conflict in the United States.<sup>48</sup> Necker believed that the United States had actually absorbed several of the crucial elements of a parliament regime.<sup>49</sup> Guizot credited America’s stability almost entirely to the statesmanship of George Washington.<sup>50</sup> The fact that the United States was a republic seemed to sharply distinguish its constitutional requirements and difficulties from those of European monarchies. However by the latter part of the nineteenth-century, British liberals had become much more critical of the United States.<sup>51</sup> A crucial figure in this transition was Walter Bagehot, who spent voluminous pages criticizing the American Constitution.<sup>52</sup> Bagehot’s

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<sup>47</sup> For the remarkable parallels and intensive dialogue between American and French political thought during this period see the forthcoming dissertation by Adam Lebovitz, *French and American Constitutional Thought, 1774-1800*

<sup>48</sup> See Macaulay’s famous letter to Henry Randall that was printed in the *New York Times*, “Macaulay on Democracy: Curious Letter from Lord Macaulay on American Institutions and Prospects” *The New York Times*, (March 24, 1860).

<sup>49</sup> See Jacques Necker, *Du pouvoir exécutif dans les grands états*, in *Oeuvres complètes*, t. 8, ed. Auguste de Staël, (Paris: 1821), 345-353; and Francois Guizot, Francois Guizot, *Mémoires pour servir à l’histoire de mon temps*, t. 8, (Paris: 1867),

<sup>50</sup> See Francois Guizot, *Washington*, (Paris: 1844), 98-177

<sup>51</sup> For a discussion of Victorian liberal criticisms of America see Frank Prochaska, *Eminent Victorians on American Democracy: The View from Albion*, (Oxford: 2012).

<sup>52</sup> See for instance Walter Bagehot, “The Federal Constitution Responsible for Federal Apathy,” and “The Present Crisis in America,” both in *Collected Works*, vol. 6, ed. Norman St John-Stevas, (Cambridge MA: 1974), 168-171, 172–175. Bagehot’s most influential work, *The English Constitution*, was devoted to the choice between the American and British models: “the practical choice of first-rate nations is between the Presidential government and the Parliamentary...it is between them that a nation which has to choose its government must choose” (Bagehot, *The English Constitution*, 202).

arguments for the superiority of the British regime to the American constitution were nearly identical to the arguments that his predecessors had made against the French constitutions of the 1790s.

One of the most significant political movements in American history, the American Progressive movement, was profoundly inspired by the criticisms of eighteenth-century French and American constitutionalism which were made by nineteenth-century liberals. Woodrow Wilson, Herbert Croly, and Walter Lippmann all argued that a constitution in which ministers served in the legislature was less prone to destabilizing gridlock, and more capable of rich and meaningful political deliberation, than a constitution like that of the United States.<sup>53</sup>

These two complaints about American politics are often still made today. American political structures often seem riven by artificial divisions and conflicts that make effective political action impossible, and continually threaten the shut-down of the government. American public discourse often seems particularly dominated by meaningless talk, rather than meaningful arguments. The contention of nineteenth-century liberalism was that these apparently different problems are profoundly related: both naturally together arise in non-parliamentary constitutional regimes. If persuasive, this argument has profound implications. To begin with, it means that achieving a more deliberative politics will be at once a more difficult task than supporters of “deliberative democracy” generally realize, and a very different kind of task than they assume it to be. It may demand fundamental changes to American political structures.

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<sup>53</sup> See in particular Woodrow Wilson, *Congressional Government: A Study in American Politics*, (Boston: 1885); and Woodrow Wilson, *Cabinet Government in the United States*, (Stamford CT: 1947). This view was much more widely shared than Wilson among Progressives however. Herbert Croly, writing as a political opponent of Wilson endorsed this arrangement as well (especially at the state level). See Herbert Croly, *Progressive Democracy*, (New York: 1915), 295 Walter Lippmann’s lifelong sympathy with Wilson’s view is noted in Craufurd D. Goodwin, *Walter Lippmann: Public Economist*, (Cambridge MA: 2014), 334.

The implication of this dissertation is not that the United States should implement a parliamentary regime tomorrow. My aim is to bring out the history of parliamentary liberalism in all its complexity. This means documenting the persuasive liberal arguments against eighteenth-century constitutionalism. But it also means examining the difficult challenges of patronage, and of cabinet instability, that arose under nineteenth-century parliamentary regimes. These were challenges that liberals like Constant, Guizot, and even Bagehot all grappled with. Whether the liberal argument for parliamentary government is *better* than the theory of American constitutionalism is a question that this dissertation will leave open. But to offer Americans a critical standard for evaluating our politics, the liberal argument for parliamentary government does not necessarily need to be better. It just needs to be meaningfully different, and to indicate problems and possibilities that we would otherwise be unable to see as clearly. Here again, the path taken by American Progressivism is perhaps the exemplary one. Most Progressives abandoned any notion of amending the Constitution to allow ministers to serve in the legislature. Yet they continued to recognize that American constitutional arrangements were defective in ways that nineteenth century liberals had suggested, and to use the liberal theory of parliamentary institutions as a critical standard for guiding their efforts at political reform.<sup>54</sup>

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<sup>54</sup> Woodrow Wilson's second major treatise on the American constitution, for instance, seeks reforms to the American political system, rather than the implementation of cabinet government. See Woodrow Wilson, *Constitutional Government in the United States*, (New York: 1908). This is also true of Herbert Croly, *The Promise of American Life*, (New York: 1909); and Walter Lippmann, *Drift and Mastery*, (New York: 1914).

## Chapter Outline

This dissertation does not claim to provide a history of the origins of parliamentary government in England or France. Nor does it offer anything like a comprehensive survey of liberalism in the late eighteenth and nineteenth-centuries. This dissertation explores merely the intersection of liberalism and parliamentary government: the area in which they met and overlapped. It shows why certain important liberal authors favored parliamentary institutions, and how one broad liberal tradition emerged out of eighteenth-century British debates over the proper relationship between parliament and ministers. Though not the only liberal tradition, this dissertation makes the case that it was—and remains—a particularly important one.

Chapter one examines the famous debate over patronage in eighteenth-century England, which reached its peak of intensity under Robert Walpole. This was a debate, I will argue, in which the fundamental features of a parliamentary regime first began to be clearly expressed in British political thought: the presence of ministers in the legislature, and the right of parliament to remove a ministry without recourse to impeachment. Chapter one also considers two other eighteenth-century texts that were influential in the formation of nineteenth-century liberalism, not because they expressed or justified the mechanics of a parliamentary regime, but rather because they prefigure the decisive turn in liberal thought away from the veto. These are *Cato's Letters*, and Jean Louis de Lolme's *The Constitution of England*.

Chapter two considers Edmund Burke, who I argue was the first genuine theorist of parliamentary government. Over the course of his political career, I will demonstrate, Burke continually defended the necessity for ministers to sit in parliament, and the right of parliament

to change the king's ministers. Burke sought to bring together the opposed aims of Walpole, and of Walpole's opponents, into a single unified constitutional vision. But I will argue that Burke was never completely successful in this effort. The clearest sign of this is that Burke was not able to come up with a consistent and clear position on the role of patronage in a parliamentary legislature.

For centuries, readers of Burke have debated whether he counts as a "liberal." In several important respects, this dissertation makes the case that he does. Burke's crucial standard for understanding and evaluating parliamentary life was the ideal of parliament as "a deliberative assembly"—an ideal he applied in heated eighteenth-century struggles over corruption and cabinet instability. Most importantly, in addition to his involvement in eighteenth-century debates over the House of Commons, Burke also wrote about the legislature in France. *Reflections on the Revolution in France* analyzes the French National Assembly of 1789, and the relations between the executive and legislature which Burke believed would prevail under the French Constitution of 1791. I will demonstrate that Burke's response to the French Revolution originated, in no small part, from his lifelong reflections on parliamentary government in England. It reiterated his strong defense of ministers serving in the legislature.

In chapter three I examine how other political thinkers in France and England reacted to the events of the French Revolution. I show that Benjamin Constant, German de Staël, and Jacques Necker all argued that the disastrous events of the 1790s were due to the fact that France had not followed the English model. For the "Coppet Circle," as this group was titled, the French Revolution proved the superiority of a parliamentary legislature, in which ministers served as representatives. Additionally, chapter three considers the nearly parallel set of arguments for a

parliamentary regime that were being made in Britain during the Revolutionary period, by liberal authors associated with the *Edinburgh Review*.

Despite agreeing about the advantages of parliamentarism, liberals in both Coppet and Edinburgh continued to disagree about the exact role of ministers in the legislature, and about the legitimacy of patronage. The final two chapters of the dissertation document how arguments over patronage, and over the proper role of ministers in a parliamentary assembly, persisted into the heart of nineteenth-century liberalism. Chapter four considers Benjamin Constant and Francois Guizot. I argue that despite agreeing about the general advantages of a parliamentary government, Constant and Guizot differed radically over the issue of patronage. Constant, like Bolingbroke, thought that there was absolutely no role for patronage in parliamentary institutions, and he spent his career in parliament battling corruption. Guizot, echoing Walpole, thought that patronage was an indispensable component of parliamentary leadership, and defended it over the course of his political career. Chapter five turns to Mill and Tocqueville. Its argument is in a way the inverse of the previous chapter. Mill and Tocqueville agreed about the devastating effects of patronage, and like Constant they devoted their political careers to fighting corruption. But Mill and Tocqueville fundamentally differed over the advantage of a parliamentary regime.

Tocqueville turns out to be perhaps the most idiosyncratic figure in this whole story. When it came to European states, his position can only be described as Whiggish. He believed that ministers were servants of the Crown, but that it was necessary they sit in parliament so parliament could be an effective popular control on their actions. In sharp contrast with Mill, Tocqueville never embraced Constant's argument that ministers were autonomous actors, and that the king should "reign but not govern." And yet at the same time, Tocqueville was also a

strong admirer of the American constitution, and in particular of its non-parliamentary aspects. Tocqueville even defended the American presidential veto, an institution that Mill (like so many other liberals) had almost no sympathy for.

Underlying Tocqueville's exceedingly complex position regarding the legislature, I will argue, was a greater degree of pessimism about whether the liberal ideal of a deliberative assembly was possible in the modern world. Tocqueville was certainly attracted to this ideal. But he saw nearly insuperable obstacles to it, both in a democratic republic like the United States, as well as in constitutional monarchy like France. In this crucial way, Tocqueville was at odds with nearly all the other figures in this dissertation, who saw "government by discussion" as a difficult, but eminently realistic and attainable mode of political decision. This pessimism about the legislature particularly distinguishes Tocqueville from John Stuart Mill, who dedicated his life and political career to instantiating "government by discussion" in a coming British parliamentary democracy.

## Chapter 1. Eighteenth-Century Political Thought and the Origins of Liberalism

By the early the eighteenth century, Parliament had come to occupy a position of unprecedented importance in English political life. It met regularly and determined taxation and revenue, as well as the national budget. Armies could not be maintained without its permission. The King was dependent upon it even for his own discretionary funds. Most remarkably of all, the exercise of all these powers went relatively unchallenged. During the seventeenth-century, Parliament and the Crown had been in a perpetual contest of strength. Charles I ruled for eleven years (1629-1640) without calling a parliament, while Charles II kept the same one in being for eighteen years (1661-1679) without an election. Both these actions triggered violent opposition, but in 1688 the conflict was largely settled.<sup>55</sup> The Declaration of Rights enshrined into law that kings could not legislate, govern, raise money, or maintain an army without Parliament, and that parliaments must meet regularly.<sup>56</sup>

Parliament's new significance in the eighteenth century is indicated by the unprecedented explosion in legislative productivity that occurred during this period. In the two centuries between 1485 and 1688, parliament passed 2,700 measures; between 1688 and 1801, a period little over half as long, 13,600 measures were passed.<sup>57</sup> Whether one considers the number of

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<sup>55</sup> For general historical studies of seventeenth century British politics and the settlement of 1688 see Mark Kishlansky, *A monarchy transformed : Britain, 1603-1714*, (London: 1996); Steven Pincus, *1688: The First Modern Revolution*, (New Haven: 2009); and J.C.D. Clark, *Revolution and Rebellion: State and Society in England in the Seventeenth and Eighteenth Centuries*, (Cambridge UK: 1986), 68-163. For an analysis of the meaning of 1688 in particular see Harvey Mansfield, "Party Government and the Settlement of 1688," *American Political Science Review*, vol. 58, no. 4, (1964), 933-946.

<sup>56</sup> The Avalon Project, "English Bill of Rights 1689," [http://avalon.law.yale.edu/17th\\_century/england.asp](http://avalon.law.yale.edu/17th_century/england.asp)

<sup>57</sup> Julian Hoppit, "Patterns of Parliamentary Legislation," *Historical Journal*, vol. 39, no. 1, (1996), 109.



bills passed, or the number debated, the striking conclusion is that Parliament was approximately ten times as active and productive during the eighteenth century as it had been in previous centuries.<sup>58</sup> It was during the eighteenth century that Parliament effectually became a *legislative* assembly—and not merely an extended council of the Crown.

The stunning increase in parliamentary activity during the eighteenth century was due in part to the increasing length and frequency of parliamentary meetings, and to the creation of regular legislative procedures that enabled bills to be efficiently debated and passed.<sup>59</sup> It also testifies to the growth of English state itself during the period after 1688.<sup>60</sup> Parliament was involved in building a trans-continental empire.<sup>61</sup> It was also increasingly enmeshed in local and regional concerns across England. While the eighteenth century saw a ten-fold increase in the rate at which Parliament passed or debated acts dealing with national issues, there was nearly a twenty-fold increase in the rate at which acts dealing with specific persons and constituents were passed or debated—such as divorces, contracts, and patents.<sup>62</sup>

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<sup>58</sup> Ibid.

<sup>59</sup> Ibid., 112-116. It was during this same period that there emerged regular election procedures. See Mark Kishlansky, *Parliamentary Selection: Social and Political Choice in Early Modern England*, (Cambridge UK: 1986), 12-22, 105-122

<sup>60</sup> The expansion of the English state during this period is described in John Brewer, *The Sinews of Power: War, Money and the English State, 1688-1783*, (London: 1989); as well as in J.H. Plumb, *The Growth of Political Stability in England*, (London: 1967), 105-132.

<sup>61</sup> For the way that parliament dealt with these new responsibilities see Hoppit, “Patterns of Parliamentary Legislation,” 116-125; as well Joanna Innes, “Legislating for three Kingdoms,” both in *Parliaments, Nations and Identities in Britain and Ireland: 1660-1860*, ed. Julian Hoppit, (Manchester: 2003), 15-48; and David Armitage, *Foundations of Modern International Thought*, (Cambridge UK: 2013), 135-153.

<sup>62</sup> Hoppitt, “Patterns of Parliamentary Legislation,” 117. This trend was noticed by Blackstone and other influential jurists. See David Lieberman, “Codification, Consolidation, and Statute”, in *Rethinking Leviathan: The Eighteenth-Century State in Britain and Germany*, ed. John Brewer and Eckhart Hellmuth, (Oxford: 1999), 359-390.

The twentieth-century historian Julian Hoppit summarizes the growth of parliamentary activity in the following terms: “Before the Glorious revolution the legislative output of parliament was infrequent, unpredictable, and numerically inconsiderable. There was a transformation, a revolution, as a consequence of the events of 1688-1689. In legislative terms, by the early eighteenth century Parliament had a new place in the social, economic and political life of the country.”<sup>63</sup> This same development was also recognized by contemporary observers. As the influential humanist George Savile, the Marquess of Halifax wrote in 1696, “parliaments are now grown to be quite other things than they were formerly. In ancient times they were little more than great assizes; a roll of grievances; magna carta confirmed; privileges of holy church preserved; so many sacks of wool given; and away.”<sup>64</sup> This looked nothing like a modern parliamentary assembly, in which there were innumerable “traps and gins laid for the well-meaning country-gentleman.”<sup>65</sup>

Halifax was seconded by an anonymous pamphleteer who also claimed that “parliaments are grown quite other things than they were in those days.” For there were now “the conveniences and inconveniences of every bill to be argued... grievances to be redressed, the government to be secured, mismanagements to be punished, property to be asserted, and money to be appropriated as well as raised.”<sup>66</sup> Yet another pamphleteer warned the electorate in the lead up to a parliamentary election: “you are to choose those that are to dispose of, and command

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<sup>63</sup> Hoppit, “Patterns of Parliamentary Legislation”, 125

<sup>64</sup> George Savile, “Some Cautions Offered to the Consideration of those who are to Choose Members to serve in the next Parliament,” in *Works*, vol. 1, ed. Mark Brown, (Oxford: 1989), 323

<sup>65</sup> *Ibid.*

<sup>66</sup> Anon., *The Subjects Case: Or advice to all Englishmen, who have the Right of Electing Members to Serve their Country in the next Parliament, to be held at Westminster, on Thursday the 6th day of Febr. 1701*, (London: 1701), 10

your purses, and to lay...taxes upon you...you are to choose those that are to make war or peace for you.”<sup>67</sup> The author continued, “you are to choose those that are to choose for you all the rules of your civil lives...the rules and laws you have already, are in their power either to alter, repeal, or continue...You are to choose those that are to supervise the administration of all justice among you...”<sup>68</sup> This author’s emphasis on “taxes” is telling. The House of Commons in particular had the power to initiate all bills dealing with revenue, so it occupied a position of especial constitutional importance during the eighteenth century. According to Edmund Burke, “since the Revolution at least—the power of the Nation has all flowed with a full tide into the House of Commons. The power of the state nearly melted down into this house.”<sup>69</sup> David Hume went one step further. “The share of power, allotted by our constitution to the House of Commons, is so great, that it absolutely commands all the other parts of the government.”<sup>70</sup>

Whether Parliament’s growth in power and activity had come at the expense of the Crown was a very difficult question to be adjudicated. Throughout the eighteenth century, the Crown’s ministers participated in Parliament as either Lords or representatives. This had earlier been a topic of heated debate. At the end of the eighteenth century, bills were brought forward that would have prohibited all executive officers, including ministers, from serving in Parliament.<sup>71</sup> But these efforts were defeated. J.A.W. Gunn notes that during most the eighteenth

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<sup>67</sup> Anon., *The Best choice of Parliament-men Considered in this Critical Juncture so as to bring down the Exorbitant Power of France and to Establish the general peace of Europe.*, (London: 1701), 12

<sup>68</sup> Ibid

<sup>69</sup> Edmund Burke, “Speech on Parliamentary Incapacitation,” *WAS*, vol. 2, 234

<sup>70</sup> David Hume, *Essays Moral and Political*, ed. Eugene Miller, (Indianapolis: 1985), 44

<sup>71</sup> See David Hayton, “The reorientation of place legislation in England in the 1690s,” *Parliaments, Estates and Representation*, vol. 5, no. 2, (1985), 103.

century, until the American and French Revolutions revealed a radically different constitutional model, the involvement of ministers in Parliament was uncontroversial. Individual *ministers* were pilloried as corrupt or tyrannical. But that they ought to be able to serve in Parliament was rarely questioned.<sup>72</sup>

The most controversial aspect of ministers being in the assembly was their involvement in the distribution of patronage. Ministers were in charge of making administrative and official appointments within their departments. There was little to prevent them from giving jobs to representatives or to voters in exchange for political support. Indeed pensions, offices, and government contracts were all provided on a political basis throughout the eighteenth century.<sup>73</sup> In addition to its power of patronage, the Crown and its ministers also maintained enormous influence over elections. Approximately one in ten seats in Parliament were directly determined by the Crown, but through additional electoral spending its weight in elections was felt through nearly the entire country.<sup>74</sup> As Bolingbroke lamented, the crown possessed both “undue influences on the elections of members of the House of Commons, and on these members when chosen.”<sup>75</sup> The controversy over these practices reached a peak during the ministry of Robert Walpole, which lasted from 1721-1742. Walpole was, in Paul Langford’s words, the first minister to gain nearly “a monopoly of parliamentary patronage.”<sup>76</sup> In large part because of this

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<sup>72</sup> See J.A.W. Gunn, *Beyond Liberty and Property: The Process of Self-Recognition in Eighteenth-Century Political Thought*, (Montreal: 1983), 62-65.

<sup>73</sup> For the classic account of influence in the House of Commons during this period see Lewis Namier, *The Structure of Politics at the Accession of George III*, (London: 1957) 11-42, 211-221

<sup>74</sup> *Ibid.*, 139-142, 194-211. The smaller English boroughs were particularly amenable to government influence (*ibid.*, 76-77).

<sup>75</sup> Bolingbroke, *Dissertation upon Parties*, in *Political Writings*, ed. David Armitage, (Cambridge UK: 1997), 98

achievement, Walpole reigned as the leader of the House of Commons. Nearly all of the eighteenth-century prime ministers who followed Walpole would seek to imitate both his control over the use of patronage, and his mastery at leading Parliament.

During the eighteenth century, the Crown's ministers wielded tremendous authority within Parliament. But this was also a period in which Parliament attempted to exercise unprecedented control over ministers. Parliament had long been able to impeach and prosecute ministers as a means of checking and controlling the monarch. But the opposition to Walpole began to contend something quite different than this: that without even being convicted of a crime, ministers could be forced out of office by a parliamentary majority. A crucial event in the development of this argument was Samuel Sandys' motion in the House of Commons in 1741, declaring that Walpole had lost the public confidence and should be removed from office.<sup>77</sup> Most importantly, Sandys' motion did not propose impeachment.<sup>78</sup> Rather it simply asked "his Majesty, that he would be graciously pleased to remove the Right Honorable Sir Robert Walpole...from his Majesty's presence and councils."<sup>79</sup> Sandys' motion was defeated—in part because many of Walpole's opponents thought it was too radical a gesture for parliament to try

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<sup>76</sup> Paul Langford, *A Polite and Commercial People: England, 1727-1783*, (Oxford: 1989), 21. Langford notes that Walpole did not have complete control over offices, as later prime ministers would. He had little say in either ecclesiastical or military appointment. But his control over fiscal and revenue offices was nonetheless unparalleled in English history (ibid., 20-21). For a further discussion of Walpole's administrative skill and its use in building a political majority see J.H. Plumb, *Sir Robert Walpole: The King's Minister*, (Boston: 1961), 233-248.

<sup>77</sup> For a discussion of Sandys' motion as the beginning of a parliamentary regime in England, see Tapani Turka, *The Origins of Parliamentarism: A Study of Sandys' Motion*, (Baden-Baden: 2007).

<sup>78</sup> The significance of the turn away from impeachment (and other "penal forms of responsibility") in the formation of a parliamentary regime in England is explored in Baranger, *Parlementarisme des origines*, 254-290.

<sup>79</sup> Quoted from Turka, *The Origins of Parliamentarism*, 35.

to force the king to drop a minister.<sup>80</sup> But a year later, Walpole resigned his office upon losing a vote in the House of Commons, the first minister to ever do so.<sup>81</sup>

As I noted in my introduction, it would be another century before the practice of cabinet responsibility was firmly entrenched in British politics. Until Victoria, monarchs would regularly struggle to keep ministers in office, even when those ministers had lost the support of Parliament.<sup>82</sup> Yet a powerful precedent had been set. After 1742, Baranger argues, “the revocation of a minister” following the loss of support in Parliament became “clearly distinguished from his punishment.”<sup>83</sup>

The influence of ministers within Parliament, and the increasingly organized attempts by opposition leaders in Parliament to oust ministers from office in order to take their place, were among the most prominent features of mid eighteenth-century British politics. Ministers themselves were figures of immense public significance. They held a celebrity status, and were valorized as classical statesmen by their supporters.<sup>84</sup> According to Hume, “there never was a man, whose actions and character have been more earnestly and openly canvassed than the present minister [Walpole], who... governed a learned and free nation for so long a time, amidst

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<sup>80</sup> See Paul Langford, *A Polite and Commercial People*, 54. Baranger notes the disagreements among Walpole’s opponents at this point over whether they need to convict Walpole of a crime to get him removed, or could merely show his revocation would conduce to “public utility” (Baranger, *Parlementarisme des origines*, 277-279).

<sup>81</sup> For a discussion of this event see Langford, *A Polite and Commercial People*, 56.

<sup>82</sup> For an examination of how English monarchs attempted to exercise ministerial preferences between George I and Victoria see Baranger, *Parlementarisme des origines*, 168-184. Baranger argues that Victoria was the first English monarch to almost completely give up this mode of political influence (*ibid.*, 183).

<sup>83</sup> *Ibid.* 279.

<sup>84</sup> This rhetoric is examined in Peter Mill, *Defining the Common Good: Empire, Religion and Philosophy in Eighteenth-Century Britain*, (Cambridge UK: 1994), 88-102.

such mighty opposition.”<sup>85</sup> It is therefore striking that the most famous discussion of the English constitution in the eighteenth century avoids any discussion of the entanglement of ministers with Parliament. Montesquieu’s *The Spirit of the Laws* appeared in 1748. This was three years after Walpole’s death, and a full six years after he had been forced to give up his twenty-year term as prime minister, following a defeat in the House of Commons. Yet Montesquieu only discusses ministers, and their responsibility to Parliament, in the context of impeachment and criminal prosecution.<sup>86</sup> Nor does Montesquieu even mention the crucial fact that the king’s ministers were present as representatives in Parliament. His description of the English constitution is of a system of three separated powers, all checking one another through the use of constitutional prerogatives.<sup>87</sup>

In Montesquieu’s account, the king’s check on Parliament was its participation in the legislative process by means of its veto power.<sup>88</sup> The “executive power” in England was able to “take part in legislation by its faculty of vetoing,” Montesquieu claimed, and thus preserve itself from legislative overreach.<sup>89</sup> Twenty years later, Montesquieu’s argument was reiterated by Blackstone, in his extraordinarily influential *Commentaries on the Laws of England*. The English constitution, for Blackstone also, was a system of checks and balances. He described “King,

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<sup>85</sup> Hume, *Essays Moral and Political*, 574.

<sup>86</sup> Montesquieu, *The Spirit of the Laws*, 162-164.

<sup>87</sup> For classic discussions of Montesquieu’s theory of the separation of powers in England see Robert Shackleton, “Montesquieu, Bolingbroke, and the Separation of Powers,” *French Studies*, vol. 3, no. 1, (1949), 25-38; and M.J.C. Vile, *Constitutionalism and The Separation of Powers*, (Indianapolis: 1998), 83-106.

<sup>88</sup> For an astute analysis of how this makes Montesquieu less than fully committed to the “separation of powers,” see Aurelian Craiutu, *A Virtue for Courageous Minds: Moderation in French Political Thought, 1748-1830*, (Princeton: 2012), 50-53.

<sup>89</sup> Montesquieu, *The Spirit of the Laws*, 164

Lords and Commons” as “like three distinct powers in mechanics, they jointly impel the machine of government in a direction different from what either, acting by itself, would have done.”<sup>90</sup> So that the Crown could protect itself from “encroachments,” Blackstone argued, “the king is himself a part of the Parliament.”<sup>91</sup> And “the share of legislation, which the constitution has placed in the Crown, consists in the power of rejecting” bills.<sup>92</sup> Like Montesquieu, Blackstone neglected to mention any relationship between ministers and Parliament, other than Parliament’s power to impeachment and prosecute them.<sup>93</sup>

This lack of attention to the developing features of what would come to be called “parliamentary government” is puzzling. So is the emphasis on the veto: a prerogative that had not been used in forty years when Montesquieu published *The Spirit of the Laws*. Eric Nelson has rightly suggested that these lacunas in Montesquieu’s description of English politics indicate his discomfort with the lack of executive independence during the Hanoverian reign.<sup>94</sup> But the result is that commentators have long struggled to connect eighteenth-century political thought with nineteenth-century theories of parliamentary government. Scholars in the history of political thought have often posited that there was radical fissure at the turn of the nineteenth-century, when the Enlightenment gave way to romanticism, historicism, and liberalism.<sup>95</sup> In line with that

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<sup>90</sup> William Blackstone, *Commentaries on the Laws of England*, vol. 1, ed. George Sharswood, (Philadelphia: 1893), 158.

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*, 257-258

<sup>94</sup> Eric Nelson, *The Royalist Revolution*, 18.

<sup>95</sup> Among the most canonical statements of this idea are Hans Gadamer, *Truth and Method*, tr. Joel Weinsheimer and Donald Marshall, (London: 2004), 272-284; Reinhart Koselleck, *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society*, (Cambridge MA: 1988); Reinhart Koselleck, *Futures Past: On the Semantics of Historical Time*, (New York: 2004), 1-74.



view, nineteenth century thinkers suggested that the rationale behind British political parliamentary institutions could not be expressed until political thought had moved away from the “rationalist” or “mechanistic” mindset of the Enlightenment.<sup>96</sup> More recently, scholars have sought to highlight continuities between Montesquieu and nineteenth-century liberalism, by focusing on broad commitments to moderation, representation and constitutionalism.<sup>97</sup> But the price of that is to necessarily downplay the parliamentary character of liberalism.

This chapter argues that the liberalism, with its commitment to a legislature in which ministers are politically responsible and sit as representatives, does have roots in the eighteenth century. But those roots are not in Montesquieu. I will make this argument in two different ways. First, I consider important eighteenth-century texts which did not attribute the Crown’s position in the English constitution to its veto power. These include *Cato’s Letters*, and Jean Louis de Lolme’s *The Constitution of England*. The arguments made in these texts, I argue, already prefigure the turn against the veto after the failure of the French Revolution. Second, I examine the English debate over corruption, which lasted through the whole eighteenth-century but reached its height during Walpole’s administration. I will argue that this was essentially a debate about the emerging mechanisms of parliamentary government. It was a controversy over the proper role and significance of ministers serving in parliament. While Walpole’s supporters strongly defended the importance of ministers being in the legislature; his opponents, such as

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<sup>96</sup> See for instance Wilson, *Constitutional Government in the United States*, 54-57.

<sup>97</sup> For important recent books in this genre, see Urbinati, *Representative Government*; Craiutu, *A Virtue for Courageous Minds*; and Annelien De Dijn, *French political thought from Montesquieu to Tocqueville: Liberty in a Levelled Society?*, (Cambridge UK: 2008);

Bolingbroke, called for Parliament to be able to force ministers out of office, and sketched the parameters of a parliamentary opposition seeking to accomplish this.

Parliamentary liberalism was not the only major tradition of political thought which sprang from the debate over patronage. It was also possible to respond to that debate by calling for the return to a significantly more independent executive—as many Americans did during the 1760s.<sup>98</sup> Or by calling for greater electoral control over representatives, through more frequent elections.<sup>99</sup> Bolingbroke would be drawn to each of these alternatives, as well as to the practice of parliamentary opposition.<sup>100</sup> But if the liberal theory of parliamentary government was not the only influential line of argument to spring from this debate, it was an extraordinarily influential and important one.

### The Inactive Monarch: *Cato* and De Lolme

Despite the influence of Montesquieu and Blackstone's constitutional formulations, it was widely acknowledged in eighteenth-century Britain that the veto was no longer being regularly exercised. This led political thinkers to reflect on the other forms of authority possessed

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<sup>98</sup> See Nelson, *The Royalist Revolution*, 22-23.

<sup>99</sup> English radical traditions of this kind have been the subject of extensive scholarship. See for instance J.G.A. Pocock, "Radical Criticisms of the Whig Order" and Rogers, "The Urban Opposition to Whig Oligarchy", both in *The Origins of Anglo-American Radicalism*, ed. Margaret and James Jacob, (Boston: 1984), 33-60, 132-149; see also Linda Colley, "Eighteenth Century English Radicalism before Wilkes", in *Transactions of the Royal Historical Society* vol. 31, (1981), 1-19; and John Brewer, Brewer, *Party Ideology and Popular Politics at the Accession of George III*, (Cambridge UK: 1976), 201-216, 245-264; as well as Miller, *Defining the Common Good*, 350-382.

<sup>100</sup> I will discuss Bolingbroke's support for a "Patriot King" later in this chapter. His support for more frequent elections is expressed in Bolingbroke, *Dissertation upon Parties*, 98-110.

by the king, which enabled him to maintain his constitutional position in the face of a powerful parliament.

If there is an eighteenth-century depiction of the English monarch that is most completely at odds with Montesquieu's, it is the one which was composed by Thomas Gordon and John Trenchard in their famous series of radical essays titled *Cato's Letters*. Whereas Montesquieu's argument rests on the veto, Gordon and Trenchard do not even mention that prerogative. Instead, they argue that what defined the role of the English monarch was his profound inactivity. An English king, they argued, was not personally involved in the exercise of either legislative or executive functions. "The laws are chosen and recommended to him by his Parliament," while they are regulated in their execution "by his judges, and other ministers of justice."<sup>101</sup> The king's "naval power is under the direction of his high admiral."<sup>102</sup> Meanwhile, "all acts of state and discretion are presumed to be done by the advice of his council."<sup>103</sup>

In an argument that strikingly prefigures Benjamin Constant's defense of a constitutional monarch a century later, *Cato* argued that it was precisely because of the English king's lack of involvement in the functions of execution and legislation, that he was able to preserve substantial political authority. This meant that the king could never commit injustices which enraged the people or legislature. "Thrice happy is that people, where the constitution is so poised and tempered, and the administration so disposed and divided into proper channels, that the passions and infirmities of the prince cannot enter into the measures of his government."<sup>104</sup> The king "has

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<sup>101</sup> John Trenchard and Thomas Gordon, *Cato's Letters, or Essays on Liberty, Civil and Religious, and other Important Subjects*, vol. 1, (New York: 1971), 92

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid., 91

in his power all the means of doing good, and none of doing ill,” *Cato* argued.<sup>105</sup> Through his inactivity, he could become an object of profound reverence and veneration. “His person is sacred, and not answerable for any events: he cannot be accountable for any wrong, which he is incapable of doing.”<sup>106</sup> “All the subjects of such a prince highly honour, and almost worship, him,” *Cato* proclaimed.<sup>107</sup>

Gordon and Trenchard did not hesitate to include the king’s wealth and patronage as among his sources of authority which were outside any actual political functions. *Cato* noted that the king “has a vast revenue to support the splendor and magnificence of his court at home, and his royal dignity abroad. He has the power of disposing of all offices: all honors flow from him.”<sup>108</sup> Yet although Gordon and Trenchard acknowledged that the disposal of offices was a major source of the Crown’s authority, they worried greatly about the threat that this posed to the constitution. In particular, they were concerned about the influence of patronage within the legislature. Gordon and Trenchard excoriated the people of England to only “choose honest men, free and independent men, and they will act honestly for the public interest, which is your interest.”<sup>109</sup> “He will prove but a sorry advocate,” for his constituents’ interests, they argued, “who receives a pension from the prince whom he is commissioned to treat with.”<sup>110</sup> To preserve

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<sup>105</sup> *Ibid.*, 91

<sup>106</sup> *Ibid.*, 93-94

<sup>107</sup> *Ibid.*, 93-94

<sup>108</sup> *Ibid.*, 93-94

<sup>109</sup> John Trenchard and Thomas Gordon, *Cato’s Letters, or Essays on Liberty, Civil and Religious, and other Important Subjects*, vol. 2, (New York: 1971), 26

<sup>110</sup> *Ibid.*, 16

the independence of the House of Commons from patronage, Gordon and Trenchard supported not only intensive popular vigilance of representatives, but also more frequent elections.

One did not have to subscribe to *Cato's* populist ideology to recognize that the English monarch did not exactly exercise political power in the way that Montesquieu and Blackstone claimed he did. Perhaps the most sophisticated treatment of the monarch's actual role and status in British politics in the eighteenth century came from an author who was in every other respect the opposite of *Cato*: skeptical of the efficacy of popular vigilance of representatives, bitterly opposed to more frequent elections, and entirely supportive of the Crown's patronage.<sup>111</sup> This author was the illustrious Swiss émigré, Jean Louis de Lolme.

De Lolme did not pass silently over the veto, as Gordon and Trenchard did in their account of a constitutional monarch. However, like so many eighteenth-century authors, De Lolme emphasized its disuse. Although "Parliament hath sat every year since the beginning of this century, and though they have constantly enjoyed the most unlimited freedom both as to the subjects and the manner of their deliberation, and numberless proposals have in consequence been made," De Lolme noted that "the Crown has not been obliged during all that time to make use, even once, of its negative voice."<sup>112</sup> Yet how was Parliament—and in particular, the House of Commons—prevented from seizing all power from the Crown, if not through the Crown's use of the veto?

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<sup>111</sup> De Lolme's most important statement on contemporary English politics was published in 1780. He was on the complete other side of the political spectrum from *Cato*. See Jean Louis de Lolme, *An Essay on Constitutional Liberty: Wherein the Necessity of Frequent Elections of Parliament is Shewn to be Superseded by the Unity of the Executive Power*, (London: 1780).

<sup>112</sup> Jean Louis de Lolme, *The Constitution of England*, ed. David Lieberman, (Indianapolis: 2007), 267.

De Lolme was adamant that since 1688, the House of Commons was the most powerful part of the English constitution. The fundamental power in the state, according to De Lolme, was power over the purse.<sup>113</sup> By seizing and holding that power, the House of Commons ensured its predominance over the other two branches. Through its control over the budget and taxation, De Lolme argued, the House of Commons forced the Crown to stop exercising nearly all of its prerogatives.<sup>114</sup> Nor did De Lolme believe that this was at all a bad outcome. On the contrary, “to have too exactly completed the equilibrium” between the power of the people's representatives and the Crown, would have been “to sacrifice the end to the means, that is, to have endangered liberty.”<sup>115</sup> De Lolme explicitly states that a “deficiency” ought to remain on the “side of the Crown.”<sup>116</sup>

Although as a constitutional power, the House of Commons held clear sway over the Crown, a central theme of *The Constitution of England* was that an English king continued to possess far more personal power and honor than any *individual* in the House of Commons could ever hope for. According to De Lolme this deeply limited the possible ambition of individual representatives. It provided an important contrast with the ancient republics, where individuals “deeply versed in the management of public business” dreamed of making themselves the ultimate power in the state.<sup>117</sup> In England, by contrast, the “splendor of the crown,” its vast wealth and deep psychological hold over the English mind, created a powerful limit to

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<sup>113</sup> Ibid., 64

<sup>114</sup> Ibid., 64-79

<sup>115</sup> Ibid., 143

<sup>116</sup> Ibid.

<sup>117</sup> Ibid., 173

usurpation.<sup>118</sup> No individual lord or representative, not even Pitt, or Marlborough, could ever hope to rival the monarch.<sup>119</sup> Whatever “the greatness of his abilities and public services,” or of his “wealth,” or of his “illustrious descent,” the idea of attempting to overthrow the English monarch and become a tyrant was a laughable dream. The English constitution “render[s] it impossible for any citizen even to rise to any dangerous greatness.”<sup>120</sup> An intelligent and ambitious member of parliament, even if he has “acquired in a high degree the love of the people, and obtained a great influence in the House of Commons...can hope neither for a dictatorship nor a consulship,” and “the only door which the Constitution leaves open to his ambition, of whatever kind it may be, is a place in the administration, during the pleasure of the King.”<sup>121</sup>

De Lolme’s crucial premise is that it is not collective usurpation by a whole legislative *body* that is to be feared, but rather the usurpation of an ambitious individuals who would seek to make use of the legislature to become tyrant. The wealth and reverence commanded by the King of England prevented members of Parliament from ever dreaming of such a plan. For De Lolme, even more than the constraint of popular election, it is the impossibility of rising to ultimate magistracy that continually channeled the ambition of representatives towards the public good, rather than towards usurpation.<sup>122</sup>

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<sup>118</sup> Ibid., 148.

<sup>119</sup> Ibid., 144-149.

<sup>120</sup> Ibid., 144

<sup>121</sup> Ibid., 145

<sup>122</sup> For De Lolme’s skepticism about popular election as a mode of controlling representatives see De Lolme, *An Essay on Constitutional Liberty*, 86-91.

De Lolme is often thought of as a follower of Montesquieu.<sup>123</sup> Yet his analysis of the English constitution, as I have outlined it, in fact departs significantly from Montesquieu's. Whereas Montesquieu describes a single process of competition between Parliament and the Crown, taking place entirely on the level of political powers, De Lolme describes two: one on the level of political powers, in which the House of Commons triumphed; another on the level of personal power and ambition, in which the King no less decisively continues to trump any *individual* member of parliament. Specifically targeting his illustrious French predecessor, De Lolme claimed that these two facts combined to make the English constitution significantly more secure than Montesquieu realized. Through the decisive constitutional predominance of the House of Commons over the monarch, England could avoid the fate of monarchical absolutism, which had destroyed the liberties of continental European nations.<sup>124</sup> Through the equally decisive personal predominance of the monarch over all individual members of parliament, England could escape the pathology that had destroyed so many ancient republics, namely usurpation of the popular assembly by an ambitious individual.<sup>125</sup> While De Lolme obviously could not be certain that England would last forever, he claimed there was no necessary reason why it had to follow the fate of "Rome, Lacadaemon, and Carthage," as Montesquieu had predicted.<sup>126</sup> De Lolme therefore biting declared that Montesquieu "rather tells us what he conjectured than what he saw."<sup>127</sup>

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<sup>123</sup> See David Lieberman, "Introduction," in *The Constitution of England*, xiv-xv. Iain McDaniel perceptively notes De Lolme's break with Montesquieu, and the influence on De Lolme of Hume. See Iain McDaniel, "Jean-Louis De Lolme and the Political Science of the English Empire," *Historical Journal*, vol. 55, no. 1, (2012), 21-44.

<sup>124</sup> De Lolme, *The English Constitution*, 307.

<sup>125</sup> *Ibid.*, 306

<sup>126</sup> *Ibid.*, 304

<sup>127</sup> *Ibid.*



## The Influence of Ministers in the Legislature: Hume, Walpole, and the Arguments for Patronage

Historians of political thought have often construed the debate over patronage during the eighteenth-century—which reached its peak under Robert Walpole—as fundamentally about the conflict between virtue and interest.<sup>128</sup> Opponents of corruption appealed to a classic ideal of virtue; defenders embraced a modern politics of self-interest. As an account of Walpole’s opponents this interpretation is often accurate. But for his defenders it is inadequate. Walpole’s supporters did not deny the importance of virtue and public spirit among parliamentary representatives. Indeed they trumpeted “the virtue and penetration of the majority of our representatives.”<sup>129</sup> Or claimed that electors must set their minds to “choosing men of greater integrity” to serve in Parliament.<sup>130</sup> What Walpole’s supporters denied was first that there was any essential incompatibility between holding one of the Crown’s offices, and also displaying virtue; or between ministers using both publicly spirited arguments and private interests to win over parliamentary representatives.<sup>131</sup> Even David Hume, the eighteenth-century theorist of “interest” *par excellence* made reference to “the honest and disinterested part” of Parliament.<sup>132</sup>

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<sup>128</sup> The canonical statement of this argument is J.G.A Pocock, *The Machiavellian Moment*, (Princeton: 2003) However see also Gunn, *Beyond Liberty and Property*, 10-42; Caroline Robbins, *The Eighteenth-Century Commonwealthman*, (Cambridge MA: 1959), 271–378; and Isaac Kramnick, *Bolingbroke and His Circle: The Politics of Nostalgia in the Age of Walpole*, (Cambridge MA: 1968).

<sup>129</sup> Anon., *A Letter to a member of Parliament. Concerning the present state of affairs at home and abroad*, (London: 1740) 27-28

<sup>130</sup> Anon., *An Enquiry into the danger of multiplying incapacities on the gentlemen of England to fit in Parliament*, (London: 1739), 39

<sup>131</sup> See for instance, Anon., *A Second Letter to a Member of Parliament Concerning the Present State of Affairs* (London: 1741), 40-41.

<sup>132</sup> Hume, *Essays Moral and Political*, 45.

What is most striking about Walpole's supporters is not their appeal to interest, I will argue, but rather—especially when compared with Montesquieu or Blackstone—that they openly embraced the role of ministers in the legislature as a central feature of British politics. Their justifications for parliamentary patronage were expressed in two different ways. Many defenders of patronage argued that this was the only way for the king to preserve his constitutional position. Unable to appeal to his veto, he needed a group of supporters within the legislature who acted on his behalf. These were his officers and dependents; and the leaders of the king's followers in Parliament was his ministry. Other advocates of patronage construed it less as a *defensive weapon*, and more as a *constructive instrument*. Ministers did not make use of patronage primarily to defend the Crown, these authors argued, but rather as a means of creating stable and effective parliamentary majorities that ministers could make use of in governing the nation.

The most famous exponent of the “defensive weapon” theory of legislative patronage was David Hume. I noted earlier in this chapter that that Hume believed the House of Commons had become the most powerful part of the British state: “the share of power, allotted by our constitution to the House of Commons, is so great, that it absolutely commands all the other parts of the government.”<sup>133</sup> Hume also denied with equal flair that the king's veto served as any kind of adequate check. “Though the king has a negative in framing laws; yet this, in fact, is esteemed of so little moment, that whatever is voted by the two houses, is always sure to pass into a law.”<sup>134</sup> Hume claimed that “the royal assent is little better than a form.”<sup>135</sup>

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<sup>133</sup> Hume, *Essays Moral and Political*, 44

<sup>134</sup> *Ibid.*

Hume argued that the primary defense the Crown had left against Parliament was its legislative patronage. “The crown has so many offices at its disposal, that, when assisted by the honest and disinterested part of the House, it will always command the resolutions of the whole so far, at least, as to preserve the ancient constitution from danger.”<sup>136</sup> The force that restrained the legislature from attacking the Crown was the personal interest of so many members who were dependent upon the Crown. “The interest” of the House of Commons as a “body,” Hume argued, was “restrained by that of the individuals...the House of Commons stretches not its power, because such an usurpation would be contrary to the interest of the majority of its members.”<sup>137</sup> Hume wrote, “we may, therefore, give to this influence what name we please; we may call it by the invidious appellations of *corruption* and *dependence*; but some degree and some kind of it are inseparable from the very nature of the constitution, and necessary to the preservation of our mixed government.”<sup>138</sup>

The claim that patronage was necessary to contain the House of Commons was widespread in eighteenth-century British thought. It was expressed by many of Walpole’s supporters.<sup>139</sup> Perhaps its most sophisticated articulation after Hume came in an anonymous pamphlet written over four decades later, which was entitled *A Dialogue on the Actual State of Parliament*. The author of this pamphlet agreed with Hume that a “great revolution” in British politics “has made the balance preponderate in favor of the House of Commons.”<sup>140</sup> “The power

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<sup>135</sup> Ibid.

<sup>136</sup> Ibid., 45

<sup>137</sup> Ibid.

<sup>138</sup> Ibid.

<sup>139</sup> For a survey of the influence of this set of claims see J. A. W. Gunn, “Influence, Parties and the Constitution: Changing Attitudes, 1783-1832,” *The Historical Journal*, vol. 17, no. 2 (1974), 301-328

of the House of Commons...seems to be transcendent.”<sup>141</sup> Moreover, the pamphlet claimed, the King’s veto “has fallen into disuse” and cannot “ever be revived, to any great effect, without setting the Crown at variance with the rest of the legislature.”<sup>142</sup> This author argued that the impossibility of the king’s using his veto meant that a constitutional balance had come to instead be effected within the House of Commons itself. The patronage exerted by the Crown (as well as by aristocrats in the House of Lords) entered as powerful forces in the House of Commons’ deliberations. They were balanced out by the influence that the people also possessed in the House of Commons, as a result of popular election. “The influence of each” part of the constitution had been able to “find its way into the House of Commons.”<sup>143</sup>

If there was an innovation that *A Dialogue on the Actual State of Parliament* made upon Hume’s defense of patronage, it was the claim that the British constitution had been *perfected* through influence.<sup>144</sup> In Hume’s rendition, patronage made up for a deficiency in the king’s ability to defend himself against the legislature. It would have perhaps been better to give the Crown sufficient formal power to defend its position, but Hume thought it was simply not “possible to assign to the Crown such a determinate degree of power, as will, in every hand, form a proper counterbalance” to Parliament.<sup>145</sup> *A Dialogue on the Actual State of Parliaments*, by contrast, makes the argument that a superior constitutional arrangement was produced once the

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<sup>140</sup> Anon., *A Dialogue on the Actual State of Parliament*, (London: 1783), 28

<sup>141</sup> Ibid.,

<sup>142</sup> Ibid., 9-10

<sup>143</sup> Ibid., 44-45

<sup>144</sup> Gunn notes a different innovation in this pamphlet, which is to include the Lords as well as the Crown as a power that operates almost entirely within the House of Commons (Gunn, “Influence, Parties and the Constitution,” 309).

<sup>145</sup> Anon., *A Dialogue on the Actual State of Parliament*, 6

king, aristocracy, and people all were exerting their weight within the House of Commons—rather than as independent actors competing through their actual constitutional powers. For this arrangement avoided the possibility of gridlock or stalemate arising between the branches of government. It meant that “no conflict can produce interruptions to the functions of government.”<sup>146</sup> “Were these three principles independent of each other,” as Montesquieu or Blackstone maintained, and with “such jarring elements opposite in their nature, and uncontrolled in their exertions, a political chaos must immediately ensure.”<sup>147</sup> “The veto of one branch... would interrupt all decision.”<sup>148</sup> At best, there would be sustained indecision; at worst, violent conflict between the branches of government.

“The peculiar excellence of the constitution” of England, therefore, lay not in its separation of powers, but rather in the fact that powers of government had been “mixed and blended together” within the House of Commons, and were no longer “distinct and separate” at all. This meant that each could attempt to block the other’s actions without ever causing a constitutional clash that brought government to a halt. They struggled to influence each other as part of the normal process of parliamentary debate and deliberation. Moreover, the author argued, any decision made in the House of Commons now reflected the unified assent of all three branches. “It is upon the harmony, not the dissention,” of constitutional powers, “upon the close and intimate connection, not upon the opposition, of them; that depend the beauty and efficacy of the British constitution.”<sup>149</sup>

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<sup>146</sup> Ibid., 44-45

<sup>147</sup> Ibid., 6

<sup>148</sup> Ibid., 6-7

<sup>149</sup> Ibid., 7

This same claim would be put forward by Edmund Burke and Jacques Necker in response to the French Revolution, and by influential liberal authors such as Francois Guizot and Walter Bagehot during the nineteenth century. And yet the basic idea that England's government rested on the harmony between executive and legislature rather than on the division between them had already been expressed by many of Walpole's supporters in their efforts to fight restrictions on patronage. Indeed this argument was voiced by Walpole himself. In response to a place bill that had been proposed to the House of Commons, Walpole argued that if members of parliament were not allowed to also hold administrative seats, then "gentlemen" of "character and distinction" would be forced to choose between serving in either administration or in Parliament.<sup>150</sup> Most would choose Parliament, and the monarch would therefore be forced to turn to "men of no fortune or interest in their country" to serve in administrative offices.<sup>151</sup> This, Walpole argued, would lead to a fatal split between the executive and legislature, potentially tearing the constitution apart.

In the words of one of Walpole's supporters, "there is certainly nothing more apparent in our political system, than that the health of our government consists in the union of its several branches."<sup>152</sup> This same author went on to contend that "a place bill" would "create everlasting jealousies between the legislative and executive powers."<sup>153</sup> Another defender of Walpole's went

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<sup>150</sup> Robert Walpole, "Debate in the Commons on the Place Bill," in *The Parliamentary History of England*, vol. 11, (London: 1812), 366

<sup>151</sup> *Ibid.*, 365

<sup>152</sup> Anon, *A Letter to a member of Parliament*, 20

<sup>153</sup> *Ibid.*, 86.

so far as to insist that for the sake of political harmony, just as to parliament “must be trusted the making of laws” so “to the members thereof must be committed the execution of them.”<sup>154</sup>

In addition to Hume’s line of reasoning, Walpole’s defenders also appealed to a different argument in support of patronage, one whose most theoretically sophisticated exponent would be the nineteenth-century French liberal Francois Guizot. This was the claim that ministers had to make use of patronage as a constructive instrument for creating a stable legislative majority. As one of Walpole’s pamphleteers wrote, “the administration, in whatever hands it is, must have a strong dependence upon the Commons, and must cultivate a good understanding with them, by the best methods they can devise.”<sup>155</sup> “Whatever ways, whatever arts, whatever means, such as are in the administration, and their friends use, to maintain this interest in the Commons, and therefore to keep the government in a steady, settled course,” were appropriate and necessary.<sup>156</sup>

The pamphlet noted that Walpole’s enemies called these methods “ministerial influence.”<sup>157</sup> But they were in fact part of a broad arrangement of “ministerial dependence,” since they arose from the fact that ministers were dependent upon parliament to be politically efficacious, and needed to constantly work to find parliament support.<sup>158</sup> The problem, this anonymous writer claimed, was that Walpole’s opponents were only able to recognize the value of a political *opposition*. They failed to recognize the equal value of a steady *administration*, and the difficulty an administration faced in maintaining support. While “an opposition is

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<sup>154</sup> Anon., *An Enquiry into the danger of Multiplying Incapacities*, 38

<sup>155</sup> Anon., *A Second Letter to a Member of Parliament*, 60

<sup>156</sup> Ibid

<sup>157</sup> Ibid., 61

<sup>158</sup> Ibid.

everlastingly necessary to preserve our liberties,” the author argued, it was also true that “the government must subsist; for otherwise, I think our liberties would be hardly worth preserving. If you admit this, you must allow them the means of subsisting; and these are no other than such an interest...as may, in some measure, balance the power of a continual opposition” in parliament.<sup>159</sup>

In his parliamentary speeches, Walpole also focused on the difficult task that ministers faced in finding support for their administration. “It will be granted,” he declared to the House of Commons, “that no government could support itself, or answer any of the ends of government, if the majority of this house consisted of such as were its declared enemies.”<sup>160</sup> And yet it was inevitable, Walpole claimed, that parties in Parliament would emerge to oppose every government. Some members would disagree with the principles of the ministers, while others would be envious that they were left out of power. “In every free country there are different parties,” Walpole declared, and “all these sorts of men, the discontented, the disappointed, the jacobites, the republicans, will always be ready to condemn and oppose the measures of the administration...and by their arguments they will often be able to prevail with some well-meaning and unthinking men.”<sup>161</sup>

Importantly, Walpole denied that patronage alone was anywhere near a strong enough instrument to hold together a ministry in parliament against so many different opponents. Much more important, he argued, was the success of the policies that ministers pursued, and the

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<sup>159</sup> Ibid., 59

<sup>160</sup> Walpole, “Debate in the Commons on the Place Bill,” 366

<sup>161</sup> Ibid.



reasonableness of the arguments that they made. “Our administration has no defense against this formidable union of parties, but by the wisdom of their measures,” Walpole declared.<sup>162</sup>

Patronage was an entirely secondary tool, he claimed. But it was nonetheless an important one. Even though “a bad government can never, by this way, gain many friends,” Walpole argued that “a title of honor, or a lucrative post or employment, may be of some service in prevailing with a gentleman to judge favorably of the government’s measures, in all cases where he is wavering in his opinion.”<sup>163</sup>

The idea that patronage was necessary only in moderation was widespread. As the author of *A Dialogue on the Actual State of Parliament* argued, “the patronage of the crown,” was only beneficial so long as it “affects the House of Commons only so far as to induce a general support of public measures, and a bias towards the system that is pursued, not a blind confidence in, or prostituted devotion to, a minister.”<sup>164</sup> Walpole insisted that if “the court” was actually “making any encroachments upon the rights of the people, a proper spirit would no doubt arise in the nation; and in such a case I am persuaded that none, or very few...electors could be induced to vote for the court candidate.”<sup>165</sup> Making an argument that would be picked up by Edmund Burke, Walpole maintained that Parliament’s continual monitoring of his administration and of its budget ensured that ministers were not using their administrative powers in an *exceptionally* illicit or partisan manner.<sup>166</sup> But the question raised by these arguments, or by Walpole’s

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<sup>162</sup> Ibid.

<sup>163</sup> Ibid.

<sup>164</sup> Anon., *A Dialogue on the Actual State of Parliament*, 47

<sup>165</sup> Robert Walpole, *The Celebrated Speech of Sir Robert Walpole, Against Short Parliaments; to Shew that a Parliamentary Reform is both Unnecessary and Dangerous*, ed. Henry Dundas, (London: 1793), 57

<sup>166</sup> Ibid., 58

insistence that a “bad government” could never subsist in power wholly “by this way,” was whether or not the influence of patronage within the legislature was so clearly containable. Were the effects of patronage subject to such limitations? Or, once introduced, would patronage corrupt the entirety of parliamentary politics? Would it motivate electors and representatives to cease trying to control the men who were in power? This was a question which would remain at the center of French and English liberalism well into the nineteenth century.

### Parliament as Control: Bolingbroke and the Argument against Patronage

The most sophisticated and influential opponent of Walpole’s administration was Henry St John, who became Lord Bolingbroke in 1712. Few individuals in eighteenth-century England had a more storied existence than Bolingbroke. Formerly a member of the House of Commons, and a minister under Queen Anne, Bolingbroke left England and joined with the Pretender in France after George I ascended to the throne in 1714. He then returned from France a decade later, becoming the intellectual leader of the opposition against Walpole.

The preponderance of Bolingbroke’s campaign against Walpole was devoted to the theme of patronage. Bolingbroke believed that Parliament’s primary role was to function as a *control* on the exercise of executive power.<sup>167</sup> While there were other “securities to liberty,” such as the courts, “the freedom and the independency of Parliament, is the keys-stone that keeps the whole together.”<sup>168</sup> Patronage, for Bolingbroke, represented the Crown’s attempt to get around

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<sup>167</sup> Bolingbroke, *Dissertation upon Parties*, 94

Parliament's control. "By the corruption of Parliament, and the absolute influence of a king, or his minister, on the two houses, we return into that state, to deliver or secure us from which Parliaments were instituted."<sup>169</sup> This was a state in which there was no check upon the government. If parliament was corrupt, and unwilling to oppose the will of the king, Bolingbroke claimed, then the people of Britain "are really governed by the arbitrary will of one man."<sup>170</sup> For Bolingbroke, the corruption of parliament therefore led straight to tyranny. "For Parliaments to establish tyranny, there is no need therefore to repeal Magna Carta, or any other of the great supports of our liberty. It is enough, if they put themselves corruptly and servilely under the influence of such a prince, or such a minister."<sup>171</sup>

Although Bolingbroke thought that corruption was an old instrument of British kings, he also argued that the conditions of eighteenth-century British politics were leading to a dramatic explosion in corruption.<sup>172</sup> There was the increasing size of the English state, and its public debt, which meant more offices.<sup>173</sup> Even more important was the fact that the monarch had lost so many "prerogatives" after 1688. As a substitute for "force" and "prerogative," the Crown had turned to "money" and "corruption."<sup>174</sup> But if the Crown initially embraced patronage out of a position of weakness, it found a much greater source of power than the one it had lost. Bolingbroke was adamant that "the means of establishing a government of arbitrary will by

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<sup>168</sup> Ibid.

<sup>169</sup> Ibid.

<sup>170</sup> Ibid.

<sup>171</sup> Ibid., 95

<sup>172</sup> Ibid., 170

<sup>173</sup> Ibid., 171-184

<sup>174</sup> Ibid., 177

corruption” are “more likely to prove effectual than those of doing it by prerogative ever were.”<sup>175</sup> By the “the increase of the means of corruption...a more real and a more dangerous power has been gained to ministers, than was lost to the crown by the restraints on prerogative.”<sup>176</sup> “Corruption,” Bolingbroke declared, is indisputably “more dangerous than prerogative ever was.”<sup>177</sup>

The primary reason for this is that whereas the king’s overt use of prerogative tended to arouse violent opposition from the people, patronage was a means of subverting the people. In Bolingbroke’s constitutional analysis, the people functioned as a control upon Parliament, just as Parliament was the control on the Crown. “If a Parliament should persist in abetting maladministration, or in any way give up those liberties which they were entrusted to maintain” the only solution was for the people to change their representatives.<sup>178</sup> But if the people themselves had also become dependent upon the Crown’s offices, and thus failed to perform this function, then the entire game was lost:

Nothing can destroy the constitution of Britain but the people of Britain: and whenever the people of Britain become so degenerate and base, as to be induced by corruption, for they are no longer in danger of being awed by prerogative, to choose persons to represent them in Parliament, whom they have found by experience to be under an influence, arising from private interest, dependents on a court, and the creatures of a minister...then may the enemies of our constitution boast that they have got the better of it.”<sup>179</sup>

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<sup>175</sup> Ibid., 186

<sup>176</sup> Henry Bolingbroke, *The Spirit of Patriotism*, in *Political Writings*, 209

<sup>177</sup> Bolingbroke, *Dissertation upon Parties*, 186

<sup>178</sup> Ibid., 104. This is the reason why Bolingbroke so strongly supported triennial parliaments (Ibid., 98-110).

<sup>179</sup> Ibid., 167

Bolingbroke's great fear was that "the many will concur with the few," and that "they will advisedly and deliberately suffer their liberty to be taken away by those, to whom they delegate power to preserve it."<sup>180</sup>

In Bolingbroke's attack on patronage, he responded to all the different arguments made in its favor by Walpole and his supporters—arguments which I examined in the previous section of this chapter. The only argument Bolingbroke was at all sympathetic to was Hume's: that "the constitutional independency of the Crown cannot be supported, unless the Crown have the right and the means...of keeping the members of those assemblies under a pecuniary influence."<sup>181</sup> Bolingbroke saw this as a potential issue of concern, but rejected Hume's remedy. If there was "a real deficiency in the power of the Crown" it should be supplied through legal remedies, not through corruption, Bolingbroke insisted.<sup>182</sup> Bolingbroke had no patience whatsoever for Walpole's argument that "corruption...is necessary to strengthen the hands of those who govern, and to render the administration more smooth and easy" within Parliament.<sup>183</sup> He completely ridiculed the notion that patronage was a source of constitutional harmony, that "our excellent constitution...is no better than a jumble of incompatible powers, which would separate and fall to pieces of themselves, unless restrained and upheld by such honorable methods as those of bribery and corruption."<sup>184</sup>

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<sup>180</sup> Ibid., 112

<sup>181</sup> Ibid., 185

<sup>182</sup> Ibid., 96

<sup>183</sup> Ibid., 95

<sup>184</sup> Ibid., 96

And yet in a striking way, Bolingbroke's position was parallel to that of Walpole's defenders. Like Hume, Bolingbroke also believed that the constitutional contest between executive and legislative powers could no longer safely be carried on as a contest between two separate constitutional entities, but rather had to occur within Parliament itself. Whereas Hume argued that the king could only properly check Parliament through having the members of his administration present within the legislature, Bolingbroke claimed the inverse: Parliament could only control the actions of the Crown if there was a formed opposition within Parliament that was able to change the king's administration and force ministers out of office when it attained sufficient support. The kind of control on the executive that Bolingbroke envisioned went beyond impeachment and criminal prosecution. Bolingbroke's aim was political contest rather than judicial inquiry. "Administration" and "opposition" were to be two armies, each proposing their own measures and systems of policy.<sup>185</sup> "Every administration is a system of conduct," Bolingbroke argued, "opposition, therefore, should be a system of conduct likewise."<sup>186</sup>

Bolingbroke claimed that it was not sufficient to impeach and prosecute individual ministers who happened to act nefariously. What was needed was "a party who opposed, systematically, a wise to a silly, an honest to an iniquitous, scheme of government."<sup>187</sup> The opposition had to "contrast, on every occasion, that scheme of policy which the public interest requires to be followed, with that which is suited to no interest but the private interest of the

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<sup>185</sup> Bolingbroke, *Spirit of Patriotism*, 215

<sup>186</sup> Ibid. For a more skeptical take on Bolingbroke as a theorist of opposition see Caroline Robbins, "Discordant Parties": A Study of the Acceptance of Party by Englishmen," *Political Science Quarterly*, vol. 73, no. 4, (1958), 523-525.

<sup>187</sup> Bolingbroke, *Spirit of Patriotism*, 216

prince or his ministers.”<sup>188</sup> The goal of such an opposition would not merely be to change the individuals in office, but rather the policies that were being pursued. “A change of...ministers, without a change of his measures, will not be sufficient.”<sup>189</sup> That would be “a mere banter, and would be deemed and taken for such, by every man who did not oppose on a factious principle; that I mean of getting into power at any rate.”<sup>190</sup>

Bolingbroke argued that it was a genuine duty of members of parliament to form a united opposition. This duty sprang from parliament’s more general obligation to act as the control on the exercise of executive power: “Every member...of Parliament is a member of a national standing council, born, or appointed by the people, to promote good, and to oppose bad government; and if not vested with the power of minister of state, yet vested with the superior power of controlling those who are appointed such by the Crown.”<sup>191</sup> According to Bolingbroke, “it follows from hence, that they who engage in opposition are under as great obligations to prepare themselves to control, as they who serve the crown are under, to prepare themselves to carry on the administration; and that a party formed for this purpose, do not act like good citizens nor honest men, unless they propose true, as well as oppose false measures of government.”<sup>192</sup>

If there is one major discontinuity in the parallel I am establishing between Hume and Bolingbroke, it is that Hume was responding to the current state of British politics, in which paid officials of the Crown *did sit* in Parliament. Bolingbroke, on the other hand, was gesturing at

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<sup>188</sup> Ibid.

<sup>189</sup> Henry Bolingbroke, *The Idea of a Patriot King*, in *Political Writings*, 262

<sup>190</sup> Ibid.

<sup>191</sup> Bolingbroke, *Spirit of Patriotism*, 216

<sup>192</sup> Ibid.

what might be. As of 1736, when Bolingbroke wrote *A Spirit of Patriotism*—his most important statement on the need for a formed and systematic political opposition in Parliament—no prime minister had ever left office because of rejection in Parliament. The first to do so would be Walpole, six years later. Yet Bolingbroke argued that the role of Parliament had changed, such that it would not be inconceivable for a systematic popular opposition in Parliament to force the king’s ministers out of office. Concerted parliamentary opposition had recently defeated Walpole’s plan to raise the Excise Tax.<sup>193</sup> An even more concerted opposition would make Walpole’s position untenable, and force his departure. Bolingbroke argued that “Parliaments are not only, what they always were, essential parts of our constitution, but essential parts of our administration too.”<sup>194</sup> “They do not claim the executive power. No. But the executive power cannot be exercised without their annual concurrence.”<sup>195</sup> Bolingbroke maintained that the monitoring of the executive by parliament had reached a new level of frequency and intensity in the eighteenth century. “How few months, instead of years, have princes and ministers now, to pass without inspection and control,” he noted.<sup>196</sup> “How easy therefore is it become to check every growing evil in the bud, to change every bad administration.”<sup>197</sup>

A parliamentary opposition was not the only method Bolingbroke turned to as a check against corrupt ministers. Along with more frequent elections, he supported a place-bill to prohibit members of Parliament from serving in administrative positions.<sup>198</sup> Bolingbroke even

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<sup>193</sup> See Plumb, *Sir Robert Walpole*, 250-283.

<sup>194</sup> Bolingbroke, *Spirit of Patriotism*, 206

<sup>195</sup> Ibid.

<sup>196</sup> Ibid.

<sup>197</sup> Ibid.



imagined that Parliament and the nation's savior might potentially come from the king himself. In 1738, Bolingbroke published his famous pamphlet on *The Idea of a Patriot King*. This idealized depiction of a wise and virtuous monarch able to save England from corruption, may appear at odds with Bolingbroke's argument from two years earlier that Parliament should be attempting to force out the king's ministers. Bolingbroke insists, in *The Idea of a Patriot King*, that a patriot king should disregard the wishes of Parliament when choosing his ministers. He should bring "to his administration such men as he can assure himself will serve on the same principles on which he intends to govern."<sup>199</sup> It is not a coincidence that Bolingbroke would be drawn upon in the 1760s by authors seeking to defend George III's choice of Lord Bute as prime minister, despite the notorious lack of acquaintance with Bute in Parliament.<sup>200</sup> "Every man," Bolingbroke wrote, "who stands forward enough in rank and reputation" could "be called to the councils of his king"—regardless of his position in Parliament.<sup>201</sup>

And yet Bolingbroke did not completely walk back on his earlier defense of a parliamentary opposition. Under a patriot king, Bolingbroke claimed, "the opportunities of forming an opposition... will be rare."<sup>202</sup> But they might still happen. A patriot king will not be omniscient. Indeed part of what distinguishes a patriot king from less trustworthy kings is precisely that a patriot king would be receptive to a publicly spirited opposition. "There may be

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<sup>198</sup> For a treatment of Bolingbroke's reasoning in support of a place bill see Kramnick, *Bolingbroke and his Circle*, 82.

<sup>199</sup> Bolingbroke, *Idea of a Patriot King*, 254

<sup>200</sup> For a discussion of this and other legacies of Bolingbroke see David Armitage, "A patriot for whom? The afterlives of Bolingbroke's Patriot King," *Journal of British Studies*, vol. 36, no. 4 (1997), 397-418; for Bolingbroke's particular influence in the 1760s, see Harvey Mansfield, *Statesmanship and Party Government*, (Chicago: 1965), 86-123.

<sup>201</sup> Bolingbroke, *Idea of a Patriot King*, 254

<sup>202</sup> *Ibid.*, 260

abuses in his government, mistakes in his administration, and guilt in his ministers, which he has not observed: and he will be far from imputing the complaints, that give him occasion to observe them, to a spirit of party...on the contrary, he will distinguish the voice of his people from the clamor of a faction, and will hearken to it. He will redress grievances, correct errors, and reform or punish ministers.”<sup>203</sup>

Bolingbroke’s major concern in *The Idea of a Patriot King* was that the king not rule through the presently existing parties in Parliament, which he believed were entirely devoted to personal interests and ambitions. They were “numbers of men associated together for certain purposes, and certain interests, which are not, or which are not allowed to be, those of the community.”<sup>204</sup> “How widely different, nay how repugnant, the interests of private ambition and those of real patriotism are,” Bolingbroke declared.<sup>205</sup> Yet the parliamentary opposition Bolingbroke had envisioned against Walpole was also not one that was organized around any existing party. It would “lay aside the groundless distinctions” of Whig and Tory.”<sup>206</sup> According to Bolingbroke, opposition “must be formed on principles of common interest. It cannot be united and maintained on the particular prejudices, any more than it can, or ought to be, directed to the particular interests of any set of men whatsoever.”<sup>207</sup> The opposition “party” Bolingbroke

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<sup>203</sup> Ibid., 261

<sup>204</sup> Ibid., 258

<sup>205</sup> Ibid., 270

<sup>206</sup> Bolingbroke, *Dissertation upon Parties*, 190

<sup>207</sup> Ibid., 37

had envisioned “is improperly called party. It is the nation, speaking and acting in the discourse of particular men.”<sup>208</sup>

Bolingbroke’s argument that parliamentary opposition could now effectually force a minister out of office was put into practice in the early 1740s. First, in Samuel Sandys’ famous motion expressing a lack of confidence in Walpole’s administration in 1741. Then in Walpole’s departure from office a year later, after he was unable to hold a majority in the House of Commons in an early vote following an election. Bolingbroke constructed his argument for parliamentary opposition within the very same debate in which Walpole and his defenders so effectively depicted the indispensable role of ministers in Parliament. This was the debate over patronage. Patronage, in Bolingbroke’s mind, was a more effective and dangerous threat in the hands of the Crown than the old prerogatives had been. It was no longer plausible to wait for the people to rise up. This meant that an even more powerful counterforce acting against the Crown was needed as well. That counterforce was a parliamentary opposition with organized leadership and a coherent political agenda, which would be able to make Parliament force corrupt ministers out of office.

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<sup>208</sup> Ibid., 37

## Chapter 2. Edmund Burke's Theory of Parliamentary Politics

The first chapter of this dissertation established that in eighteenth-century English debates over corruption, defenders of patronage explained the advantages that came from ministers sitting in Parliament. Opponents of patronage, on the other hand, argued for the need for a parliamentary opposition party that was able to force ministers out of office, potentially without recourse to impeachment. One of the first political thinkers who attempted to incorporate both of these different arguments into a single coherent political vision was Edmund Burke. From the very beginning of his political career, through to the end, Burke staunchly defended constitutional arrangements in which ministers served only with the clear support of Parliament, and were present in Parliament as representatives.

Burke first argued for this arrangement during the 1760s, when he believed that George III was scheming to take away the actual exercise of executive power from ministers who were in Parliament. It was in response to George III's "shadow cabinet" that Burke first went about justifying the rudimentary parliamentary arrangements that had developed in England over the course of the eighteenth century. Twenty years later, Burke defended the advantages of ministers sitting in the legislature as part his attack on the French Revolution. In 1789, the French National Assembly banned its members from serving as ministers, and prohibited ministers from even attending its meetings.<sup>209</sup> The Assembly also inscribed into the constitution it was writing—the eventual Constitution of 1791—a similar prohibition against representatives from the legislature

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<sup>209</sup> See "Suite de la discussion de la motion de M. comte de Mirabeau relative à l'entrée des ministres dans l'Assemblée," in *Archives Parlementaires*, ser. 1, t. 9, (Paris: 1877), 715-718.

serving in ministerial offices.<sup>210</sup> In a further break with Britain (and going further even than the Constitution of the United States), the legislature was given no voice whatsoever in the appointment of ministers—other than through impeaching and prosecuting them. Ministers were appointed entirely at the discretion of the executive.<sup>211</sup> Burke’s arguments against George III’s “shadow cabinet,” and against the French National Assembly stand as a powerful and distinctive defense of what the nineteenth century would come to call *parliamentary government*.

The primary aim of this chapter is to document Burke’s argument for a parliamentary regime. But a second aim is to show that Burke’s understanding of parliamentary government was not fully consistent. Burke was never able to completely meld together Walpole and Hume’s arguments for why powerful ministers ought to serve in Parliament, with Bolingbroke’s argument that Parliament should be able to force out the king’s ministers at will. This is most evident in Burke’s shifting stance on the legitimacy of patronage. For much of his political career, Burke shared Walpole’s opinion that patronage was not dangerous or problematic so long as it went through the hands of ministers in Parliament. The reason for this was that ministers were responsible to Parliament. They could be exposed by their opponents, and lose their offices if they went too far into corruption. Moreover, the existence of organized parliamentary opposition meant, according to Burke, that ministers governing in Parliament had to make use of party connections that were based in friendship, loyalty, and shared political principles. They could not merely appeal to the brute personal interest of representatives.

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<sup>210</sup> See Léon Duguit and Henry Monnier, *Les constitutions et les principales lois politiques de la France depuis 1789: collationnées sur les textes officiels, précédées des notices historiques et suivies d'une table analytique détaillée*, (Paris: 1908), 10, 17.

<sup>211</sup> *Ibid.*, 17-18.

Because of his tolerance for *ministerial* patronage, Burke claimed that Walpole was not in fact “a prodigal and corrupt minister.”<sup>212</sup> Indeed Burke contended that “the charge of systematic corruption is less applicable to him, perhaps, than to any minister who ever served the crown for so great a length of time.”<sup>213</sup> Rather, Walpole was “a sound Whig” who “governed by party attachments.”<sup>214</sup> The crucial distinction, for Burke, was between “corruption” and “party attachments.” And yet there were other points in his career, particularly during the long reign of Lord North, when Burke became far more extreme in his opposition to patronage, and saw it as a threat to parliamentary deliberation and parliamentary autonomy, even when directed by ministers. In addition to shifting his stance on patronage, Burke also vacillated about whether the role of ministers in Parliament was primarily so that Parliament could more effectively contain the Crown, or so that the Crown could more effectively influence the decisions of Parliament. In *Thoughts on the Cause of the Present Discontents* he made the former argument; in *Reflections on the Revolution in France*, the latter.

Despite these various shifts, Burke always argued for the necessity of ministers sitting in Parliament. And he always conceived of Parliament itself as a “deliberative assembly.” Burke was convinced of the self-standing value of political deliberation. It was only through a process of argument and discussion between different viewpoints, he claimed, that political actors were able “to unite into a consistent whole the various anomalies and contending principles that are

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<sup>212</sup> Edmund Burke, *Appeal from the New to the Old Whigs*, in *Works of Edmund Burke*, vol. 3, (London: 1854), 50.

<sup>213</sup> Ibid.

<sup>214</sup> Ibid.

found in the minds and affairs of men.”<sup>215</sup> But Burke also credited deliberation with having a particularly important role in a parliamentary assembly. For Burke, as for Bolingbroke, the essential role of parliament was to be the *popular control* on the Crown. But since the king himself was inviolable, the way the Crown was controlled was through monitoring his ministers in Parliament. Ministers were forced to continually articulate and justify their discretionary actions before Parliament. It was in the ensuing debate and discussion between the ministry’s supporters and opponents that Parliament held ministers responsible, performing its role of controlling the executive.

Few eighteenth-century political thinkers expressed a more elevated conception of Parliament than Burke did. But it also true that few were more disappointed than Burke with the actual performance of Parliament in this regard. While in Parliament, Burke witnessed parliament blunder into a disastrous war with its American colonies, and then sustain a catastrophic military defeat. “The dispute” with the colonies, Burke lamented “had its apparent origin from things done in Parliament.”<sup>216</sup> It was “the acts passed there which had provoked the war.”<sup>217</sup> Burke’s attempts to reform British rule in India and Ireland, to prosecute Warren Hastings, and to reduce patronage were all defeated in Parliament. Nor, for Burke, were these failures simply the result of bad luck, or of contingent mistakes. They reflected larger pathologies within Parliament during the final decades of the eighteenth century, which prevented it from properly functioning as a deliberative assembly.

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<sup>215</sup> Edmund Burke, *Reflections on the Revolution in France*, in *Writings and Speeches*, vol. 8, ed. L.G. Mitchell, (Oxford: 1989), 217

<sup>216</sup> Edmund Burke, *Letter to the Sheriffs of Bristol*, *WAS*, vol. 3, 313.

<sup>217</sup> *Ibid.*

Burke entered the House of Commons in 1765, in the midst of a decade defined by profound cabinet instability, and repeated contentions between Parliament's leaders and George III. No stable deliberative consensus could be formed about who should hold ministerial office. Burke attacked "the futility, the weakness, the rashness, the timidity, the perpetual contradiction in the management of our affairs," during this period, particular with respect to America.<sup>218</sup> The extraordinary gridlock of the 1760s ended when Lord North became prime minister in 1770, but in Burke's eyes that barely counted as an improvement. Despite the manifest failure of North's policies towards America, he was able to remain in office for a full thirteen years, longer than any prime minister since Walpole. Burke saw no effective control or contestation of North in Parliament, but rather "despair" and "listlessness."<sup>219</sup> Although the policies pursued by North's administration did not have "the smallest degree of common sense," Parliament stood in the "most perfect repose."<sup>220</sup> "Scarcely one can be found," Burke wrote, "who will take a step towards putting our affairs in a better condition by endeavoring a change of hands or an alteration of counsels."<sup>221</sup> Despite his manifest errors, North was able to "carry on administration with the most perfect success and perfect Tranquility."<sup>222</sup> In both the 1760s and the 1770s,

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<sup>218</sup> Burke, *Thoughts*, 285. The connection between the "inconsistency" of parliament's measures concerning America during the 1760s, and the continually shifting and unstable cabinets within parliament is a central theme of Burke's famous "Speech on American Taxation." See Edmund Burke, "Speech on American Taxation," *WAS*, vol. 2, 430-462.

<sup>219</sup> Edmund Burke, "Letter to Charles O'Hara," (August 17, 1775), in *Correspondence of Edmund Burke*, vol. 3, ed. George Guttridge, (Cambridge UK: 1961), 186.

<sup>220</sup> *Ibid.*, and Edmund Burke, "Letter to Charles Lee," (February 1, 1774), in *Correspondence of Edmund Burke*, vol. 2, ed. Lucy Sutherland, (Cambridge: 1960), 518.

<sup>221</sup> Burke, "Letter to Charles O'Hara" (August 17, 1775), 518

<sup>222</sup> Edmund Burke, "Letter to Charles O'Hara (December 11, 1773), *Correspondence*, vol. 2, 496.



Parliament appeared equally distant from effectively performing its role as a deliberative assembly.

There exists abundant scholarship on Burke's conceptions of prudence, judgment, representation, and deliberation—all virtues which he saw as indispensable within Parliament.<sup>223</sup> There is also an expansive literature on Burke's engagements with India, Ireland and America, all settings in which Parliament stunningly failed to live up to Burke's ideal.<sup>224</sup> But Burke's complex and sophisticated understanding of Parliament itself, and of the challenges which emerge in legislative bodies, have not been systematically examined. In addition to defining Burke's career in English politics, the pathologies facing the legislature were also central to Burke's response to the French Revolution. The French Revolution was, in Burke's depiction, the revolt not of a nation, but of a legislative assembly. Almost the entirety of Burke's discussion of France in *Reflections on the Revolution in France* concerns "the principles" and "proceedings of the National Assembly."<sup>225</sup> In that pamphlet, Burke portrays the French National Assembly as riven by corruption, and incapable of deliberation—themes which had been central to his writings and speeches about parliament for the previous two decades. To fully understand the

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<sup>223</sup> See Richard Bourke, "Theory and Practice: The Revolution in Political Judgment" in *Political Judgment: Essays in Honor of John Dunne*, ed. Raymond Geuss and Richard Bourke (Cambridge UK: 2009); Francis Canavan, "Edmund Burke's Conception of the Role of Reason in Politics," *Journal of Politics*, vol. 21, no. 1, (1959), 60-79; Paddy Bullard, *Edmund Burke and the Art of Rhetoric*, (Cambridge UK: 2011); Leo Strauss, *National Right and History*, (Chicago: 1953), 294-323; Hannah Pitkin, *The Concept of Representation*, (Berkeley: 1967), 168-189; James Conniff, "Burke, Bristol, and the Concept of Representation," *Western Political Quarterly*, vol. 30, no. 3, (1977), 329-341. Burke's conception of political action is an important topic in David Bromwich's recent biography. See David Bromwich, *The Intellectual Life of Edmund Burke: From the Sublime and the Beautiful to American Independence*, (Cambridge MA: 2014).

<sup>224</sup> These are the central themes of Richard Bourke's recent biography of Burke. See Richard Bourke, *Empire and Revolution: The Political Life of Edmund Burke*, (Princeton: 2015). For Burke on India in particular see Jennifer Pitts, *A Turn to Empire*, 59-100; Uhdya Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought*, (Chicago: 1999), 154-189; and Frederick Whelan, *Edmund Burke and India: Political Morality and Empire*, (Pittsburgh: 1996).

<sup>225</sup> Burke, *Reflections*, 212.

significance and legacy of *Reflections on the Revolution in France*, I will argue, it is necessary to consider Burke as a theorist of Parliament.

I begin this chapter by examining Burke's most significant work about Parliament, *Thoughts on the Cause of the Present Discontents*. Following my examination of *Thoughts*, I will go on to show how Burke's conception of parliamentary government shifted during the 1770s, as Parliament was cured of cabinet instability, but only at the price of acquiescing to the government of Lord North. Finally, I turn to the French Revolution. As well as being an important development in our understanding of Burke's political thought, the connection I draw between Burke's involvement in debates over Parliament, and his argument against the National Assembly is crucial to the whole arc of the dissertation. In future chapters I will argue that important nineteenth-century debates over parliamentary government in France, involving major liberal thinkers such as Constant, Guizot, and Tocqueville, emerged out of, and were structurally parallel to eighteenth-century debates surrounding Parliament in England. With his parallel arguments about Parliament in England, and about the National Assembly in France, Burke serves as an important bridge connecting these two different eras.

### *The Present Discontents*

Burke's views on Parliament are most systematically expressed in his 1770 pamphlet *Thoughts on the Cause of the Present Discontents*. Like so many of Burke's speeches and writings, *Thoughts* was written as an active intervention in parliamentary affairs, meaning that its political context especially matters. The immediate circumstances are as follows. In February of

1769, the controversial satirist John Wilkes was elected to the House of Commons from Middlesex, only to be expelled by the House in April, and replaced by his defeated opponent. This led to popular riots and outrage throughout England. Burke saw the widespread discontent as the Rockingham Whigs' opportunity to get back into power.<sup>226</sup> He wrote *Thoughts on the Cause of the Present Discontents* as a manifesto, in a sense, for a Rockingham ministry.<sup>227</sup>

There is also a broader context surrounding Burke's pamphlet, which is equally visible throughout it. This was the extraordinary cabinet instability which had consumed parliament for nearly the entirety of the 1760s. During the previous reigns of George I and George II, the Whig party had maintained a sturdy hold on parliamentary power. From 1721 to 1742, Robert Walpole had been prime minister. Between 1743 and 1754, it had been Walpole's protégé Henry Pelham. And between 1754 and 1762, it had been Henry Pelham's brother the Duke of Newcastle. Even William Pitt, the most popular and eloquent statesman of the period, had proven unable to hold onto power in parliament without the support of Newcastle. With George III's ascension to the throne in 1760, the monopoly of the Whigs was coming to its definitive end.<sup>228</sup> In 1762, George III dismissed Newcastle's ministry.<sup>229</sup> Yet it was unclear what would replace the *Old Corps*, as the Whigs of Walpole and Pelham were called, as a force of parliamentary unity and stability.

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<sup>226</sup> Burke's insistence that this could be Rockingham's political moment, if he could make himself the leader of the discounted public, is evident in his letters from the period. See Edmund Burke, "Letter to Lord Rockingham," (July 9, 30, 1769), and "Letter to Lord Rockingham" (September 6, 1769), *Correspondence*, vol. 2, 44, 51-52, 71.

<sup>227</sup> For a scholarly account of Burke's immediate political aims in writing the pamphlet, as well as his ultimate disappointment with its effects, see John Brewer, "Party and the Double Cabinet: Two Facets of Burke's *Thoughts*," *Historical Journal*, vol. 14, no. 3, (1971), 479-501

<sup>228</sup> J.D.C Clark persuasively traces the "disintegration of the *Old Corps*" as parliament's ruling power further back to the 1750s, and to the weakening of the conventional Whig and Tory parties during that period. See J.D.C. Clark, *The dynamics of change: The crisis of the 1750s and English party systems*, (Cambridge UK: 1982). In contrast with Clark, Burke saw the crucial event, we will see, as George III's ascent to the throne.

<sup>229</sup> The history leading up to this event is recounted in Lewis Namier, *England in the Age of the American Revolution*, (London: 1930), 51-262; 331-485.

Between 1763 and 1770 there was profound uncertainty and instability in Parliament. As Burke declared in amazement, “no less than seven prime ministers of state” held office in a seven year period.<sup>230</sup>

In *Thoughts on the Cause of the Present Discontents*, Burke sought to explain both the riotous popular unrest following Wilke’s expulsion, and the profound legislative instability of the previous seven years by tracing them back to a conspiracy within George III’s court to subvert Parliament. The Court’s aim, as Burke described it, was not simply to control the House of Commons through influence—something opposition parties had been perpetually warning about for over a century. Its intention, Burke argued, was to radically separate the king from his ministers in Parliament, so that executive power could be exercised independently of the legislature. For Burke, this was a stunning challenge to the relationship between legislature and executive that had developed in Britain during the eighteenth century. After 1688, “the Crown, deprived, for the ends of the Revolution itself, of many prerogatives, was found too weak to struggle against all the difficulties which pressed so new and unsettled a Government.”<sup>231</sup> As a result, Burke argued, it was “obliged...to delegate a part of its powers” to “the leaders of Whigs or Tories, men of talents to conciliate the people, and engage to their confidence.”<sup>232</sup> Over the eighteenth century, it had become an increasingly established practice that the weight of the executive power was passed on from the monarch to individuals possessing their own role and

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<sup>230</sup> Edmund Burke, “Speech on London Remonstrance,” *WAS*, vol. 2, 240. Scholarly discussions of the parliamentary instability of the 1760s include Richard Pares, *King George III and the Politicians* (Oxford: 1953), 61-118; and Paul Langford, *The First Rockingham Administration, 1765-1766*, (Oxford: 1973), 1-108, 199-263; and Baranger, *Parlementarisme des origines*, 91.

<sup>231</sup> Burke, *Thoughts*, 259

<sup>232</sup> *Ibid.*; also *ibid.*, 261

influence within Parliament, who served as the Crown's ministers. Simultaneously Parliament had come to exercise a "negative" on the king's choice of ministers; "a power of control on the system and persons of administration."<sup>233</sup> While the king selected the ministers, parliament could refuse to support them. "This power of control was what kept ministers in awe of Parliaments."<sup>234</sup>

"Since the Revolution," Burke wrote, "the influence of the Crown had been always employed in supporting the Ministers of State, and in carrying on the public business according to their opinions."<sup>235</sup> It was this practice, Burke claimed, that George III's court had stunningly rejected. Because it would have been inconceivable to revive the king's prerogatives, the Court first sought to do what Bolingbroke suggested in the *Idea of a Patriot King*: to choose as prime minister a man who had no influence or consideration in Parliament. This was the infamous Earl of Bute.<sup>236</sup> When that project failed, Burke argued, the Court then attempted to achieve the same end even more clandestinely, by creating a *shadow-cabinet*.<sup>237</sup> While there would still be a few prominent members of parliament holding ministerial positions, Burke claimed that the vast majority of administrative offices were now being filled with the Court's own handpicked men.

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<sup>233</sup> Ibid., 279

<sup>234</sup> Ibid.

<sup>235</sup> Ibid., 269

<sup>236</sup> Ibid., 260. For a compelling analysis of Bute's role in the political thought of this period see John Brewer, "The Misfortunes of Lord Bute: A Case-Study in Eighteenth Century Political Argument and Public Opinion," *Historical Journal*, vol. 16, no. 1, (1973), 3-43.

<sup>237</sup> It almost goes without saying that the veracity of Burke's accusation about the shadow-cabinet is not of great significance to my account. Whether true or not, in responding to this conspiracy Burke expressed a general set of claims about how parliament ought to work that long outlasted the period in which this conspiracy may or may not have taken place. Modern historians have generally been skeptical that George III had any intention of the sort Burke ascribed to him. For a recent judicious summary of the debate, see H.T. Dickinson, "George III and Parliament," *Parliamentary History*, vol. 30, no. 3, (2011), 395-413.

These officers were acting in collusion with the Court, behind the backs of the ministerial leaders of Parliament. “By this operation, two systems of administration were to be formed,” Burke wrote.<sup>238</sup> That of the ministers was “merely ostensible.”<sup>239</sup> The real “executory duties of government” were being performed by the Court and its minions.<sup>240</sup> Parliament was brought into acquiescence to such a scheme through corruption. All the “perpetual changes in administration” during the 1760s, Burke argued, were the result of ministers entering office, and then suddenly finding themselves without any durable support either from Parliament or the Crown.<sup>241</sup> The problem was that an “administration without connection with the people, or with one another,” was being “put in possession of government.”<sup>242</sup>

In order to demonstrate the necessarily destructive consequences of a *shadow-cabinet*, one of Burke’s major interventions in *Thoughts* was to defend the parliamentary arrangement that had emerged in the eighteenth century, whereby the Crown selected as its ministers important members of Parliament, and these ministers governed with the support of the legislative body. Burke went so far as to call this practice “the most noble and refined part of our constitution.”<sup>243</sup> He made two distinct arguments in its favor. The first was essentially Walpole’s: that this arrangement ensured the unified exercise of political power, and prevented a clash between executive and legislative functions from occurring. “Nothing, indeed, will appear

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<sup>238</sup> Burke, *Thoughts*, 260

<sup>239</sup> *Ibid.*, 261

<sup>240</sup> *Ibid.*

<sup>241</sup> Burke, “Speech on London Remonstrance,” 241

<sup>242</sup> Burke, *Thoughts*, 266

<sup>243</sup> Burke, *Thoughts*, 279

more certain,” Burke wrote, “than that every sort of government ought to have its administration correspondent to its legislature. If it should be otherwise, things must fall into a hideous disorder.”<sup>244</sup> In a pamphlet written the year before *Thoughts*, Burke likewise argued that “having the great strong holds of government in well-united hand” helped to “secure the predominance of right and uniform principles.”<sup>245</sup> It was necessary to unite “the capital offices of deliberation and execution” in the hands of a single group, “who can deliberate with mutual confidence, and who will execute what is resolved with firmness and fidelity.”<sup>246</sup>

In addition to reiterating Walpole’s argument for a harmony of executive and legislative functions, Burke also reiterated Bolingbroke’s contention that a strong parliamentary influence over the king’s administration, and selection of ministers, was an indispensable safeguard for liberty. This was what ensured that the executive power was always exercised in the public interest. Through “Parliament, refus[ing] to support Government, until power was in the hands of persons who were acceptable to the people,” Burke argued, Britain had attained “all the good effects of popular election... without the mischiefs attending on perpetual intrigue, and a distinct canvass for every particular office throughout the body of the people.”<sup>247</sup> Without the disorder of popular elections, the British people could be confident that “their executory system” was oriented towards the public interest.<sup>248</sup> Parliament was able to ensure that “the discretionary powers which are necessarily vested in the Monarch, whether for the execution of the laws, or

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<sup>244</sup> Ibid., 278

<sup>245</sup> Edmund Burke, *Observations on a Late State of the Nation*, WAS, vol. 2, 210

<sup>246</sup> Ibid.

<sup>247</sup> Burke, *Thoughts*, 278-279.

<sup>248</sup> Ibid., 278.

for the nomination to magistracy and office, or for conducting the affairs of peace and war, or for ordering the revenue,” would “all be exercised upon public principles and national grounds,” which were continually justified before parliament—not according to “the likings or prejudices, the intrigues or policies, of a Court.”<sup>249</sup>

Burke argued that it was “the first duty of Parliament, to refuse to support government, until power was in the hands of persons who were acceptable to the people.”<sup>250</sup> By trying to maneuver around that practice, George III’s Court was putting at risk the security of English subjects against the arbitrary exercise of executive power. At the same time, by refusing to support ministers in Parliament, George III was unravelling the unified exercise of legislative and administrative functions. For the Court’s plot was “to intercept the favour, protection, and confidence of the Crown in the passage to its ministers; it is to come between them and their importance in Parliament.”<sup>251</sup> In attacking the two crucial features of a parliamentary regime, Burke claimed, George III was threatening both liberty and the effective exercise of power. His scheme led to “neither the security of a free government, nor the energy of a monarchy that is absolute.”<sup>252</sup> “The control of Parliament upon the executory power is lost,” even as “government” became “in all its grand operations languid, uncertain, ineffective.”<sup>253</sup>

Burke was convinced that making Parliament into the control over the king’s appointment of ministers did not reduce the king’s status. He sympathized with the annoyance

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<sup>249</sup> Ibid., 277.

<sup>250</sup> Ibid.

<sup>251</sup> Ibid., 269.

<sup>252</sup> Ibid., 283.

<sup>253</sup> Ibid.; as well as *ibid.*, 294.



that a monarch must feel when Parliament refused his favorite minister. But Burke argued that “a great Prince may be obliged...to sacrifice his private inclination to his public interest. A wise Prince will not think that such a restraint implies a condition of servility.”<sup>254</sup> Burke used the reign of George II as an example of how the glory of the monarch only further increased when his ministers truly governed in the public interest, with the support of Parliament. “In times full of doubt and danger to his person and family, George the Second maintained the dignity of his Crown connected with the liberty of his people, not only unimpaired, but improved, for the space of thirty-three years. He carried the glory, the power, the commerce of England, to a height unknown.”<sup>255</sup> And yet many of George II’s ministers were not personally his first choice. Burke argued that “if such was the condition of the last reign, and the effects were also such as we have described,” then “we ought, no less for the sake of the Sovereign whom we love, than for our own” to never “depart from the maxims of that reign, or fly in the face of this great body of strong and recent experience.”<sup>256</sup>

Moreover, although Parliament should possess a *veto* over the king’s choice of ministers, Burke maintained that Parliament should not be able to completely dictate ministers to the king either. The negotiation between king and Parliament over who should fill ministerial positions involved a delicate act of judgment on all sides:

No lines can be laid down for civil or political wisdom. They are a matter incapable of exact definition. But, though no man can draw a stroke between the confines of day and night, yet light and darkness are upon the whole tolerably distinguishable. Nor will it be impossible for a Prince to find out such a mode of Government, and such persons to administer it, as will give a great degree of content to his people.<sup>257</sup>

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<sup>254</sup> Ibid., 267.

<sup>255</sup> Ibid., 266-267.

<sup>256</sup> Ibid., 267.

<sup>257</sup> Ibid., 282

This contested judgment over who should hold ministerial positions was an essential element of a parliamentary regime. Indeed, in addition to Burke's arguments that the emerging structure of parliamentary government unified the exercise of executive and legislative functions, and safeguarded liberty, it is also possible to detect a third reason that Burke was so adamant ministers should serve in the legislature, and need its continual support to stay in power. This was that their presence expanded the scope of parliamentary deliberation so that it also became about the character and actions of specific persons holding office, and not only about general laws and policies. "The laws reach but a very little way," Burke wrote.<sup>258</sup> "Constitute Government how you please, infinitely the greater part of it must depend upon the exercise of the powers which are left at large to the prudence and uprightness of Ministers of State...all the use and potency of laws depends upon them. Without them, your Commonwealth is not better than a scheme of upon paper; and not a living, acting, effective constitution."<sup>259</sup>

By making ministers completely responsible to parliament for their positions, the discretionary actions of ministers became a subject of parliamentary deliberation. Members of Parliament found themselves forced to deliberate on the qualities and virtues of the individuals who were to hold office. Not only retrospectively—through "subsequent punishment" like impeachment—but prospectively, as they decided who to support for ministerial office. Through regularly judging the actions of individual ministers, as well as deliberating over laws, Parliament entered more deeply into all the nuances and particularities that were involved in governing England. The unification of executive and legislative authority which had been

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<sup>258</sup> Ibid., 277.

<sup>259</sup> Ibid.

brought about during the eighteenth century through parliamentary government corresponded, for Burke, to a more complete and unified form of political deliberation.

### The Complexity of Corruption

What made George III's whole shadow-cabinet scheme possible was corruption. "The power of the Crown, almost dead and rotten as Prerogative, has grown up anew, with much more strength, and far less odium, under the name of influence," Burke claimed.<sup>260</sup> It was through this "influence" that the Court had been able to draw so many members of Parliament away from their traditional leaders like Pitt and Rockingham, who became thus unable to create stable ministries. "On the side of the Court," Burke lamented, were "all honors, offices, emoluments; every sort of personal gratification to avarice or vanity."<sup>261</sup> Members of parliament not only personally profited through their connection to the Court, Burke noted; they also used the Court's influence as a means to further their own political ambition. Through being close to the Court, a member of Parliament "can do an infinite number of acts of generosity and kindness." "He can procure indemnity from quarters. He can procure advantages in trade... He can obtain a thousand favors, and avert a thousand evils. He may, while he betrays every valuable interest of the kingdom, be a benefactor, a patron, a father, a guardian angel, to his borough."<sup>262</sup> The Court drew upon the entirety of this influence to render Parliament subservient to its scheme of a shadow-cabinet.

In the short-term, Burke saw corruption as a source of highly unstable ministries, and constantly shifting parliamentary majorities. "When ministry rests upon public opinion," Burke

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<sup>260</sup> Ibid., 258.

<sup>261</sup> Ibid., 299

<sup>262</sup> Ibid.

wrote, “it is not indeed built upon a rock of adamant; it has, however, some stability. But when it stands upon private humor, its structure is of stubble, and its foundation is on quicksand.”<sup>263</sup>

When “the system of administration” is based on private interest, it becomes “open to continual shocks and changes, upon the principles of the meanest cabal, and the most contemptible intrigue. Nothing can be solid and permanent.”<sup>264</sup> Over the long term, however, Burke thought the instability and turmoil of the 1760s was only an intermediate stage. The eventual result of such high levels of patronage, Burke warned, would be not an unstable legislature, but rather one enslaved to royal influence. “Parliament” would come to “partake in every considerable act of government,” since a vast majority of its members would be entirely dependent upon government for their seat or income.<sup>265</sup>

At first glance, Burke’s warning about parliament being entirely subverted by the Crown appears to resemble Bolingbroke’s. Bolingbroke, and the country party more generally, had also argued that the exercise of corruption had emerged as a dangerous substitute for prerogative. They warned that this would eventually lead to a legislature entirely subjugated to the monarch. But, especially in 1770, Burke was considerably more ambivalent about patronage than Bolingbroke ever was.<sup>266</sup> The important point is not only, as the radical Catharine Macaulay emphasized in her response to *Thoughts*, that Burke had no problem with personal influence being exercised in parliament by aristocrats.<sup>267</sup> It is rather that even on the issue of the Crown’s

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<sup>263</sup> Ibid., 312

<sup>264</sup> Ibid., 313

<sup>265</sup> Ibid., 294

<sup>266</sup> For a much more extensive comparison between Burke and Bolingbroke than I am able to offer here see Mansfield, *Statesmanship and Party Government*.

patronage, Burke's position was considerably complex and ambiguous. The great catastrophe, in Burke's eyes, was not really that the Crown's influence had grown to such a considerable extent over the eighteenth century. It was rather that, since the ascent of George III, the Crown's influence was no longer controlled by ministers with a personal basis of support in Parliament. If a unified Whig cabinet under Rockingham had entered power, there is no indication that Burke, in 1770, would have seen anything illegitimate in their making use of patronage, as well as arguments, to remain in office.<sup>268</sup>

Indeed in *Thoughts on the Cause of the Present Discontents*, Burke explicitly argued against any legal restrictions which would prevent members of Parliament from serving in administrative positions.<sup>269</sup> "It were better, undoubtedly, that no influence at all could affect the mind of a member of Parliament," Burke wrote.<sup>270</sup> "But of all modes of influence, in my opinion, a place under the Government is the least disgraceful to the man who holds it, and by far the most safe to the country."<sup>271</sup> This kind of "influence...is open and visible," Burke noted.<sup>272</sup> It is "connected with the dignity and the service of the state."<sup>273</sup> Burke distinguished the open influence of patronage from other more clandestine forms of corruption such as direct "bribery,"

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<sup>267</sup> See Catharine Macaulay, *Observations on a Pamphlet entitled "Thoughts on the Cause of the Present Discontents,"* (London: 1770), 7.

<sup>268</sup> A similar conclusion about Burke's view of influence was also reached by Frank O'Gorman. See Frank O'Gorman, *Edmund Burke: His Political Philosophy*, (Bloomington: 1973), 49-50. For an interpretation of Burke that draws him much closer towards Bolingbroke and the country party tradition, even in *Thoughts*, see W.M. Elofson, *The Rockingham Connection and the Second Founding of the Whig party, 1768-1773*, (Montreal: 1996).

<sup>269</sup> Burke's opposition to a place-bill is also discussed by David Bromwich. See Bromwich, *The Intellectual Life of Edmund Burke*, 171-172.

<sup>270</sup> Burke, *Thoughts*, 311.

<sup>271</sup> Ibid.

<sup>272</sup> Ibid.

<sup>273</sup> Ibid.

or “underhand and oblique” support, which the government might give to members if open forms of influence were excluded.<sup>274</sup> Moreover, Burke accepted that a large administrative state was a permanent feature of English politics. “A great official, a great professional, a great military and naval interest, all necessarily comprehending many people of the first weight, ability, wealth, and spirit, has been gradually formed in the kingdom. These new interests must be let into a share of representation.”<sup>275</sup> Burke’s intention was to return the support offered by all these offices to ministers within Parliament. Their patronage was compatible with liberty, since they were responsible to Parliament in a way the Court was. It was possible for Parliament, and if necessary the people, to monitor and control ministers, but not a secret Court conspiracy.

In a further contrast with Bolingbroke, Burke wanted ministry and opposition to be carried on by traditional parliamentary parties. When Burke was writing *Thoughts*, there was the real possibility that a coalition without any partisan basis (the sort advocated by Bolingbroke) would be formed between Temple, Grenville and Pitt—the last of whom was the most prominent supporter of *patriotism* during Burke’s early tenure in parliament.<sup>276</sup> Burke’s political aim was the exact opposite: an administration clearly led by Rockingham, and dominated by his supporters, which would be able to command support from both the House of Commons and the monarch. Burke was not inherently opposed to coalition governments—and he himself would

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<sup>274</sup> Ibid., 310

<sup>275</sup> Ibid., 310, 311.

<sup>276</sup> The pamphlet *Seasonable Hints from an Honest Man* (1761), which Burke attacks in *Thoughts* for suggesting a patriot king and ministry, is a pro-Pitt pamphlet. See John Douglas, *Seasonable hints from an honest man on the present important crisis of a new reign and new Parliament*, (London: 1761). For a scholarly discussion of Pitt’s rhetoric of patriotism see Brewer, *Party Ideology and Popular Politics at the Accession of George III*, 96-112.

briefly serve in one in 1783—but they were clearly inferior, in his mind, to a cabinet in which one party predominated.<sup>277</sup>

Although Burke’s goal was a stable ministry, led by a single party, that unified together legislative and executive functions, and made use of patronage, he also insisted that Parliament’s central role was to make it exceedingly difficult for this kind of power to be held. As Burke explained in a letter to his friend Charles O’Hara, there should be “required art, address, and influence” by leaders of parliament “to secure a Majority.”<sup>278</sup> This goal should not come easily. Nor had it, Burke claimed in that same letter, before George III. The foremost duty of parliament, in Burke’s mind, was to be “inquisitive” of ministers.<sup>279</sup> Members of Parliament were to only support administrations that were worthy of their support. Among the greatest possible virtues of a member of Parliament was perpetual suspicion towards those in power. Insofar as Burke had a response to patronage being exercised in a corrupt manner *by ministers* (as opposed to by a secret court conspiracy) in the late 1760s, it was in the exercise of this same control by “an inquisitive and distinguishing Parliament”—which exposed corrupt deals and appointments.<sup>280</sup> “In such a Parliament,” Burke argued, if ministers “act ill, they know that no intrigue can protect them.”<sup>281</sup> Later in this chapter, I will show that Burke made especial use of argument in justifying his proposed reform of the East India Company.

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<sup>277</sup> Ibid., 212

<sup>278</sup> Edmund Burke, “Letter to Charles O’Hara” (September 30, 1772), *Correspondence*, vol. 2, 336

<sup>279</sup> Burke, *Thoughts*, 313

<sup>280</sup> Ibid.

<sup>281</sup> Ibid

In *Thoughts on the Cause of the Present Discontents*—and here, by contrast, largely in line with Bolingbroke—Burke argued that the role of monitoring and checking ministers was one which ultimately involved the public at large, as well as Parliament. When a king has made a serious mistake in his choice of ministers, and Parliament has shown itself unwilling to force them out, “the people must on their part show themselves sensible of their own value. Their whole importance, in the first instance, and afterwards their whole freedom, is at stake.”<sup>282</sup> When Parliament failed to effectively serve as a control on those in power, “the natural strength of the kingdom...must interpose, to rescue their Prince, themselves, and their posterity.”<sup>283</sup> Burke acknowledged that “this interposition is a most unpleasant remedy.”<sup>284</sup> But if Parliament failed to properly “enquire and distinguish” the individuals who exercised ministerial office, who else but the people at large were left to take up that great task?<sup>285</sup>

Burke interpreted the mounting public anger in the late 1760s as evidence that the British people was attempting to act as such a control. In February of 1768, a year before the expulsion of Wilkes, Burke was already issuing dire warnings about popular uprising:

The long Patience, amounting almost to Tameness, with which the People of England have borne the Outrages of evil Ministers, has only been equalled by the irresistible Force by which they attacked, and the unrelenting Severity with which they finally punished the authors of their great Grievances. I wish with all my Heart that our Time may furnish no such Examples: and yet I confess my Fears are excited by Appearances that are sufficiently alarming. The People of England have seen an Administration formed, almost avowedly, under the Direction of a dangerous, because private and unresponsible, influence.<sup>286</sup>

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<sup>282</sup> Ibid., 282

<sup>283</sup> Ibid.

<sup>284</sup> Ibid., 311

<sup>285</sup> Ibid., 313

<sup>286</sup> Edmund Burke, “Mnemon to the Public Advertiser,” *WAS*, vol. 2, 77



The public, Burke argued before the House of Commons, “see that there is a dark, secret, influence which deranges, and makes perpetual changes in Administration, disabling them from doing any good, but not from doing anything bad: and that this House takes no note of it.”<sup>287</sup>

Following Wilke’s expulsion, Burke compared the present political moment to the English Civil War.<sup>288</sup> It was the role of the House of Commons to prevent the coming violent confrontation between people and government, by effectively acting as the people’s control upon the government. If the people see that Parliament is unwilling to fulfill this great trust, then popular uprising threatens.

### Burke’s Shifts on Patronage

In many respects, Burke would hold onto the conception of parliamentary politics laid out in *Thoughts on the Cause of the Present Discontents* for the rest of his political career. He would continue to actively defend the practice of ministerial responsibility—that “no ministry” should “exist in this country without the confidence of the House of Commons”—well into the 1780s.<sup>289</sup> I will show later in this chapter how in response to the French Revolution, Burke reiterated his strong opinion that ministers ought to be able to serve in the legislature. Yet Burke’s view of parliamentary government did evolve in important ways after *Thoughts*. Over

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<sup>287</sup> Burke, “Speech on London Remonstrance,” 240.

<sup>288</sup> Burke, *Thoughts*, 286

<sup>289</sup> Edmund Burke, “Debate on York Petition for a Reform in the Representation,” in *The Parliamentary History of England*, vol. 24, (London: 1815), 348-349

the course of the 1770s, Burke shifted with respect to two of his positions in the pamphlet. First, Burke came to actively support legislation that would lessen the extent of patronage. Second, Burke moderated his previously strong confidence that the public would intervene as a last control against a corrupt government.

What happened in 1770 was that Lord North took power. For the next thirteen years he would hold the reins of Parliament. Burke is joined by modern historians in pointing to substantial confusion and internal division within North's administration.<sup>290</sup> Still, when compared to the governments of Grafton, Chatham, Rockingham and Greenville—all of which attempted to govern during the 1760's—North's administration was remarkably durable. The role of the House of Commons, in Burke's mind, was to ensure that only a worthy ministry stayed in office. And yet, from Burke's perspective, North's government was the least worthy imaginable. North had brought England into an unnecessary war first with its colonies, then with France, and finally with Spain. He had so badly mismanaged these wars that England had nearly been invaded for the first time since the Spanish Armada. Catastrophic military defeats were suffered by British forces in America, and there was a near-revolution in Ireland.<sup>291</sup> Yet still, North remained in office. As Burke angrily declared to the House of Commons in 1779, "you see the same men, in the same power, sitting undisturbed before you, though thirteen colonies have been lost."<sup>292</sup> The longest serving prime minister since Walpole, North would not step down until 1782.

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<sup>290</sup> See for instance Herbert Butterfield, *George III, Lord North and the People: 1779-80*, (London: 1949), 20-25, 117-138; as well as Baranger, *Parlementarisme des origines*, 92.

<sup>291</sup> Burke summarizes the litany of North's failures and mistakes in the articles of impeachment against North which Burke drafted in 1779—though which were never brought forward. See Edmund Burke, "Articles of Impeachment," *WAS*, vol. 3, 454-463.

Burke's nightmare had occurred. A ministry which did not in any way deserve the assent of Parliament was able to nonetheless maintain a secure grip on power. Burke was convinced that this was occurring in large part because of patronage. North was able to survive in office because he was backed by "a determined...and considerable majority in both houses in favour of the Court Scheme."<sup>293</sup> Executive and legislative functions had not been unified through the deliberative judgment of members of Parliament, but through what Burke called "private interest and Court cabal."<sup>294</sup> Yet North's administration also deeply complicated the argument of *Thoughts on the Present Discontents*. For Parliament had been corrupted into submission not through the court acting behind the ministry's backs, but rather through the ministry itself. Burke did initially believe that North too was being manipulated and undermined by the Crown; but over the course of the 1770s, the shadow-cabinet scheme became an increasingly less plausible explanation of events.<sup>295</sup>

Despite the disastrous policies of the North Administration, and despite Parliament's clear failure to properly monitor and contest the men who were holding ministerial offices, for nearly the whole of North's first decade in power, the British people did not rise up in anger, as Burke had predicted they would. Instead, to Burke's shock and amazement, the British people actively supported the war with America. In his *Letter to the Sheriff's at Bristol*, Burke painted a dark landscape of public opinion, in which any attempt to question the war was branded as treason.<sup>296</sup> The British public, according to Burke, had been swept away by "that blindness of

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<sup>292</sup> Edmund Burke, "Speech on Public Expenses," *WAS*, vol. 3, 472

<sup>293</sup> Edmund Burke, "Letter to Charles O'Hara" (April 2, 1771), *Correspondence*, vol. 2, 207.

<sup>294</sup> Burke, "Letter to Charles O'Hara" (September 30, 1772), 336

<sup>295</sup> For one of Burke's final attempts to account for the North's administration in terms of his categories from the 1760s see Edmund Burke, "Letter to Charles O'Hara" (May 22, 1773), *Correspondence*, vol. 2, 435.

heart which arises from the frenzy of civil contention.”<sup>297</sup> “All men who wished for peace, or retained any sentiments of moderation, were overborne or silenced.”<sup>298</sup> Worst of all, for Burke, “the designs of the Court coincide exactly with the frenzy of the people.”<sup>299</sup>

When it became clear that a quick and decisive victory in America had slipped out of Britain’s grasp, the war became less popular. But Burke found the British people’s passivity, and their unwillingness to confront the North government after the truth about the war with America was obvious, no less stunning than their earlier fervor. Burke feared that this acquiescence signaled a real change in England’s political character:

As to the good people of England, they seem to partake every day more and more of the character of that administration which they have been induced to tolerate. I am satisfied, that within a few years there has been a great change in the national character. We seem no longer the eager, inquisitive, jealous, fiery people, which we have been formerly, and which we have been, a very short time ago.<sup>300</sup>

“No man commends the measures which have been pursued,” or trusted North to find a successful way out of the struggle with America.<sup>301</sup> But Burke lamented that this judgment “excites to no passion; it prompts to no action.”<sup>302</sup>

As the British people fell into “a sort of heavy lumpish acquiescence” to North’s administration, Burke lost nearly all of his earlier confidence that they could be trusted to intervene against a nefarious or corrupt ministry when Parliament failed in that task.<sup>303</sup> To rise to

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<sup>296</sup> Burke, “Letter to the Sheriffs at Bristol,” 298, 300, 305, 329-330.

<sup>297</sup> *Ibid.*, 300

<sup>298</sup> *Ibid.*, 628-630

<sup>299</sup> Edmund Burke, “Letter to William Dowdeswell” (November 6/7, 1772), *Correspondence*, vol. 2, 365

<sup>300</sup> Edmund Burke, “Letter to Lord Rockingham” (August 22-23, 1775), *Correspondence*, vol. 3, 190

<sup>301</sup> *Ibid.*

<sup>302</sup> *Ibid.*

<sup>303</sup> Edmund Burke, “Letter to Charles Fox” (October 8, 1777), *Correspondence*, vol. 3, 382

ministerial office, Burke wrote to Rockingham, their party had “but two instruments to work with, the Crown and the people. The first the principal cause of our situation, the latter the slave of it. Depend upon it, the people of England are not what they were. They have few opinions of their own, and in those they are nothing like steady and resolved.”<sup>304</sup> The fact that Burke lost his parliamentary seat at Bristol in 1780, while North would hang on for several more years, was not merely a personal disappointment. It was a further sign that popular judgment was failing everywhere.

Burke’s faith in the people was to some degree reignited by the popular movement against North that was led by Christopher Wyville during 1779, and in which the Rockingham Whigs actively participated. But by 1784, Burke was again in despair. His attempt to reform the East India Company had been defeated (at the king’s instigation) in the House of Lords. Rather than find public support against the king’s interference, Burke’s coalition was instead massively defeated in the subsequent election. “I consider the House of Commons as something worse than extinguished,” Burke wrote in a letter to William Baker following the defeat:

The people did not like our work; and they joined the Court to pull it down...It is rather difficult to form a judgment of a whole people. But at present the picture of the English nation does not appear to me in a very favorable light...they are so fond of aggrandizing the Crown, and of humbling everything which does not derive its importance directly from that source, that they are totally indifferent to the consequences.<sup>305</sup>

Burke never abandoned the fundamental aim articulated in *Thoughts*. This was a Whig administration led by Rockingham—or after Rockingham’s death, by Charles Fox. But in several respects, Burke drifted closer to Bolingbroke during the 1770s. This is evinced by his repeated

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<sup>304</sup> Edmund Burke, “Letter to William Baker” (November 9, 1777), *Correspondence*, vol. 3, 401

<sup>305</sup> Edmund Burke, “Letter to William Baker” (June 22, 1784), in *Correspondence of Edmund Burke*, vol. 5, ed. Holden Furber, (Cambridge UK: 1965), 154-155.

claims throughout that whole decade that the British people had lost all their public spirit and virtue—remarks which also foreshadow Tocqueville’s similar despair about the French people during the 1840s. Like both Tocqueville and Bolingbroke, Burke blamed this loss of public spirit in large part on government patronage. According to Burke, “formerly the operation of the influence of the Crown only touched the highest orders of the State. It has now insinuated itself into every creek and cranny in the kingdom. There is scarcely a family...which does not feel that it has something to keep or to get, to hope or to fear, from the favor or displeasure of the Crown”<sup>306</sup> It was “to this cause,” Burke declared to Parliament, that “I attribute that nearly general indifference to all public interests...for some years.”<sup>307</sup>

Burke’s move in the direction of Bolingbroke’s position is further indicated by his shift towards favoring a major legislative reform to diminish patronage. Earlier in this chapter, I noted that Burke decisively rejected the idea of a place-bill in 1770. Despite his concern about corruption, he had argued that it would be dangerous and counterproductive to try to keep administrative officers out of Parliament. Burke’s main concern then had been with *who* was exercising patronage: was it flowing through ministers who were accountable to Parliament, or was the Court *unaccountably* exercising patronage behind ministers’ backs? Burke was broadly satisfied so long as it was the former. The North administration led Burke to oppose patronage in a much more general manner. While Burke never supported a place-bill, in 1780 he was the main instigator for a sweeping measure of economic reform that would have tended towards the same end. Rather than prohibit administrative officers from sitting in Parliament, Burke’s bill sought to eliminate excessive administrative positions that were being used to corrupt Parliament.

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<sup>306</sup> Burke, “Speech on Public Expenses,” 471

<sup>307</sup> Ibid.

Burke claimed that his economic reform bill would “cut off a quantity of influence equal to the places of fifty members of Parliament.”<sup>308</sup> His justification was that such a reform would prevent ministers in power from being able to support their position entirely through patronage. “Government ought to have force enough for its functions; but it ought to have no more. It ought not to have force enough to support itself in the neglect or abuse of” those functions.<sup>309</sup> Ministers should not be able to “throw themselves on their power for a justification” when they lacked “all the virtues, and all the qualifications of a statesman.”<sup>310</sup> A major diminishment in patronage was necessary so that ministers could no longer circumvent control by Parliament.

In 1780, Burke was therefore willing to contemplate a legislative solution to the problem of patronage that would expressly target ministers as well as the Crown. In drafting such a bill, Burke was implicitly walking back on his earlier confidence in Parliament. The length of the North administration had shown that the House of Commons could not be trusted as a safeguard against corrupt and incompetent ministries. Nor could the people be trusted in this task. Yet it shows how uncertain Burke was in taking this more radical approach that a mere four years later he would again revert to the argument he had laid out in *Thoughts on the Cause of the Present Discontents*: that no other limitation on corrupt ministerial patronage was needed beyond the control of Parliament. The occasion on which Burke made this argument was his great effort to reform British rule in India. The East India reform bill that was drafted by Burke and Fox

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<sup>308</sup> Ibid., 474. For Burke’s explanation of his economical reform plan see Edmund Burke, “Speech on Economical Reform,” *WAS*, vol. 3, 481-551. For a rich discussion of this speech see Bromwich, *The Intellectual Life of Edmund Burke*, 351-368.

<sup>308</sup> Burke, “Speech on Public Expenses,” 474

<sup>309</sup> Ibid.,” 472

<sup>310</sup> Ibid.

proposed to place the East India Company entirely under the control of two commissions appointed by Parliament. One of the two commissions was simply political, but the other commission was economic, and would have appointed all the officers of the company. Burke strenuously supported the bill, even though a tremendous new field for political patronage was potentially being opened up. There was nothing that would have prevented ministers leading Parliament from appointing their political supporters (both in and out of the legislature) to the most lucrative positions in the East India Company.

Burke believed that even this would have been a price worth paying if it meant reforming British rule in India. But he additionally argued—even more openly than he had in *Thoughts*—that it was entirely appropriate for a minister to appoint “friends” and “persons of his own party” to administrative positions. As long as this was done in public and not “clandestine,” and as long as Parliament as a whole was able to hold the ministry accountable for its appointments, there was no cause for complaint.<sup>311</sup> If a minister “proposes for his own ends” that an individual be placed in administrative offices who is defective with respect to “rank, fortune, character, ability, or knowledge,” Burke reminded the House, “he is in an independent House of Commons; in a House of Commons which has, by its own virtue, destroyed the instruments of parliamentary subservience.”<sup>312</sup> The House of Commons “would not endure” such corruption Burke argued.<sup>313</sup> And the minister “would perish by the means which he is supposed to pursue for the security of his power.”<sup>314</sup> Burke was again confident that if patronage flowed through the hands of ministers

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<sup>311</sup> Edmund Burke, “Fox’s India Bill,” in *Writings and Speeches*, vol. 5, ed. P.J. Marshall, (Oxford: 1981), 445

<sup>312</sup> *Ibid.*

<sup>313</sup> *Ibid.*

<sup>314</sup> *Ibid.*



who were accountable to Parliament, patronage would not pose a radical danger to parliamentary life.

### Burke and the French National Assembly

The House of Commons was not the only elected legislative body that Burke wrote about at length. In May of 1789, the Estates-General of France convened for the first time since the early seventeenth century. Within a month, its delegates had reconfigured themselves into a single, unified *National Assembly*. Over the next two years, and led by such illustrious figures as Emmanuel Sieyès, the Marquis de Lafayette, and the Comte de Mirabeau, the National Assembly would attempt to rewrite from scratch the fundamental laws of France.

Edmund Burke's *Reflections on the Revolution in France* is perhaps the most famous and influential account of the actions of the National Assembly that has ever been written. Yet scholars of Burke have usually overlooked the crucial fact that *Reflections* was a pamphlet written in large part about the actions of an elected assembly. It is not an exaggeration to say that the National Assembly constitutes the red-thread running through Burke's whole account of the French Revolution. The very first time that Burke even discusses events in France in the pamphlet, it is to analyze the National Assembly's particular membership and social makeup.<sup>315</sup> Burke's account of the Revolution itself is almost entirely centered on two particular decisions made by the National Assembly: the Assembly's choice to move with the Royal Family from

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<sup>315</sup> Burke, *Reflections*, 91.

Versailles to Paris; and its decision to confiscate Church land in order to pay off France's debt.

Burke concludes the pamphlet by analyzing the Assembly's great project, the constitutional laws it was writing which would go into effect in 1791.

Burke was adamant that the members of the Assembly had completely surrendered all of their formal legitimacy the moment the Estates-General was disbanded. "I can never consider this Assembly as anything else than a voluntary association of men who have availed themselves of circumstances to seize upon the power of the state," Burke declared.<sup>316</sup> "They have not the sanction and authority of the character under which they first met," having "completely altered and inverted all the relations in which they originally stood."<sup>317</sup> But Burke's argument against the National Assembly extended to more than just its illegitimacy. The National Assembly failed according to the supreme test by which he had so long measured parliament: it failed at being a *deliberative* body. The National Assembly was not "possessed of any real deliberative capacity," Burke wrote in an early letter concerning events in France.<sup>318</sup> It paid no homage whatsoever to "prudence, deliberation, and foresight," he argued in *Reflections*.<sup>319</sup> With the Parisian populace standing in the galleys, "the Assembly...acts before them the farce of deliberation with as little decency as liberty."<sup>320</sup> There is "a compelled appearance of deliberation," but not the actuality, since the members all "vote under the domination of a stern necessity."<sup>321</sup> "Who is it that

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<sup>316</sup> Ibid., 213

<sup>317</sup> Ibid.

<sup>318</sup> Edmund Burke, "Letter to William Wyndham" (September 15, 1789), in *Correspondence of Edmund Burke*, vol. 6, ed. Alfred Cobban and Robert Smith, (Cambridge UK: 1967), 25.

<sup>319</sup> Burke, *Reflections*, 216

<sup>320</sup> Ibid., 119

<sup>321</sup> Ibid., 118

admires, and from the heart is attached to national representative assemblies,” Burke wrote, “must turn with horror and disgust from such a[n]... abominable perversion of that sacred institute.”<sup>322</sup> Burke further argued that the constitution being written by National Assembly, the eventual constitution of 1791, would contain a legislative body no different than it was. It would also be “a body without fundamental laws, without established maxims, without respected rules of proceeding, which nothing can keep firm to any system whatsoever.”<sup>323</sup> “The future is to be in most respects like the present assembly.”<sup>324</sup>

Burke described the French Revolution as an unprecedented event—“the most astonishing that has hitherto happened in the world.”<sup>325</sup> He depicted its egalitarian ideology, embodied in the Declaration of the Rights of Man and Citizen, as a willful, even satanic revolt against both nature and history. But when we focus on the crucial fact that *Reflections on the Revolution in France* is a pamphlet about a *legislative* body, important continuities emerge with Burke’s earlier political career. To begin with, the very same question about the relationship between ministers and the legislature that so consumed Burke in *Thoughts on the Cause of the Present Discontents*, strikingly reappeared in France after 1789. As I noted at the beginning of this chapter, the National Assembly voted to prohibit its members from serving as the king’s ministers. The constitution for France that the National Assembly was writing, which went into effect in 1791, also contained a strict prohibition against the ministers of France sitting in the legislature.

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<sup>322</sup> Ibid., 119.

<sup>323</sup> Ibid., 245

<sup>324</sup> Ibid.

<sup>325</sup> Ibid., 60.

At the end of *Reflections*, Burke stridently attacked the Assembly's strict separation between legislative and executive officials, making several of the same exact arguments he had earlier made in *Thoughts*. The broader point of these passages was to show that the proposed French Constitution of 1791 contained a dangerously weak monarch. But although a number of scholars have perceptively discussed Burke's support for monarchical government, to my knowledge there exists no careful analysis of his particular discussion of it in *Reflections*.<sup>326</sup> Burke made two different kinds of criticisms about how the National Assembly had constituted the executive power. First, he noted specific prerogatives that the king of France has not been given.<sup>327</sup> Foremost among these was "the right of peace and war."<sup>328</sup> Second, and far more extensively, Burke criticized the National Assembly for failing to integrate the executive power into the broader constitutional fabric. With respect to the judicial power, "the higher parts of the judicature" would no longer be in the king.<sup>329</sup> "The king of France" was no longer "the fountain of justice."<sup>330</sup> But it is with respect to the future Legislative Assembly that Burke saw the failure of integration as most dangerous. "I see nothing in the executive force (I cannot call it authority)," Burke claimed, "that has the smallest degree of just correspondence or symmetry, or

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<sup>326</sup> For Burke's views on monarch see for instance James Conniff, *The Useful Cobbler: Edmund Burke and the Politics of Progress*, (Albany: 1994), 92-94; and Richard Bourke, "Edmund Burke and Enlightenment Sociability: Justice, Honour and the Principles of Government," *History of Political Thought*, vol. 21, no. 4, (2000), 632-656.

<sup>327</sup> This line of argument clearly reiterates Burke's fears about Pitt's Regency bill during George III's madness a year earlier, which Burke argued would give the Prince of Wales a truncated executive power. See Edmund Burke, "Debate in the Commons on the Regency Bill," in *The Parliamentary History of England*, vol. 27, (London: 1816), 1171-1177

<sup>328</sup> Burke, *Reflections*, 251.

<sup>329</sup> *Ibid.*, 246.

<sup>330</sup> *Ibid.*, 247.

even amicable relation, with the supreme power, as it now exists, or as it is planned for the future government.”<sup>331</sup> By the “supreme power,” of course, Burke meant the National Assembly.

The most important reason that the king would fail to have any “amicable relation” with the National Assembly was that his ministers were not participating in it. “The ministers of state in France are the only persons in that country who are incapable of a share in the national councils,” Burke thundered. “What ministers! What councils! What a nation!”<sup>332</sup> George III had not dared go so far, in Burke’s rendition, as to take his executive officers out of the legislature. But he (or rather his “Court”) had tried to accomplish this same end surreptitiously. There is a remarkable parallel between Burke’s attack on the National Assembly, and his attack on the George III’s “shadow cabinet” twenty years earlier. Similar to *Thoughts on the Present Discontents*, in *Reflections on the Revolution in France* Burke argues that depriving ministers of a role in the legislature would sap the government of “vigor,” and create a frightening disunity between the constitutional powers. “Your supreme government [ie. the National Assembly] cannot harmonize with its executory system,” Burke argued.<sup>333</sup>

The difference between the two pamphlets is that in 1770 Burke saw this kind of move as a threat to the legislature, while in 1790 he depicted it as a threat to the king. In Britain, Burke’s primary argument for ministers serving in the legislature was that it enabled Parliament to hold them accountable. In France, by contrast, he claimed that the absence of ministers in the legislature meant that ministers would be unable to regularly defend their actions—and therefore the actions of the king—from legislative assault. Incapable of regularly defending their decisions

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<sup>331</sup> Ibid., 250.

<sup>332</sup> Ibid., 249

<sup>333</sup> Ibid., 248

before the Assembly, Burke argued, ministers would quickly lose all authority. “Competitors of the ministers are enabled by your constitution to attack them in their vital parts, whilst they have not the means of repelling their charges.”<sup>334</sup> Burke in effect denied, therefore, that the king’s ministers would actually be independent of the legislature: though appointed entirely at the king’s discretion, they lived in perpetual terror of the National Assembly. “In their puzzled situations, under two sovereigns...they must act in such a manner as (in effect, whatever they may intend) sometimes to betray the one, sometimes the other, and always to betray themselves.”<sup>335</sup> While “in all other countries, the office of ministers of state is of the highest dignity,” Burke argued, “in France it is full of peril and incapable of glory.”<sup>336</sup> In his typically unmatched prose, Burke depicted the frightening situation of French ministers who were unable to participate in the National Assembly: “They are to execute, without power; they are to be responsible, without discretion; they are to deliberate, without choice.”<sup>337</sup>

Without his ministers being in the legislature, Burke lamented, the king would have no way of shaping the legislature’s decision: “not so much as...a single vote by himself or his ministers, or by any one whom he can possibly influence.”<sup>338</sup> If Burke’s despair over the never-ending reign of Lord North had led him closer to Bolingbroke’s view that the legislature had to be cleansed of patronage, one is tempted to see him here moving in the opposite direction towards Hume. Although Burke does not expressly endorse the use of patronage within

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<sup>334</sup> Ibid., 249

<sup>335</sup> Ibid., 252

<sup>336</sup> Ibid., 249

<sup>337</sup> Ibid., 252

<sup>338</sup> Ibid., 250

parliament, as Hume and his followers did, Burke's argument—which four years later would be expanded upon and reiterated by Jacques Necker—is that having ministers in the National Assembly could have served as an indispensable source of support for the French king. More broadly, Burke seems to suggest, a monarch needs to have some individuals whom “he can possibly influence” in the legislature, if he is not to be crushed by it.

Despite making opposite claims about how ministers tilt the balance of constitutional power in an Assembly, Burke's argument against the National Assembly is not entirely at odds with his earlier position in *Thoughts on the Cause of the Present Discontents*. Even in *Reflections*, Burke is careful to note that the king's ministers do not simply act as a blind extension of his own power and intentions. Nor must they always support his personal opinions. In a decently constituted state, Burke argues, a king may sometimes have to accept a minister whom he does not personally agree with. Strikingly, the example from Britain that Burke uses to illustrate this point is the exact same example he had used to illustrate it twenty years earlier: George II. “When George the Second took Mr. Pitt, who certainly was not agreeable to him, into his councils, he did nothing which could humble a wise sovereign.”<sup>339</sup>

The prohibition upon ministers participating in the Assembly was not the only mistake that the National Assembly made in constituting the legislative power. Burke was stunned that the National Assembly “have forgot to constitute a Senate,” and that France would thus have a unicameral legislature.<sup>340</sup> “Never before this time,” Burke wrote, “was a body politic composed of one legislative and active assembly” only.<sup>341</sup> A higher and more elevated “council” was

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<sup>339</sup> Ibid., 248

<sup>340</sup> Ibid., 245

<sup>341</sup> Ibid.

needed to bring stability and consistency to government. It was “something to which, in the ordinary detail of government, the people could look up; something which might give a bias and steadiness, and preserve something like consistency in the proceedings of state.”<sup>342</sup> Burke also attacked the Constitution of 1791’s system of indirect election. Despite the French Revolution’s egalitarian ideology, Burke noted, “the member who goes to the...assembly is not chosen by the people, nor accountable to them. There are three elections before he is chosen: two sets of magistracy intervene between him and the primary assembly.”<sup>343</sup> As a result, “there is little, or rather no, connection between the last representative and the first constituent.”<sup>344</sup> Finally, Burke attacked the strict term limits on representatives serving in the Assembly, which meant that “just as these magistrates begin to learn their trade...they are disqualified for exercising it.”<sup>345</sup>

In an important continuity with his previous writings on parliament in England, Burke predicted an explosion of patronage with the French legislative assemblies. Pointing his finger at the ambitious lawyers and financiers who made up the majority of the National Assembly in 1789, Burke warned that these members “must *join* (if their capacity did not permit them to *lead*) in any project... which could lay open to them those innumerable lucrative jobs which follow in the train of all great convulsions and revolutions.”<sup>346</sup> In a pamphlet written the year after *Reflections*, Burke would make this accusation even more dramatically. The “National Assembly,” Burke argues, “holds out the highest object of ambition to vast multitudes as, in an

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<sup>342</sup> Ibid.

<sup>343</sup> Ibid., 235

<sup>344</sup> Ibid.

<sup>345</sup> Ibid., 236

<sup>346</sup> Ibid., 94



unexampled measure, to widen the bottom of new species of interest merely political, and wholly unconnected with birth or property.”<sup>347</sup> The Assembly would be particularly prone to such patronage, Burke argued, due to its social composition. It was made up of third-rate lawyers and clerics, impoverished traders, and “dealers in stocks and funds.” Attaining administrative office would be an unprecedented improvement in the lives of most of its members:

Whilst they sit in the Assembly they are denied offices of trust and profit—but their short duration makes this no restraint—during their probation and apprenticeship they are salaried with an income to the greatest part of them immense; and after they have passed the novitiate, those who take any sort of lead are placed in very lucrative offices, according to their influence and credit, or appoint those who divide their profits..<sup>348</sup>

The crucial difference between patronage in Britain and France, in Burke’s depiction, was that the offices and economic opportunities in France were scattered throughout dozens of regional and municipal governments, rather than held by the Crown. In France, unlike in England, the logic of private interest and government office within the legislature had become completely separated from the power of the king. The effect of patronage would not be a legislature subjugated to the Crown, but instead a legislature subjected by a whole panoply of bourgeois interests scattered throughout the entire nation. “France will be wholly governed by the agitators in corporations, by societies in the towns formed of directors of assignats and trustees...attorneys, agents, money-jobbers, speculators, and adventurers.”<sup>349</sup>

Burke’s most important evidence of the Assembly’s subservience to financial interests was its decision to confiscate church property to pay down the national debt. Based on the rhetoric of the National Assembly, Burke argued, the debt should have simply been wiped away. All the treaties made under the Bourbon monarchy were voided because the monarchy

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<sup>347</sup> Edmund Burke, *Thoughts on French Affairs*, WAS, vol. 8, 365

<sup>348</sup> *Ibid.*, 366

<sup>349</sup> Burke, *Reflections*, 242

illegitimate.<sup>350</sup> There was no reason that the national debt from the old regime, a similar series of binding legal engagements, should not have also been declared void. Nor given its ideology, Burke argued, should the Assembly have batted an eye over the blow that would have dealt financial speculators.<sup>351</sup> The fact that the debt from the old regime was not only maintained, but that ten percent of the land in France was confiscated to pay it, indicated a great deal, to Burke, about where power actually lay at that moment in France. This confiscation was surely driven, Burke argued, by the “moneyed interest” of the nation.<sup>352</sup> Burke’s case that the financial elite was the moving force behind the decision to confiscate property was further confirmed by the manner in which the Assembly planned to go about auctioning off the church-lands: the extensive period allowed to buyers to pay for the lands meant that most of the lands would be bought on speculation.<sup>353</sup> In short, the confiscation of church land not only unnecessarily rescued the financial class in France; they would be the greatest beneficiaries of it.<sup>354</sup>

But if the confiscation of Church land revealed the power of France’s financial interests, Burke argued, the Assembly’s decision to move to Paris with the Royal Family revealed its deep political dependence on the masses of the people.<sup>355</sup> Burke predicted that the newly energized French populace would be enraged by the corrupt pursuit of “private interests” within the National Assembly, and would turn their anger against it. “When the National Assembly has

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<sup>350</sup> Ibid., 157.

<sup>351</sup> Ibid., 158

<sup>352</sup> Ibid., 158-162

<sup>353</sup> Ibid., 170-174.

<sup>354</sup> Burke also found evidence of the power of financial interests in the Constitution of 1791 itself, which assured greater power to cities and towns, as opposed to the countryside. See *ibid.*, 221-242.

<sup>355</sup> Ibid., 118

completed its work, it will have accomplished its ruin,” since the revolting masses and popular clubs would turn their anger against the Assembly itself.<sup>356</sup> It is a testament to the continuity in Burke’s thinking about the legislature over the course of his political career that *Reflections on the Revolution in France* concludes with exactly the same nightmare scenario as *Thoughts on the Cause of the Present Discontents* had: a violent uprising by the people against their government, as they come to realize that their legislature has been lost to them through force of corruption. Burke had been incorrect when he made this prediction about Britain in 1770. With respect to France, by contrast, he would come to be revered as prophetic.

### Burke’s Liberal Legacies

The important role that was being played by the National Assembly in *Reflections on the Revolution in France* was immediately perceived by Burke’s opponents. James Mackintosh devoted the second of five chapters of *Vindiciae Gallicae* to defending “the Composition and Character of the National Assembly” against Burke. Even though he believed “the character of the National Assembly is of secondary importance,” Mackintosh felt compelled to defend it, “as Mr. Burke has expended so much invective against that body.”<sup>357</sup> Thomas Paine also felt forced to give a contrasting account of “the happy situation the National Assembly were placed in.”<sup>358</sup> Both Mary Wollstonecraft and Burke’s hesitantly oppositional friend Phillip Francis thought that

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<sup>356</sup> Ibid., 268-272

<sup>357</sup> James Mackintosh, *Vindiciae Gallicae*, ed. Donald Winch, (Indianapolis: 2006), 57-58

<sup>358</sup> Thomas Paine, *The Rights of Man*, in *Political Writings*, ed. Bruce Kuklick, (Cambridge UK: 2000), 107

Burke's argument in *Reflections* was self-contradictory. How could the National Assembly be at once so powerful, and so independent of all control, yet also completely subservient to the people of Paris?<sup>359</sup>

It is in fact difficult to be persuaded by Burke's attack on the composition and corruption of the National Assembly. Because Burke was unwilling to perceive any meaningfully important differences between the competing ideological alternatives within the Assembly, all he could see was a corrupt mob lusting after profit, office, and power. But Burke's argument that the Assembly had failed to properly constitute the executive's involvement in legislature was more persuasive. In *Vindiciae Gallicae*, Mackintosh (who would later emerge as an important theorist of parliamentary government in his own right) acknowledged that the National Assembly should have allowed ministers to sit in the legislature.<sup>360</sup> This part of Burke's argument would also be quickly confirmed by historical events. The constitution which was written by the Assembly would collapse less than a year after it went into effect in 1791, following severe conflicts between the Louis XVI and the Legislative Assembly.

One such set of conflicts was over the king's use of the veto. In a pamphlet written a year after *Reflections*, shortly before the French constitution went into operation, Burke described the veto given to Louis XVI not as a useful check against the legislature, but rather as a "mischievous" and "dreadful prerogative" which it would be "impossible for the king to show even the desire of exerting" without putting his life at risk.<sup>361</sup> Burke's judgment would be

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<sup>359</sup> Mary Wollstonecraft, *Vindication of the Rights of Men and A Vindication of the Rights of Women*, ed. Sylvana Tomaselli, (Cambridge UK: 1995), 63; and Phillip Francis, "Letter to Edmund Burke"(November 3/4, 1790), *Correspondence*, vol. 6, 154

<sup>360</sup> Mackintosh, *Vindiciae Gallicae*, 118.

quickly confirmed. The Legislative Assembly opened on October 1<sup>st</sup>, 1791, and within two months Louis XVI had already vetoed two different bills. The first threatened France's *emigres* with death and confiscation; the second required priests who had not sworn an oath to the new constitution to do so within eight days. That May, Louis XVI vetoed yet another measure targeting the non-juring priests. He also vetoed a bill to gather the new National Guard in Paris, but in this case the king's veto was flatly ignored.

Meanwhile, another set of conflicts between the king and the legislative assembly was breaking out over the king's appointment of ministers. In March of 1792, the king dismissed his hawkish minister of war, the Comte de Narbonne. The Assembly responded first with a vote of confidence in Narbonne's favor, and then with the impeachment and criminal indictment of the king's minister of foreign affairs, Claude Delessart. By the middle of March, the king had acceded to the Assembly and accepted a ministry acceptable to Jacobins and Girondins who made up its majority—only to dismiss that ministry two months later. With tension at a fever pitch, on August 9 1792, Jérôme Pétion proposed a motion to the Legislative Assembly calling for the king to be removed. The motion was rejected, leading the *sections* of Paris and the members of the National Guard who had massed there to rise up in arms. The next day, the Legislative Assembly reversed its position, and voted for Louis XVI to be suspended and jailed. Another Constitutional Convention was called to create a republic, leading soon to the Terror.<sup>362</sup>

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<sup>361</sup> Burke, *Thoughts on French Affairs*, 378. In *Reflections*, Burke seems to have mistakenly believed that the king had lost his veto permanently (Burke, *Reflections*, 247). Burke was not quite as opposed to the veto, however, as future liberals would be. He referenced it as a part of the monarch's participation in the legislative process in Britain. See Burke, *Thoughts*, 279.

<sup>362</sup> For scholarly treatments of the dramatic events in France during the course of 1791 and 1792 (discussed in the previous two paragraphs) see Francois Furet, *Revolutionary France 1770-1880*, tr. Antonia Nevill, (Malden MA: 1995), 101-116; Michel Vovelle, *The Fall of the French Monarchy: 1787-1792*, tr. Susan Burke, (Cambridge UK: 1984), 210-232; and C.J. Mitchell, *The French Legislative Assembly of 1791*, (Leiden: 1988), 103-220. For an attempt to use intellectual history to account for the events of this period see Michael Sonenscher, *Sans-Culottes: An Eighteenth-Century Emblem in the French Revolution*, (Princeton: 2008), 283-361.

The framework of the Constitution of 1791 was, of course, only one factor in this dramatic series of events. But as I will show in future chapters, for a stunning number of nineteenth-century thinkers reflecting on the Revolution, it would feature as one of the most important factors. It was in large part because of the collapse of the Constitution of 1791 that the nineteenth-century European ideology known as *liberalism* would come to be inescapably defined by the commitment to parliamentary government: a regime in which ministers sat in the legislature as representatives. And a great many of these nineteenth-century liberals would derive their understanding of parliamentary government from Edmund Burke.

But along with showing Burke's consistent support for ministers sitting in the legislature, this chapter has also focused on the shifts and ambiguities in how Burke understood the role of ministers. As a result of those shifts and ambiguities, several quite different liberal theories of parliamentary government can all be traced back to Burke. Whigs in England like Henry Brougham and James Mackintosh (after his conversion from radicalism) would influentially reiterate Burke's argument from *Thoughts on the Present Discontents* that having the king's ministers sit in Parliament was necessary so that Parliament could effectively moderate and surveil the exercise of executive power. Like Burke, they argued that patronage specifically emanating from the Crown threatened to undermine Parliament, so that it could not carry out this function. In France, Duvergier du Hauranne would also appeal to *Thoughts* in order to attack royal patronage, and to condemn a monarch who was excessively involved in shaping the actions of the legislature. On the other hand, during the 1790s, Jacques Necker reiterated, and expanded upon Burke's argument from *Reflections on the Revolution in France* that a crucial mistake had been made in not allowing the king's ministers to sit in the National or Legislative Assembly. Like Burke, Necker argued that this would have potentially given the king the means to contain

and moderate the actions of those legislative bodies. Although Necker's argument appears to be the inverse of Hauranne or Brougham's, it is equally present in Burke's writings.

Burke himself would likely attribute the shifts I have identified in this chapter to changes in circumstances. For Burke, the relationships between different constitutional roles and powers was always a matter of contingent judgment. As he declared in 1783 during the debate over the reform of the East India Company: "if I am not able to correct a system of oppression and tyranny...but by some increase to the influence of the Crown, I am ready here to declare, that I, who have been active to reduce it, shall be at least as active and strenuous to restore it again."<sup>363</sup> Burke went on, "I am no lover of names; I contend for the substance of good and protecting government, let it come from whatever quarter it will."<sup>364</sup> Prudence, for Burke, was the highest political virtue, "the God of this lower world," and prudence was defined by political actors conforming their decisions to particular circumstances.<sup>365</sup>

Indeed the greater puzzle may be why, across so many different contexts, Burke remained so strongly convinced that ministers ought to sit in the legislature. The answer, which seems to be most powerfully articulated in *Thoughts on the Cause of the Present Discontents*, was that this general constitutional practice could be an indispensable support for the exercise of prudence. Forcing Parliament to continually deliberate over the actions of an administration, as well as over legislation, elevated Parliament into a higher kind of deliberative body, one which debated the merits of particular decisions and individuals, and not only general maxims and principles. The great advantage that parliamentary government brought to political deliberation

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<sup>363</sup> Burke, "Fox's India Bill," 442.

<sup>364</sup> Ibid.

<sup>365</sup> Burke, *Letter to the Sheriffs at Bristol*, 316.

would have held true, in Burke's eyes, whether or not ministers in Parliament shifted the weight of constitutional power to the king, or away from him.



### **Chapter 3. The French Revolution and the Liberal Parliamentary Turn: Necker, Constant, and the Whigs of Edinburgh**

Edmund Burke was not unique in seeing the French Revolution as an instance of legislative usurpation. Over the course of the 1790s and early 1800s, a wide variety of political thinkers would ponder the organization of legislative power in modern states, in light of events in France. The dramatic actions taken by the National Assembly in 1789, by the Legislative Assembly in 1791 and 1792, and finally by the Convention forced observers of French politics to grapple with the same dilemma that Jean Louis De Lolme had so forcefully stated with respect to the House of Commons: if modern states must be governed by an elected legislative assembly in order to be preserve liberty, how to prevent the legislature itself from becoming a threat to liberty?

During the Revolutionary era, these questions were nearly omnipresent in French political thought. But the answers that thinkers tended to arrive at shifted markedly. In 1789, France enthusiastically put its trust in the strictest possible separation of powers as a way of containing the legislature. During the early months of the Revolution, ministers were prohibited from attending the meetings of the National Assembly. The Constitution of 1791 forbid members of the Legislative Assembly from serving in any executive positions. Yet by the beginning of the nineteenth-century, parliamentary institutions, defined by the presence of ministers in the legislature, had emerged as an influential alternative in French political thought. With the fall of Napoleon, authors as diverse as Benjamin Constant, Francois Guizot, Germaine de Staël, Chateaubriand, Royer-Collard, Simonde de Sismondi, and Joseph Fiévée all wrote in support of a parliamentary mode of government for France. As shocking as it would have sounded from the vantage point of 1789, political life in France throughout most of the nineteenth century was

acted out within parliamentary structures. Perhaps most striking of all, French *liberalism*, the nineteenth-century political tradition which self-consciously embraced the “early” French Revolution of 1789 as distinct from its later excesses, was defined by a commitment to parliamentary government—precisely the institutional arrangement which was thoroughly rejected in 1789.

This chapter aims to account for the parliamentary turn in French political thought during the 1790s and early 1800s. That turn, I will demonstrate, was based in the same argument that Edmund Burke had already expressed in *Reflections on the Revolution in France*: the argument that a parliamentary legislature would have been less likely to assault the monarchy and constitution. To support this interpretation, I will offer original readings of the two most influential advocates of parliamentary institutions during this period, Jacques Necker and Benjamin Constant. Necker and Constant both attributed the failure of the French Revolutionary constitutions to the fact that ministers were prohibited from serving in the legislature. I will show that each offered a powerful, if strikingly different argument for why a parliamentary legislature could be more reliably expected to not bring down the other constitutional powers.

In order to better elucidate Necker and Constant’s political thought, this chapter situates them alongside a range of other figures. The chapter begins with a brief survey of different approaches to the legislature during the early years of the French Revolution, in which I seek to bring out how opposed to parliamentary institutions the political atmosphere of 1789 was. In the process of examining Necker and Constant, I also consider other members of the “Coppet Circle,” as it is known, especially Germaine de Staël. Finally, the chapter concludes with comparison between the Coppet Circle and an important British intellectual group at the turn of the nineteenth century that also championed specifically parliamentary institutions. This was the

circle of Whig thinkers who founded and wrote for the *Edinburgh Review*, including such authors as Francis Jeffrey, James Mackintosh, and Henry Brougham.

As well as tracing the liberal tradition in favor of parliamentary institutions that arose at the beginning of the nineteenth century, this chapter also seeks to demonstrate how divided that tradition was, over the issue of patronage, and over the proper role of ministers in the legislature. Even in a world shaped by the French Revolution, theorists of parliamentary institutions could not move past the questions that in the previous century had preoccupied Hume and Walpole, Burke and Bolingbroke.

### 1789 and the Rejection of the Parliamentary Model

The danger of an excessively powerful and unchecked legislature weighed heavily on the minds of many of the deputies to the French National Assembly in 1789. But their general conviction, for the most part, was that it would be possible to contain the legislature through strictly delineating its political authority, and through setting up other independent constitutional powers to serve as checks against it. This general conviction is evident in the eventual Constitution of 1791—whose main provisions I summarized in the previous chapter. In addition, the idea of containing the legislative assembly through a strict separation and equilibrium of powers was equally manifest in the two most important constitutional projects of 1789 which did not end up being adopted. These were the proposed constitutions written by Emmanuel Sieyès, and by Jean Joseph Mounier.

In Sieyès' framework the legislative power was to be divided into two portions. There would be a lower *chambre des communes*, and a more elite *chambre du conseil*. Legislation could only be initiated in the lower chamber, but in order to become law it would have to also be approved by the upper chamber, and sanctioned by the King.<sup>366</sup> More innovatively, Sieyès offered a further division between "the legislative power," and what he called "the constituent power." Sieyès argued that, when necessary, an elected "national convention" that was entirely separate from the normal "legislative assembly" would be held, with the power to make changes to the constitution itself.<sup>367</sup> According to Sieyès, it was the particular failure to distinguish these two powers that made legislative usurpation possible in England. "In England," Sieyès claimed, "one has not distinguished the constituent power from the legislative power; so the British Parliament, unlimited in its operations, is able to attack the royal prerogative."<sup>368</sup> It was the power possessed by Parliament to determine constitutional arrangements as well as regular legislation that made it a threat to both liberty and the constitution. It was because of this threat, Sieyès maintained, that the king of England needed an absolute veto, and the power to dissolve Parliament.<sup>369</sup>

By prohibiting the legislative assembly from being able to decide on fundamental constitutional questions, as parliament was able to do in England, Sieyès argued that France would never face the prospect of an all-powerful and unchecked legislature. Sieyès declared that

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<sup>366</sup> For these details of Sieyès' constitutional plan Emmanuel Joseph Sieyès, "Project de constitutions soumis à l'assemblée nationale par M. l'abbé Sieyès," in *Archives parlementaires*, ser. 1, t. 8, (Paris: 1875), 425-426.

<sup>367</sup> Emmanuel Joseph Sieyès, "Reprise de la discussion sur l'organisation du pouvoir législatif et la sanction royale" (September 7, 1789), *AP*, ser. 1, t. 8, 595

<sup>368</sup> *Ibid.*

<sup>369</sup> *Ibid.*

the very possibility of legislative overreach “is impossible in France,” because of its stricter separation of powers.<sup>370</sup> Unlike England, he declared to the National Assembly, “we have as a fundamental and constitutional principle that the ordinary legislature will not have the exercise of the constituent power,” or “that of the executive power.”<sup>371</sup> Sieyès argued that “this separation of powers is the most absolute necessity”: in contrast to the British Parliament, France’s Legislative Assembly would truly be constitutionally contained, and held to a narrow, constitutionally inscribed role.<sup>372</sup>

Although his constitutional plan differed from Sieyès’ on many crucial points, Jean Joseph Mounier agreed entirely with Sieyès that an absolute “division of powers” was “the basis of liberty.”<sup>373</sup> The fact that I am grouping Mounier and Sieyès together might be surprising to some readers. Mounier was the leader of the moderate *monarchien* party in the National Assembly, and he is usually interpreted as the great Anglophile of the early revolution. But I want to suggest that this characterization of Mounier only goes so far. Mounier thought of himself as an Anglophile, declaring that “England is presently the nation in Europe that enjoys the greatest liberty.”<sup>374</sup> And his constitutional plan for France took many of its component features from England. For instance, Mounier insisted that alongside the popularly elected lower house there had to be a more elite upper chamber, as well as a king possessing an absolute veto

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<sup>370</sup> Ibid.

<sup>371</sup> Ibid.

<sup>372</sup> Ibid.

<sup>373</sup> Jean Joseph Mounier, “Suite de la discussion relative A la sanction royale. Rapport de M. Mounier sur le necessite de cette sanction,” *AP*, ser. 1, t. 8, 564

<sup>374</sup> Jean Joseph Mounier, *Considérations sur les gouvernemens et principalement sur celui qui convient à la France*, (Paris: 1789), 38

and the right to dissolve the legislature.<sup>375</sup> Like Sieyès—who, after all, did assert that in England at least, these provisions were necessary to prevent legislative usurpation—Mounier thought the dominant constitutional necessity was to contain the elected legislature through these other, entirely independent, constitutional powers.

Also like Sieyès, Mounier believed that on a certain crucial point, Parliament had gained far too much weight in the English constitutions. For Mounier, this was the role that Parliament had come to play in approving the appointment of ministers. Mounier called the influence that Parliament had gained over the selection of ministers in England “one of the greatest abuses of the English Parliament, and one of the causes of the greatest outrages,” both “in the constitution” and “in the ministry.”<sup>376</sup> Mounier warned the National Assembly that if it ever came to possess any influence whatsoever over the king’s selection of ministers, this would “harm the liberty and the power that the king should have in the selection of his council and his ministry.”<sup>377</sup> Moreover, Mounier argued, the creation of any bonds or connections between the ministry and the assembly, such as there were in England, would completely violate the principle of the separation of powers. According to Mounier, “it is necessary to prevent the joining of powers” and for that reason “it is necessary that the National Assembly not confound the legislative and

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<sup>375</sup> See Jean Joseph Mounier, “Présentation par M. Mounier du projet contenant les premiers articles de la Constitution,” and “Rapport fait par M. Mounier contenant les articles concernant l’organisation du pouvoir législatif,” *AP*, ser.1, t. 8, 285-288, 522-527.

<sup>376</sup> Jean Joseph Mounier, “Discussion de diverses motions relatives au renvoi des ministres et au rappel de M. Necker,” *AP*, ser.1, t. 8, 242

<sup>377</sup> *Ibid.*

executive powers.”<sup>378</sup> Mounier insisted, “it is not the nation’s function to have influence over the choice of ministers.”<sup>379</sup>

Mounier believed that a strong executive capable of checking the legislature was among the most important constitutional necessities.<sup>380</sup> But crucially, he believed this strong executive had to be a completely independent executive, who was able to make ministerial appointments without any interference by the legislature. In the last analysis, Mounier was more attracted to Montesquieu’s depiction of the balance of powers in England, than he was to the actual politics of England itself.<sup>381</sup>

While Mounier rejected the creation of any connection between ministers and the National Assembly because he feared this would weaken the executive, those farther to the left in the National Assembly opposed this same move because they believed it would harm the assembly. One such figure was Sieyès himself. In his essay *Views on the Executive Means*, written before the Assembly met, Sieyès explicitly argued that the king’s officers should have no participation in the meetings of the National Assembly, and that representatives must be unable to hold royal office.<sup>382</sup> That would corrupt the formation of a genuine national will, Sieyès argued, which could only come about through the unimpeded deliberation of the nation’s elected

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<sup>378</sup> Ibid., 243

<sup>379</sup> Ibid.

<sup>380</sup> Mounier, “Suite de la discussion relative à la sanction royale. Rapport de M. Mounier sur le necessite de cette sanction,” 555, 559, 561-564

<sup>381</sup> For an article that makes a similar case to mine about Mounier, and about the general turn against Britain’s parliamentary institutions in 1789, see François Burdeau and Marcel Morabito, “Les expériences étrangères et la première constitution française,” *Pouvoirs*, vol. 50, (1989), 97-112

<sup>382</sup> See Emmanuel Joseph Sieyès, “Views of the Executive Means,” in *Political Writings*, 34-35.

representatives.<sup>383</sup> In an early meeting of the Assembly, Lanjuinais reminded the other representatives that “we have desired to separate the powers,” and he warned that by creating any relations between the ministry and the National Assembly, “we will join the legislative power to the executive power in the hands of the ministers.”<sup>384</sup>

In a later debate over the provisions of the Constitution of 1791, Robespierre made a similar argument. He claimed that the presence of ministers in the Legislative Assembly would create a situation where “the executive power and the legislative power are confounded,” violating one of “the first principles of the Constitution” which was “the separation of powers.”<sup>385</sup> Robespierre argued that merely having ministers present at legislative sessions, even if they had no vote, would destroy the very possibility of free and unhindered deliberation, such was the power they held.<sup>386</sup> For this reason, Robespierre argued that “it would be wise of the National Assembly to oppose all sorts of barriers to the influence of the executive power over the deliberations of the legislative body.”<sup>387</sup> That last point was reiterated by Lanjuinais, who opposed ministers serving in the Legislative Assembly as well as in the National Assembly. Lanjuinais noted that “if the king enters...you declare that at that instant the legislative body ceases to be deliberating.”<sup>388</sup> This should equally apply to his ministers, Lanjuinais maintained.

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<sup>383</sup> Ibid.

<sup>384</sup> Jean-Denis Lanjuinais, “Suite de la discussion de la motion de M. comte de Mirabeau relative à l’entrée des ministres dans l’Assemblée,” *AP*, ser. 1, t. 9, 716

<sup>385</sup> Maximilien Robespierre, “Suite de la discussion du projet de Constitution—Discussion de l’article 10,” in *Archives parlementaires*, ser. 1, t. 29, (Paris: 1888), 445

<sup>386</sup> Ibid.

<sup>387</sup> Ibid.

<sup>388</sup> Comte Jean Denis Lanjuinais, “Suite de la discussion du projet de Constitution—Discussion de l’article 10,” *AP*, ser. 1, t. 29, 446.



He argued that ministers should only be allowed to enter the legislature at specific moments “when they are summoned,” and they “should only be able to speak when requested.”<sup>389</sup>

As I discussed in the last chapter, the constitution which was written by the Assembly would collapse less than a year after it went into effect in 1791. This was the culmination of severe conflicts between the Louis XVI and the legislature over both his use of his veto, and his appointment of ministers. One way that French political thinkers responded to the stunning events of 1792 was to insist that the divisions and checks between constitutional powers simply hadn't been worked out properly. Over the remainder of the 1790s there would be further attempts to accomplish that goal. These included the Girondin constitution written by Condorcet in 1793, which called for shorter term limits, and more extensive opportunities for the electorate to surveil representatives; the constitution of 1795, which instituted the five person Directory as the executive branch; as well as the utterly labyrinthine constitution which Sieyès proposed in 1799: it contained three different legislative assemblies, rotation in office, as well as an independent executive who was elected for life.<sup>390</sup>

But there was another possible response to the disaster of 1792. The figures who will be examined in this chapter agreed with Sieyès and Mounier that the key to safely instituting a constitution for a modern state was to prevent legislative usurpation. But unlike the revolutionaries of 1789, they did not think that the way to accomplish this was through creating independent political powers that could check the actions of the legislature from the outside. The

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<sup>389</sup> Ibid., 447

<sup>390</sup> Sieyès' constitutional proposal of 1799 is summarized by Michael Sonenscher. See Sonenscher, “Introduction,” XXXI-XXXIII. For discussion of Condorcet's constitutional design and its principles, see Urbinati, *Representative Democracy*, 172-222; as well as Pierre Rosanvallon, *La démocratie inachevée : histoire de la souveraineté du peuple en France*, (Paris: 2000), 59-74.

secret to the success of the British constitution, Necker and Constant would both argue, was that it succeeded in moderating the exercise of legislative power from within, preventing dangerous actions from being taken in the first place. The way Britain accomplished this was through allowing members of Parliament to serving as ministers. In 1789 this was still very much a minority perspective. But it was voiced, most importantly by Mirabeau.<sup>391</sup> Another figure who proposed to the National Assembly in 1789 that the whole British constitution should be imitated, including ministers serving in the legislature, was Jacques Necker.<sup>392</sup> Necker would play a crucial role in France's later turn towards parliamentary institutions.

### Jacques Necker

Like De Lolme, Necker was originally from Geneva. He moved to France 1747, at the age of fifteen, and quickly began to rise in the world of finance and banking. From 1776 to 1783, Necker served as finance minister of France, where he fought for political and economic modernization.<sup>393</sup> His writings on trade, commerce, and administration were read throughout Europe and the Americas.<sup>394</sup> In 1788, as France teetered on the edge of bankruptcy and

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<sup>391</sup> A frequent goal of Mirabeau during the early years of the Revolution was to create better relations between the ministry and the National Assembly, even if that meant transgressing the strict separation of powers desired by so many of the other delegates. See Comte de Mirabeau, "Discussion de diverses motions relatives au renvoi des ministres et au rappel de M. Necker," *AP*, vol. 8, 242-243; as well as Comte de Mirabeau, "Motion concernant : 1\* les substances; 2\* la création d'une banque nationale; 3\* l'entrée des ministres dans l'Assemblée," *AP*, t. 9, 710-711.

<sup>392</sup> Jacques Necker, "Mémoire de M. Necker sur la sanction royale," *AP*, vol. 8, 612-615

<sup>393</sup> For an account of Necker's life as finance minister see Henri Grange, *Les Idées de Necker*, (Paris: 1974), 21-52.

<sup>394</sup> A discussion of Necker's economic and political thought prior to the Revolution is found in Michael Sonenscher, *Before the Deluge: Public Debt, Inequality, and the Intellectual Origins of the French Revolution*, (Princeton: 2007),

revolution, Necker was brought back in by Louis XVI to again be finance minister, a role he served in during the first years of the Revolution. Necker would go on to become the most sophisticated and influential advocate of the British parliamentary model in France during the Revolutionary period.

Like Mounier, Necker warned the National Assembly in 1789 that France ought to have a bicameral legislature.<sup>395</sup> But Necker additionally claimed that the Assembly should allow ministers to participate in the assembly—a step, I have noted, which Mounier’s commitment to the strict separation of powers did not permit him to support.<sup>396</sup> In 1790, Necker left office and spent the rest of his life in Switzerland. During the remainder of the revolutionary period, he continued to advocate the parliamentary model. His writings during the 1790s included a treatise on executive power entitled *Du pouvoir exécutif dans les grands états*, a history of the French Revolution, and numerous other works. Over the course of this dissertation, we will repeatedly see the impact of Necker’s arguments and formulations on the development of liberal thought. In addition to influence of his writings, Necker was the father of Madame de Staël, who was in turn the lover of Benjamin Constant. Both Constant and De Staël would follow in Necker’s footsteps as influential advocates of a parliamentary system for France. Necker’s estate in Coppet, Switzerland was the fertile intellectual ground from which many of the most sophisticated treatments of the British approach to legislative power emerged during the Revolutionary era.

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302-310. For a discussion of Necker’s influence see Donald Swanson and Andrew Trout, “Alexander Hamilton, “the Celebrated Mr. Neckar,” and Public Credit,” in *William and Mary Quarterly*, vol. 47, no. 3, (1990), 422-430.

<sup>395</sup> Necker, “Mémoire de M. Necker sur la sanction royale,” 614

<sup>396</sup> *Ibid.*

Scholars have generally analyzed Necker's significance, and his advocacy of parliamentary institutions, in one of two ways. The first approach has recently been exemplified by Aurelian Craiutu. It is to depict Necker and his circle as still essentially followers of Montesquieu. While Craiutu is aware of the distinctiveness of Necker's formulations, he argues that a single commitment to moderation and constitutional balance is what fundamentally connects Montesquieu, Mounier, and Necker.<sup>397</sup> The second approach, which has been followed by scholars such as Henri Grange and Alain Laquièze, is nearly exactly the opposite. In contrast to Craiutu, these interpreters emphasize the difference between Necker's advocacy for the actual practice of parliamentary government as it existed in England, and Montesquieu or the *monarchiens'* support for a strict separation and equilibrium of powers. But the far-reaching conclusion that these scholars draw from this comparison is that the theory of parliamentary government was literally Necker's invention. While parliamentary government was successfully practiced by the British, according to Laquièze it was only adequately theorized by the French—or more precisely, in Coppet, Switzerland.<sup>398</sup> Henri Grange likewise argues for the utter originality of Necker's theory of the British parliamentary regime.<sup>399</sup>

My interpretation of Necker differs from both these approaches. I claim neither that he was utterly original, nor that he was fundamentally still following Montesquieu. What both these approaches to studying Necker miss is how diverse and contested the debate about the organization of legislative power in Britain was during the eighteenth century—how many ways,

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<sup>397</sup> See Craiutu, *A Virtue for Courageous Minds*, 32, 53, 109, 150, 153

<sup>398</sup> See Alain Laquièze, "Le modèle anglais et la responsabilité ministérielle selon le Groupe de Coppet," in *Coppet, creuset de l'esprit libéral: les idées politiques et constitutionnelles du Groupe de Madame de Staël*, ed. Lucien Jaume, (Paris: 2000), 166-168

<sup>399</sup> See Grange, *Les Idées de Necker*, 335-349.

along with Montesquieu, that there were to think about legislative power. Later in this chapter I will trace the subtle ways in which Benjamin Constant's theory of parliamentary government was derived from Jean Louis de Lolme. But a much more obvious comparison, and one which has gone surprisingly unexplored by scholars, is that between Necker and Burke.<sup>400</sup>

Necker's political agenda during the early years of the Revolution differed from Burke's in significant ways. In contrast to Burke, Necker believed that a moderate reform of the French monarchy, to make it more closely approximate Britain, was a real possibility in 1789. Unlike Burke, in other words, Necker did not believe from the outset that the Revolution was simply doomed. Additionally, Necker's difficult experiences as Foreign Minister during the 1770s and 1780s had led him to be far more critical of the French *ancien régime* than Burke was. Necker thought that French monarchs before 1789 were completely unregulated in their exercise of power.<sup>401</sup> In addition to creating the possibility of abuse, this also meant that the monarchy was powerless to shape events or determine policies. Because France lacked a regular legislature, Necker argued, the French monarchy was incapable of coordinating with public opinion to match its goals, or even recognizing what public opinion was.<sup>402</sup> According to Necker, it was the dramatic clash between the emerging power of public opinion, and the absolutism of the French monarchy that led to the Revolution.

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<sup>400</sup> Grange for instances compares Necker's constitutional thought with Montesquieu, Blackstone, De Lolme, and the Monarchiens—yet not to Burke (ibid.) Craiutu does note one commonality between Necker and Burke, namely that both saw the French revolutionaries as committed to abstract theory rather than to prudence and moderation (Craiutu, *A Virtue for Courageous Minds*, 122, 130).

<sup>401</sup> Jacques Necker, *De la révolution française*, in *Oeuvres complètes*, t. 10, ed. Auguste de Staël, (Paris: 1821), 265-286.

<sup>402</sup> Ibid. For a more extended summary of Necker's criticisms of the French pre-revolutionary regime see Henri Grange, *Les Idées de Necker*, 359-399.

Yet if Necker's criticisms of the French *ancien régime* and his political goals during the Revolution were at odds with Burke, Necker's analysis of the disastrous course of the Revolution almost exactly mimics *Reflections on the Revolution in France*. The parallel begins with Necker's assessment of the Revolution's fundamental principles—equality, popular sovereignty, and the rights of man—which he attacked as mere “abstractions” and “chimeras.”<sup>403</sup> Because of their excessive “generality,” Necker argued, the principles of the French Revolution were removed from all actual human experience.<sup>404</sup> They were blind to the eternal necessity of “ranks, gradations, and bonds of consideration and respect” in society. Necker insisted that “equality, uniformity, only seem applicable to the nature of man, at the beginning of life;” they are “a parity consecrated by our absolute nakedness and our extreme weakness.”<sup>405</sup>

For Necker, it was madness to think that political order was possible in modern states without social hierarchy. “The new philosophers of France have considered all inequalities as the simple product of a system of injustice and oppression, imagined and sustained by the prejudices of personal interest,” he lamented.<sup>406</sup> “Turning their attention (*regards*) to the most marvelous of phenomena, the civil and political union of twenty five million men,” the French revolutionaries madly “thought that public order could be maintained in an immense nation, without any of the gradations that prepare sentiments of respect and obedience.”<sup>407</sup>

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<sup>403</sup> Jacques Necker, *Réflexions philosophiques sur la égalité*, OC, t. 10, 409-410

<sup>404</sup> Ibid., 435

<sup>405</sup> Ibid., 437

<sup>406</sup> Ibid., 350

<sup>407</sup> Ibid.

More important than the parallel between Necker and Burke's attacks on the spirit of the French Revolution is the similarity between their constitutional arguments. For Necker, as for Burke, the French revolutionaries were not only engaged in a stunning moral rebellion against the very nature of society. They also failed at the task of constructing stable political institutions. Like *Reflections on the Revolution in France*, the first half of Necker's 1793 treatise *Du pouvoir exécutif dans les grands états* was rhetorically structured around a contrast between the institutions of England and France. Its primary aim was a detailed comparison between the French Constitution of 1791 and the political system of Britain. I noted in the last chapter that two of Burke's most important criticisms of the Constitution of 1791 were that it neglected a second chamber and that it forbid ministers from serving as members of the legislature. These same two points are the core of Necker's argument as well. Necker attacked the absence of a second legislative body in France.<sup>408</sup> And he claimed that "of all the parts of the comparison that I have attempted, the constitution of the ministry, in the two countries, seems one of the most essential."<sup>409</sup> Necker's point (again parallel to Burke) was that by failing to provide for ministers to serve in the legislature, the French had guaranteed "the debasement of the ministers" before the assembly.<sup>410</sup> Without ministers serving in the Assembly, the king was not "able to preserve himself from the invasion" of the legislature.<sup>411</sup> According to Necker, it was "the different constitution of the ministry in France and England," which, "more than any other circumstance,

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<sup>408</sup> Necker, *Du pouvoir exécutif dans les grands états*, 51-55.

<sup>409</sup> *Ibid.*, 157

<sup>410</sup> *Ibid.*, 167

<sup>411</sup> *Ibid.*, 169

led” to the overthrow of the French monarchy, and thus to “the union of all authority in the hands of the Assembly; a union not only imprudent in relation to liberty, but dangerous.”<sup>412</sup>

The most general and far-reaching mistake made by the National Assembly of 1789, Necker believed, was that in framing a French constitution it had completely neglected to consider the proper construction of executive power.<sup>413</sup> It was the weakness of the Crown in the Constitution of 1791 that led to Louis XVI being toppled in under a year, paving the way for the horrors of the Convention. For Necker then, as for Burke, the institutional catastrophe of the first years of the French Revolution was a legislative assembly that freed itself from all moral and constitutional shackles; a legislature “exercising over the entire nation a terrible right, a frightening power.”<sup>414</sup> Necker called the “progressive domination of a single assembly” a form of “domination without parallel.”<sup>415</sup> But in calling for a strong executive able to effectively contain the legislature, Necker was not calling for an entirely independent executive, as Mounier had. To the contrary, Necker argued, what the British model demonstrated was that a king was most able to contain the legislature when his influence was exercised *within the legislature*—rather than against it from the outside. Because his ministers were themselves representatives, a British monarch could shape and influence the course of legislation well in advance, before a law ever arrived for his signature.

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<sup>412</sup> Ibid., 166-167, 169

<sup>413</sup> Necker’s critique of the Constitution of 1791 is also discussed in Luigi Lacchè, “Coppet et la percée de L’État libéral constitutionnel,” in *Coppet, creuset de l’esprit libéral*, 147-150

<sup>414</sup> Necker, *De la révolution française*, 169

<sup>415</sup> Necker, *Du pouvoir exécutif dans les grands états*, 278, 281. See also *ibid.*, 273-275.



Through the influence of his ministers in parliament, the king of England was spared from ever having to confront the nation's elected representatives head on through the use of his veto, which Necker called "a circumstance of great explosiveness, and which easily becomes the origin of a spirit of disunion among the two powers."<sup>416</sup> I noted that it was Louis XVI exercising his veto in 1791 and 1792 that triggered the deadly conflicts between him and the Legislative Assembly. Necker's argument was that a constitution in which the king's ministers served as representatives, and were the most influential figures within parliament, shielded the king from having to veto legislation. In England, there is "habitual discussion between the ministers and all the other members of parliament," which "serves effectively to prevent the Monarch refusing his sanction to multiple resolutions passed by the legislature."<sup>417</sup> As a result of its parliamentary structure, England had managed to avoid the explosive use of the royal veto for nearly a century. In England, Necker admiringly declared, "the true participation of the government in legislating does not consist in...the agreement of the monarch to bills of parliament, but in the engagement of ministers in the deliberations which proceed the laws."<sup>418</sup> Necker's preference for the king to shape legislation through ministers sitting in the assembly, as opposed to the veto, accounts for his relative nonchalance in 1789 about whether or not the king's veto would be absolute or merely temporary—a point on which Mounier was, by contrast, utterly insistent in favor of the absolute veto.<sup>419</sup>

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<sup>416</sup> Ibid., 163

<sup>417</sup> Ibid.

<sup>418</sup> Ibid., 162-163

<sup>419</sup> Necker, "Mémoire de M. Necker sur la sanction royale," 612-615

Necker additionally maintained that including ministers in the legislature would be of great advantage to the quality of legislative deliberation. It created hierarchy and authority within the legislature which would otherwise be completely lacking in a gathering of hundreds of ambitious individuals from across the nation.<sup>420</sup> Moreover, Necker denied that the involvement of ministers would thwart the legislature's role as popular representative. Representatives could still contest the monarch and his ministers' policies there. But the difference was that rather than this occurring as a struggle between two independent constitutional powers, a conflict which might literally tear the constitution apart, it became instead a conflict within the legislature itself. The king's ministers and the other representatives argued with one another as colleagues, all holding the same position, not as the spokesmen of wholly independent and disconnected constitutional powers. "The ministers of England are attacked in the middle of parliament but it is peer to peer."<sup>421</sup> Conflict was thus transformed into dialogue. "It is their opinions which are combated; it is their principles which are censured," Necker wrote.<sup>422</sup> "In the contestation which one engages in... it is always to *the honorable member of parliament* that one makes one's address," while, metaphorically speaking, "the minister of the monarchy disappears from the arena."<sup>423</sup>

Necker argued that the necessity for legislators to serve as ministers demonstrated the limitations of the whole theory of dividing and balancing constitutional powers—the theory most famously expressed by Montesquieu. According to Necker, the problem was that this theory was

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<sup>420</sup> Ibid., 160

<sup>421</sup> Ibid., 165

<sup>422</sup> Ibid.

<sup>423</sup> Ibid.

excessively focused on setting up conflict and rivalry between powers. It therefore ignored the equal necessity of setting up links, overlaps, and recognized connections between powers.

Necker warned, “one cannot establish political harmony between diverse powers, solely through the effect of suspicious surveillance, and mutual defiance.”<sup>424</sup> Like Burke, and Walpole even earlier, Necker claimed that “the powers of which a government is composed” must also be “intermingled in so many ways...how would they ever be in accord, how would they remain in their rightful place without connections that have been artfully calibrated?”<sup>425</sup> Necker argued that it was “bonds more than counterweights, proportions more than distances, relations more than vigilance, which contribute to the harmony of governments.”<sup>426</sup>

The theory of balanced and separated powers was less directly dangerous in Necker’s mind than the Jacobin theory of directly exercised popular sovereignty. It led most immediately to constitutional conflict and gridlock, rather than straight to tyranny. But it was just as distant from the true aim of government, since it “continually arrested the attention of legislators on the necessity of balancing one force by another, and not on the advantage of wisely uniting them.”<sup>427</sup> While Necker argued that the partisans of popular sovereignty could not understand the necessity of plural, differentiated, and conflicting political powers, those beholden to a theory like Montesquieu’s could *only* see the need for conflict and differentiation between political powers. This led them to deeply misunderstand the nature of the British political system: “what is most vaunted about the government of England,” he noted, “is the equilibrium established between the

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<sup>424</sup> Ibid., 67

<sup>425</sup> Ibid.,

<sup>426</sup> Ibid., 68

<sup>427</sup> Ibid.

different powers.”<sup>428</sup> While Necker did not find this view completely false, he insisted that “the stability of the English government was not uniquely due to the balance among authorities” but also to “the just and wise relations, the nuanced relations,” between “the persons who must exercise these different powers.”<sup>429</sup>

What made the British parliamentary model so compelling to Necker was that it acknowledged the necessity for there to be multiple, constitutional powers, even as it also enabled those powers to fluidly unite and act together. Harmony was established between the separate functions of execution and legislation, without these functions ever being confused, or combining into the hands of a single tyrannical power. The crucial feature of the British system which enabled harmony to arise between distinct constitutional powers was that ministers served in the legislature. Ministers were chosen at the discretion of the monarch, and yet their authority within parliament depended upon their possessing “the confidence” of both houses.<sup>430</sup> The choice and support of ministers by both monarch and legislature was thus the focal point through which consensus and harmony between different constitutional powers occurred. “The habitual presence of ministers in parliament, their title as representatives of the people,” was “necessary...to establish between the legislative body and administration that harmony without lethargy, absolutely necessary for the regular action of government.”<sup>431</sup> Necker warned, “at the moment that harmony disappears, at the moment where one prefers to it a system of defiance, all

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<sup>428</sup> Ibid., 65-66

<sup>429</sup> Ibid., 66

<sup>430</sup> Ibid., 164

<sup>431</sup> Ibid., 161

becomes combat... before long it will be proven that disorder and confusion are the primary peril which free constitutions must be guaranteed against.”<sup>432</sup>

Necker attributed the destruction of the Constitution of 1791 to its strict commitment to the theory of the balance and separation of powers, and concomitant failure to follow the example of Britain.<sup>433</sup> He went on to make this same attack against the Constitution of 1795. According to Necker, “the essential tendency of the republican constitution given to France in 1795; the capital tendency which could place order or liberty in peril, is the complete and absolute separation of the two primary authorities: the one which makes the laws, and the other which directs and monitors their execution.”<sup>434</sup> Necker placed the Constitution of 1795 at the “other extreme” from the “National Convention”, which had “united, confounded all powers in a monstrous organization.”<sup>435</sup> The Constitution of 1795, by contrast, attempted “an absolute separation between the two supreme powers.”<sup>436</sup> In contrast to the Constitution of 1791, the Constitution of 1795 did not eventually lead to legislative tyranny, but rather to a takeover by the executive. Yet in Necker’s eyes it seemed to equally confirm his argument. In this case, rather than submit to the legislature, a constitutionally weak executive responded by preemptively staging a military coup. As Necker’s daughter Germaine de Staël summarized the situation, the Directory ended up with “too much arbitrary power and too little legal power.”<sup>437</sup> For Necker,

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<sup>432</sup> Ibid.

<sup>433</sup> Ibid., 168-169

<sup>434</sup> Necker, *De la révolution française*, 122

<sup>435</sup> Ibid.

<sup>436</sup> Ibid., 124

<sup>437</sup> Germaine De Staël, *Considerations on the Principal Events of the French Revolution*, ed. Aurelian Craiutu, (Indianapolis: 2008), 396. She notes the indebtedness of her critique of the Directory to Necker (ibid., 390-391).

the superiority of the English model was that it did not force two rival, independent powers to check each other: a situation that the constitutions of 1791 and 1795 suggested would lead at best to violent stalemate; at worst to the disastrous victory of one of the two powers, which was then free to reign despotically. Instead, England transformed this kind of conflict into a discussion within the legislature.

Necker's argument that the strict adherence to the theory of divided and balanced powers was a major contributing factor to the disasters of the French Revolution would become extraordinarily influential among French liberals. Over the remaining chapters of the dissertation I will examine the numerous authors who agreed with him about this historical claim—most notably Benjamin Constant and Francois Guizot. As late as 1847 and 1848, such influential liberal authors as Prosper de Barante and Duvergier de Hauranne continued to reiterate Necker's argument that the disastrous course of the French Revolution was due to the excessively strict separation of executive and legislature in the French Constitution of 1791.<sup>438</sup>

Before moving on from Necker, however, it is important to note two crucial complications in his argument for a parliamentary system. The first of these is Necker's admiration for not only the British political system, but also for the Constitution of the United States of America. In his recent book *The Royalist Revolution*, Eric Nelson has demonstrated how different the American constitutional framework was from the parliamentary theory which Necker was committed to.<sup>439</sup> Ultimately, as Marcel Morabito has argued, Necker preferred the British system over the United States.<sup>440</sup> And he believed that the social circumstances of the

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<sup>438</sup> See Prosper de Barante, *Questions constitutionnelles*, (Paris: 1849), 66-67; Duvergier du Hauranne, *De la reforme parlementaire et la reforme Electoral*, (Paris: 1847), 138-139.

<sup>439</sup> Nelson, *The Royalist Revolution*.

New World were so different from those of Europe that the United States could barely serve as a model.<sup>441</sup> American federalism ensured that the national government was only occupied with a small and defined set of issues. There was simply less need for governing in America, and thus the harmonious intertwining of executive and legislative power, which occurred through ministers serving in the legislature was less necessary.<sup>442</sup>

Yet even if Necker thought that circumstances and secondary institutions were primarily responsible for the good fortune of the United States, he also did clearly admire its constitution. But why? Why didn't he see it, and its separation of powers, as fundamentally similar to the French constitutions which he attacked? In America as well, after all, cabinet members were prohibited from serving in the legislature. The reason for this is that Necker had an astute, though highly idiosyncratic view of the American Constitution. He thought that it did in fact contain certain relationships, specifically between the executive and the Senate, which were fundamentally opposed to the logic of Montesquieu. The most obvious of these was the fact that the Constitution made the Vice-President also the leader of the Senate, where he casted a tie-breaking vote. Necker noted that "the leader of the senate is determined by the Constitution itself; it has designated for this position the vice-president of the United States."<sup>443</sup> And he admirably declared that, the American Constitution, "by this institution, seems to have wished to form the beginning of a bond between the legislative authority and the executive power."<sup>444</sup>

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<sup>440</sup> Marcel Morabito, "Necker et la question du 'chef de l'État,'" in *Coppet, creuset de l'esprit liberal*, 47.

<sup>441</sup> Necker, *Du pouvoir exécutif dans les grands états*, 321-333, 340-341.

<sup>442</sup> *Ibid.*, 339-340

<sup>443</sup> *Ibid.*, 345

<sup>444</sup> *Ibid.*

Necker also cited the fact that the Senate confirmed treaties, ambassadors, and cabinet appointments.<sup>445</sup> In Necker's eyes these provisions did not mark out purely defensive rights (like the veto or impeachment power) through which one constitutional power defended its status from other powers—the manner in which Montesquieu had so famously described the logic of checks and balances. Rather they made the Senate actively involved in the exercise of executive power, and the vice-president a genuine participant in the legislature. “The concert with the senate, which has been made a general duty for the president, associates to his administration and unites to its interests one of the two chambers of which the American congress is composed.”<sup>446</sup> Necker predicted that from “such a tendency must result a more perfect and more assured harmony between the government and the legislative power.”<sup>447</sup> Necker argued that these provisions “indeed are an exception to the common principle of the separation of powers.”<sup>448</sup> “But,” he asked, “what does it matter if this exception hits closer to the general good?”<sup>449</sup> In a sense, then, Necker praised the American Constitution because he believed that despite important similarities to the French revolutionary constitutions, it still approximated the British model to a far greater degree than they did.<sup>450</sup>

Even more surprising than Necker's admiration for the American Constitution is the fact of his sudden reversal over the merits of the British system itself in 1799. This reversal needs to

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<sup>445</sup> Ibid., 350-351

<sup>446</sup> Ibid., 352

<sup>447</sup> Ibid., 353

<sup>448</sup> Ibid.

<sup>449</sup> Ibid.

<sup>450</sup> On this point see also Jacques Necker, *Dernières vues de politique et de finance offertes a la nation Francaise*, in *Oeuvres complètes*, t. 11, ed. Auguste de Staël, (Paris: 1821), 142



be distinguished from another shift in Necker's political thinking over the 1790s, which was noted by Marcel Gauchet: Necker's judgment that as a result of the social and political transformation France had undergone since 1789, it would probably be impossible to rebuild the French monarchy.<sup>451</sup> In his last major political work, *Dernières vues de politique et de finance offertes a la nation Francaise*, Necker not only admits the greater convenience of a republic in post-revolutionary France.<sup>452</sup> He also argues that even if it were possible to recreate monarchical government in France, France should not imitate England; ministers ought to not serve as legislators.<sup>453</sup> While it is probably impossible to know exactly how Necker changed his mind on this crucial question, the argument against the British parliamentary model he offers in 1799 is centered on the danger of corruption. The dilemma Necker confronted in 1799, apparently for the first time, is the problem of how English monarchs could assure that the individuals they wanted to serve as ministers were also members of Parliament. The answer, Necker acknowledges, is England's byzantine electoral system and the overwhelming wealth and influence of the Crown in elections. "The monarch, by his influence in the diverse borough of the realm, is sure to make his ministers enter into popular chamber with the title of "deputies of the people."<sup>454</sup> Through "boroughs dependent on the Crown, or on proprietors who are devoted to him, the prince has certain means to make his ministers enter into the popular chamber."<sup>455</sup>

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<sup>451</sup> See Gauchet, *La condition politique*, 274-276.

<sup>452</sup> *Ibid.*, 223

<sup>453</sup> *Ibid.*, 203-205

<sup>454</sup> *Ibid.*, 203

<sup>455</sup> *Ibid.*, 205

Importantly, Necker never reverses his long-standing position that tremendous advantages are to be gained from legislators serving as ministers. Indeed he reiterates that same point yet again in 1799.<sup>456</sup> But what Necker had come to think was that these advantages were not worth the price of a corrupt electoral system like England's.<sup>457</sup> The "diminution in the influence of the of the prince over the popular chamber," which Necker acknowledged would unfortunately follow from ministers not participating as members of the legislature, "would not be a sufficient reason for imitating the English system of elections."<sup>458</sup> Necker was adamant that without the Crown's influence over elections, it would be dangerous to introduce the British practice of representatives serving as ministers. That would in fact decisively weaken rather than strengthen the monarch, since his choice of ministers would suddenly be completely dependent upon the whims of electors and legislators.<sup>459</sup>

One of the few errors which Henri Grange makes in his important study of Necker's life and thought is Grange's claim that Necker agreed with Hume about the value of corruption. Necker, Grange states, thought that a king had to wield his enormous patronage and electoral influence to ensure constitutional balance.<sup>460</sup> It is easy to see why Grange thought that Necker believed this. Nearly everything about Necker's constitutional thought would lead one to think that he shared Hume's position. For if, as Necker argues, the primary advantage of having ministers in the legislature is that they are able to shape parliament's agenda prior to the passage

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<sup>456</sup> Ibid., 203-204

<sup>457</sup> Ibid., 203, 205

<sup>458</sup> Ibid., 204

<sup>459</sup> Ibid., 207

<sup>460</sup> Grange, *Les Idées de Necker*, 318-321.

of legislation, ensuring that a king never has to use his veto, and that no explosive confrontation between him and the nation's representatives takes place, patronage would seem like the most useful possible instrument for ministers to have at their disposal in order to accomplish this. Why else did Necker think that British ministers were able to so effectively shape the decisions of a whole majority of parliament? But Necker did not go in this direction. He acknowledged that "corruption...can stand in, with certain governments, for a lack of proportion between the different established powers."<sup>461</sup> But immediately after stating this he explicitly rejected it as a political tool. Even "leaving to the side for a moment its immorality," Necker claimed that any reliance on corruption was destined to be highly uncertain. Once unleashed in a political system, it was impossible to say exactly where it would end, or who would be exercising it, or what its consequences would be.<sup>462</sup> Necker argued that "it is by the prudent accord of all the parts of the constitution...that one prevents the abuse of power; it is never by its abuse that one should assure political harmony."<sup>463</sup> Necker's whole vision of the parliamentary system was one in which different constitutional powers came to a free, harmonious, and *public* agreement on a course of action. Rather than corruption, Necker put his trust in *opinion*. It was the "majesty" of the king that sustained his influence in Parliament and in the nation, assuring him all the "support of opinion."<sup>464</sup> In another important parallel with Burke, Necker believed that the power exercised by the Crown and peerage within Parliament, the fundamental public legitimacy of their roles, and thus the whole British constitution itself rested on what Necker called "the empire of the

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<sup>461</sup> Necker, *Du pouvoir exécutif dans les grands états*, 64. It should be noted that the specific question Necker is treating here is whether legislators should be paid

<sup>462</sup> Ibid.

<sup>463</sup> Ibid., 65

<sup>464</sup> Ibid., 60; also Necker, *De la révolution française*, 295.

imagination.”<sup>465</sup> It was most likely Necker’s judgment by 1799 that the whole symbolic power of the aristocracy and monarchy had been destroyed in France, and that ministers could never gain draw on this symbolic capital in order to shape a parliamentary majority, which forced him to confront the issue of corruption head on.

While Necker felt that instituting the British parliamentary system in France was not worth the price of corruption, his daughter eventually came to the opposite judgment. Born in 1766, and one of the most important thinkers in Europe by the early nineteenth century, Germaine De Staël was an ardent republican during the 1790s—the period when her father was arguing for parliamentary monarchy.<sup>466</sup> But during the Napoleonic era she abandoned her earlier republican preferences and emerged as a prominent advocate for the British parliamentary model. Her great historical study of the French Revolution, *Considérations sur les principaux événemens de la Révolution Française*, was published posthumously in 1817. It reiterated her father’s claim that the French Revolution could have succeeded if it had emulated England.

Like her father, De Staël attacked the National Assembly of 1789 for its “absurd decree” declaring “the functions of deputy and minister incompatible.”<sup>467</sup> This “transformed the balance of power into mutual hostility,” she argued.<sup>468</sup> De Staël reiterated her father’s application of this same principle to the Constitution of 1795, even quoting him at times verbatim.<sup>469</sup> She also

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<sup>465</sup> Necker, *Du pouvoir exécutif dans les grands états*, 213.

<sup>466</sup> For an excellent account of Germaine de Staël’s political thought see Aurelian Craiutu, *A Virtue for Courageous Minds*, 158-197.

<sup>467</sup> De Staël, *Considerations on the Principal Events of the French Revolution*, 232

<sup>468</sup> Ibid.

<sup>469</sup> Ibid., 390-391

agreed with him on certain points about the nature of the English constitution. For instance, she noted that “in England, the king never makes of his veto.”<sup>470</sup> In contrast to her father, however, De Staël openly acknowledged the existence and significance of English corruption. She noted the king’s patronage within the legislature, as well as the fact that “the ministry” could “influence a number of elections.”<sup>471</sup> According to De Staël, “we may reckon, in the number of the prerogatives of the Crown, the right of introducing by its influence sixty or eighty members into the House of Commons out of the six hundred and fifty-eight who compose it.”<sup>472</sup> She referred to the Crown’s electoral influence as “an abuse”: and yet she maintained that this abuse “has not, down to the latest times, altered the strength and independence of the English Parliament.”<sup>473</sup> Indeed a page earlier De Staël had openly praised the Crown’s patronage in Parliament. “The favors at the disposal of the Crown form a part of the prerogative of the king, and consequently of the constitution. This influence is one of the weights in the balance so wisely combined.”<sup>474</sup> Fundamentally, Madame de Staël agreed with her father that the creation of a stable parliamentary consensus depended most of all upon opinion rather than on corruption. However De Staël thought that this political ideal was perfectly compatible with a monarch who used patronage as one means of influencing the actions of Parliament.

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<sup>470</sup> Germaine de Staël, *Réflexions sur la paix intérieure*, OC, ser. 3, t. 1, 151

<sup>471</sup> De Staël, *Considerations on the Principal Events of the French Revolution*, 669.

<sup>472</sup> Ibid.

<sup>473</sup> Ibid.

<sup>474</sup> Ibid., 668

## Benjamin Constant

In contrast with Necker, though like Germaine de Staël, Benjamin Constant was a genuine intellectual child of the Revolution. Arriving in France in 1794, after an education and adolescence that spanned much of Europe, Constant was a staunch support of republican government during the early 1790s, and a defender of the Directory.<sup>475</sup> Constant would continue to be a republican well into the first decade of the nineteenth century, as he labored over his never-published work *De la possibilité d'une constitution républicaine dans un grand pays*.<sup>476</sup> No less striking than Constant's early republicanism is his full embrace of the social revolution of 1789. Unlike Necker or Burke, Constant viewed equality not as a "chimera" but rather as the destiny of the human race. From "an impenetrable cloud which covers its birth," he declared, "we see the human species advance towards equality, over the debris of institutions of every kind."<sup>477</sup> Constant argued that individual liberty, the absence of arbitrary political interference in citizens' lives, was a supreme moral principle.<sup>478</sup> Political order, for Constant, was not held together through social hierarchy, prejudice, and "the empire of imagination," but rather through

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<sup>475</sup> See Benjamin Constant, "De la force du gouvernement actuel de la France et de la nécessité de s'y rallier," in *Oeuvres complètes*, t. 1, ed. Jean-Daniel Candaux and Lucia Omacini, (Tübingen: 1998), 366-375.

<sup>476</sup> For Constant's rejection of monarchy, see Benjamin Constant, "De la possibilité d'une constitution républicaine dans un grand pays," in *Oeuvres complètes*, t. 4, ed. by Maria Luisa Sánchez Mejía and Kurt Kloocke, (Tübingen: 2005), 401-426

<sup>477</sup> Constant, "De la force du gouvernement actuel de la France et de la nécessité de s'y rallier," 374

<sup>478</sup> See Benjamin Constant, "Des réactions politiques," *OC*, t. 1, 464-465.

the rationally held conviction that those in power were governing for the common good, and treating all citizens equally and impartially.<sup>479</sup>

By the end of the Napoleonic period, Constant had shifted away from supporting republican government, and had come to advocate a constitutional monarchy. In 1814, during the Hundred Days, he published *Réflexions sur les constitutions, la distribution des pouvoirs, et les garanties, dans une monarchie constitutionnelle* which called for a political regime modelled on Britain with Napoleon as monarch. The following year, in *Principes de politique applicables à tous les gouvernements représentatifs* and *De la responsabilité des Ministres* Constant defended a similar arrangement for the restored Bourbon line. In all three pamphlets, Constant argued for France to adopt a legislature identical to England's. There should be a hereditary House of Peers whose members could be added to by the monarch, and a lower House elected by the people. Constant was explicit that ministerial offices should be held by members of the legislature, who should govern only so long as they maintain support from a parliamentary majority.<sup>480</sup>

There was only one point on which Constant's constitutional proposals for France were at all unconventional with respect to English practice, and even here he radicalized more than broke with the English model. This was Constant's claim that an English monarch did not actually possess any executive powers, but rather only the ministers did. In England, the standard view of

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<sup>479</sup> Ibid. See also Benjamin Constant, "Second lettre de M. Benjamin Constant à M. Charles Durand, avocat, en réponse aux questions contenues dans la troisième partie de l'ouvrage intitulé," *OC*, t. 11, 373-374. One of most important influences on Constant's moral and social outlook was Sieyes. As late as 1829, Constant would refer to Sieyes as "a man of immense spirit," whose "views on metaphysics and politics are full of both finesse and depth." In particular, Constant argued that "it is to Sieyes that we owe that principle which is the most necessary to recognize in every political organization: the limitation on sovereignty." See Benjamin Constant, "Souvenirs historiques à l'occasion de l'ouvrage de M. Bignon," *Revue de Paris: journal critique, politique et littéraire*, t. 11, (1830), 120-121

<sup>480</sup> Constant, *Principles of Politics*, 242-244

ministers had long been that they were the servants of the Crown, which was the executive power. Constant did not want to change anything about the process through which ministers were actually appointed. Like in England, Constant supported ministers in France being first selected by the monarch, and then either acquiesced to, or rejected by the legislature in the course of parliamentary debate.<sup>481</sup> But what Constant was insistent on was that the monarch should play absolutely no role in the minister's determination of policies. "The king reigns but he does not administer" was Constant's adage.<sup>482</sup> "The king wishes that the people are happy, well-governed, and enjoy their rights. He chooses ministers in order that they administer in this direction."<sup>483</sup> As to the policies which would lead to happiness, "the ministers choose them."<sup>484</sup>

Constant called the distinction between royal and executive power "the key to all political organization."<sup>485</sup> Its significance was that it enabled the monarch to serve as what Constant called a *neutral power*. With the exception of the right to grant pardons, Constant's king possessed no positive ability to act upon the people. He was only able to act upon the parliamentary process itself, through dismissing ministers, dissolving parliaments, appointing peers, and vetoing bills—though like Necker, Constant would end up severely downplaying the veto. "The monarchy is not an active power," Constant argued, rather "it maintains the active powers in the limits which are traced for them; it changes the depositaries when they are bad; it

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<sup>481</sup> Benjamin Constant, "Du Droit de Dissolution," in *Recueil d'articles 1829-1830*, ed. Ephraim Harpaz, (Paris: 1992), 523-524.

<sup>482</sup> Benjamin Constant, "Un dernier mot sur le refus du budget," in *Recueil d'articles 1829-1830*, 136.

<sup>483</sup> Benjamin Constant, "Second lettre sur la prérogative royale," in *Recueil d'articles 1829-1830*, 177

<sup>484</sup> Ibid.

<sup>485</sup> Benjamin Constant, *Réflexions sur les constitutions, la distribution des pouvoirs, et les garanties, dans une monarchie constitutionnelle*, (Paris: 1814), 1



represses them when they overstep; it disarms them, when they want to usurp.”<sup>486</sup> Constant explained the role he intended for the monarch with the following adage: “the royal power is, in some sense, the judicial power for the other powers.”<sup>487</sup>

By 1814, with his embrace of British institutions, Constant had clearly turned away from advocating republicanism. However, it is not at all evident that in his embrace of parliamentary government Constant ever walked back on his commitment to the ideal of 1789; the ideal of a politics guided by liberty, equality, and reason. This what makes Constant's eloquent embrace of a parliamentary form of government in 1814 and 1815 so striking. Constant exemplifies, in a sense, the whole question of how liberals who worshipped the French Revolution of 1789, in all its social magnitude, ended up embracing a parliamentary form of government: the very institutional structure which had been utterly rejected in 1789.

Because Constant supported a government that was intended to be moderate and constitutionally circumscribed, not to mention modelled on England, scholars generally assert that Constant was following Montesquieu.<sup>488</sup> The difficulties with associating Constant and Montesquieu are so clear, though—beginning with Constant’s denial that a powerful aristocracy was necessary to assure liberty in France—that scholars who assert the connection between Constant and Montesquieu are nearly always immediately forced to amend or qualify it. In Jacob

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<sup>486</sup> Benjamin Constant, “Questions politiques: de la monarchie et de la république,” in *Recueil d’articles 1829-1830*, 293.

<sup>487</sup> *Ibid.*, 8

<sup>488</sup> For attributions of Constant’s Montesquieuanism see Stephen Holmes, *Benjamin Constant and the Making of Modern Liberalism*, (New Haven: 1984), 4-5, 134; Biancamaria Fontana, *Benjamin Constant and the Post-Revolutionary Mind*, (New Haven: 1991), 48-50; K. Steven Vincent, *Benjamin Constant and the Birth of French Liberalism*, (New York: 2011), 107, 174-176; Markus Prutsch, *Making Sense of Constitutional Monarchism in Post-Napoleonic France and Germany*, (Palgrave Macmillan, New York, 2013), 1, 4, 37; and Craiutu. *A Virtue for Courageous Minds*, 227, 289.

Levy's formulation Constant "built on Montesquieu;" according to Stephen Holmes and George Armstrong Kelly he was an ambivalent Montesquieuian.<sup>489</sup> K. Steven Vincent and Biancamaria Fontana argue that Constant amended Montesquieu's account of the English constitution by introducing five powers instead of three.<sup>490</sup> For Craiutu, on the other hand, it was through the idea of a neutral power that Constant built on Montesquieu—though remaining within the spirit of Montesquieu's thought.<sup>491</sup>

One of the clearest and most significant differences between Constant and Montesquieu is that Constant strongly denied the monarchical veto was an adequate or important instrument for checking the assembly. "The veto is a means of such extremity...it is hardly ever made use of," Constant argued, and "there are very few examples of the exercise of the veto in England."<sup>492</sup> Constant noted that George III did not even dare to use the veto against Fox's reform of the East India Company, despite his abhorrence of it. "In 1783...the King preferred the arguably irregular means of his personal credit over the members of the high chamber, to the legal employment of his constitutional prerogative, for rejecting Fox's India Bill."<sup>493</sup>

Constant never questioned the idea of the separation of powers as boldly as Necker did.<sup>494</sup> But in line with his skepticism about the veto, Constant did question the other dominant

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<sup>489</sup> See Jacob Levy, "Beyond Publius: Montesquieu, Liberal Republicanism and the Small-Republic Thesis," *History of Political Thought*, vol. 27, no. 1, (2006), 56, 74-82; Holmes, *Benjamin Constant and the Making of Modern Liberalism*, 10, 265; George Armstrong Kelly, *The Humane Comedy: Constant, Tocqueville and French Liberalism*, (Cambridge: 1992), 48-51.

<sup>490</sup> Fontana, *Benjamin Constant and the Post-Revolutionary Mind*, 50; Vincent, *Benjamin Constant and the Birth of French Liberalism*, 189.

<sup>491</sup> Craiutu, *A Virtue for Courageous Minds*, 227-234.

<sup>492</sup> Constant, "De la possibilité d'une constitution républicaine dans un grand pays," 610

<sup>493</sup> Ibid.

eighteenth-century constitutional metaphor of “checks and balances.” Constant denied that liberty was best preserved when a distinct executive and legislature faced off against each other. He argued that such an approach set up a stark dichotomy between civil conflict, and tyranny. If the legislature and executive did not cooperate, there was the complete breakdown of all government. But on the other hand, if they did successfully cooperate, they suddenly found themselves completely unchecked by any other constitutional actor. “When these powers are divided, there is nothing to reestablish concord between them. When they are united, there is nothing to arrest the infringements which their union encourages.”<sup>495</sup> Unsurprisingly, Constant saw the French Constitution of 1791 as the greatest confirmation of how attempting to balance constitutional powers led to violent stasis. “In the Constitution of 1791,” Constant lamented, “I see...two powers condemned to ceaselessly combat one another.”<sup>496</sup> Yet Constant would also continually underline the second potential danger as well: “it is possible, some will argue, through ingenious combinations, to restrain power by dividing it. We may set its different parts in opposition and balance them against one another. Yet by what means can we ensure that the total sum will not be unlimited?”<sup>497</sup>

To rely on a clash between distinct constitutional powers was at once a dangerous and insufficient method of preserving liberty. The right approach, Constant argued, was to ensure that the individuals holding political offices did not think to overstep their constitutional limits in

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<sup>494</sup> See for instance Constant, *Principles of Politics* (1810), 35-36 where Constant’s qualified support for this doctrine is expressed. It is somewhat puzzling that Constant’s favored constitutional arrangement, in which ministers within by the legislature expressly hold the executive power, seems to flaunt this doctrine much more flagrantly than any of Necker’s constitutional proposals do.

<sup>495</sup> Constant, “De la possibilité d’une constitution républicaine dans un grand pays,” 617

<sup>496</sup> *Ibid.*, 678-679

<sup>497</sup> Benjamin Constant, *Principles of Politics*, 182.

the first place. As Constant wrote in 1815, “we must find for political institutions foundations which combine the interest of the different holders of power so that their most apparent, most certain, and most durable advantage would be to remain within the limits of their respective attributions.”<sup>498</sup> Five years earlier he put the point this way: “if your combined authorities abuse the liberty you accord them, your constitution is corrupt, for a good constitution would have given them an interest in not abusing it.”<sup>499</sup>

What drew Constant to the British parliamentary model was not a Montesquieuan commitment to checks and balances. But it was also not a belief in constitutional unity and harmony of the sort expressed by Necker. Rather, Constant thought that the political structure of England conditioned individuals in office to not to want to overstep the bounds of their offices to begin with. This was the very same advantage of the English political system that had so powerfully captivated another Swiss author three decades earlier, Jean Louis De Lolme. Indeed Constant’s formulation of the advantages of the British approach to structuring the legislature are so close to De Lolme’s that it is difficult to believe he was not following De Lolme directly. There is evidence that Constant was thinking about De Lolme during the period in which he wrote *Réflexions sur les constitutions* and *Principes de Politique*. While De Lolme is not mentioned in either pamphlet, he is mentioned in another pamphlet published during that same political moment. *De la liberté des brochures, des pamphlets et des journaux*, Constant’s most systematic defense of freedom of expression, came out a mere two months after *Réflexions sur les constitutions*.<sup>500</sup> In it, Constant declares specifically that he will “invoke” the “authority of

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<sup>498</sup> Ibid.

<sup>499</sup> Constant, *Principles of Politics* (1810), 96

Delolme” in order to demonstrate that freedom of speech and expression were compatible with political authority in England.<sup>501</sup> There is thus a very strong indication that Constant agreed with De Lolme about the character of English liberty. Given the similar logic in both their arguments, which I will demonstrate in the course of this chapter, it is not at all a leap to suppose that De Lolme’s influence on Constant’s thinking ran deeper still.<sup>502</sup>

Of all political powers, Constant was especially struck by the difficulty of preventing the legislature from thinking to overstep its constitutional bounds. Constant believed that “the legislative power is evidently the first of all powers in rank and dignity.”<sup>503</sup> He argued that “there is nothing more salutary for either monarchy or liberty than an independent representation, an organ which truly represents public opinion.”<sup>504</sup> Yet among constitutional powers, the legislature was also arguably the most dangerous.<sup>505</sup> It was, for Constant, “of all powers the blindest in its movements, the most unpredictable in its consequences.”<sup>506</sup> Constant especially emphasized the peculiar size of the legislature. Large enough to be gripped by a mob-mentality, and for

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<sup>500</sup> For the precise dates of these pamphlets see Cecil Patrick Courtney, *A Bibliography of Editions of the Writings of Benjamin Constant to 1833*, vol. 1, (Hudson: 1981), 34-37.

<sup>501</sup> Constant, *De la liberté des brochures, des pamphlets et des journaux*, 26.

<sup>502</sup> Also important to note is the substantial influence of De Lolme on Germaine de Staël. In the notes De Staël wrote in preparation for her book *Des circonstances actuelles qui peuvent terminer la Révolution et des principes qui doivent fonder la république de France*, she includes a three page summary of De Lolme. See Germaine de Staël, “Notes de Germaine de Staël pour la preparation de son livre,” *OC*, ser. 3, t. 1, ed. Lucia Omacini, (Paris: 2009), 534-536. So high a status does De Lolme have for De Staël that her notes on him are placed alongside her notes on Machiavelli, Plato, Aristotle, and Montesquieu (Ibid., 521-536). He is THE authority on the English constitution.

<sup>503</sup> Constant, “De la possibilité d’une constitution républicaine dans un grand pays,” 431.

<sup>504</sup> Benjamin Constant, “Des désordres actuels de la France et des moyens d’y remédier par M. le comte de Montlosier,” in *Oeuvres complètes*, t. 10, vol. 1, ed. Kurt Kloocke, (Berlin: 2010), 176.

<sup>505</sup> Constant’s particular concern about the legislature as a threat to liberty is noted by Marcel Gauchet. See Gauchet, *La condition politique*, 280-282.

<sup>506</sup> Constant, *Principles of Politics*, 195.

individual legislators to disclaim responsibility for their individual actions, the legislature was also small enough to stick to a clear, persistent, and ruthless agenda.<sup>507</sup> A legislature could oppose itself to “the national spirit” and be carried away by “*esprit de corps*.”<sup>508</sup> On the other hand it could equally play the demagogue and follow the worst of public passions; or, it could be divided by gridlock and faction, leading to “indecision” and “exhaustion.”<sup>509</sup> Constant did not think that these pathologies only afflicted “the most corrupt and subjugated assemblies,” such as “the Convention dominated by Robespierre” or “the Parliament of Cromwell.”<sup>510</sup> They were found even in “regular assemblies, chosen freely and peaceably.”<sup>511</sup> However it was clearly the events of the French Revolution that had driven Constant to such an ambivalence about the legislature. “During the entire course of our revolution,” Constant lamented, “representative assemblies...have exercised the most unheard of arbitrary power over the whole of individual existence.”<sup>512</sup> He argued that “none of our free constitutions has assigned a limit to legislative power.”<sup>513</sup> And, “when the legislative power has no limits, when the representatives believe themselves invested with unlimited sovereignty...the tyranny of men chosen by the people is just as disastrous as every other tyranny.”<sup>514</sup>

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<sup>507</sup> Ibid., 195-196

<sup>508</sup> Ibid.

<sup>509</sup> Ibid.,

<sup>510</sup> Constant, “De la possibilité d’une constitution républicaine dans un grand pays,” 518

<sup>511</sup> Ibid.

<sup>512</sup> Ibid., 550

<sup>513</sup> Ibid.

<sup>514</sup> Ibid.

Constant's solution to legislative overreach and tyranny equally rested on his insight into the peculiar size of the legislature. Although a legislative assembly might occasionally be seized by a single mob-like mentality, for the most part Constant believed that the legislature was too large for all its members to share a single will or intention. This meant, according to Constant, that the danger of legislative overreach and despotism was not so much the danger of a whole assembly deciding collectively to play the tyrant. To the contrary, Constant suggested, the tyrannical potential of the legislature arose because of how difficult it was for the legislature to achieve anything approaching unanimity. Given the number of competing wills, factions, and voices within any legislature, "a well unified minority, which has the advantage of attack, which frightens and seduces, reasons and menaces in turn" will "dominate sooner or later."<sup>515</sup> Constant used the Legislative Assembly of 1791 and 1792 as an example of this "There never existed, in the Legislative Assembly, a hundred men who wished to bring down the constitutional monarchy: from the commencement to the end of its short career, that assembly was always driven in a direction opposed to its wills and desires."<sup>516</sup> What looked like constitutional usurpation by the whole legislature was in reality only the usurpation of a highly organized minority, which succeeded in pushing the rest of the body to follow it.

Constant reiterated this point at the start of the Restoration: "the constituent assembly did not want to shake and weaken the monarchy and yet it shook and weakened it. The legislative assembly did not want bring down the throne, and yet it did."<sup>517</sup> Constant argued that practically

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<sup>515</sup> Constant, "De la possibilité d'une constitution républicaine dans un grand pays," 519

<sup>516</sup> Ibid.

<sup>517</sup> Benjamin Constant, "Prospectus du Journal des Arts," *OC*, t. 10, vol. 1, 134.

every other tyrannical legislative assembly had also been driven by a small and ambitious faction:

"Three quarters of the Convention held in horror the assassinations which Paris became the theatre of. Nevertheless it did not delay in being subjugated by the authors of those crimes, even as they were a very small number at its heart. Whoever has pored through the authentic acts of the Parliament of England...before the death of Charles I, must be convinced that two-thirds of the parliamentarians ardently desired the peace that their votes ceaselessly repressed, and that they regarded as horrible and blamable, the war which each day they proclaimed unanimously the justice and necessity of."<sup>518</sup>

The comparatively large size and capacity for pluralism of the legislature, precisely those features which made the legislature a space for deliberation and an institution capable of representing a variety of perspectives, also made the legislature an unsurpassed location for usurpation by ruthlessly minded individuals or factions.<sup>519</sup>

If Britain had avoided legislative tyranny and usurpation during the eighteenth century, this was primarily because Britain had succeeded in preventing usurpation by tyrannically minded individuals and factions within parliament. Constant attributed this above all to the fact that Britain's parliamentary structure allowed members of Parliament to serve in ministerial offices, therefore channeling the ambitions of legislators away from usurpation, towards those offices. Constant claimed, "the greatest advantages result from letting representatives have the ability to arrive at ministerial places."<sup>520</sup> For, while "legislative functions are first in genuine dignity, and the most appropriate to independent characters, the places of the ministry are, in a great empire, the surer route to power and to riches. They are always more desired by vulgar

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<sup>518</sup> Constant, "De la possibilité d'une constitution républicaine dans un grand pays," 519.

<sup>519</sup> See Benjamin Constant, "The Spirit of Conquest and Usurpation and their Relation to European Civilization," in *Political Writings*, 85-167

<sup>520</sup> Constant, "De la possibilité d'une constitution républicaine dans un grand pays," 542



ambitions. If the members of the representative assemblies cannot ever participate in the executive power, as ministers, it is to be feared that they will regard that power itself...as their natural enemy."<sup>521</sup> According to Constant, "it is this possibility," the possibility for a representative to become a minister, "which has perhaps preserved the English constitution."<sup>522</sup>

Including ministers in the legislature shaped and directed the ambition of representatives so they did not think of usurpation, and instead sought ministerial office. As the passages cited in the above paragraph attest, Constant had already come to favor including legislators in the ministry even during his republican period. In *De la possibilité d'une constitution républicaine dans un grand pays*, Constant supported a republic with an executive committee rather than a unitary executive, but a committee which, unlike the actual Directory, would be able to appoint ministers from out the legislature. Constant reiterated similar arguments for a parliamentary legislature within a constitutional monarchy in 1815:

"When the representatives of the people are excluded from participation in power, we have reason to fear that they will regard it as their natural enemy. If on the contrary, the ministers could be received in the bosom of the assemblies, the ambitious will direct their efforts only against men and would respect the institutions. Because their attacks will be aimed at individuals, they will be less dangerous for the assembly as a whole. No-one will want to break an instrument the use of which he could hope to win... We see an example of this in England. The enemies of the ministry see in its power their own future authority and strength."<sup>523</sup>

The existence of a constitutional monarch alongside Parliament created an additional point of support against usurpation from within the assembly.<sup>524</sup> Although the king had almost no power

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<sup>521</sup> Ibid., 543

<sup>522</sup> Ibid., 542-543

<sup>523</sup> Ibid., 224

<sup>524</sup> During his republican phase, Constant supported an elite committee serving as the neutral power. The difference between these two options is one of the primary distinction between monarchy and republic in Constant's thought. Which did he ultimately prefer? While this is a longstanding question among scholars of Constant, in a late essay he wrote that both options had their pros and cons. The problem with having a committee serve as the neutral power is that "this corps can divide; conflict can establish itself in its heart." But whereas the chief danger in a republic is

to directly act upon the people, he was still possessed of extraordinary dignity and majesty. As the symbolic representation of neutrality and the justice, the king reigned as “a point of a power superior to the ministry...a fixed unassailable point which passions cannot reach.”<sup>525</sup> According to Constant, “nothing of the kind happens in a republic, where all citizens may rise to the supreme power.”<sup>526</sup> Here again Constant’s argument is highly reminiscent of De Lolme. Constant hoped that a monarch who was bereft of executive functions, but who exercised a powerful role of public symbolism could stand as a clear, fixed limitation against the ambition of individuals and factions within the legislature.

In addition to his personal majesty, Constant also saw the monarch as capable of limiting the legislature through certain constitutional functions. But even here, I want to suggest, Constant’s argument broke markedly with the simple idea of checks and balances. Continuous with general constitutional theory, the powers which were wielded by the king with respect to the legislature were meant most of all to condition the motivations of the individuals within the legislature—rather than to check legislative decisions. Constant’s king, I noted earlier, was the “judiciary power for the constitutional powers.” Nor was this phrase merely metaphorical. While the king could not jail representatives and ministers, Constant saw the king’s primary power as being able to deprive them individually of office, or to reward them by giving them a higher office. The king could make representatives into Peers, or appoint them as ministers. He could also dismiss a ministry, or dissolve Parliament.

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factional spirit within the neutral power, the danger in a monarch is that neutrality is entirely dependent on the character one man. See Constant, “Questions politiques,” 294-295.

<sup>525</sup> Constant, “Principles of Politics,” 190

<sup>526</sup> *Ibid.*, 190

I have already shown that like Necker, Constant strongly downplayed the veto. Indeed for Constant, the most important power that the monarch possessed was the peculiarly British power of dissolution—a power which the United States, as well as France in 1791, had notably excluded from their constitutions. Constant claimed that the “germ of death” in the Constitution of 1791 was that it was an “impossibility” for “the king to dissolve the legislative assembly.”<sup>527</sup> He declared, “without that precaution, a monarchy and a constitution are chimeras.”<sup>528</sup> While the monarch’s other powers—the appointment of peers, the approval of ministers—allowed him to act within the parliamentary process itself, only the right of dissolution enabled the monarch to stop everything, and in a sense start the entire legislative process over from scratch. It was a true power of last resort, and moreover one which completely maintained the king’s neutrality. In dissolving parliament the monarch was never forced to take any stand on any particular issue, as vetoing a piece of legislation inherently demanded of him.

The power of dissolution could not prevent the legislature from passing an agenda that had wide public support. In that situation, after all, the people would simply re-elect the representatives the king had sent home. All that dissolution achieved was time, and a new opportunity for popular judgment to occur. But what made this so essential was that Constant’s greatest fear, as I have emphasized, was never usurpation by the whole legislature, but rather legislative usurpation led by an extreme individual or faction that had come to prevail within the assembly. Dissolution enabled the king to send home the entire faction in a single stroke, and made the people rather the monarch himself the arbiter of their fate. It is true that the monarch was reliant on the public making the right judgement about the constitutional threat that the

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<sup>527</sup> Constant, “Des désordres actuels de la France et des moyens d’y remédier par M. le comte de Montlosier,” 176

<sup>528</sup> Ibid.

faction posed. But to adequately defend the constitution from such a faction through the use of the veto, the king would have to exercise it repeatedly, and repeatedly put himself on the line—exactly what doomed the French constitution of 1791.

Although there are important respects in which Constant's conception of parliamentary government was influenced by Necker, Constant's central institutional analysis, as well as the larger political vision underlying it, departed significantly from his. Whereas Necker claimed that the British system prevented legislative overreach by allowing the monarch to be actively involved within the legislature, Constant radically denied that ministers in parliament were even an extension of the king's authority at all, let alone that their role was to shape the legislative process so that it corresponded with the king's interests. For Constant, the necessity of placing ministerial offices in parliament was that this directed the ambition of representatives away from usurpation. These offices created a secure, constitutional outlet for the ambition of legislators, who might otherwise attack the constitution. If England had tamed the threat of legislative usurpation since 1688, Constant's radical claim was that it had accomplished this while dramatically weakening the power and activity of the monarch. Although the Crown had gradually been deprived of nearly its entire role in actual governing, it fit into a complex constitutional structure that channeled the ambition of representatives and parties away from usurpation, and instead towards higher offices.

In contrast to Necker, Constant did not advocate parliamentary institutions as a means of instantiating social order and hierarchy. Rather they offered a secure constitutional structure in which the most wide-ranging political disagreement and contestation could safely take place.

Bryan Garsten has noted the centrality of political contest to Constant's political theory.<sup>529</sup> "The

representative system is a system of struggle,” Constant declared; “if there is no struggle, the representative system would be the worst of all systems.”<sup>530</sup> Because England’s parliamentary system conditioned actors competing for power not to struggle against the constitution itself, but instead against each other for ministerial offices, a truly rich and vibrant public debate, defined by conflicting interests and opinions, could safely take place in England without any threat to the constitutional order.

Constant distinguished several different forms of debate and discussion which made up the political life of a parliamentary regime. On the one hand, he depicted deliberation over interests. “One hundred deputies, nominated by a hundred sections of a state, bring into the assembly the particular interests, the local preoccupations of their electors,” Constant noted.<sup>531</sup> Parliament was where these local and particular interests would be negotiated, eventually leading to a consensus that was the larger national interest. “Forced to decide together,” Constant argued, legislators “become aware of the respective sacrifices which are indispensable.”<sup>532</sup> However Constant also depicted a legislative contest over opinions and principles, as well as over interests, and he foresaw this filtering down throughout the broader public. “It is representative assemblies alone that can infuse life into the political body,” Constant argued.<sup>533</sup> England was again his example. “In England, pamphlets accompany each political question nearly into the heart of parliament. Every thinking part of the nation intervenes in this way concerning the

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<sup>529</sup> See Bryan Garsten, “Liberalism and the Rhetorical Vision of Politics,” *Journal of the History of Ideas*, vol. 73, no.1, (2012), 89-93.

<sup>530</sup> Benjamin Constant, “Annales de la session de 1817 à 1818: Composition actuelle de la Chambre des députés,” *OC*, t. 10, vol. 2, (Berlin: 2010), 952.

<sup>531</sup> Constant, *Principles of Politics*, 206.

<sup>532</sup> *Ibid.*

<sup>533</sup> Constant, *De la liberté des brochures, des pamphlets et des journaux*, 8

question which interests it.”<sup>534</sup> Through its interplay between public and legislature, England exemplified a politics of rich public deliberation: “the representatives of the people and the government see all sides of each question presented, and of all the opinions which are attacked and defended.”<sup>535</sup> Constant argued that the inclusion of ministers in the assembly elevated the level of discourse, since “they bring knowledge of fact which only the exercise of government can give”<sup>536</sup> But more importantly, I have shown, the existence of a strict disjuncture between king and administration created a structure in which members of the legislature could compete for the power to implement their ideas and agendas, without the monarchy and constitution ever being shaken.<sup>537</sup>

### Parliamentary Liberalism in Coppet and Edinburgh

In the aftermath of the French Revolution, one crucial intellectual circle for the development of theories of parliamentary government was in Coppet, Switzerland—the proverbial home of Necker, Constant, and Germaine de Staël. A second such circle was based in Edinburgh, Scotland. This was because of the *Edinburgh Review*, which had been founded in 1802 by four graduates of Edinburgh University (Francis Jeffrey, Francis Horner, Sydney Smith, and Henry Brougham). Over the next three decades, this journal would become one of the major

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<sup>534</sup> Ibid.

<sup>535</sup> Ibid.

<sup>536</sup> Benjamin Constant, “Considérations sur la loi des élections,” *OC*, t. 10, vol. 2, 647

<sup>537</sup> This is why even the most dramatic popular manifestations in England did not threaten the regime, Constant argued. See Constant, *De la liberté des brochures, des pamphlets et des journaux*, 24.

organs of the Whig party, as it struggled to reform Parliament. In its early years, the *Edinburgh Review* included articles on a stupendous array of topics.<sup>538</sup> One important topic, which has largely been overlooked by scholars, was the nature of parliamentary government in England.

The *Edinburgh Review*'s main political objective was to chart a middle-path in English politics between radicalism and the status quo. Writers in the *Edinburgh Review* such as Jeffrey, Brougham, James Mackintosh, and Thomas Macaulay rejected the idea of universal suffrage. They abhorred the numerous traditions of radicalism which flourished in England in the aftermath of the French Revolution. And yet at the same time, these “first Edinburgh Reviewers,” as Walter Bagehot would later call them, acknowledged that England's current political structures were out of step with the demands of an emerging modern society.<sup>539</sup> Major cities and classes went unrepresented in parliament, while elections across the country were often determined nakedly by corruption—emanating both from the Crown, and from private money. Within parliament, William Pitt had reigned as prime minister nearly continuously for over two decades, something difficult to imagine happening in a genuinely free nation. The Whigs of the early nineteenth century were great admirers of Edmund Burke. And yet unlike Burke, they thought there was a middle-path between the status quo and full-on democracy.

This commitment to the *juste milieu* was also one that thinkers associated with the Coppel Circle could appreciate. Indeed there are numerous personal connections between the liberals of Edinburgh and the liberals of Coppel. James Mackintosh, for instance was a close

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<sup>538</sup> For broad surveys of the thought of the Edinburgh Whigs, and their legacy, see Biancamaria Fontana, *Rethinking the Politics of Commercial Society: The Edinburgh Review 1802–1832*, (Cambridge: 1985); as well as John Burrow, Stefan Collini, and Donald Winch, *That Noble Science of Politics*, (Cambridge: 1983).

<sup>539</sup> Walter Bagehot, “The First Edinburgh Reviewers,” in *Collected Works*, vol. 1, ed. ed. Norman St John-Stevan, (Cambridge MA: 1965-1986), 308-341

friend of Benjamin Constant, and the brother-in-law of Simonde de Sismondi. He praised Constant as “unquestionably the first political writer of the Continent, and apparently the ablest man in France.”<sup>540</sup> Jeffrey similarly called Germaine de Staël “the most powerful writer that her country has produced since the time of Voltaire and Rousseau.”<sup>541</sup> But the connection I want to specifically highlight is between the justifications for parliamentary government put forward in these two contexts.

Today Francis Jeffrey is nearly a forgotten figure in the history of political thought.<sup>542</sup> Yet as M.J.C. Vile has noted, Jeffrey—who served as a member of parliament as well as being one of the most prolific contributors to the *Edinburgh Review*—was among the premier theorists of parliamentary institutions in the early nineteenth-century.<sup>543</sup> Until Walter Bagehot and the Third Earl Grey, a half-century later, few authors in Britain would spell out the difference between a parliamentary regime and other forms of representative government with the theoretical and historical sophistication that Jeffrey displayed. In a series of articles published between 1807 and 1820, Jeffrey argued that originally, the king, lords, and commons had functioned as entirely discrete and independent powers. “At first,” he stated, “these three orders had separate functions and privileges, which they exercised separately and successively—frequently with very little concert—and sometimes with considerable hostility.”<sup>544</sup> But Jeffrey

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<sup>540</sup> James Mackintosh, “France,” *Edinburgh Review*, vol. 24, no. 48, (1815), 530

<sup>541</sup> Francis Jeffrey, “Mad. De Staël sur la Revolution Francoise,” *Edinburgh Review*, vol. 30, no. 60, (1818), 275. For a somewhat less flattering portrayal of De Staël (and her father) by Jeffrey see Francis Jeffrey, “Germaine de Staël,” *Edinburgh Review*, vol. 36, no. 71, (1822), 54-82.

<sup>542</sup> One of the few monographic studies of Jeffrey as an intellectual is Phillip Flyn, *Francis Jeffrey*, (Camden: 1978).

<sup>543</sup> Vile, *Constitutionalism and the Separation of Powers*, 237-239.

<sup>544</sup> Jeffrey, “Cobbett's Political Register,” 411.



argued that this arrangement only worked so long as little actual governing was required. “When the business of government became more complicated and operose, the greatest inconvenience must have been experienced from this entire separation of the three estates of which it was composed,” Jeffrey wrote, “and some expedients must have been devised for giving them a greater sympathy and mutual contact in their proceedings.”<sup>545</sup>

In particular, the specific threat which emerged out of the initial separation of English constitutional powers was that of a clash between the popular legislature, and either of the other two branches. According to Jeffrey, “it never could have been but most injurious to the state and country at large, that the House of Lords, for example, should throw out, by a great majority, an important bill which the House of Commons had passed by a great majority—or that the King should reject, with indignation, a law which had received the decided approbation of both Houses of Parliament.”<sup>546</sup>

What defined the modern English political system, for Jeffrey, was a transformation in the nature of England’s constitutional balance. Rather than the different orders of government acting entirely in their own spheres, the increasing power of the House of Commons in the English state led the other two powers to see no other choice than to exercise their influence within the popular assembly—instead of against it from the outside. Jeffrey’s account of the value of this arrangement is nearly identical to Necker’s. Jeffrey’s argument was that having the Crown through its ministers exercising political weight within the legislature, was required to prevent the violent clash of constitutional powers. The *raison d’être* of parliamentary institutions

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<sup>545</sup> Ibid., 411-412

<sup>546</sup> Ibid., 412

was to “employ[ing] the different tendencies of the royal, aristocratical, and popular influences, rather to modify the measures of government in their concoction, than to counteract and oppose each other afterwards.”<sup>547</sup> Before legislation is even passed through the House of Commons, it would be already shaped so that the Crown would not find it wholly disagreeable.

“It is impossible to deny,” Jeffrey maintained, “that, according to the present constitution of the House of Commons, the Crown, the Executive government, or the Ministry, has a great influence in its deliberations.”<sup>548</sup> And as a result of this influence, “the collision and shock of...rival principles, is either prevented or prodigiously softened by this early mixture of their elements,—that by converting those sudden and successive checks into one regulating and graduated pressure, their operation becomes infinitely more smooth and manageable.”<sup>549</sup> The collisions between different powers of government were thus blunted by Britain’s modern parliamentary regime, which transformed what would have otherwise have been blind clashes and stalemates between separate constitutional powers, into argument and deliberation entirely within the House of Commons.

If a measure to which the Lords were adverse was proposed in the Commons, it would be desirable that the reasons and the influence which produced their hostility should be directed against it *in that House*; and if a measure, from which the Sovereign was resolved to withhold his acquiescence was proposed in either House, it would, in like manner, be desirable that this repugnance should be disclosed *in the course of their deliberations*, and matters prevented, if possible, from coming to extremities by the interposition of the royal veto on a measure zealously patronized by the Parliament.<sup>550</sup>

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<sup>547</sup> Ibid., 412

<sup>548</sup> Ibid., 413

<sup>549</sup> Ibid.

<sup>550</sup> Ibid., 412

It is evident that the particular collision which Jeffrey most feared was one between the House of Commons and the Crown, as this was a clash that Jeffrey was confident the Crown would decisively lose. It was the growing power of the House of Commons which necessitated the turn to a parliamentary regime in the first place. Jeffrey claimed that as a result of “the vast and rapid increase of wealth and intelligence in the country at large” the House of Commons had emerged as far and away the most powerful part of the British constitution.<sup>551</sup> The House of Commons had come to possess “a degree of weight and authority, against which it would no longer have been safe for any other power to have risked an opposition.”<sup>552</sup> Jeffrey noted that “no ministry, for a hundred years back, has had courage to interpose the royal negative to any measure which has passed through the House of Parliament, even by narrow majorities; and there is no thinking man, who can contemplate, without dismay, the probable consequences of such a resistance, where the House of Commons had been zealous and nearly unanimous.”<sup>553</sup> Indeed Jeffrey went so far as to write that, “the whole frame and machinery of the constitution” in Britain “is contrived for the express purpose of preventing the kingly power from dashing itself to pieces against the more radical power of the people.”<sup>554</sup> In this situation, “in order to exercise their constitutional functions with safety, therefore, it became necessary for the King and the great families to exercise them in the Lower House—not against the united Commons of England, but among them.”<sup>555</sup> This way, “the balance which was in danger of being lost through

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<sup>551</sup> Ibid., 414

<sup>552</sup> Ibid., 414

<sup>553</sup> Ibid.

<sup>554</sup> Francis Jeffrey, “Leckie on the British Government,” *Edinburgh Review*, vol. 20, no. 40, (1812), 339

<sup>555</sup> Jeffrey, “Cobbett’s Political Register,” 414

the increasing power and influence of the Lower House, has been saved by being transferred into that assembly; and all that was essentially valuable in the constitution, has been secured by a silent but very important change in its mode of operation.”<sup>556</sup>

Jeffrey’s argument clearly comes out of the Humean tradition which I examined in the first chapter of this dissertation. However it is also quite possible that Jeffrey was drawing from Necker when he composed his nearly identical account of the value of parliamentary institutions.<sup>557</sup> To a much greater degree than *A Dialogue on the Actual State of Parliament*, the most important expression of Hume’s position in the final decades of the eighteenth century (which I discussed in the first chapter of this dissertation), and the one most similar to Jeffrey’s, Jeffrey warned not merely about the possibility of gridlock between the executive and legislature in the event that the king were to exercise his veto, but rather predicted the immediate destruction of the monarchy. It is difficult to imagine that Jeffrey was not thinking about the collapse of the French Constitution of 1791—an event he later wrote about in the *Edinburgh Review*—when he crafted his image of “the kingly power . . . dashing itself to pieces against the more radical power of the people.”<sup>558</sup>

At the same time, Jeffrey’s immediate adversaries were English, rather than French. Inspired by the French and American revolutions, which broke so prominently with the English model, the late eighteenth and early nineteenth century saw prominent radicals in England

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<sup>556</sup> Ibid.

<sup>557</sup> The interest in Necker’s account of the French Revolution in England is testified to by the English translations of his works. See Jacques Necker, *An Essay on the True Principles of Executive Power in Great States*, (London: 1792); as well as Jacques Necker, *On the French Revolution*, (London: 1797).

<sup>558</sup> For Jeffrey’s harrowing description of the collapse of the French monarchy in 1792 see Jeffrey, “Mad. De Staël sur la Revolution Francoise,” 300-301.

questioning the integration of ministers with Parliament. Thus Jeffrey noted that “Mr. Cobbett talks repeatedly of the irregularity of Parliament interfering with the King’s choice of ministers, with which, he says, they have no more to do than with the choice of his running footmen.”<sup>559</sup> Jeffrey claimed that Cobbett, as well as Francis Burdett, “regard the revival or active development of the King’s prerogative, as an important part of that beneficial reform, which they think would be effected by purging the Common’s House of all admixture of Royal or aristocratical influence.”<sup>560</sup> Jeffrey was adamant that to increase the independent exercise of the king’s constitutional prerogatives, and correspondingly decrease the influence he exercised through his ministers being in the House of Commons, would be “by far the greatest calamity that could be inflicted upon us by our own hands.”<sup>561</sup> The result, in Jeffrey’s rendition, sounds again identical to the fate of the French Constitution of 1791:

To set the Sovereign of this country again to stand upon his prerogative, and to meet the encroachments of a democratical House of Commons with no other aid than a set of ministers appointed without any connection with that House, would be to expose the monarchy and the constitution to a fate infinitely more certain and terrible than that which fell upon them in the time of King Charles.<sup>562</sup>

There is, then, an impressive parallel between Necker’s justification for parliamentary institutions and Jeffrey’s. But in contrast with Necker—though like Necker’s daughter, Germaine de Staël—Jeffrey was entirely open about the importance of corruption in making the king’s influence within the House of Commons possible. The weight that had come to be wielded by the Crown’s ministers was due to their control over offices desired by

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<sup>559</sup> Francis Jeffrey, “Parliamentary Reform,” *Edinburgh Review*, vol. 14, no. 28, (1809), 302

<sup>560</sup> *Ibid.*

<sup>561</sup> *Ibid.*

<sup>562</sup> *Ibid.*

representatives, and their influence upon so many parliamentary boroughs. In defending this influence, Jeffrey cited Hume.<sup>563</sup> While Jeffrey lamented to some degree that the Crown and aristocracy's influence over members of the House of Commons was "practiced in a sort of covert and underhand manner," he saw no other alternative.<sup>564</sup> To give any "formal recognition" to these forms of influence would run the risk of endorsing them, and thus pushing their operation well beyond the bounds which were constitutionally healthy.<sup>565</sup>

Jeffrey was a prominent advocate of parliamentary reform. He stood at the forefront of Whigs seeking to give parliamentary representation to unrepresented classes and cities. But this was only because he did not think that parliamentary reform, if pursued in a moderate manner, would necessarily decrease the influence of either the aristocracy or the Crown within the House of Commons. "If we apprehended, therefore, that House of Commons would be freed from all but popular influence, by making the scheme of representation more comprehensive and more consistent, we should certainly be vehement against any such change in its present constitution."<sup>566</sup> Jeffrey claimed to "have no fears" on this head. So long as the fundamental features of the English constitution were not changed, the aristocracy and Crown would retain "a due proportion of their influence," even within a reformed House of Commons.<sup>567</sup>

The other Edinburgh Whigs broadly agreed with Jeffrey about the superiority of England's parliamentary arrangements, in which representatives in the legislature could also hold

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<sup>563</sup> Jeffrey, "Cobbet's Political Register," 415

<sup>564</sup> Jeffrey, "Parliamentary Reform," 304

<sup>565</sup> Ibid.

<sup>566</sup> Ibid., 303

<sup>567</sup> Ibid., 303-304

executive offices and serve as ministers. Henry Brougham, the most prominent contributor to the *Edinburgh Review* other than Jeffrey, decried the fact that in United States, “by an extremely injudicious provision no minister can sit in either House, nor any person holding any public appointment.”<sup>568</sup> Brougham saw this as a clear stimulus either to misgovernment by the executive and its agents, or to improper interventions by the legislature, which had no ordinary method of influencing the executive’s decisions. In America, “the most effectual responsibility under which the servants of the State and its executive government can be placed is destroyed; and neither an explanation of public measures, nor a chance of preventing errors by discussion, nor any opportunity of defending the Government's proceedings is afforded.”<sup>569</sup> Brougham’s conception of the purpose of parliamentary institutions differed noticeably from Jeffrey’s. The necessity for the king’s ministers to serve in Parliament was not that they would assure the Crown an extra-constitutional influence over the House of Commons, as Jeffrey claimed. Rather, reiterating Burke’s argument in *Thoughts on the Present Discontents*, Brougham conceived of their presence there as a way for the House of Commons to continually monitor the executive, ensuring that the inviolable and “irresponsible” authority of the Crown was always exercised according to the public interest. What Brougham celebrated was that “the Government cannot be carried on with us for any length of time, unless the ministers of the day have the support of a

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<sup>568</sup> Brougham, *The British Constitution*, 412. Though these lines are from one of Brougham’s later writings, other citations attest that his view of ministerial responsibility did not markedly change over the course of the nineteenth century. See for instance, Henry Brougham, “Mr. Canning--Parliamentary Reform”, in *Contributions to the Edinburgh Review by Henry Lord Brougham*, vol. 2, (London: 1856), 498; as well as, Henry Brougham, “Dangers of the Constitution”, *Contributions*, vol. 2, 438; and finally Henry Brougham, “Queen Consort”, in *Contributions*, vol. 2, 408.

<sup>569</sup> Brougham, *The British Constitution*, 412

decided Majority in both Houses of Parliament.”<sup>570</sup> This ensured that the Crown’s “known agents” were always “answerable for their acts” to Parliament.<sup>571</sup>

As a result of his differing conception of parliamentary institutions, in the years prior to the Reform Act, Brougham opposed practically all patronage within the House of Commons as corrupting its independence. How could the House of Commons surveil the king’s administration, and ensure ministers’ responsiveness to public opinion, if a plurality of its members were dependent upon that very administration for their seats in parliament, or for administrative positions; and if as a body, Parliament was “identified, as it is too apt to be, with the executive, rather than with its constituents?”<sup>572</sup> Brougham strongly advocated the necessity of party connections, as the indispensable means of making possible both government and opposition in parliament.<sup>573</sup> But in contrast with Jeffrey, who supported parliamentary reform but not as a way specifically of targeting corruption, Brougham supported parliamentary reform, and the elimination of rotten boroughs, specifically as a way of limiting monarchical patronage. He argued that the elimination of the corrupt boroughs and the enfranchisement of unrepresented cities and communities, leading to “the freest representation of all classes--of the property, the talents, and the numbers of the people,” would substantially eliminate the financial dependence of members of Parliament on the Crown.<sup>574</sup>

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<sup>570</sup> Ibid., 408

<sup>571</sup> Ibid.

<sup>572</sup> Brougham, “Dangers of the Constitution,” 437-438.

<sup>573</sup> See Henry Brougham, “The State of the Parties,” *Edinburgh Review*, vol. 46, no. 92, (1827), 431-432

<sup>574</sup> Brougham, “Mr. Canning--Parliamentary Reform”, 493. For more of the specifics of Brougham’s opposition to corruption emanating from the Crown, see Henry Brougham, “Parliamentary Reform,” *Contributions*, vol. 2, 364-371.



The influential Whig author and parliamentary representative James Mackintosh, who had previously been one of Burke's most radical critics, also argued that "the main grounds of expediency" for parliamentary reform was "that it furnishes the only means of counteracting the growing influence of the Crown in the House of Commons."<sup>575</sup> Echoing the argument made by Burke in *Thoughts on the Cause of the Present Discontents*, Mackintosh claimed that the influence of the Crown had come to threaten "the right of the House of Commons to interpose, with decisive weight, in the choice of ministers, as well as the adoption of measures."<sup>576</sup> He also criticized George III's active use of the power of dissolution, and more importantly his use of the threat of dissolution, to keep in place ministries he preferred, against the will of the House of Commons.<sup>577</sup> Neither Mackintosh nor Brougham went so far as to argue that the king's ministers should not even be an extension of his authority, as Constant argued. But Mackintosh still saw a kinship between his ideas and Constant's. He declared that Constant was "the literary representative of a party," in France, "whose principles are decisively favorable to a limited monarchy, and indeed to the general outlines of the institutions of Great Britain."<sup>578</sup> In particular, Mackintosh argued that Constant's writing "on ministerial responsibility, with some errors (though surprisingly few) on English details, is an admirable discussion of one of the most important institutions of a free government, and, though founded on English practice, would convey instruction to most of those who have best studied the English constitution."<sup>579</sup>

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<sup>575</sup> James Mackintosh, "Parliamentary Reform," *Edinburgh Review*, vol. 34, no. 68, (1820), 483. For further critiques of corruption by Mackintosh see *ibid.*, 486-487, 492-494.

<sup>576</sup> *Ibid.*, 498

<sup>577</sup> *Ibid.*

<sup>578</sup> Mackintosh, "France," 529-530

<sup>579</sup> *Ibid.*, 530

In the introduction to this dissertation I elucidated the most significant difference between parliamentary liberals in France and in England. This was their respective theories of representation. All of the Edinburgh Whigs who I have been examining supported the idea that parliament was only truly representative when it served as an exact *mirror*, or express image, of all the different classes, interests, and opinions in English society. This led them to broadly support England's system of a variety of modes of suffrages. Necker, Constant, and De Staël, by contrast, all rejected this view of representation. They criticized England's diverse electoral arrangements and defended a uniform qualification for French elections. Despite this important divergence, however, and despite the very different political circumstances in France and England, I have demonstrated that justifications for parliamentary government in both nations followed similar tracks. Francis Jeffrey and Jacques Necker both argued that the particular merit of parliamentary institutions was that it enabled the monarch—through his ministers—to be actively involved within the legislature before the passage of legislation, preventing a fatal clash over the veto. On the other hand, Brougham and Mackintosh followed Benjamin Constant in their rejection of that justification for parliamentary government—though they did not go so far as to strip the king of any role in the exercise of the executive power, as Constant did. Corruption was another question that liberals were similarly at odds over within both the Coppet Circle and the pages of the *Edinburgh Review*.

At the same time, the idea of a Parliament that mirrored the range of interests and opinions in the people did open one approach to moderating legislative power in England, which was less available in France. This is most evident in the writings of James Mackintosh. Unlike Jeffrey, I noted, Mackintosh denied that the Crown ought to be actively intervening in parliamentary deliberations as a means of containing the legislature. And in contrast to De Lolme

or Constant, Mackintosh did not provide a compelling psychological argument for why members of the House of Commons would be conditioned to avoid aiming towards usurpation of the other constitutional powers. Nor, finally, did Mackintosh have the same infatuation with parliamentary parties that Burke or Brougham did. It was precisely through the House of Commons containing an exactly representative diversity of standpoints and social interests that it was prevented from being a threat to the constitutional order. In other words, Mackintosh described the secure exercise of legislative power in terms of *sociological* conditions. He saw the balanced representation of opinions and social interests as the key to avoiding a House of Commons which was beholden to a single faction, or which followed the overwhelming influence of a temporary public majority.<sup>580</sup> The creation of such a balance *within* the legislature was what prevented it from rashly acting against the broader interest of the public.

This solution to legislative tyranny was especially influential in England, where its most canonical advocate would be John Stuart Mill. However it did find some expression in France as well. There, the most important advocate of a sociologically balanced legislature was Simonde de Sismondi.<sup>581</sup> It is likely not a coincidence that Sismondi was Mackintosh's brother-in-law. Despite being a close associate of Constant and De Staël, Sismondi lamented France's uniform suffrage. "Uniformity of electoral qualification, uniformity of electoral title, have been adopted

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<sup>580</sup> See especially James Mackintosh, "Universal Suffrage," *Edinburgh Review*, vol. 31, no. 61, (1818), 174-177, 181-192; as well as Brougham, *The English Constitution*, 95. It notable that although Brougham was a supporter of a variety of suffrages before 1832, later in life he came to think that it was not necessary to ensure the sociological diversity of the House of Commons. See Henry Brougham, "Speech on Parliamentary Reform," in *Works of Lord Henry Brougham*, vol. X, (Edinburgh: 1873), 343; compare with Brougham, *The British Constitution*, 91-92.

<sup>581</sup> For a broad account of Sismondi's thought see Nadia Urbinati, "Sismonde de Sismondi's aristocratic republicanism," *European Journal of Political Theory*, vol. 12, no. 2, (2012), 153-174. An excellent discussion of Sismondi's place within French liberalism is Lucien Jaume, "La conception sismondienne du gouvernement libre comparée à la vision française," in *Sismondi e la civiltà toscana* (Florence : 2001), 213-230. I would contend, however, that Sismondi's embrace of the Whig theory of representation offers a more concise contrast between Sismondi and Constant on representation than Jaume states (*ibid.*, 225-228).

by the nation with a blind fanaticism, as a consequence of equality,” Sismondi claimed.<sup>582</sup> As an alternate model, Sismondi recommended that instead France imitate Britain, where there were entirely separate franchises for “counties” and “boroughs,” and where “in certain boroughs, the number of citizens is so limited that the election is determined by a narrow coterie; other boroughs admit to the right of citizen the entire male population, and the election is then the result of pure democracy.”<sup>583</sup> Sismondi argued that “in adopting the complicated system of the English, instead of the simple but deceiving system of the French, we could include a much greater part of the nation in elections, and reserve however for the intelligence of the nation the part which is due to it.”<sup>584</sup> He argued that such an assembly would better instantiate all the diverse interests and viewpoints in French society, prevent the domination of the assembly by an single interest or ideology, and give rise to a richer and more enlightened political debate.<sup>585</sup>

## Conclusion

The problem of legislative usurpation can be a difficult one for contemporary readers to grasp. We tend to be much more familiar with the gridlock and corruption to which legislative

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<sup>582</sup> Simone de Sismondi, *Études sur les constitutions des peuples libres*, (Paris: 1836), 83

<sup>583</sup> *Ibid.*, 81

<sup>584</sup> *Ibid.*, 84

<sup>585</sup> *Ibid.*, 85-87, 110-111, 136-146. Another associate of the Coppet Circle who came to embrace the English electoral system, and its underlying theory of representation was Germaine de Staël’s son, Auguste De Staël. In contrast with his mother, Auguste De Staël specifically praised the “diversity of modes of election” in England. They ensured that the English parliament could effectively serve as “the faithful image of all the contrasts of the social order.” In England “the interests of agriculture and those of commerce and of industry, old habits and new ideas are assured” of adequate representation. All these different classes and standpoints “had their place marked in advance in the elective chamber.” See Auguste De Staël, *Lettres sur Angleterre*, (Paris: 1825), 294, 295, 296.

assemblies seem so often prone—rendering them incapable of effective collective action—and with their weaknesses in the face of strong presidents or military coups. But that has not always been the case. This chapter has argued that the development of liberal thought at the end of the eighteenth-century was decisively inflected towards parliamentary institutions by the fear of an excessively powerful and overreaching legislature, which liberals thought could not be adequately checked by the prerogatives of an independent monarch.

During the nineteenth century, liberals in France and England would end up becoming highly involved in debates over more familiar problems legislative gridlock and legislative corruption. But the ways they ended up responding to these more familiar legislative challenges were conditioned by earlier debates surrounding the legislative excesses of the French Revolution. In addition to showing the pervasive liberal fear of a tyrannical legislature, this chapter has also documented how that fear could translate into strikingly different claims on behalf of parliamentary institutions. Arguing for the superiority of a parliamentary legislature could mean supporting a monarch who was active in Parliament through his ministers, as Jacques Necker and Francis Jeffrey did. But it could also mean supporting a radical separation between king and ministry, like Benjamin Constant—or the more familiar Whig approach of Brougham and Mackintosh in which ministers remained the servants of the Crown, but were in the legislature so that the Crown could be effectively monitored and surveilled.

These same alternative ways of thinking about parliamentary government would recur as nineteenth-century liberals grappled with the difficult challenges of parliamentary corruption and parliamentary gridlock. Perhaps no liberal more encapsulates this transition than Benjamin Constant. In the next chapter we will see Constant apply the same conception of parliamentary government, and the same distinction between executive and royal power, which he developed in

response to legislative excesses of the French Revolution, during the Restoration—in order to combat parliamentary corruption, and cabinet stability. The figure who is at the center of the next chapter, Francois Guizot, was only three years old when the French constitution of 1791 was written. His political career would be passed in a very different legislative environment than that of the French Revolution. Yet the influence of the debates of that earlier period over his political thought is no less unmistakable.

#### **Chapter 4. Patronage and Cabinet Instability: Benjamin Constant, Francois Guizot and the Challenges of French Parliamentary Politics**

The early years of the Restoration stand as one of the high points of French parliamentary liberalism. Between 1814 and 1815, France adopted not one, but two different constitutions modelled on England. There was the Charter of 1814, granted by Louis XVIII as he ascended to the throne—and under which France was governed until 1830. There was also the Napoleonic constitutional framework of 1815, written by Benjamin Constant himself, and ratified during the Hundred Days.<sup>586</sup> Both constitutions provided for a bicameral legislature, with one popularly elected house and one hereditary house. Even more importantly, given the subject of this dissertation, both constitutions explicitly stated that members of the legislature could hold executive office and serve as cabinet-level ministers.<sup>587</sup>

This was an event of clear intellectual as well as institutional significance. In the early years of the Restoration, a stunning number of authors wrote to defend the parliamentary constitutions of 1814 and 1815. Many were longstanding advocates of the British model who are explored in this dissertation—such as Benjamin Constant, Madame de Staël, and Francois Guizot. What is even more telling, however, is that several writers who were otherwise critical of the British approach to structuring legislative institutions came to embrace it. Lanjuinais, who appeared in the previous chapter of this dissertation as a stalwart opponent of ministers serving

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<sup>586</sup> These constitutional frameworks are printed in Duguit and Monnier, *Les constitutions et les principales lois politiques de la France*, 180-198. For scholarly treatments of the Charter of 1814 see Alain Laquièze, *Les origines du régime parlementaire en France*, 37-76; and Rosanvallon, *La monarchie impossible*, 15-55. For an analysis of the constitutional framework of 1815, and Constant's role in framing it see Alain Laquièze, "Benjamin Constant et l'Acte Additionnel aux Constitutions de l'Empire du 22 Avril 1815," *Historia Constitucional*, no. 4, (2003), 197-234.

<sup>587</sup> Duguit and Monnier, *Les constitutions et les principales lois politiques de la France*, 180, 192-193.

in the legislature, had decisively changed his mind by 1819, when he praised and defended the 1814 Charter.<sup>588</sup> Another such convert was Joseph Fiévée. Fiévée had also been opposed to using Britain as any sort of political model for France, though unlike Lanjuinais he made this argument broadly from the right as opposed to the from the left. But at the outset of the Restoration, Fiévée too had come to believe in the suitability of parliamentary institutions for France.<sup>589</sup> Simonde de Sismondi, on the other hand, would eventually become skeptical of the advantages of parliamentary government.<sup>590</sup> In 1815, however, he wrote a strong defense of Napoleon's parliamentary constitution.<sup>591</sup>

While there would always be opponents and skeptics (such as Sismondi would become) the consensus in favor of parliamentary institutions which crystalized in France during the early Restoration proved remarkably durable. Even events of such magnitude as the 1830 and 1848 revolutions did not fundamentally challenge it. The Charter of 1830, and the constitutions of the Second and Third Republics all enabled representatives in the legislature to serve as ministers holding executive office.<sup>592</sup> Never again in the nineteenth century would France impose an

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<sup>588</sup> For Lanjuinais' discussion of the Charter of 1814 see Jean-Denis Lanjuinais, *Constitutions de la Nation Française*, in *Oeuvres de J. D. Lanjuinais*, t. 2, (Paris: 1832), 200-289.

<sup>589</sup> See Joseph Fiévée, *Histoire de la session de 1816*, (Paris: 1817), 76-82; compare with Joseph Fiévée, *Lettres sur l'Angleterre: et réflexions sur la philosophie du XVIIIe siècle*, (Paris: 1802). For an in depth examination of Fiévée's political thought which helps illuminate his trajectory on this issue, see Gunn, *When the French Tried to be British*, 193-256.

<sup>590</sup> Sismondi's later ambivalence about the kind of constitution he had wholeheartedly supported in 1815 is expressed in Sismondi, *Études sur les constitutions des peuples libres*, 274-280

<sup>591</sup> See Simonde de Sismondi, *Examen de la constitution Française*, (Paris: 1815).

<sup>592</sup> For the constitutions of 1830 and 1848 see Duguit and Monnier, *Les constitutions et les principales lois politiques de la France*, 212-218, 232-246. An excellent analysis of the Charter of 1830 is Laquièze, *Les origines du régime parlementaire en France*, 77-124. The Third Republic famously did not have a single constitutional text, but for the fundamental law explicitly maintaining the eligibility of representatives to serve as ministers see Duguit and Monnier, *Les constitutions et les principales lois politiques de la France*, 332.



absolute division between legislative representatives and executive officials, as it had done in 1791 and 1795.

France's decisive turn in favor of parliamentary government did not end the debate over the legislature within French liberalism. In large part, this was because France's parliamentary assemblies came to be afflicted with a set of difficult new challenges—challenges, however, which any student of English politics would have found quite familiar. On the one hand, there was the issue of legislative patronage. Because ministers with control over the appointment of administrative offices were sitting in the legislature, and seeking to pass a political agenda, they faced the ever-present temptation to use these offices as a political instrument. The size of the French administrative made patronage especially worrisome. The vast bureaucracy inherited from Napoleon contained approximately 250,000 administrative positions, nearly all appointed by ministers in the legislature. At no point during either the Restoration or the July Monarchy were more than 250,000 individuals eligible to vote in parliamentary elections.<sup>593</sup> Conceivably, every single French voter could be an employee of the ministry in power, and many were in fact given jobs, or promised governmental favors in exchange for votes.<sup>594</sup> No less frightening than the use of patronage to win over voters, was its deployment to win over elected representatives. There existed only minimal obstacles preventing members of the legislature from also holding

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<sup>593</sup> This figure is taken from H.A.C. Collingham, *The July Monarchy: A Political History of France, 1830-1848*, edited by R.S. Alexander, (New York: 1988),71

<sup>594</sup> One of the most detailed contemporary analyses of the way ministers in French parliamentary politics used the administrative powers at their disposal to influence elections was made by Gustave Beaumont—Tocqueville's best friend and close intellectual collaborator. See Gustave Beaumont, *De l'Intervention du Pouvoir dans les Elections*, (Paris: 1843). For more recent scholarly analyses of electoral and legislative patronage during this period see Bernard Silberman, *Cages of Reason: The Rise of the Rational State in France, Japan, the United States and Great Britain*, (Chicago: 1993), 120-129; Louis Girard, "La réélection des députés promus à des fonctions publiques, 1828-1831," in *La France au XIX siècle: Mélanges offerts à Charles Hippolyte Pouthas*, (Paris: 1973), 227-244; as well as Francois Julien-Lafferrière, *Députés fonctionnaires sous la monarchie de Juillet* (Paris:1970); and Bastid, *Les institutions politiques de la monarchie parlementaire française*, 232-236, 265-267.

administrative office. By the end of the July Monarchy, two-thirds of the members of the Chamber of Deputies were also employed in administrative positions.<sup>595</sup>

In addition to the challenge of patronage, there was also the persistent problem of cabinet instability. French kings would frequently select ministers who were at odds with the legislature, leading to a difficult stalemate.<sup>596</sup> Disagreements also often arose within a ministry, or between the ministers and the king, while often the legislature itself could not arrive at any consensus.<sup>597</sup> These difficulties are illustrated by the extraordinary instability of French cabinets. Between 1815 and 1821, France was governed by five different prime ministers.<sup>598</sup> While the conservative *ultras* were more successful at holding onto power during the 1820s—though at the cost of incurring a revolution—the 1830s would witness even more drastic gridlock. Literally a dozen different cabinets rose and fell in a ten year period.<sup>599</sup> If the great specter of the French Revolution had been an omnipotent legislature, capable of overturning all social and political order, during the Restoration and July Monarchy, France’s parliamentary assemblies often

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<sup>595</sup> Bernard Silberman, *Cages of Reason*, 123

<sup>596</sup> For an analysis of conflicts between ministries and parliaments in nineteenth-century France, see Laquière, *Les origines du régime parlementaire en France*, 354-359.

<sup>597</sup> Laquière also provides an excellent discussion of the general problem of internal ministerial dissensions, and ministerial solidarity during this period (ibid., 372-380). On this topic, see also Bastid, *Les institutions politiques de la monarchie parlementaire française*, 312-317, 330-245.

<sup>598</sup> Richelieu’s first ministry lasted the longest of these five, approximately three years, but it underwent substantial internal revolutions the entire time. In the first year alone, over half the men holding positions changed. See Léon Muel, *Gouvernements, ministères et constitutions de la France depuis cent ans: Précis historique des révolutions, des crises ministérielles et gouvernementales, et des changements de constitutions de la France depuis 1789 jusqu'en 1890*, (Paris: 1891), 128-129. For an in-depth account of the parliamentary politics of this period see Robert Alexander, *Re-writing the French Revolutionary Tradition*, (Cambridge UK: 2003), 81-94.

<sup>599</sup> For accounts of the parliamentary instability and intrigue during the July Monarchy see Collingham, *The July Monarchy*, 200-219; and Robert Koepke, “The Failure of Parliamentary Government in France, 1840-1848,” *European Studies Review*, vol. 9, (1979), 433-455.

appeared the very opposite of omnipotent. They seemed wrecked by unstable and shifting leadership, and powerless in the face of internal divisions.<sup>600</sup>

Even as nineteenth-century France faced novel challenges of parliamentary corruption and instability, challenges conditioned in large part by the very parliamentary institutions which France had adopted, the old disagreements of the 1790s over the nature of parliamentary government did not disappear. As Alain Laquièze emphasizes throughout his study of French parliamentary institutions during the Restoration and July Monarchy, there was strikingly little agreement about how such institutions were supposed to function.<sup>601</sup> The most important debate was over the status of ministers. Did ministers need to have the definitive support of a parliamentary majority in order to remain in power? Or was the king entitled to appoint ministers whom he preferred? In the context of this disagreement, the divergent theories of parliamentary government put forward by Necker and Constant during Revolutionary period, which I explored in the last chapter, became if anything more relevant than ever. Political actors who wanted the king to have wide-discretion in his choice of ministers drew on Necker's constitutional theories. On the other hand, those who wanted to shift the power of determining ministers decisively to the legislature found support in the writings of Constant.<sup>602</sup>

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<sup>600</sup> Gridlock and ministerial instability would also remain a difficult challenge for France during the Third and Fourth republics, and a continual problem for political scientists. For important treatments of this topic see James Garner, "Cabinet Government in France," *American Political Science Review*, vol. 103, no. 3, (1914), 353-374; Roy Macridis, "Cabinet Instability in the Fourth Republic (1946-1951)," *Journal of Politics*, vol. 14, no. 4, (1952), 643-658; as well as John Huber and Cecilia Martinez-Gallardo, "Cabinet Instability and the Accumulation of Experience: The French Fourth and Fifth Republics in Comparative Perspective," *British Journal of Political Science*, vol. 34, no. 1, (2004), 27-48.

<sup>601</sup> Laquièze, *Les origines du régime parlementaire en France*

<sup>602</sup> Among the many scholarly treatments of the debate over the king's role in parliamentary process, see Furet, *Revolutionary France*, 351-367; Lucien Jaume, *L'Individu effacé ou la paradoxe du libéralisme français*, (Paris: 1997), 158-164; and Pasquino, "Sur la théorie constitutionnelle de la monarchie de Juillet," 111-122. Another useful account, centered specifically on Guizot, is Douglas Johnson, *Guizot: Aspects of French History, 1787-1874*, (Westport CT: 1975), 196-230.

This debate over the king's role in choosing ministers became, in turn, intimately tied up with the persistent realities of gridlock and corruption. On the one hand, the disagreement over whether the legislature or monarch had the ultimate say in producing a ministry was inflamed by the frequent ministerial crises—which led to this larger constitutional question being always on the table. On the other hand, the very notion of the king having substantial discretion in his choice of ministers significantly raised the stakes in debates over legislative corruption. For it meant that patronage might not only be a means for ministers to illicitly achieve a political agenda, but one which the king could use to subvert the legislature and electorate in its entirety, destroying all political liberty. In response to this specter, nineteenth-century French liberalism witnessed what can only be called a Whig revival. Figures such as Duvergier du Hauranne, and Charles Rémusat spoke constantly of Burke and Bolingbroke, Bute and Walpole, as they warned of a legislature completely subjected to the king's influence.<sup>603</sup>

This chapter examines two seminal liberal political theorists who were elected to parliamentary office in nineteenth-century France, and who became actively involved in debates over legislative patronage and instability. The first is Benjamin Constant, who also served as a major figure in the previous chapter. The second is Francois Guizot. My argument is two-fold. First, I aim to show that a central political objective for both these influential liberal thinkers was to salvage and reform France's dysfunctional parliamentary assemblies. Second, I will demonstrate that Guizot and Constant took radically different approaches to accomplishing this shared aim. For Guizot, I will argue, the defining challenge facing French parliamentary politics was its instability. It was this challenge which he prioritized above all other political problems,

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<sup>603</sup> See Charles Rémusat, "Députés Fonctionnaires Publics" (April 19 1847), *Annales du Parlement français*, t. 9, (Paris: 1848), 364-372; and Duvergier de Hauranne, *De la reforme parlementaire et la reforme electoral*, 113-138, 301.

and especially over the danger of corruption. Guizot criticized the use of patronage only in moments when it got in the way of forming stable cabinets and effective legislative majorities. When he believed patronage could contribute to that larger goal, he was more than willing to countenance it. Guizot's judgment on this matter was exactly the opposite of Constant. Constant was unwilling to advocate patronage as a tool of any kind in French parliamentary politics. He saw an absolute distinction between a legislature that governed through deliberation over competing principles and arguments, and a legislature in which decisions could be shaped and effected by the personal financial interests of legislators. While Constant was also concerned about instability within parliament, he saw such instability as almost entirely a result of the corrupt use of patronage. Constant did not believe, as Guizot did, that patronage could serve as a useful tool for bringing about effective parliamentary majorities and stable cabinets.

It is striking that Guizot and Constant have so rarely been analyzed in relation to the challenges facing French parliamentary life during the early nineteenth century. Historians and biographers have documented Constant's involvement in French politics during the Restoration.<sup>604</sup> But the basic interpretative debates over Constant's political thought still seem to be primarily focused on his writings up to 1815.<sup>605</sup> Constant's parliamentary career is rarely used to illuminate or interrogate the major themes of his political thought. His voluminous writings on the challenges of parliamentary life during the Restoration, and his confrontation with parliamentary corruption and instability, have gone strikingly overlooked by scholars. In the case

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<sup>604</sup> For such discussions of Constant in parliament see Vincent, *Benjamin Constant and the Birth of French Liberalism*, 197-201; and especially Robert Alexander, "Benjamin Constant as a Second Restoration Politician," in *The Cambridge Companion to Constant*, ed. Helena Rosenblatt, (Cambridge: 2009), 146-170.

<sup>605</sup> The obvious exception is his lecture on ancient and modern liberty, delivered in 1819. See Constant, "The liberty of the Ancients compared with that of the moderns"

of Guizot, this lacuna is even more surprising. Unlike Constant—or for that matter Mill or Tocqueville—Guizot was that rare intellectual who actually managed to achieve immense political power in parliament. A leading member of the liberal opposition during the 1820s, and briefly in administrative office from 1815-1817, Guizot was the dominant figure in French politics during the July Monarchy. Between 1830 and 1837, Guizot served as minister of the interior and minister of public instruction. He was foreign minister continuously from 1840 until 1848, eventually occupying the role of prime minister. Despite his extraordinary political career, the centrality of Guizot’s parliamentary experience to his political thought, as well as his decades-long confrontation with parliamentary gridlock have been largely overlooked by scholars.<sup>606</sup>

The result of these oversights is a profound impoverishment, not only in our understanding of these two authors, but in our understanding of liberalism more generally. The disjuncture between Constant and Guizot over patronage reveals the historical roots of French liberalism in eighteenth-century parliamentary debates: their disagreement is almost exactly parallel to that between Bolingbroke and Walpole a century earlier. It was at the same time, a disagreement about the possibility of government through deliberation. Constant and Guizot both subscribed to the liberal ideal of parliament as a deliberative body, in which the exercise of political power was contingent on a debate between meaningfully different viewpoints. Yet while Guizot thought that deliberation ought to be the central and defining activity of parliament, I will argue that he was skeptical whether deliberation alone could create stable cabinets and legislative majorities. It was necessary for ministers to also appeal to the personal interests of

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<sup>606</sup> One scholar who did note the immense importance of gridlock for Guizot as a parliamentary leader, though not as a political theorist, was Robert Koepke. See Koepke, “The Failure of Parliamentary Government in France,” 434.

representatives and electors—nor did Guizot believe that doing so would irreparably corrupt legislative debate and discussion. On both of these points Constant disagreed. For Constant, debate and discussion was the only legitimate and only effective source of stable parliamentary majorities. Constant saw an inherent conflict between government by argument and discussion, and government by way of personal interest. Constant and Guizot's disagreement over legislative patronage, I will demonstrate, was a disagreement about the nature and limits of a deliberative politics.

The chapter begins with Constant. I explore Constant's three most important political positions during the Restoration: his continued commitment to a separation between royal and ministerial power; his opposition to censorship; and his attacks on the use of patronage. While patronage is the most important of these issues for my argument, it is impossible to understand the significance of patronage in Constant's thought, or the relation of his parliamentary career to his earlier writings from the Revolutionary era, without a more comprehensive examination of his political position during the Restoration. I next turn to Guizot. Because this is Guizot's first real appearance in the dissertation, I first make clear his place in its larger trajectory. I demonstrate Guizot's strong commitment to a parliamentary legislature, and the intellectual lineage connecting him to figures like Necker and De Staël who were discussed in the previous chapter. I then examine Guizot's ambitious attempt to comprehend and solve the pathologies which parliamentary legislatures faced in France during the first half of the nineteenth century. In particular, I will demonstrate that overcoming parliamentary instability was among the orienting principles of his political thought. In contrast with Constant, and with later liberals like Mill and Tocqueville, Guizot viewed instability as a greater danger to the modern legislature than corruption

## Benjamin Constant and the Challenges of Parliamentary Government

Although so much of Constant's political thought was shaped by the experience of the French Revolution, his intellectual and political activities did not come to an end with the close of the Revolutionary era. Constant's support for Napoleon during the Hundred Days meant that he was forced to initially flee to England. But through political connections, Constant was able to secure his return to France in 1816, and upon returning he almost immediately embarked on a political career. Until his death in 1830, Constant was one of France's most prolific commentators on parliamentary affairs. After running failed campaigns for parliamentary office in 1817 and 1818, Constant finally entered the legislature in 1819, and for the rest of his life he would sit on and off in the Chamber of Deputies.

The sorts of political challenges that Constant was forced to confront during the Restoration were, with a few exceptions, radically different from those which he had pondered in the aftermath of the Revolution. But there are nonetheless striking continuities in his political thought. While a representative in the Chamber, Constant continued to defend the radical constitutional separation between king and ministry that he had first pioneered decades earlier. He continued to maintain that only ministers, and not the king, were entitled to exercise executive power. According to Constant, "this legal convention" was "the only basis, the indispensable basis" for establishing political responsibility.<sup>607</sup> He warned, "if you destroy this convention, you bring down the whole constitutional edifice."<sup>608</sup> So important did Constant

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<sup>607</sup> Benjamin Constant, "Questions sur la législation actuelle de la presse en France-IV," *OC*, t. 10, vol. 2, 694

<sup>608</sup> *Ibid.*



believe the constitutional distinction between king and ministry to be, that he even insisted, unconvincingly, that it was implicitly sanctioned by the Charter of 1814. “The Charter has distinguished between royal authority and ministerial authority,” Constant claimed: “the Charter, in declaring the King inviolable and the ministers responsible, has formally recognized that one can attack them, without the authority of the king being touched.”<sup>609</sup>

I have already noted how vexed a question it would be in nineteenth-century France, whether ministers were servants of the king or not, since this was related to the question of whether the king could install ministers of his choice even in opposition to the Chamber. As Pasquale Pasquino has shown, the debate over this issue dominated French politics well into the July Monarchy.<sup>610</sup> But it was especially fraught and complex at the beginning of the second Restoration.<sup>611</sup> The return of Napoleon had led the French electorate to turn sharply to the right, electing a sizable majority of ardent counter-revolutionaries to the Chamber of Deputies in 1816. On the other hand, the king had selected a much more centrist ministry. Its two leaders were the moderate conservative Richelieu, and Élie-Louis Decazes—the latter an opportunist willing to ally with right or left to stay in power. Richelieu and Decazes were the dominant parliamentary figures between 1815 and 1821, and while neither could be called a man of the left, they were willing to collaborate with individuals who had liberal convictions. They became especially

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<sup>609</sup> Ibid., 693

<sup>610</sup> See Pasquino, “Sur la théorie constitutionnelle de la monarchie de Juillet.”

<sup>611</sup> Rosanvallon observes, importantly, that it was only after the polarization of the Hundred Days that the proponents of different visions of parliamentary government found themselves truly at odds. The months prior to Napoleon’s stunning return were marked, at least among intellectuals, by a greater commitment to working out together the puzzling questions raised by the Charter of 1814. See Rosanvallon, *La monarchie impossible*, 75.

close with a group of centrist liberals known as the *doctrinaires*, whose members included Guizot, Hercule de Serre, Paul-Pierre Royer-Collard, and Joseph Lainé, among other.<sup>612</sup>

The strong political divergence between the Chamber and the ministry in 1816 meant sustained gridlock for most of the year. But it also led to a strange reversal of constitutional positions. Royalist defenders of the ancien regime proclaimed that ministries ought to be determined by a majority of the legislature, and not according to the king's preferences.<sup>613</sup> They even embraced Constant's radical distinction between royal and ministerial power. One of the most important pamphlets written in this vein was Chateaubriand's *De la monarchie selon la charte*. Constant angrily recognized that the heart of Chateaubriand's argument was taken from him. As he declared in one of the many rejoinders to Chateaubriand which he penned during this period, "it pertains to me less than to anyone to examine if these principles are the fruit of meditations by the author, or if, borrowed from elsewhere, they have exaggerated someone else's."<sup>614</sup> Yet Constant was forced to acknowledge "the constitutional principles professed in this work...seem just in many respects."<sup>615</sup>

On the other hand, confronted with an assembly loaded with reactionaries, defenders of the liberal ministers took up the tradition of Necker. They argued that a monarch who had an active hand within parliament was the only way to tame and moderate legislative power. According to Hercule de Serre, "the only means for reconciling the existence of public liberty with the force of government consists in the avowed and regular influence which the

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<sup>612</sup> For a discussion of these bills see Furet, *Revolutionary France*, 289-291.

<sup>613</sup> See for instance François-René de Chateaubriand, *La Monarchie selon la Charte*, (Paris: 1816); Baron de Vitrolles, *Du ministère dans le gouvernement représentatif*, (Paris: 1815)

<sup>614</sup> Benjamin Constant, "Réponse à Chateaubriand, *De la Monarchie selon la Charte II*," *OC*, t. 10, vol. 1, 295

<sup>615</sup> *Ibid.*

monarchical power exercises upon the Chambers that it has created.”<sup>616</sup> His clear implication was that giving the legislature a decisive say in the king’s choice of ministers would be a threat to this influence, perhaps even to the monarchy’s existence. This same argument was also expressed by the liberal minister Joseph Lainé, and it would be one the core points of Francois Guizot’s first major political work, *Du gouvernement représentatif et de L’état actuel de la France*, also written in 1816.<sup>617</sup> According to Paul Pierre Royer-Collard, an influential liberal who would go on to be a mentor of Alexis de Tocqueville, “the day when the government will be at the discretion of the majority of the Chamber, the day where it will be established in fact that the Chamber can reject the ministers of the king...that day we are in a republic.”<sup>618</sup> Royer-Collard called it “a fundamental and sacred principle that it is the king who governs” through his ministers.<sup>619</sup>

After the assassination of the Duke Berry in 1820, Louis XVIII turned sharply towards the right—a stance continued by his successor to the throne, Charles X. In turn, liberals and conservatives reversed their positions on whether the king should have a decisive say in the appointment of ministers. But one liberal who had no need to reverse his principles after 1820 was Benjamin Constant. Constant had also been horrified by the *chambre introuvable* of 1816. He immediately perceived it as the conservative version of the Legislative Assembly of 1791, a fanatically ideological legislature that posed a real threat to France’s fragile, new constitutional

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<sup>616</sup> Hercule de Serre, “Discussion de project de loi sur les élections,” in *Archives parlementaires*, ser. 2, no. 16, (Paris: 1869), 239

<sup>617</sup> Joseph Lainé, “Discussion de project de loi sur les élections,” *AP*, ser. 2, no.16, 236-237; Francois Guizot, *Du gouvernement représentatif et de l’état actuel de la France*, (Paris: 1816)

<sup>618</sup> Paul Pierre Royer-Collard , *La vie politique de M. Royer-Collard: ses discours et ses écrits*, ed. Prosper de Barante, vol. 1, (Paris: 1861), 217

<sup>619</sup> *Ibid.*, 293

fabric. And yet despite this, Constant never budged in his claim that the ministers were not an extension of the monarch, and that they could not govern when they did not have the clear support of a majority of the Chambers.

Constant was not being suicidal in his devotion to principles. He maintained that all sides of the political spectrum, including both Chateaubriand and the *ultras* as well as the liberals in power, were missing the subtlety of his argument. Constant had indeed been adamant that the king's political preferences should not determine his choice of ministers against a parliamentary majority. But, as I emphasized in the last chapter, Constant also expected, and indeed called for the king to *dismiss* ministers and *dissolve* legislatures that were on a course of radical error—restarting the parliamentary process from scratch, so to speak. “When the king sees the minister close to making an error he does not remain impassive. He does not let him commit a fault for which the nation will bear the penalty.”<sup>620</sup> The king “does not force his minister” to act otherwise, which would in fact violate the distinction between royal and executive power, “but he dismisses him.”<sup>621</sup> It was because Chateaubriand, “a very eloquent author,” had failed to appreciate the powers of dismissal and dissolution, Constant claimed, that he had “exaggerated my theory, in pretending to reduce the king to the quality of a spectator...this is certainly not what I intend.”<sup>622</sup> The appropriate answer to the *chambre introuvable* in 1816 was to dissolve it, and Constant pointedly cited the example of 1791: “when, in a monarchy, an assembly is not sincerely royalist, the king must dissolve it. Would it have pleased God that Louis XVI could

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<sup>620</sup> Benjamin Constant, “Des Chambres (VII Article) Projet de loi sur les Journeaux,” *OC*, t. 10, vol. 1, 467.

<sup>621</sup> *Ibid.*

<sup>622</sup> *Ibid.*

have done so in 1791! When, under the regime of a constitution, an assembly is not sincerely constitutional, the king must dissolve it.”<sup>623</sup>

The power of dissolution was in fact what resolved the situation in 1816. Louis XVIII dissolved the *chambre introuvable*, and new elections yielded a more moderate Chamber, with a solid majority in favor of the ministry. Far from this whole series of events being a challenge to his theory, Constant instead saw it as a powerful confirmation. In contrast with 1791, the tyrannical assembly had been effectively disarmed through the king exercising his neutral powers. The king was able “to disperse this menacing majority,” and when given another chance, voters came to their senses.<sup>624</sup> Reflecting on the events of 1816 Constant would conclude that the “distinction” between royal and executive power, which, he proudly declared, “I first established,” had “obtained the only success which it still lacked.”<sup>625</sup> This was that “experience has proved that it truly preserves” a constitutional order.<sup>626</sup>

The *chambre introuvable* cast an extremely long shadow over nineteenth-century France. But Constant’s commitment to distinguishing royal and ministerial power during the rest of his life was not primarily due to the specter of an excessively powerful legislature—a threat that soon faded into the background. It was rather due to the connection that Constant identified between this issue and another quite different one: the freedom of the press. The liberal debate over the freedom of the press, which has been analyzed in depth by Lucien Jaume, was the most

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<sup>623</sup> Constant, “Des désordres actuels de la France et des moyens d’y remédier par M. le comte de Montlosier,” 176.

<sup>624</sup> Benjamin Constant, “Annales de la session de 1817 à 1818: Partie Politique,” *OC*, t. 10, vol. 1, 923

<sup>625</sup> Constant, “Des Chambres (VII Article) Projet de loi sur les Journeaux,” 467

<sup>626</sup> *Ibid.*

important and extensive political battle that Constant was involved in during the Restoration.<sup>627</sup> In the aftermath of Napoleon's stunning return from Elbe, sharp restrictions on the press were put in place to shore up the fragile regime, along with a number of other "laws of exception." As Jaume demonstrates at length, all of these laws were defended by prominent liberals such as Guizot, Charles Rémusat, and Royer-Collard.<sup>628</sup> Indeed it had been Richlieu and Decaze's centrist ministry, the same ministry that confronted the *chambre introuvable*, which passed the laws of exception in 1816, and upheld them for three years. It was only after 1820 that similar restrictive laws were implemented by the *ultras*.<sup>629</sup> They would be briefly taken down at the beginning of the July Monarchy, but a new censorship regime would soon be back in place, lasting until 1848.<sup>630</sup>

Constant was strongly opposed to all of the laws of exception, but especially to censorship. Denying that there was any trade-off between individual liberty and political security, Constant called a free press the "flame of popular government."<sup>631</sup> And he posited a clear connection between his support for the freedom of the press, and his vision of parliamentary government in which the king was uninvolved in governing. The reason for this connection was as follows. Despite his support for freedom of the press, Constant was forced to

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<sup>627</sup> See Lucien Jaume, *L'Individu effacé*, (Paris: 1997), 407-44.

<sup>628</sup> Ibid., 413-418. For another broad survey of the debate over the freedom of the press during the early Restoration, see Jeremy Jennings, "A note on freedom of the press in Restoration France," *Journal of Modern Italian Studies*, vol. 17, no. 5, (2012), 568-573.

<sup>629</sup> For a more extensive history of efforts at censorship during this period see Robert Goldstein, *Censorship of Political Caricature in Nineteenth-century France*, (Kent OH: 1989), 103-118.

<sup>630</sup> See *ibid.*, 119-168

<sup>631</sup> Constant, "Questions sur la législation actuelle de la presse en France-IV," 695. For Constant's systematic defenses of freedom of the press against censorship see Constant, *De la liberté des brochures, des pamphlets et des journaux*; and Constant, *Principles of Politics* (1810), 103-124.

acknowledge one exception. The king himself had to be above criticism. The “inviolability” of the king was, in Constant’s mind, the very essence of the monarchical authority. But if an inviolable king came to play any part in actual governing, if ministers were seen as servants doing the will of the king, then to criticize any of their actions, Constant claimed, would inherently mean criticizing the king. There would exist a justification for the most extensive possible censorship. “The criticism of laws” would have to “be forbidden, as showing a lack of respect for...the King.”<sup>632</sup> In turn, “the criticisms of proposals for laws, the opposition to these proposals in the Chamber, their discussion in journals or in pamphlets must be equally forbidden...if one perceives the Monarch where one should only see ministers.”<sup>633</sup>

During the aftermath of the French Revolution, I showed in the last chapter, Constant’s primary justification for the separation of royal and ministerial power was that it created a secure space for political contestation in the legislature that would not threaten the constitution as a whole. Constant continued to put forward this De Lolmian argument well into the Restoration. He noted in 1817, for instance, that under his theory of parliamentary government, “since the parties are agitating below the sphere in which the royalty truly resides, political order is no longer in peril. All is full of life in the middle, where there is intense struggle; all is tranquil at the summit.”<sup>634</sup> But Constant also began to point to a very different advantage of distinguishing ministerial from royal power. This was that if these two functions were confused, then the king’s inviolability became a potential justification for censorship. When the king was perceived to be personally governing through his ministers in parliament, his inviolability would either

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<sup>632</sup> Ibid.

<sup>633</sup> Ibid.

<sup>634</sup> Constant, “Des Chambres (VII Article) Projet de loi sur les Journeaux,” 467.

inevitably become an “attribution of ministerial authority,” or “the king himself, descending from the height where he was placed, ceases to be neutral, and becomes a sort of minister, before which all liberty disappears, because he associates with the inviolability he possesses, attributions incompatible with that inviolability.”<sup>635</sup> Only when “laws, proposals for laws, acts of government, measures of administration” were perceived to “appertain to the ministry” alone, according to Constant, was it the case that they could “be criticized with moderation.”<sup>636</sup> The distinction between royal and ministerial authority was necessary so that there could be a parallel distinction between “obedience to laws” and “approbation of laws”: it ensured that criticizing the law was a constitutionally distinct action from violating the law.

Constant believed that censorship was a natural and destructive consequence of the king’s intervening excessively in parliamentary affairs. To some degree this was also true of Constant’s analysis of another major issue which engaged him during the Restoration, the issue of legislative patronage. It is noteworthy that Constant only became concerned about patronage relatively late in his life. There is little evidence that Constant cared about it during the Revolutionary period. In his strong advocacy of ministers sitting in the legislature, Constant seemed at moments to brush the worry of corruption aside.<sup>637</sup> Most tellingly, the constitutional framework of 1815, which Constant wrote for Napoleon, explicitly allowed that members of parliament could serve in administrative positions at any level of the French state.<sup>638</sup>

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<sup>635</sup> Ibid., 468.

<sup>636</sup> Constant, “Questions sur la législation actuelle de la presse en France-IV,” 696

<sup>637</sup> See Constant, “De la possibilité d’une constitution républicaine dans un grand pays,” 542

<sup>638</sup> Duguit and Monnier, *Les constitutions et les principales lois politiques de la France*, 192



It was only after 1815 that Constant came to believe that legislative patronage posed a direct danger to representative government. Like censorship, patronage was practiced in France from the beginning of the Restoration until the end of the July Monarchy. And like censorship, patronage was initially introduced by centrist ministers.<sup>639</sup> A testament of this is the fact that in 1817 it was the leading rightwing *ultra* Jean-Baptiste de Villèle who fought for legislation to make it more difficult for members of the Chamber of Deputies to hold administrative positions.<sup>640</sup> Villèle, who would have no compunctions about using political patronage when he was in power during the 1820s, saw his effort at reform in 1817 repulsed by liberal-leaning representatives.<sup>641</sup> Serre claimed that Villèle's bill was an "attack on the royal authority."<sup>642</sup> Reiterating the claims of Robert Walpole, Serre claimed that restricting administrative employees from the Chamber would make it "impossible for the government to possess the necessary action."<sup>643</sup> Royer-Collard likewise argued that restrictions on administrative employees serving in the legislature would sabotage "the cooperation of the Chambers with the

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<sup>639</sup> Girard shows that the appointment of legislators to administrative positions as a way of controlling them was in fact pioneered by Napoleon, and then seamlessly incorporated into the parliamentary life of the Restoration. See Girard, "La réélection des députés promus à des fonctions publiques," 227-228. But the use of administrative power to influence parliamentary elections was first deployed by Decazes against the conservative majority of the *chambre introuvable* after its dissolution. In Francois Furet's memorable words, the defeat of the *ultras* in 1816 represented "the paradox of a liberal victory acquired by a Bourbon by mobilizing the prefects" (Furet, *Revolutionary France*, 288.)

<sup>640</sup> See "Suite de la discussion du projet de loi relatif à l'organisation des collèges électoraux," in *Archives parlementaires*, ser. 2, t. 18, (Paris: 1870), 92

<sup>641</sup> For a discussion of Villèle's own use of patronage to hold parliamentary power during the 1820s, and the defense of patronage by the *ultras*, see Girard, "La réélection des députés promus à des fonctions publiques," 231-240

<sup>642</sup> Hercule de Serre, "Suite de la discussion du projet de loi relatif à l'organisation des collèges électoraux," *AP*, ser. 2, t. 18, 90.

<sup>643</sup> *Ibid.*

government”—the very aim of the parliamentary structures put in place by the Charter of 1814.<sup>644</sup>

Like his attacks on censorship, Constant’s opposition to legislative patronage would set him at odds with many of France’s leading liberals in parliament. Indeed a fascinating parallel can be detected in Constant’s writings during this period between patronage and censorship. Constant saw both censorship and patronage as means through which a government could avoid having its power contested through discussion. In the case of censorship, a government could actively prohibit forms of written opposition. With patronage, on the other hand, Constant’s specific fear was about discourse within the legislature. If ministers were able to use the force of personal interest to gain representatives to their side before any debate had happened, then genuine disagreement and deliberation would disappear. When a ministry “purports to place, by fear or ruse, on the benches of the national representation, its own men, named by it, paid by it, revocable by it; if it wishes that the employees of the government are at the same time the authorized representatives of the people,” Constant declared, the result would be a false and empty consensus on major issues.<sup>645</sup> Parliament would become “the theater of a long monologue, divided between demands and responses, but recited in a choir of the same voices.”<sup>646</sup> If censorship struck at debate and discourse in the broader public, patronage prevented a genuine “public conversation,” as Constant called it, from emerging within the legislature.<sup>647</sup>

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<sup>644</sup> Paul Pierre Royer-Collard, “Suite de la discussion du projet de loi relatif à l’organisation des collèges électoraux,” *AP*, ser. 2, t. 18, 92.

<sup>645</sup> Benjamin Constant, “Second lettre de M. Benjamin Constant à M. Charles Durand,” *OC*, t. 11, 378.

<sup>646</sup> *Ibid.*

<sup>647</sup> Benjamin Constant, “Annales de la session de 1817 à 1818,” *OC* 11, 188.

Constant argued that growing numbers of functionaries in parliament meant that the "assembly...would not be a representative body, it would be a council of state, with this inconvenience in addition, that its decisions, dictated by those power, would still have the air of being the expression of the popular will or sentiment."<sup>648</sup> Yet unlike eighteenth-century British critics of patronage like Bolingbroke, Constant did not necessarily oppose patronage because he feared the monarch in particular would subvert the legislature. As we will see in the next chapter, this particular concern would be fervently expressed by Adolph Thiers and Duvergier de Hauranne during the July Monarchy, both of whom claimed to be followers of Constant. But this was not Constant's primary concern. He may have recognized that even if ministers were fully independent of the king, as he wanted, there was still the possibility that they would use their control over executive offices to win over electors and representatives, and push through a legislative agenda. Patronage was a potential danger to deliberation and discussion in the legislature whether or not it was the king or the ministers who governed.

Moreover, Constant did not think that the ultimate result of legislative corruption was likely to be a subjugated and acquiescent parliament. Rather, he argued, it would lead to exactly the kind of instability that so consumed the Chamber during the first years of the Restoration—instability which Constant traced directly back to corruption. In a nation with as many competing factions and ambitious individuals as modern France, Constant argued that it was impossible to create a stable legislative majority through the promise of offices alone. There were too many interested parties and too few carrots: "in making yourself agreeable to parties which want places, you turn away all the others who also want places," Constant wrote, "sacrificing the

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<sup>648</sup> Benjamin Constant, "Des élections de 1818," *OC*, t. 11, 816

majority which murmurs for places, to the minority which demands them.”<sup>649</sup> Additionally, Constant argued that ministers would only “half-satisfy” representatives with the positions they were giving them.<sup>650</sup> As soon as members of the Chamber began demanding better positions in exchange for their support, ministers were forced into an impossible dance: “jumping from one minority to the other...dividing, subdividing, and exciting the parties...using vengeance to push exasperated factions to vote in its direction.”<sup>651</sup> Through this strategy, “a ministry can create a majority that will last for a few months,” at most.<sup>652</sup>

Constant was convinced that only a parliamentary majority based in shared convictions and principles, rather than in personal interests, would ever be stable and satisfied.<sup>653</sup> At any given moment, Constant was worried that ministers would be prone to irresponsibly “overstep,” and pass harmful legislation through an acquiescent chamber.<sup>654</sup> However, over any extensive span of time, Constant believed that corruption was a fragile basis for a legislative majority. “It is not the despotism of our ministers, their violence, their vexations, that I fear,” Constant wrote, “it is their always growing weakness.”<sup>655</sup> Constant specifically connected this weakness to

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<sup>649</sup> Benjamin Constant, “D’une assertion de M. Bailleul dans sa brochure contre M. de Chateaubriand,” *OC*, t. 11, 244

<sup>650</sup> *Ibid.*

<sup>651</sup> *Ibid.*

<sup>652</sup> Constant, “Annales de la session de 1817 à 1818,” 189.

<sup>653</sup> *Ibid.*

<sup>654</sup> Constant, “Des élections de 1818,” 818

<sup>655</sup> Benjamin Constant, “Des élections, du ministère, de l’esprit public,” *OC*, t. 11, 434

corruption, since corruption meant that ministers “advance day-by-day without principles, without support, without foresight.”<sup>656</sup>

In order to combat patronage, Constant called for severe restrictions on functionaries serving in the Chamber of Deputies. In his own period, he noted, “it is said that in the Chamber of Deputies there are a hundred twenty or hundred thirty public functionaries dependent on the ministry for their salaries, their fears, their hopes.”<sup>657</sup> Constant argued that this number had to be reduced twenty-fold.<sup>658</sup> Breaking with the constitutional framework he had written for Napoleon in 1815, Constant sought during the Restoration to prohibit all administrative officials but the very highest ministers from sitting in the legislature.<sup>659</sup>

Constant was also one of the leaders of a growing liberal opposition party in parliament, titled the “independents,” which he thought would be able to govern without the use of patronage. Constant supported the *independants* out of disgust with the centrist ministries which were in power between 1815 and 1821. Indeed as late as 1830, Constant would maintain that the centrist ministries of the early Restoration, which had favored “the suspension of the constitution” and governed through corruption, were just as threatening to French representative government as the ultra-conservatives.<sup>660</sup> “It is an error to think that the ministerial Chambers are

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<sup>656</sup> Ibid.

<sup>657</sup> Constant, “Annales de la session de 1817 à 1818,” 190.

<sup>658</sup> Constant maintained that the proportion of executive officers sitting in the legislature should never exceed one in hundred representatives. In practice, this meant that none but the ministers should be allowed to serve. See Constant, “Des élections de 1818,” 814.

<sup>659</sup> Ibid.

<sup>660</sup> Benjamin Constant, “Des Élections prochaines,” *OC*, t. 10, vol. 2, 769.

less dangerous than the counter-revolutionaries,” Constant insisted in 1830.<sup>661</sup> As evidence of this claim he asked the reader to “look at the Chamber from 1817 to 1820.”<sup>662</sup> In the lead-up to 1830, when reactionaries were in control of the entire French government, Constant was willing to ally with many of the liberal *doctrinaires* who earlier had supported Decazes and Richelieu. But in the first years of the Restoration, Constant had envisioned the *independants* expressly as an alternative to them.

Constant maintained that the “independents” would be able hold legislative support exclusively through political principles and ideas, and could therefore entirely eschew negotiations over patronage.<sup>663</sup> He lamented, that “one ceaselessly speaks about the negotiations of all the ministers with all the parties.”<sup>664</sup> But with his own party, Constant was adamant that this entire game would come to an end. “The negotiations would be either useless or superfluous. Useless, because if you violate their principles, the independents will not ever associate themselves with these violations. Superfluous, because if you respect their principles, you will be in fact united with the independents, without having any need to negotiate with them.”<sup>665</sup> The principles Constant wanted his party to embrace were identical with the essentials of his political thought. According to Constant, the “independents” were believers in “constitutional monarchy, because it is constitutional,” and they “respect the hereditary transmission of the throne because this transmission puts the calm of peoples away from the struggle of factions.”<sup>666</sup> They were

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<sup>661</sup> Benjamin Constant, “Des Chambres de deputes depuis 1814 jusq’en 1830,” *Recueil d’articles 1829-1830*, 462.

<sup>662</sup> Ibid.

<sup>663</sup> Constant, “D’une assertion de M. Bailleul dans sa brochure contre M. de Chateaubriand,” 244-245

<sup>664</sup> Ibid.

<sup>665</sup> Constant, “D’une assertion de M. Bailleul dans sa brochure contre M. de Chateaubriand,” 244

<sup>666</sup> Constant, “Des Élections prochaines,” 777

absolutely committed to “the liberty of the press and newspapers, so that each individual can argue without seeing his arguments mutilated by the censure,” and to “the responsibility of ministers”<sup>667</sup> While Constant defended this program in its own right, he was adamant that as a clear and principled, and constitutional platform it could also garner sufficient public support to create a solid parliamentary majority that did not rely on patronage.<sup>668</sup>

Nor was this an entirely unrealistic goal. By 1819, though not as unified as Constant would have hoped, the independents were close to a parliamentary majority.<sup>669</sup> Constant was convinced that their victory would force the creation of an opposition party that was also based in ideas and arguments, upending the whole ethos of French parliamentary life.<sup>670</sup> It would mean an end to ministries being formed via “meetings” and “negotiations” and “transactions”—rather than debate and deliberation.<sup>671</sup> The legislature would finally become a space in which governing happened through arguments and ideas.

A clear line of reasoning can be traced from Constant’s rejection of political extremism during the French Revolution, to his opposition to patronage during the early Restoration. In the aftermath of the Revolution, I argued in the last chapter, Constant defended a specifically parliamentary legislature because he believed that it alone was capable of moderating and

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<sup>667</sup> Benjamin Constant, “Pensées diverses sur les élections,” 422. For an excellent scholarly account of the liberal opposition that Constant was a part of during the early Restoration see Robert Alexander, *Re-writing the French Revolutionary Tradition*, 105-134. For a treatment of the left-wing opposition Constant participated in which is more focused on intellectual currents, see Andrew Jainchill, *Reimagining Politics After the Terror: The Republican Origins of French Liberalism*, (Ithaca: 2008), 287-294.

<sup>668</sup> See Constant, “D’une assertion de M. Bailleul dans sa brochure contre M. de Chateaubriand,” 244-245; Constant, “Second lettre de M. Benjamin Constant à M. Charles Durand,” 373-374;

<sup>669</sup> Alexander, *Re-writing the French Revolutionary Tradition*, 86

<sup>670</sup> See Benjamin Constant, “Annales de la session de 1817 à 1818: Partie Politique,” *OC*, t. 10, vol. 2, 922-923

<sup>671</sup> Constant, “D’une assertion de M. Bailleul dans sa brochure contre M. de Chateaubriand,” 244

constitutionalizing the political competition and passionate disagreements which were unleashed in a representative assembly. During the early years of the Restoration, I have shown in this chapter, Constant discovered an equal threat coming from the opposite direction. This was that a legislature might not even be able to evince genuinely passionate disagreements to begin with. Constant was so opposed to legislative patronage, because, like censorship, he saw patronage as a means of preventing genuine political competition and disagreement from occurring in the first place. If “the advantages of a representative assembly,” for Constant, was that it made possible a “public conversation, over each fact, over each complaint, over each measure,” legislative corruption threatened to prevent that “public conversation” from ever happening—substituting instead a much more dangerous and unstable practice: government through the personal interests of representatives.<sup>672</sup>

### Francois Guizot and the Parliamentary Tradition

One of my primary aims in this chapter is to establish a clear contrast between Constant’s strategy to reform French parliamentary politics, which I just have finished examining, and Francois Guizot’s. But the two authors in fact shared a great deal in common. Although Guizot was born in 1787, a generation after Constant or De Staël, the defining event in his life, as in theirs, was the French Revolution.<sup>673</sup> Guizot was six years old when his father was executed

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<sup>672</sup> Constant, “Annales de la session de 1817 à 1818,” 187

<sup>673</sup> The centrality of the French Revolution to Guizot’s political thought is an important theme in Pierre Rosanvallon’s classic study. See Pierre Rosanvallon, *Le Moment Guizot*, (Paris: 1986), 16-26, 73-87. For an



during the Terror. As scholars have noted, Guizot displayed a strident, lifelong opposition to the theory of popular sovereignty, which he connected with the violent excesses of Robespierre.<sup>674</sup> Like the members of the Coppet Circle, Guizot emerged from the French Revolution critical of all claims to undivided, absolute sovereignty. He opposed the absolute sovereignty of a monarch, just as he did the absolute sovereignty of the people. Guizot argued that only *reason* could ever be sovereign, and that in human affairs, governments best approximate to reason when there are multiple, conflicting organs of power. Where no single power is alone sovereign, all are compelled to rationally justify their actions.<sup>675</sup>

It would be incorrect, however, to interpret Guizot's belief in the sovereignty of reason as admiration for mixed, constitutional government *tout court*. Like Necker, Guizot opposed constitutional theories that called for different powers to be decisively separated. Along with Constant, he was skeptical of the traditional notion of checks and balances. In his first major political pamphlet, *Du gouvernement représentatif et de l'état actuel de la France*, published in 1816, Guizot viciously attacked what he called "that vain theory of the division, of the balance, of the equilibrium of powers, which still throws so much confusion into our political ideas."<sup>676</sup> With the experience of the French Constitution of 1791 clearly very much on his mind, Guizot argued that this theory was a recipe for violence: "everywhere that diverse, equal powers, separate and independent, are called to take part in government," Guizot argued, the result was

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illuminating study of Guizot's youth and intellectual upbringing see Charles Pouthas, *La jeunesse de Guizot (1787-1814)*, (Paris: 1936).

<sup>674</sup> See for instance Pierre Bouretz, "L'héritage des Lumières," in *Francois Guizot et la culture politique de son temps*, 40-51; Pierre Rosanvallon, *Le Moment Guizot*, 85; Aurelian Craiutu, *Liberalism Under Siege*, (Lanham MD: 2003), 123-147; and Michael Drolet, "Carrying the Banner of the Bourgeoisie," *History of Political Thought*, vol. 32, no. 4, (2011), 655-661

<sup>675</sup> See Guizot, *The Origins of Representative Government in Europe*, 52

<sup>676</sup> Guizot, *Du Gouvernement représentatif*, 29.

“combat”: “there was no unity in the government of Rome, where the power of the people and that of the senate were in permanent struggle...There was no unity in the government of England before the revolution of 1688, when the state of things was such that the royal power and the power of the two chambers, not having between them any relations except of opposition, ceaselessly conspired one another’s mutual ruin.”<sup>677</sup>

Guizot would continue to attack theories of this kind throughout the 1820’s. In his major unpublished work of political philosophy, *De la Souveraineté*, Guizot declared, “the equilibrium of... powers is an empty phrases, their balance a chimera.”<sup>678</sup> In any constitutional system defined by checks and balances, Guizot claimed, “the powers would neutralize each other;” and, “in lieu of a good government, there would only result the absence of all will, of all action, of all government.”<sup>679</sup> In his lectures on the history of representative government, Guizot lamented, “we have seen enumerated the legislative power, the executive power, the electoral power, the judicial power...and every effort of science has been exerted to make these different powers co-exist, while maintaining among them a rigorous distinction and enjoining upon them never to fall into confusion, nor even to assimilate their offices and action.”<sup>680</sup> The outcome, Guizot argued, was not liberty but tyranny. The result of such a strict separation was that common unified action became impossible: “ere long, all these rights and powers, incapable of existence and action in

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<sup>677</sup> Ibid., 27

<sup>678</sup> Francois Guizot, *Philosophie Politique: de la souveraineté*, in *Histoire de la civilisation en Europe*, ed. Pierre Rosanvallon, (Paris: 1985), 343

<sup>679</sup> Ibid., 343-344.

<sup>680</sup> Guizot, *The Origins of Representative Government in Europe*, 329.

their isolated condition, have become centralized or lost in the hand of an individual or collective despotism, which alone was powerful and real.”<sup>681</sup>

Guizot’s preference was for a parliamentary system modelled on England. Although the parliamentary system did not conflate the functions of execution and legislation, or collapse together parliament and the king into a single homogenous entity, it allowed relationships of unity and cooperation to form between these different powers and functions. The most important of these relationship was that members of the legislature also served as ministers, therefore filling both executive and legislative offices simultaneously. Parliamentary government was Guizot’s political preference during his entire life.<sup>682</sup> However he best explained its character, and how it differed from “the theory of the balance of powers,” in 1816. What was at the heart of the traditional theory, Guizot argued in *Du gouvernement représentatif*, was the creation of checks and balances between constitutional *powers*.<sup>683</sup> The Chamber of Deputies might conflict with the King, for instance, and their disagreement would be mediated by the Chamber of Peers. A parliamentary system, on the other hand, aimed to move beyond this kind of conflict. The formation of a ministry meant that “the King, the Chamber of Deputies and the Chamber of Peers” ended up “forming one single and self-same power, which governs with the forces of the three elements combined;” in turn, the control on its action does not come from a different

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<sup>681</sup> Ibid.

<sup>682</sup> As late as 1867, Guizot would continue to maintain that parliamentary government was the only way of reconciling monarchical authority and popular government, though he was skeptical that a parliamentary regime could work in a republic. See Francois Guizot, *Mémoires pour servir à l’histoire de mon temps*, t. 8, (Paris: 1867), 97-99. For his conception of the parliamentary character of the July Monarchy see for instance Francois Guizot, “Débats de la coalition,” *HPF*, t. 3, 209-210; and Francois Guizot, “Débat sur la question du mandat impératif donné par les électeurs aux deputes,” in *Histoire Parlementaire de France*, t. 5, (Paris: 1864), 292

<sup>683</sup> Guizot, *Du Gouvernement représentatif*, 30

constitutional power, but from “the opposition within the two chambers” of the legislature.<sup>684</sup> What is decisive, according to Guizot, is that the opposition within parliament which checks the government “is not a power; it has no right other than that of speaking.”<sup>685</sup> An internal parliamentary opposition, through forcing the ministry to continually justify itself to the public, indeed acts as a sort of check on its actions. But since it is not a constitutional power in its own right, it can act as a check without ever leading to a devastating conflict between parts of the government—such as happened in France in 1791.<sup>686</sup>

### Guizot and French Liberalism

Despite their common attachment to parliamentary institutions, Guizot and Constant were politically often at odds. Along with so many of the *doctrinaires*, Guizot served under the ministries of both Richelieu and Decazes. He wrote one of his first pamphlets supporting the censorship laws that Constant would spend countless pages attacking.<sup>687</sup> When Guizot was in power during the July Monarchy, he would make heavy use of both censorship and parliamentary patronage. Perhaps most fundamentally of all, Guizot rejected the distinction Constant was seeking to draw between ministerial and royal authority. When faced with the

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<sup>684</sup> Ibid. (my italics)

<sup>685</sup> Ibid.

<sup>686</sup> A similar account of parliamentary government, and of its divergence from constitutional arrangements that check and balance *powers* was also proposed by Royer-Collard. See Royer Collard, *La vie politique de M. Royer-Collard*, 292-293

<sup>687</sup> Francois Guizot, *Quelques idées sur la liberté de la presse*, (Paris: 1814).

*chambre introuvable* in 1816, Guizot defended an active role for the monarch in the legislature. “Royal authority has not been invaded and replaced by that of the Chambers; it is not the Chambers which govern; it is not the Chambers which make and unmake ministers.”<sup>688</sup> Rather “the government, enlightened by its experience of the danger of setting itself up outside the Chambers, and of thus having to direct or combat alien powers...very wisely decided to take its seat in the Chambers themselves, to establish there the center of its acts, to at last govern in the middle of them and by them.”<sup>689</sup> Guizot insisted that to give the legislature the ultimate determination over the king’s choice of ministers was equivalent to popular sovereignty.<sup>690</sup> It was through the monarch’s involvement in the legislature by way of his ministers that there “was operated that fusion of powers, the only point of calm for mixed governments.”<sup>691</sup>

But Guizot’s position on all of these issues would shift over time. He was nowhere near as consistent as Constant, and this means that it is too simplistic to cast him simply as Constant’s adversary. For instance, although Guizot served under Richelieu and Decazes, he later became a harsh critic of them and their policies. Two of Guizot’s most important pamphlets, *Du gouvernement de la France depuis la restauration, et du ministère actuel*, and *Des moyens de gouvernement et d'opposition dans l'état actuel de la France*, written in 1820 and 1821, feature attacks against most of the leading liberals and centrists who he had been essentially allied with during the previous five years —Serre, Decazes, Lainé, Richelieu, Pasquier. Like Constant,

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<sup>688</sup> Guizot, *Du Gouvernement représentatif*, 30

<sup>689</sup> *Ibid.*, 30-31.

<sup>690</sup> *Ibid.*, 23

<sup>691</sup> *Ibid.*, 30-31

Guizot ended up wanting liberals in parliament to take a very different path than that of the early Restoration.

Moreover, while Guizot would never adopt Constant's air-tight distinction between royal and ministerial power, his position on whether ministers needed support from a majority of the legislature to remain in office shifted numerous times. Guizot's stance on this question correlated almost exactly with whether or not he was in power. When he argued in 1816 that the king could appoint ministers in opposition to the legislature, he was employed by the government. In the 1820s, by contrast, Guizot remained for the most part in opposition. And during this period, he adopted the very position he had earlier rejected in 1816: that the legislature ought to have a definitive say over the selection of ministers. "To contest whether the chambers should have a decisive influence over the formation of the ministry," Guizot contended in 1820, "or to demand that the ministers be strong without the support of the chambers, is to refuse representative government."<sup>692</sup>

While serving as Minister of Public Instruction in 1834, Guizot switched back. He sternly instructed the legislature that, although "the indirect influence of the Chamber over the administration is the law of our government," when it came to "the direct intervention of the Chamber in the choice of ministers, in the composition of the cabinet, that would be a grave attack on the prerogative of the Crown. It would be a great perturbation in the relations of political powers."<sup>693</sup> And yet finding himself out of office in the late 1830s, Guizot would again

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<sup>692</sup> Francois Guizot, *Du gouvernement de la France depuis la restauration, et du ministère actuel*, (Paris: 1820), 284.

<sup>693</sup> Francois Guizot, "Interpellations sur les causes de la crise ministérielle survenue à la fin de février 1835," in *Histoire Parlementaire de France*, t. 2, (Paris: 1863), 349. See also Francois Guizot, "Explications relatives aux crises ministérielles survenues dans le dernier semestre de 1834," *HPF*, t. 2, 289-320.

take up the side of the legislature in the dispute. He declared, as he had in 1820, that “once the preference of the Chambers and of the nation is well established, once a combination is evidently called to enact their preference, the Crown must not oppose any obstacles...it must lend its loyal and sincere support” to the new ministry.<sup>694</sup> Maintaining that it was “very natural” and “very legitimate,” for “the Crown to have its opinion and its view” about “the formations of cabinet,” Guizot insisted again that the legislature’s preference was decisive.<sup>695</sup>

It is impossible to deny the audacity and brazenness of Guizot’s flip-flopping, which was one source of his deep unpopularity by 1848.<sup>696</sup> But beneath Guizot’s inconsistency over the respective roles of the monarch and legislature in appointing ministers, a surprisingly deep consistency can be found—and one which has gone generally unnoted by scholars. When Guizot defended an active monarch within the Chamber, his argument was the same as Necker’s: that this functioned as an indispensable source of unity between constitutional powers.<sup>697</sup> But when Guizot was on the completely opposite political side of this question, such as in 1839 or in the 1820’s, and arguing for legislative control over the formation of ministries, his justification remained the same. Guizot’s critique of monarchical meddling in the Chamber, in such moments, was very rarely that it was tyrannical, or an assault on liberty, or illegitimate in itself. Guizot’s claim was rather that it interfered with the Chambers coming to a deliberative consensus, and finding the ministry which the nation would best support. “It is in the chambers,” Guizot wrote in

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<sup>694</sup> Francois Guizot, “Discussion à l’occasion des interpellations de M. Mauguin sur la formation du cabinet après la coalition,” *HPF*, t. 3, 250

<sup>695</sup> *Ibid*

<sup>697</sup> Guizot made this argument both during the Restoration and July Monarchy. See Francois Guizot, *Du gouvernement représentatif*, 41-46; compare with Francois Guizot, “Discussion de l’adresse de 1834,” *HPF*, t. 2, 179-182

1820, “that the organization of national power can be achieved. It is there that public interests come to be illuminated in all their evidence, and speak with all their authority....placing the most sincere ministers in a state of accomplishing what the nation demands.”<sup>698</sup> Guizot declared that, “this alone is the end and the result of having representative chambers: that they labor without cease to form the government which suits the nation, and that the government, formed by them, draws from them, in its turn, its energy and stability.”<sup>699</sup> As Guizot argued in 1839, only “an administration supported by general sentiments” could found “the security of the nation and the force of your government.”<sup>700</sup> It was thus in the king’s own self-interest, which Guizot called, using the expression of the age, the king’s “self-interest well understood,” to only support ministries which were the choice of the Chamber—and thus were supported by “the natural force” of mature public opinion.<sup>701</sup> Instead of depicting the monarch as the natural source of constitutional unity, as he did when he was in office, Guizot would argue when he was in opposition that it was legislative consensus that was. “The only means for founding harmoniously the monarchy and the constitution, order and liberty, is to constitute with regularity, and in all its extent, the influence of the chambers over the government.”<sup>702</sup>

Beneath his shifts, Guizot’s underlying political goal was always the same: the formation of a stable, unified ministry that was able to lead a clear parliamentary majority. Guizot’s great

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<sup>698</sup> Guizot, *Du gouvernement de la France depuis la restauration*, 286

<sup>699</sup> Ibid.

<sup>700</sup> Francois Guizot, “Débats de la coalition,” 210. See also *ibid.*, 194, 196.

<sup>701</sup> Ibid., 243. It is striking that even on the eve of the 1830 Revolution, in a moment when the French government arguably was engaged in a direct assault on public liberty Guizot’s central criticism of Polignac was still primarily that his policies would not lead to the stable formation of parliamentary power. See Francois Guizot, “Discussion de l’adresse dite des 221,” in *Histoire Parlementaire de France*, t.1, (Paris: 1863), 14-25.

<sup>702</sup> Guizot, *Du gouvernement de la France depuis la restauration*, 293



admiration for English parliamentary practice stemmed from his perception that England had succeeded in achieving this aim. Indeed Guizot went so far as to declare that a British prime minister was the most powerful man in all of Europe. “There has never been a nation where political power was held as strongly as it was under Pitt,” Guizot contended. He declared that “Pitt’s power, in England, was stronger than that of Napoleon.”<sup>703</sup> Yet the power of a British prime minister, according to Guizot, was entirely commensurate with free government. For it was power that emerged through “liberty and public discussion,” and which was continually tested through debate and argument in front of an opposition.<sup>704</sup>

To create stable cabinets and effective legislative majorities in France, like those wielded by Pitt in Britain, was Guizot’s lifelong political ambition. As he declared in 1839, “it is the public’s interest, it is the interest of government in general, and it is for the sake of the dignity of this Chamber, that it have a single view—a positive, clear, and firm view—which directs and sustains its power”<sup>705</sup> In his memoirs, Guizot reiterated that this had been his fundamental political goal. “A homogenous cabinet, composed of men who were permeated with the same ideas concerning internal and external politics, and capable...of rallying in the Chambers a majority devoted to these ideas, and of establishing a true and lasting accord between the king and that majority”: Guizot was emphatic that this had been, for him, “the prime problem to resolve, and the prime end to attain.”<sup>706</sup>

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<sup>703</sup> Francois Guizot, “Présentation et discussion du projet de loi relatif à la réélection des Députés promus à des fonctions publiques salariées,” (August 27 1830), *HPF*, t. 1, 45,

<sup>704</sup> *Ibid.*, 46

<sup>705</sup> Guizot, “Débats de la coalition,” 237

<sup>706</sup> Guizot, *Mémoires pour servir à l'histoire de mon temps*, t. 8, 9-10

To a great degree, however, Benjamin Constant would have been sympathetic with Guizot's words. I already noted Constant's own disgust with the weak ministries and shifting legislative majorities between 1815 and 1821. Moreover, like Constant, Guizot believed that the most important thing that was needed to make parliamentary life more stable was leadership that based in clear, intellectually grounded principles. This was a conviction that can be traced back to the very foundations of Guizot's whole political philosophy. As many scholars have noted, Guizot perceived a nearly unbridgeable distinction between political power that rested merely on will, and political power based in a rational consensus.<sup>707</sup> For Guizot, all power not based in rational consensus was inherently unstable. Wills, preferences, interests were prone to vacillate and change. On the other hand, a political regime that was in power through the deliberative and well-thought-out support of the public, because it was perceived to be governing in the common interest, was not only better in its own right: it also possessed a stable and lasting basis for its authority.<sup>708</sup>

While Guizot believed that government based in rational consensus was a lasting need of human beings, specific characteristics of his own era made this need significantly more pressing. The increasing equality of the modern world meant that all the social hierarchies which once might have served as a social basis for political authority had vanished. In 1819, over a decade before Tocqueville left for America, Guizot instructed the Chamber of Deputies that France was becoming "a wholly novel society, which did not in any way resemble the one which preceded it, or perhaps any other society past or present."<sup>709</sup> This was due to "the introduction of the

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<sup>707</sup> Guizot, *Philosophie Politique*, 334-325

<sup>708</sup> *Ibid.*, 347-352

principle of equality in every part of the civil order, including even, I dare say, in its most hidden folds.”<sup>710</sup> Guizot continued: “it thus results from this, that there is no longer anything in France today but the government, and the citizens or individuals.... There no longer exist any of the intermediate or local powers which elsewhere exercise either avowed rights, or positive force—whether aristocratic patronage, or the bonds of corporations, or particular privileges.”<sup>711</sup> In the world as it was after the French Revolution, there was no other source of political authority left except reason.<sup>712</sup>

The supreme advantage of representative government, for Guizot, was that it was the only form of government which encouraged the rational exercise of political power. What was distinctive about representative governments was that they contained multiple political actors—the monarch, both chambers of the legislature, the electorate—each incapable of wielding sovereign power by itself.<sup>713</sup> Only when entered into a unified consensus could the exercise of political power occur.<sup>714</sup> Guizot’s argument is indebted to Necker, who had influentially proposed that effective governments allow not only for conflicts to take place between constitutional powers, but also for unity to emerge between them. This was an end which England achieved through the practice of having the king’s ministers serve as leaders in parliament. What Guizot added to Necker’s argument was the idea that the process of creating

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<sup>709</sup> Francois Guizot, “Discussion du projet de loi présenté le 22 mars 1819 sur les Journaux et Écrits périodiques,” *HPF*, t.1, 8.

<sup>710</sup> Ibid

<sup>711</sup> Ibid.

<sup>712</sup> For this foundational claim of Guizot’s thought see Guizot, *Histoire de la civilisation en Europe*, 298-304

<sup>713</sup> Guizot, *Origins of Representative Government in Europe*, 53

<sup>714</sup> Ibid.

unity between constitutional powers was coextensive with a process of argument and deliberation.<sup>715</sup> It was a process in which different political actors, each “emanating from different sources and resulting from different social necessities,” made arguments from its respective position, until a consensus finally emerged between them.<sup>716</sup> That consensus approximated to “reason and justice.”<sup>717</sup> It was only through “united deliberation” that the unified exercise of political power become possible, and that unified power—represented in the parliamentary system Guizot had in mind by a ministry governing with support from both the legislature and the monarch—was forced to repeatedly justify its decisions to an opposition in order to remain in existence.<sup>718</sup>

Scholars have often seen Guizot’s remarks about representative government and the rational organization of political power as excessively normative and universalistic—lacking the sociological depth or consciousness of particularity found in Tocqueville.<sup>719</sup> But despite his repeated use of the term “reason,” the kind of argument and deliberation that Guizot foresaw political actors engaged in under a representative government was as much sociological as it was normative. Guizot called it “the mission of governments” and “the necessity of governments” to comprehend society “in all its faces, to grasp it from all sides, to respond to it in all its needs.”<sup>720</sup>

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<sup>715</sup> Ibid., 54-55.

<sup>716</sup> Ibid., 53

<sup>717</sup> Ibid., 54

<sup>718</sup> Ibid.

<sup>719</sup> For criticisms of Guizot’s conception of the sovereignty of reason as excessively normative, and unconscious of social particularity, see Cheryl Welch, *De Tocqueville*, (Oxford: 2001), 24-31; and Welch, “The Beauty of Gray? Liberal Politics and Theory in Postrevolutionary France,” *Political Theory*, vol. 33, no. 5, (2005), 732; as well as Bryan Garsten, “Benjamin Constant’s liberalism and the political theology of the general will,” in *The General Will: The Evolution of a Concept*, ed. David Lay Williams and James Farr, (Cambridge UK: 2015), 384.

<sup>720</sup> Guizot, *Des moyens de gouvernement*, 134

Only those governments were strong or secure, according to Guizot, “in which society in its entirety resounds,” and which are not “insensitive, deaf or estranged from anything which passes in its depths.”<sup>721</sup> Guizot was convinced that political deliberation and discussion between different actors was what led to this more comprehensive understanding of social life. In parliament, “opinions” come to “adapt themselves to general needs and sentiments, which is necessary for those in power to be knowledgeable.”<sup>722</sup>

Guizot’s criticism of the moderate and liberal ministers who held power between 1815 and 1821 was that they failed to recognize the essential nature of representative government. They did not see that in representative systems, stable leadership was coextensive with rational leadership. They failed to put forward a comprehensive and intellectually coherent agenda, which could invite reasoned assent from a wide range of political and social actors. This was the most important source of the legislative gridlock and instability of the early Restoration. In Guizot’s eyes, it represented a shortcoming of character as much as of intellect. Guizot’s political pamphlets—like Burke or Swift’s—teem with rich character studies of legislative actors. Guizot depicts the liberals who held ministerial office between 1815 and 1820, such as Lainé and Serre, as simultaneously too inconsistent and too impressionable to effectively govern. They lacked emotional solidity as well as intellectual clarity. Guizot wrote about Lainé: “his emotions were so multiplied, and yet each in itself so successive and exclusive that he did not have the force to judge them, to class them, to convert them into reasonable opinions, to accord to each of them its legitimate share of influence.”<sup>723</sup> Guizot went on:

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<sup>721</sup> Ibid., 209.

<sup>722</sup> Ibid., 318

The most contradictory emotions, the most diverse impressions struck M. Lainé from all sides. He submitted turn by turn, with an impassioned docility; sometimes full of love and anxiety for the name of liberty; sometimes shaken to his core by the idea of the royal prerogative being in peril; moved today by the misfortunes of the émigrés, and tomorrow by the sufferings of the Girondin. All the memories which spoke, all the ideas which stirred, anything which possessed in itself something seductive or pathetic, found, in M. Lainé, some welcoming fiber, and he was moved.<sup>724</sup>

The liberal ministers of the early Restoration were emotionally and intellectually indeterminate; their minds and passions moved in too many different directions to possess any “constancy of vision” or “force of action.”<sup>725</sup>

In the legislative landscape Guizot painted, inconsistent ministers like Lainé, Serre, and Decazes were joined in office by other men who had greater solidity of character, but no energy or ideas. Here, for instance, is Guizot’s evaluation of Richelieu:

M. de Richelieu is not a man who, to attain a determined end, places himself at the head of other men and leads them. They surround him, but do not follow him, for he does not march anywhere. There is with him some indefinable quality of immobility, which reduces him often to serving as an obstacle, never as a means...His conscience is righteous, his vision short-sighted, his character weak. Honest and loyal, he can engage in lively debate at its beginning; but if the situation becomes at all confused, if the course of events (*choses*) accelerates, he becomes troubled, and refusing the consequences of his own actions, takes refuge in inaction. It is not that he fears to compromise, it is that he does not know what to decide or how to act...What is violent shocks his reason, what is difficult surpasses it; his immobility is only an expression of his doubt; or of his view of his own powerlessness.<sup>726</sup>

Guizot argued that the solidity and immobility of Pasquier or Richelieu, as well as the erratic impressionability of Serre or Lainé, were character traits that had been magnified by the French Revolution and Napoleonic wars. These events were at once so complex and so horrific that it became far easier to adopt a posture of inaction, or to be torn in many different directions, than to come up with a clear and rational understanding of French society and its need.

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<sup>723</sup> Guizot, *Des moyens de gouvernement*, 228

<sup>724</sup> Ibid., 27-28

<sup>725</sup> Ibid., 30

<sup>726</sup> Ibid., 40-41

## The Necessity of Political Parties

What was missing in the ministries of the early Restoration, according to Guizot, was a systematic legislative program and vision. The crucial institution Guizot identified for bringing this to French parliamentary life was a party system. Guizot shared Constant's belief that unified ministries and parliamentary majorities would best be achieved when there were several competing parties representing opposing principles, which exchanged power in turn. According to Guizot, "great and persevering parties which are devoted to some set of general and vital interests of society" are "the natural and necessary element of free government."<sup>727</sup> As he argued before the Chamber of Deputies in 1839:

This is the regular condition, the salutary condition of representative government. It has precisely for its object to bring out two great opinions, the one governmental, the other critical or reformist, and to clearly outline them, regularly classify them.... and constrain the two parties to mutually control each other, mutually enlighten each other in an honorable struggle.<sup>728</sup>

Guizot thought that clearly defined parties served the cause of rational government. By conflicting with each other over first principles, and over general programs of governing, organized political parties made parliamentary debate into a genuine clash of reasons and arguments.<sup>729</sup> A ministry could not enter office or remain in office without making a broad argument for its agenda being the most rational and just. Through parties, "political power is given over to clear and decided opinions, which is necessary for it to be secure."<sup>730</sup> Guizot

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<sup>727</sup> Francois Guizot, *Trois générations: 1789, 1814-1848*, (Paris: 1863), 198

<sup>728</sup> Francois Guizot, "Chambre des deutes—Séance," *HPF*, t. 3, 187

<sup>729</sup> Surprisingly, this dimension does not feature at all in J.A.W. Gunn's commentary on Guizot and parties (*When the French Tried to be British*, 433-457).

argued that competing political parties were the only means with which to place “those in power, as well as in opposition, in a state to sustain long struggles...to resist discouraging setbacks and uncertain winds, and to pursue, while forever combatting each other, slow and difficult achievements. Great political parties are the armies of civil order, which are at the heart of liberty.”<sup>731</sup>

The crucial caveat in Guizot’s argument was his insistence that parties also be somewhat fluid, and that their members be capable of moderation and flexibility. This was Guizot’s decisive critique of the party of the *ancien regime* in the early 1820’s. Its program was so fantastical, so out-of-touch with reality, so extreme, that there was no possibility of it even being a participant in rational political debate. Over time, Guizot believed, the structural demands of the parliamentary process would shape principled parties to be moderate and practically minded. Like Burke, Guizot argued that one particular merit of parliamentary institutions was to infuse general political debates with a series of particular and personal judgments. Because parliamentary debates continually revolved around the highly specific judgment of whether a ministry has done well, or not, the great questions that divide parties are constrained into less extreme and destructive manifestations. The result, Guizot wrote, is to “prevent great political tremors, by reducing the competing systems of government to ministerial questions.”<sup>732</sup> This “regiments the parties, disciplines them, confines them,” and also “places the throne beyond their combat.”<sup>733</sup> As well as moderating the aims of political parties, parliamentary government

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<sup>730</sup> See Guizot, *Des moyens de gouvernement*, 318 for Guizot’s early defense of parties along the line outlined here.

<sup>731</sup> Guizot, *Trois générations*, 198-199

<sup>732</sup> Guizot, *Du gouvernement de la France depuis la restauration*, 213

<sup>733</sup> *Ibid.*



introduced flexibility into their programs, and fluidity into their ranks. The range of debates which parties become involved in during a session compelled general principles to be continually tested and applied against particular issues. Guizot declared that “there is not, I am convinced, a single deputy who does not leave after each session with more enlightenment, reason, and experience than he brought in at the beginning; there is not one session which has not led France to make real progress in its intelligence of its affairs, its situation, and its true interests.”<sup>734</sup> This greater clarity, arrived at through the discussions of a parliamentary session, forced parties to continually modify, improve and expand their political agenda, in order to maintain power.<sup>735</sup>

Guizot’s model for political parties was England. He argued that England’s party system was central to its relative political stability. While all of Europe was torn after the French Revolution between “the spirit of order” and “the spirit of liberty,” Guizot argued, “it was the good fortune of England that...these two principles being incorporated and organized in two great political parties, were carried and exercised turn-by-turn.”<sup>736</sup> Moreover, English political parties had shown themselves capable of being practically minded as well as principled. Since the beginning of the eighteenth century, they had proven willing to limit themselves to competition over holding ministerial office. “Under the reign of Anne,” Guizot noted, “the Tories were ministers and excited many alarms...but the defenders of the new interests conducted themselves with sagacity and skill. Their attacks did not go beyond the ministers.”<sup>737</sup> Only

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<sup>734</sup> Ibid., 289

<sup>735</sup> It was due to Guizot’s insistence on the flexibility and fluidity of parliamentary parties and representatives that he (along with the preponderance of nineteenth-century liberals) opposed any sort of mandate from voters. See Francois Guizot, “Débat sur la question du mandat impératif donné par les électeurs aux députés,” 287-300.

<sup>736</sup> Francois Guizot, *Sir Robert Peel : étude histoire contemporaine*, (Paris: 1859), 4-5

<sup>737</sup> Guizot, *Du gouvernement de la France depuis la restauration*, 214

because the Whigs were wise enough to "take great care to contain their agitations in the arena of ministers," Guizot claimed, could "the representative system commence as a regular government" in England.<sup>738</sup> In his writings on the actual working of the English legislature in his day, most of all in his biographical study of Robert Peel, Guizot depicted a continued interplay between the general competing programs which defined the Whigs and Tories, and the process of parliamentary competition and debate, where each party was constrained to adapt its program into increasingly nuanced and specific proposals.<sup>739</sup> While political parties elevated political disagreement to a level of higher conceptual generality, the process of parliamentary debate and competition forced legislators to take account of fact, situations, personalities, and practicalities. It was via the conjunction of these two structures that the parliament came close to attaining comprehensive political understanding, "knowledge about the general needs of society, and of the proper means of satisfying them."<sup>740</sup>

With his powerful and distinctively modern defense of a system of political parties, it one of the tragic ironies of Guizot's political career that he ended up essentially standing for one-party government. In contrast with Britain, Guizot saw no stable system of responsible, unified parties in the France of his day—and nothing remotely approximating one. This was primarily

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<sup>738</sup> Ibid.

<sup>739</sup> Guizot's fascination with Peel stemmed from the fact that Peel could not belong to either of the two great English parties: his bourgeois background meant that he could never share in the aristocratic principles of Toryism; his conservatism kept him from ever joining with the Whigs. Peel was thus, "turn by turn conservative and reformer; Tory, Whig, and at moments nearly a radical." (Guizot, *Sir Robert Peel*, 353). One might say that in his very exceptionality to the English party system, Peel illuminated its nature, for Guizot. And because of his versatility, Peel was always at the center of legislative debate. He exemplified the process through which parliamentary confrontation and competition forces general doctrines to be adapted to circumstances. For an incisive critique of Guizot's interpretation of Peel, however, see Alan Kahan, "Guizot et le modèle anglais," in *Francois Guizot et la culture politique de son temps*, 219-221.

<sup>740</sup> Guizot, *Des moyens de gouvernement*, 245

because, during the July Monarchy, Guizot saw the French left as disorganized and unserious.<sup>741</sup> After 1848 Guizot would go so far as to blame the whole collapse of the regime on the absence of unified political parties.<sup>742</sup> Although Guizot was one of the pioneering theorists of a modern, pluralistic, party system, he did not see this as a realistic possibility in his own political context. To the contrary, he was always convinced that no party but his own could possibly lead a stable, effective, and unified governing majority in the Chamber of Deputies.

### Gridlock and Corruption

Guizot's overriding political concern, I have argued, was the creation of a stable governing ministry that had the support both of the king, and of a clear majority of parliament. "The unified political views of the cabinet; its close relation with the party that it has for a political ally in the Chambers; its continual labor to support that party and to make the very same politics prevail both close to the throne and in the Chambers ... such are the essential laws of parliamentary government," he wrote.<sup>743</sup> For this reason, cabinet instability and gridlock in parliament was Guizot's true legislative nightmare. It was the antithesis of the "freely established harmony between the great political powers" which Guizot saw as the task of parliamentary government. Unfortunately, as I noted in the introduction to this chapter, cabinet instability and

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<sup>741</sup> See for instance Francois Guizot, "Discussion à l'occasion des interpellations adressées par M. Mauguin au ministère sur les troubles survenus dans Paris," *HPF*, t. 1, 275-292; and Guizot, "Discussion à l'occasion des interpellations de M. Mauguin sur la formation du cabinet après la coalition," 254-256, 259-265.

<sup>742</sup> Guizot, *Trois générations*, 202-204

<sup>743</sup> Guizot, *Mémoires pour servir à l'histoire de mon temps*, t. 8, 97.

parliamentary gridlock recurred repeatedly throughout Guizot's entire political career. When he declared in 1841 that, "the reorganization of a true majority of government is, at this moment, the most pressing interest of the nation, of the Chamber, of the crown, and of the honor of our institutions," he could have been speaking at any number of other points during the previous twenty-five years.<sup>744</sup> It was really only when Guizot himself was in power, between 1841 and 1848, that there was a durable ministry which could count on a parliament majority on most important issues.<sup>745</sup>

It would be going too far to say that gridlock was the sole legislative pathology that concerned Guizot during his political career. Guizot was also concerned at particular moments, we will see, by parliamentary corruption. And he loathed the ultra-conservative ministries which held power in the 1820s. But in Guizot's mind, these other dilemmas all folded into the larger challenge of establishing stable ministries and effective legislative majorities. Guizot traced the power of the *ultras* during the 1820s back to the failure of liberals and moderates to stabilize parliamentary life during the previous decade. As Guizot showed most fully in his pamphlet *Du gouvernement de la France depuis la restauration, et du ministère actuel*, this failure created a power-vacuum that more reactionary parliamentary actors sought to fill.<sup>746</sup> In turn, Guizot also predicted the reactionary principles of the *ultras* would equally fail at the task of parliamentary leadership. One of Guizot's major critique of the *ultras* in *Des Moyens de Gouvernement et d'Opposition dans L'État Actuel de la France* is that their principles were also bound to fail as

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<sup>744</sup> Francois Guizot, "Debat sur les fonds secrets complémentaires demandés pour l'exercice 1841," *HPF*, t.3, 426.

<sup>745</sup> One of the main arguments of Koepke's essay, however, is to show how difficult and uncertain a task it was for Guizot to maintain this parliamentary unity. See Koepke, "The Failure of Parliamentary Government in France," 433-455.

<sup>746</sup> Guizot, *Du gouvernement de la France depuis la restauration*, 19-126.

principles of stable parliamentary government—a critique ultimately borne out by the *ultras*' defeats in the elections of 1827 and 1829, which started the chain of events culminating in the revolution of 1830.<sup>747</sup> For Guizot, the reactionary governments of the 1820s sprang from the failure of durable ministries and stable parliamentary majorities to form during the previous decade. And his prediction was that they too would be ultimately unable to address that more fundamental political necessity.

Guizot's assimilation of other legislative challenges to the challenge of parliamentary gridlock and cabinet instability is equally apparent in his discussions of patronage. It has been suggested by some scholars that Guizot's use of political patronage as a legislative tool during the July Monarchy was merely a function of his being in power.<sup>748</sup> Didn't Guizot, after all, criticize the corruption of Richelieu's second ministry while he was in opposition? Wasn't Guizot's lament during this time that, "not a single proposition, not a single ministerial measure has had any principle for its rule, and France as its object... Representative government has become the mantel under which miserable coteries and personal pretensions have run their affairs, while appearing to treat those of France?"<sup>749</sup> What has largely been missed, however, is that Guizot was never making an argument against patronage *tout court*. Guizot's claim was that the ministers in office during the early Restoration were using *nothing but patronage* to stay in power. His lament was that "public needs mean *nothing* in the conduct of the ministers."<sup>750</sup> In the

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<sup>747</sup> Guizot, *Des moyens de gouvernement*, 143-186, 203-207; as well as Guizot, *Du gouvernement de la France depuis la restauration*, 116-117.

<sup>748</sup> For instance Alan Kahan, "Guizot et le modèle anglais," 225

<sup>749</sup> Guizot, *Des moyens de gouvernement*, 57

<sup>750</sup> *Ibid.*

very same pamphlet in which Guizot penned his most vicious attacks against the way ministers in power were using patronage, he also maintained that there was an important role to be played by patronage in parliamentary politics. When personal interests became the whole *raison d'être* of government, as Guizot claimed was often the case between 1815 and 1821, then power became deeply unstable. But if patronage was used as an additional tool to solidify political bonds which were also based in principled, intellectual agreement, then it was an important and justifiable instrument.

“I do not think all is corrupt,” Guizot wrote in 1821, “in the application of political power to acquire men of whom it has need, because I am convinced that the care and the management of their inclinations, of their interests, of their affairs, has its legitimacy as well as its necessity.”<sup>751</sup> So long as patronage was exerted on behalf a party that had a principled governing agenda, Guizot denied it counted as corruption.<sup>752</sup> If “by consequence of their rapprochement, there is established a tighter bond between those in power and an individual, if the personal interest of the citizen finds some advantage in serving a power which serves the cause he himself as always served,” Guizot asked, then what is wrong with that?<sup>753</sup> “Since when,” Guizot demanded, “is it forbidden to pursue one’s duties and manage one’s affairs together?”<sup>754</sup> The task for a ministry, Guizot argued, was to use political patronage appropriately and responsibly. But to think that parliamentary government could ever function without it was deeply naïve. “Understanding of the general needs of society, and even of the means of

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<sup>751</sup> Ibid., 248

<sup>752</sup> Ibid., 250-251

<sup>753</sup> Ibid., 250-251

<sup>754</sup> Ibid., 251

satisfying them, is not sufficient for those who wish to govern. Power does not always negotiate with the public. It necessarily contracts direct relations with a multitude of individuals, and this also has its science, which is forgotten with peril.”<sup>755</sup> To claim, as Benjamin Constant did, that it would be possible to govern in parliament without exercising what Guizot called “the art of negotiating with individuals” was almost as naïve as the opposite mistake made by Richelieu and Decazes—who thought that they could hold power *purely* through that art, without any general governing philosophy at all.<sup>756</sup>

Guizot thought that the coherent and stable exercise of legislative power rested above all on the force of intellectual assent and rational consensus. But a legislative majority formed in this way became significantly more secure when representatives and voters were also connected to the ministry through clear and definable personal interests. While Benjamin Constant had argued that governing through the personal interests of legislators was radically at odds with government by principles and arguments, and that a successful legislative body was one in which only the latter occurred, Guizot believed that these were two different elements in the larger art of legislating. Whereas Constant supported a radical diminution in the number of representatives holding administrative offices, Guizot opposed any legislation that would limit representatives from serving in administrative positions, on the grounds that this was an important source of parliamentary unity.<sup>757</sup> Indeed as late as 1852, four years after his humiliating fall from power, Guizot would continue to defend the necessity of patronage in parliamentary government. In a

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<sup>755</sup> Ibid., 244

<sup>756</sup> Ibid., 245

<sup>757</sup> See Francois Guizot, “Présentation et Discussion du Projet de Loi Relatif a la Réélection des Députés Promus a des Fonctions Publiques Salariées”, and “Renseignements doneé par le Ministre de l’Intérieure sur les Changements Opérées dans le Personnel de l’Administration après la Revolution de 1830”, both in *HPF*, t. 1, 41-48, 59-62.

letter to his English friend Lord Aberdeen, in which Guizot justified the policies he had pursued during the July Monarchy, he particularly singled out his use of patronage as having been fully legitimate. Noting that “the distribution of places and of administrative favors,” was a particularly controversial aspect of his time in office, Guizot offered a forthright defense:

“Certainly I myself made use of it, and all the ministers [during the July Monarchy] made use of it, to aid in the formation and maintenance of a majority which would be attached to the policies they believed themselves obliged to practice. In principle, and within certain limits that was both necessary and legitimate... What is more necessary under a constitutional regime than the strength and loyal organization of the parties called to exercise power? The practice of all the nations where representative government exists...is the same in this matter, and this practice corresponds to all the indications of common sense.<sup>758</sup>

Guizot’s letter to Aberdeen makes crystal clear the degree to which Guizot’s support for patronage during the July Monarch, and his complacency about concerns over corruption, came back to his long quest to create stable cabinets and clear parliamentary majorities. Patronage was a powerful instrument for assuring “the strength and loyal organization of the parties called to exercise power.”

In the first chapter of this dissertation, I demonstrated that Walpole and his defenders made two distinct arguments to defend the use of parliamentary patronage. Their first argument was that this was necessary for constitutional balance: it enabled the king to more effectively contain the House of Commons. Their second claim was that patronage served as an indispensable tool for assuring stability and unity within parliament itself. The most famous political thinker who advanced the first of these arguments was David Hume. The second found its greatest exponent in France, nearly a hundred years later. His name was Francois Guizot.

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<sup>758</sup> Francois Guizot, “Letter to Lord Aberdeen” (April 26 1852), collected by David Johnson, in “Guizot et Lord Aberdeen en 1852. Échange de vues sur la réforme électorale et la corruption,” in *Revue d'histoire moderne et contemporaine*, vol. 5, no. 1, (1958), 66-67



## Conclusion

This chapter has explored two familiar political thinkers from a novel historical perspective. Taking seriously the fact that Benjamin Constant and Francois Guizot were both elected representatives who served in parliament, as well as brilliant theorists of parliamentary government, I have shown that they differed significantly in their assessments of how to reform France's parliamentary legislatures. One of their most fundamental disagreements was over whether patronage had any role in a deliberative assembly. In making their respective arguments, Constant and Guizot carried the debate between Walpole and Bolingbroke forward into the heart of French liberalism. The question of patronage thus continued to be a generative challenge for political thinkers trying to figure out what representative government should be like when ministers in charge of executive functions are in the legislature.

## Chapter 5. Tocqueville and Mill on Parliamentarism and Democracy

Guizot's parliamentary leadership during the 1840s attracted fierce opposition, culminating in the revolutionary uprising of 1848. Much of that criticism came from radicals on the left.<sup>759</sup> But there were also numerous critics of Guizot, in both France and England, who proudly identified as liberals. Among them were the two most famous liberal political thinkers of the entire nineteenth century, Alexis de Tocqueville and John Stuart Mill. Even though Tocqueville and Mill were strongly influenced by Guizot's lectures and books, they repeatedly attacked Guizot's parliamentary leadership.<sup>760</sup> Like Benjamin Constant, Tocqueville and Mill disagreed with Guizot about the relevant importance of corruption and cabinet instability. Both Mill and Tocqueville thought that corruption was a more destructive pathology for a parliamentary assembly than internal instability. They denied that ministers should be able to appeal to representatives' financial interest as a means of building stable governing majorities.

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<sup>759</sup> For a survey of treatments of the radical opposition to Guizot, see Pierre Rosanvallon, *La Démocratie inachevée*, 129-179; William Fortescue, "Morality and Monarchy: Corruption and the Fall of the Regime of Louis-Philippe in 1848", *French History*, 16 (2002), 83-100; and Julien-Laferrière, *Députés fonctionnaires sous la monarchie de Juillet*, 142-155. This opposition encompassed many of the artists and poets of the age, whose politics are depicted in Tim Clark, *Image of the People: Gustave Courbet and the 1848 Revolution*, (Berkeley: 1973); as well as Tim Clark, *The Absolute Bourgeois: Artists and Politics in France, 1848-1851*, (Berkeley: 1973).

<sup>760</sup> Mill summarized his ambivalent feelings about Guizot with these words: "M. Guizot, a man of a greater range of ideas and greater historical impartiality... gave to the world those immortal Essays and Lectures for which posterity will forgive him the grave faults of his political career." See John Stuart Mill, "Armand Carrel," in *Collected Works*, vol. 20, ed. J.M. Robson, (Toronto: 1985), 185-186. For the influence of Guizot's thought on Mill, see George Varouxakis, "Guizot's historical works and J.S. Mill's reception of Tocqueville," *History of Political Thought*, vol. 20, no. 2, (1999), 292-312. A much larger literature exists on Guizot's influence on Tocqueville. See for instance, Francois Furet, "The Intellectual Origins of Tocqueville's Thought," in *Tocqueville et l'esprit de la Démocratie*, ed. Laurence Guellec, (Paris: 2005), 121-140; Melvin Richter, "Tocqueville and Guizot on Democracy: From a Type of Society to a Political Regime," *History of European Ideas*, vol. 30, no. 1, (2004), 61-82; and Aurelian Craiutu, "Tocqueville and the Political Thought of the Doctrinaires," *History of Political Thought*, vol. 20, no. 3, (1999), 456-493.

Tocqueville and Mill attacked parliamentary corruption not merely as political theorists, but also as active participants in parliamentary life. From 1839 to 1852, Tocqueville served in the French Chamber of Deputies, and then in the National Assembly of the Second Republic.<sup>761</sup> Mill was elected to the House of Commons in 1865. Although he only served for two years, Mill's election capped nearly four decades in which he had participated in parliamentary politics as a commentator and essayist.<sup>762</sup>

When viewed as legislative actors, Mill and Tocqueville's political aims were broadly similar. They both saw legislative and electoral corruption as the major challenge facing parliamentary life, and argued for dramatic reforms of parliamentary government so that it would be free of corruption. Yet when viewed as theorists of the legislature, Mill and Tocqueville strikingly diverge. Like nearly all of the other major liberal thinkers who have been examined in this dissertation, Mill believed in the clear superiority of a parliamentary system, in which ministers sat in the legislature. Tocqueville was supportive of parliamentary government for European states. But in contrast to Mill, he also held great sympathy for the American constitution, which did not allow ministers to serve in the legislature. In particular, Tocqueville thought that the veto-power was an effective way to contain the legislature in a democracy. His strong advocacy of the presidential veto in *Democracy in America* puts him at odds not only with

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<sup>761</sup> For accounts of Tocqueville's political career see Andrée Jardin, *Tocqueville: A Biography*, tr. Lydia Davis and Robert Hemenway, (Baltimore: 1988), 269-464; as well as Sharon Watkins, *Alexis de Tocqueville and the Second Republic, 1848-1852: A Study in Political Practice and Principles*, (Lanham: 2003).

<sup>762</sup> The classic study of Mill's involvement in parliamentary politics during the 1830s is Joseph Hamburger, *Intellectuals in politics, John Stuart Mill and the philosophic radicals*, (New Haven: 1965). Mill's career as a parliamentary representative in the 1860s is analyzed in Bruce Kinzer et.al., *A Moralist in and out of Parliament: John Stuart Mill at Westminster, 1865-1868*, (Toronto: 1992).

Mill, but also with influential French liberals such as Benjamin Constant, Germaine de Staël and Francois Guizot.

Mill and Tocqueville disagreed over whether the veto was a useful instrument for containing the legislature, and over the merits of parliamentary institutions. But they also differed substantially in how they understood parliamentary institutions. For Tocqueville, parliamentary government was a system in which a strong executive (whether a king or elected president) was held responsible through his ministers serving in the legislature. Tocqueville never seems to have held the idea, popularized by Constant, that it was the ministers themselves who were the executive. Yet it was that notion which served as the basis of Mill's entire theory of parliamentary institutions. To a degree that scholars have neglected to emphasize, I will argue, Mill subscribed directly to Constant's ideal of a king who "reigns but does not administer."

Despite the vast scholarship on both Mill and Tocqueville, there has been little commentary about how they viewed the legislative structures of their own nations—structures which deeply occupied both their political lives and thought. There have been no scholarly treatments about how they differed in their conceptions of parliamentary government, or about their shared commitment to combatting parliamentary corruption.<sup>763</sup> By examining these themes, I aim to substantially clarify Mill and Tocqueville's distinctive positions in nineteenth-century liberalism. Both Mill and Tocqueville subscribed to the overarching ideal of liberalism that has been explored in this dissertation: the ideal of parliament as a political body in which decisions

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<sup>763</sup> One brief, though illuminating treatment of Mill's broad concern with corruption is found in Duncan Kelly, *The Propriety Of Liberty: Persons, Passions And Judgment In Modern Political Thought*, (Princeton: 2011), 204-210. Tocqueville's opposition to corruption had also been noted by several scholars, such as in Francois Mélonio, *Tocqueville and the French*, tr. Beth G. Raps, (Charlottesville: 1998), 61-62; as well as Guillaume Bacot, "L'Apport de Tocqueville aux idées décentralisatrices", in *Tocqueville et l'esprit de la Démocratie*, 208-211. There is no systematic study of how Tocqueville and Mill's arguments about corruption connect to the larger themes of their political thought, and which looks at both authors' writings on this theme in tandem.

were arrived at and justified through argument and deliberation. However I will contend, over the course of this chapter, that Tocqueville had far less faith in the possibility of this ideal than Mill. While Tocqueville fought to reform parliament in his own nation so that it would be a space for meaningful debates instead of mere “quarrel[s] over words,” he saw no way to institute legislative bodies so that they would reliably live up to this ideal.<sup>764</sup> In Tocqueville’s eyes, both the parliamentary system and the American system had severe flaws. They were flaws that could be tempered and moderated, but never completely ameliorated. In contrast to Guizot, Tocqueville’s anxieties about the possibility of the liberal ideal of “government-by-discussion” never led him to support patronage as a corrective. But they were manifested in his unusual attraction to the American presidency.

The first half of this chapter considers Tocqueville and Mill’s general, theoretical treatments of the legislative assembly. I start with Tocqueville. I analyze his fear of legislative overreach, his belief that the veto could be an instrument for containing the legislature, and his complex views about parliamentary institutions. Turning to Mill, I demonstrate how sharply he disagreed with Tocqueville on these constitutional questions. The second half of this chapter documents how—despite such immense constitutional disagreements—Mill and Tocqueville both devoted their political careers to reforming parliamentary politics and battling corruption. I first consider Tocqueville and Mill’s extensive arguments against French parliamentary patronage. I then turn to their criticisms of the role of private money in English parliamentary elections—a problem which absorbed much of Mill’s time in the House of Commons. Throughout the chapter I situate both authors among other less well-known French and English

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<sup>764</sup> Ibid.

liberals who were also writing about parliamentary institutions, and involved in parliamentary life, during the same period Mill and Tocqueville were. In particular, since the previous chapter canvassed the nineteenth-century French debate over patronage in so much depth, this chapter fills in the parallel debate that occurred in Victorian England

### Tocqueville and the Omnipotent Democratic Legislature

Like so many French liberals writing in the wake of the French Revolution, Tocqueville was terrified by the power of the elected legislature. What makes Tocqueville somewhat unique within French liberalism, however, is that his fear of the legislature was primarily sparked by experiences in America, rather than in France. Tocqueville admired the vast majority of political institutions he encountered in America. But the one notable exception was America's legislative bodies. While traveling through the United States, Tocqueville was astonished at how unchecked an American state legislature was. "In America the legislature of each state is faced by no power capable of resisting it," Tocqueville wrote.<sup>765</sup> "Nothing can stop it in its tracks, neither privileges, nor local immunity, nor personal influence, not even the authority of reason, for it represents the majority that claims to be the only instrument of reason."<sup>766</sup> An American state legislature, Tocqueville argued, "has no limit to its action other than its own will."<sup>767</sup>

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<sup>765</sup> Tocqueville, *Democracy in America*, vol. 1, 149.

<sup>766</sup> *Ibid.*, 149-150.

<sup>767</sup> *Ibid.*, 150.

Tocqueville's depiction of unchecked legislative power in *Democracy in America* represents an important, if often overlooked component of his famous account of the tyranny of the majority. "The legislature is, of all political powers, the one which most willingly obeys the majority," Tocqueville declared.<sup>768</sup> In "the United States," he claimed, "the omnipotence of the majority... favors the legal despotism of the legislator."<sup>769</sup> Tocqueville's most well-known passages about the tyranny of the majority depict it as a form of social coercion. However throughout the first volume of *Democracy in America*, majority tyranny is continually intertwined with legislative overreach. Perhaps the most telling instance of this is at the very end of Tocqueville's famous chapter "Of the Omnipotence of the Majority in the United States and Its Effects." Tocqueville ends the chapter with passages from two of America's founders, Jefferson and Madison, which are intended to illustrate the theme of the tyranny of the majority. Remarkably, the lines that Tocqueville quotes from Jefferson do not even appear to have anything to do with the majority at all. They are simply about the danger of an uncontained legislature: "the executive power, in our government, is not the only, and perhaps not the principal object of my concern, the tyranny of legislators is now and will be for many years to come the most formidable danger."<sup>770</sup>

Even when a democratically elected legislature did not become tyrannical, Tocqueville warned that it would be wrecked by instability and incompetence. Despite his admiration for the practical experience and political abilities of American citizens, Tocqueville did not think that their abilities extended to the art of legislation. "Aristocracy is infinitely more skillful in the

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<sup>768</sup> Tocqueville, *Democracy in America*, vol. 2, ed. Eduardo Nolla, tr. James Schleifer, (Indiapolis: 2012), 403.

<sup>769</sup> *Ibid.*, 416.

<sup>770</sup> *Ibid.*, 426.

science of lawmaking than democracy can be,” he wrote.<sup>771</sup> According to Tocqueville, an aristocracy is “not subject to passing impulse” and can have “long-term plans that it knows how to develop until the favorable opportunity presents itself. Aristocracy proceeds skillfully; it knows the art of bringing together at the same time, toward the same point, the collective force of all its laws. It is not so with democracy; its laws are nearly always defective or ill-timed.”<sup>772</sup> Tocqueville argued that “legislative instability is an evil inherent in democratic government,” since “sovereign power is handed over to the authority that makes the laws. That authority can rapidly and irresistibly abandon itself to each of its desires.”<sup>773</sup> He declared, “there is no one in the United States... who pretends to deny that this instability exists or who does not regard it as a great evil.”<sup>774</sup>

Tocqueville clearly saw a parallel between the American state legislatures, and the legislative assemblies of the French Revolution. In a passage which was eventually excised from the final version of *Democracy in America*, he explicitly noted how his warning about an unchecked legislative assembly applied to France’s experience during the Revolution.<sup>775</sup> But Tocqueville’s thinking about the legislature was powerfully shaped by the United States. This is revealed most of all by the institutional checks that he proposed for containing legislative power—checks which had been rejected by the most prominent French liberals.<sup>776</sup> The first of

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<sup>771</sup> Ibid., 378

<sup>772</sup> Ibid.

<sup>773</sup> Ibid., 407.

<sup>774</sup> Tocqueville, *Democracy in America*, vol. 1, 323

<sup>775</sup> Tocqueville, *Democracy in America*, vol. 2, 408



these was indirect election. As I noted in an earlier chapter on Burke, the French revolutionary constitutions contained a triple stage system of voting. The electorate did not directly elect the members of the Legislative Assembly. Instead it selected representatives to intermediate assemblies; those intermediate assemblies decided who would serve in the national legislature. In 1817, France turned away from this model and instituted direct elections.<sup>777</sup> That move was strongly defended by both Constant and Guizot, who saw indirect election as partly responsible for the excesses of the Revolution.<sup>778</sup> Tocqueville, on the other hand, was inspired by the high quality of deliberation he witnessed in the American Senate—at the time, elected by state legislature rather than directly by the public—and he took this as evidence for the value of indirect election more generally.<sup>779</sup> Although “the legislature, which names the Senators, is not an aristocratic or privileged body,” Tocqueville argued, “it is sufficient for the popular will to pass through this chosen assembly in order, in a sense, to be transformed and to emerge clothed in more noble and more beautiful forms.”<sup>780</sup> Tocqueville claimed that America Senators “represent exactly the governing majority of the nation; but they represent only the elevated thoughts that circulate in its midst, the generous instincts that animate it, and not the small passions that often trouble it and the vices that dishonor it.”<sup>781</sup> When Tocqueville was in

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<sup>776</sup> It is worth noting that Tocqueville’s perception of the American state legislatures as excessively powerful and unstable was greatly influenced by the citizens he spoke with during his travels in the United States. See Alexis de Tocqueville, *Journey to America*, tr. J.P. Mayer, (New Haven: 1960), 82-89, 92, 98-99, 101-104,

<sup>777</sup> The intellectual significance of the shift in 1817 is discussed in Rosanvallon, *Le Peuple introuvable*, 43-56, 121; and Alan Spitzer, “Restoration Political Theory and the Debate over the Law of the Double Vote,” *Journal of Modern History*, vol. 55, no. 1, (1983), 54-70.

<sup>778</sup> Francois Guizot, *The History of the Origins of Representative Government in Europe*, 344-352; and Constant, *Principles of Politics*, 201-213. Mill also notably favored direct election of representatives. See Mill, *Considerations*, 482-487.

<sup>779</sup> Tocqueville, *Democracy in America*, vol. 1, 320-321

<sup>780</sup> *Ibid.*, 321

parliament during the 1840s he continued to praise indirect elections, even indicating that France should reintroduce them.<sup>782</sup> This was a striking departure from French liberal thought.

There was another American constitutional arrangement that Tocqueville also admired, which was even more difficult to advocate in a French context than indirect election. This was the American presidency. Tocqueville thought that the independent president created by the Federal constitution served as an indispensable check against the legislature. As he expressed in a note while writing *Democracy in America*, an American president “executes the constitutional desires of the legislatures with more skill and sagacity than they would be able to do themselves,” and “is a barrier against the abuse of their power.”<sup>783</sup> The president “prevents their omnipotence from degenerating into tyranny.”<sup>784</sup> Especially striking to Tocqueville was the contrast between the state and federal governments. He believed the failure of the state constitutions to include a comparatively strong executive contributed to their legislatures being so unstable and despotic.<sup>785</sup> Tocqueville did not think that the American presidency could ever be truly equal in power to Congress. But the American president was strong enough, he believed, to temper and moderate Congress. While “the Americans have not been able to destroy the inclination that leads legislative assemblies to take hold of government,” Tocqueville wrote, “they have made this inclination less irresistible.”<sup>786</sup>

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<sup>781</sup> Ibid.

<sup>782</sup> Ibid; and Tocqueville, “Notes pour un Discours”, in *Oeuvres complètes*, t. 3, vol. 2, ed. Francois Melonio, (Paris: 1985), 211

<sup>783</sup> Tocqueville, *Democracy in America*, vol. 1, 201.

<sup>784</sup> Ibid.

<sup>785</sup> Tocqueville, *Democracy in America*, vol. 2, 404

<sup>786</sup> Ibid., 202

According to Tocqueville, the United States federal constitution had succeeded in moderating the legislature. But it achieved this through a constitutional arrangement entirely different from the one French liberals had supported in the aftermath of the French Revolution. Tocqueville specifically noted that America had not followed a parliamentary model: “the President has no entry into Congress,” Tocqueville wrote: “his ministers are excluded as he is.”<sup>787</sup> Unlike a French or British monarch, the president is not “represented, within the Chambers, by a certain number of agents who set forth his views, uphold his opinions and make his maxims of government prevail.”<sup>788</sup> Instead, the primary power at the president’s disposal for restraining the legislature was his veto—exactly the power, I have shown in this dissertation, that went entirely out of use in England, and was downplayed by authors such as Necker, Constant, and De Staël after the disaster of 1792.

Tocqueville explained that “the President is armed with a qualified veto that permits him to stop the passage of laws.”<sup>789</sup> And while Tocqueville made clear that Congress could ultimately override the veto, he argued that its use by the president gave both the legislature, and the public, a chance to stop and deliberate again:

There can only be an unequal struggle...between the President and the legislature, since the latter, by persevering in its intentions, always has the power to overcome the resistance that opposes it. But the qualified veto at least forces it to retrace its steps; it forces the legislature to consider the question again; and this time, it can no longer decide except with a two-thirds majority of those voting. The veto, moreover, is a kind of appeal to the people; the executive power pleads its cause and makes its reasons heard.<sup>790</sup>

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<sup>787</sup> Tocqueville, *Democracy in America*, vol. 1, 206

<sup>788</sup> *Ibid.*, 206

<sup>789</sup> *Ibid.*, 203

<sup>790</sup> *Ibid.*

In one sense, this passage is highly reminiscent of Benjamin Constant. Constant had similarly argued that the purpose of the king's neutral powers—particularly the power of dissolution—was to restart the legislative process so that Parliament could come to its senses, and the public could weigh in. It was a means of prompting further public deliberation. This is the same advantage that Tocqueville ascribes to the veto. Yet to achieve this similar end, Tocqueville advocates an entirely different institutional mechanism from Constant. To contain the legislature, the American president has no other option than to take a stand on a particular piece of legislation. He becomes anything but neutral. Throughout this dissertation I have attempted to cast doubt on the idea that nineteenth-century liberalism was indebted above-all to Montesquieu. But Tocqueville is the one author for whom that conventional historical account has a large degree of truth. Like Montesquieu, Tocqueville believed there could be a successful political regime in which a powerful legislature was tamed and corrected through an executive using the veto power.

Tocqueville was well aware that there was another constitutional option available: the parliamentary system, in which the king (or president) has ministers who serve in the legislature. Tocqueville's views on parliamentary government are quite complex. On the one hand, over the course of his life, Tocqueville pointed to two significant problems that emerged whenever ministers served in the legislature. One of these is the problem of legislative patronage, which will be discussed at length later in this chapter. The other was a lack of consensus between executive and legislature within parliament—the challenge that had so obsessed Guizot. Tocqueville discusses this problem in *Democracy in America*. There he notes that, “it is an established axiom in Europe that a constitutional king cannot govern when the opinion of the legislative chambers is not in agreement with his...A European king needs to obtain the support

of the legislative body to fulfill the task that the constitution imposes on him.”<sup>791</sup> The reason for this was that the king’s ministers could not effectively serve in office without legislative support. But this meant that for any governing to happen, the nation was entirely dependent on a difficult consensus being reached. The king “needs the chambers,” and “the chambers need him,” Tocqueville wrote, “they are two powers that cannot live without each other.”<sup>792</sup> “The gears of government stop at the moment when there is discord between them.”<sup>793</sup> It is important to recall that Tocqueville researched and wrote the first volume of *Democracy in America* between 1830 and 1835. As I noted in the previous chapter of this dissertation, that was a period when such “discord” was at nearly an all-time high in French parliamentary life.

But although parliamentary institutions were prone to internal gridlock and corruption, Tocqueville also believed that parliamentary government had several distinct advantages. One was that they made possible hereditary monarchy. Tocqueville was always convinced that monarchy was the best political arrangement, especially for France. “A Republic is an ill-balanced form of government, promising more freedom and giving less than a constitutional monarchy,” he wrote.<sup>794</sup> Tocqueville argued that monarchy prevented the executive power from becoming an object of violent public contention, and ensured continuity of political leadership over time.<sup>795</sup> Tocqueville also claimed that monarchy enabled the strongest possible executive. “To want the representative of the State to be simultaneously armed with great power and elected

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<sup>791</sup> Ibid., 210

<sup>792</sup> Ibid.

<sup>793</sup> Ibid.

<sup>794</sup> Alexis de Tocqueville, *Recollections: The French Revolution of 1848*, (New Brunswick: 1987), 200-201

<sup>795</sup> Tocqueville, *Democracy in America*, vol. 1, 211-217.

is, to my mind, to express two contradictory desires.”<sup>796</sup> Making the executive subject to popular election necessarily diminished his power. “To make hereditary royalty change to a state of elected power,” Tocqueville argued, “its sphere of action must be contracted in advance; its prerogatives gradually reduced.”<sup>797</sup>

Because of the United States’ international isolation and social stability, it could make do with an elected president, Tocqueville thought.<sup>798</sup> But the social conflict and heated international competition of continental Europe made hereditary monarchy the much better option.<sup>799</sup> And there was no doubt in Tocqueville’s mind that hereditary monarchy absolutely demanded a parliamentary regime. Where “the head of executive power is irresponsible,” Tocqueville wrote—as it traditionally was under hereditary monarchy—the only check on day-to-day abuses by the executive was for “ministers to be placed under the eyes, in the heart and under the hand even, of the legislative assembly.”<sup>800</sup> Tocqueville’s reasoning for why a parliamentary regime was necessary in European monarchies was the same as Edmund Burke’s in *Thoughts on the Cause of the Present Discontents*. Tocqueville saw the assembly as the popular control on the king; it achieved this through holding the king’s ministers accountable for all of their actions and decisions.

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<sup>796</sup> Ibid., 212.

<sup>797</sup> Ibid.

<sup>798</sup> Ibid., 217-218.

<sup>799</sup> Ibid.,

<sup>800</sup> See Alexis de Tocqueville, “Discours sur l’élection du président de la république,” in *Oeuvres complètes*, t.3, vol. 3, ed. André Jardin, (Paris: 1990), 213

In constitutional settings where the legislature was the most powerful political actor, and most prone to overstep—a condition Tocqueville generally associated with democracy—he supported an independent executive armed with a veto. But in settings where the executive was the most powerful, and most likely to overstep its constitutional bounds, Tocqueville saw parliamentary arrangements as the only reliable means of monitoring and checking the executive’s actions. This was the case in most monarchies, Tocqueville believed.<sup>801</sup> But it could also be true of an elected president, when that president commanded a strong military and large centralized bureaucracy. It was this line of reasoning that led Tocqueville to support a parliamentary constitution in the aftermath of the 1848 Revolution. Tocqueville was on the commission that drafted the Constitution of France’s Second Republic—the first parliamentary regime in history that had an elected president instead of a hereditary monarch. Despite misgivings, Tocqueville also staunchly defended that constitution before the National Assembly.<sup>802</sup>

At first glance it may seem surprising that after the fall of the monarchy in 1848, Tocqueville did not push for a presidency modelled on the United State. Most puzzling of all, Tocqueville accepted a president who had no veto power—the very prerogative he had most vividly praised in his account of the American presidency. Why did Tocqueville defend what he himself called an “unheard of” arrangement: a popularly elected president whose ministers sat in

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<sup>801</sup> Throughout his time in parliament during the July Monarchy, Tocqueville viewed the king as stronger than parliament and more likely to overstep its bounds. See Alexis de Tocqueville, “Preparation au Discours que je Voulais Prononcer le 11 Fevrier 1842 et que la Cloture m’a Empeche de Prononcer,” *OC*, t. 3, vol. 2, 246-249.

<sup>802</sup> For an outstanding analysis of Tocqueville’s thinking about the executive during this period see Lucien Jaume, “Tocqueville et le problème du pouvoir exécutif en 1848,” *Revue française de science politique*, vol. 41, no. 6, (1991), 739-755.

the legislature?<sup>803</sup> The reason was Tocqueville's fear of executive overreach. The "immense clientele" which the French president had at his disposal through his control over the bureaucracy and the military made it too dangerous for his ministers not to be sitting in the assembly, and responsible to the assembly for their every action.<sup>804</sup> It should be noted that in the aftermath of 1848, Tocqueville was also greatly concerned about the power of the National Assembly—a unicameral legislative body elected through mass democratic suffrage. In a private note from the period Tocqueville reiterated his position from *Democracy in America* that "the chronic malady of democracies" was "the mobility, capriciousness and tyranny of legislative power."<sup>805</sup> This was in large part why Tocqueville wanted a popularly elected president to begin with.<sup>806</sup> But once a powerful president was on the verge of becoming a reality, Tocqueville saw an even greater necessity "to monitor the executive power in its principal acts."<sup>807</sup> It was this that led him to defend a parliamentary republic.<sup>808</sup>

When all of Tocqueville's different writings about the legislature are drawn together, it is difficult not to sense a profound underlying pessimism. The legislature, for Tocqueville, posed a question without any good answer. Where the executive was strongest constitutional power, a

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<sup>803</sup> Tocqueville, "Discours sur l'élection du président de la république," 213. Jaume is right to note that the constitution does not precisely specify that ministers *must* be members of the Assembly, or create a *formal* process of ministerial responsibility, which Tocqueville seems to suggest (Jaume, "Tocqueville et le problème du pouvoir exécutif en 1848," 750-752). But given that the Charters of 1830 and 1848 also did not include such provisions, Tocqueville was not wrong to assume that this same form of politics would develop under the Second Republic.

<sup>804</sup> Alexis de Tocqueville, "Réflexions sur les pouvoirs du président et de l'assemblée," *OC*, t. 3, vol. 3, 224-225.

<sup>805</sup> Alexis de Tocqueville, "Notes," *OC*, t. 3, vol. 3, 208.

<sup>806</sup> See Alexis de Tocqueville, "L'Elaboration de Projet Constitution," in *OC*, t. 3, vol. 3, 99, 104, 106-107.

<sup>807</sup> Tocqueville, "Notes," 208. See also Tocqueville, "L'Elaboration de Projet Constitution," 106-107.

<sup>808</sup> Jaume notes that in fact the National Assembly was completely ineffectual at holding Louis-Napoleon's ministers accountable. See Jaume, "Tocqueville et le problème du pouvoir exécutif en 1848," 352.



parliamentary regime was necessary to control the executive through its ministers. But this led to the internal gridlock and cabinet instability that France experienced throughout the 1830s, and to the corrupt use of patronage. Where the legislature was the most powerful constitutional body, a condition Tocqueville associated with democracy, then legislative tyranny threatened.

Tocqueville believed that the dangers associated with both of these arrangements could be potentially ameliorated. Yet neither arrangement seemed at all likely to produce a legislature which governed through principled deliberation, and through meaningful debates that clarified the most important political problems. Neither arrangement, in other words, would be reliably able to embody the ideal of “government-by-discussion,” which was so central to nineteenth-century liberalism.

#### Mill against Tocqueville: The Merits of a Parliamentary Legislature

It would not be an exaggeration to say that one of the most important events in John Stuart Mill’s life was reading *Democracy in America*.<sup>809</sup> But although Mill imbibed Tocqueville’s warning about the tyranny of the majority, including with respect to the legislative assembly, he did not accept the solutions that Tocqueville advocated. Mill was not willing to embrace an independent president armed with a veto as a method for containing the democratic legislature. Nor did Mill accept Tocqueville’s more general pessimism about the legislature as an institution.

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<sup>809</sup> For Mill’s account of *Democracy in America*’s profound effect on his thinking see John Stuart Mill, *Autobiography*, in *Collected Works*, vol. 1, ed. J.M. Robson and Jack Stillinger, (Toronto: 1981), 201.

Mill agreed with Tocqueville that democracy might potentially lead to legislative oppression. Without steps being taken to reform legislative institutions, Mill warned, democracy would mean “a government of privilege, in favour of the numerical majority, who alone possess practically any voice in the State.”<sup>810</sup> In Victorian Britain, the “numerical majority” was the working-class. “One of the greatest dangers, therefore, of democracy,” Mill argued, “is the danger of class legislation; of government intended for (whether really effecting it or not) the immediate benefit of the dominant class.”<sup>811</sup> Yet Mill strikingly disagreed with Tocqueville about how to contain a democratically elected legislature. Whereas Tocqueville saw the American presidency as an effective means for checking the legislature, Mill exclusively and avowedly favored the parliamentary model. He acknowledged the force of Tocqueville’s reasoning: “there is unquestionably some advantage, in a country like America, where no apprehension needs be entertained of a coup d’état, in making the chief minister constitutionally independent of the legislative body, and rendering the two great branches of the government...an effective check on one another.”<sup>812</sup> This was exactly Tocqueville’s account of the value of the American presidency. But Mill immediately went on to add that “the advantage” Americans got from this arrangement was “purchased at a price above all reasonable estimate of its value.”<sup>813</sup>

Part of Mill’s opposition to the American presidency was that, like Tocqueville himself, Mill disapproved of the vulgarity and empty partisanship of American presidential elections.<sup>814</sup>

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<sup>810</sup> Mill, *Considerations*, 448

<sup>811</sup> *Ibid.*, 446

<sup>812</sup> Mill, *Considerations*, 524

<sup>813</sup> *Ibid.*, 524-525.

<sup>814</sup> *Ibid.*, 525.

Mill was convinced that far more competent executive officials would be selected by the legislature than by the public: “it seems...certain,” he wrote, “that the...prime minister, will be better selected by the people's representatives, than by the people themselves directly.”<sup>815</sup> But Mill was also concerned about the consequence of disagreement between the legislature and executive. Most countries were not like the United States. Coup d'états were a potential object of worry. For this reason, Mill wrote, “there ought not to be any possibility of that deadlock in politics, which would ensue on a quarrel breaking out between a President and an Assembly, neither of whom, during an interval which might amount to years, would have any legal means of ridding itself of the other.”<sup>816</sup>

Mill's advocacy of parliamentary government extended to republics as well as to monarchies. “It seems far better that the chief magistrate in a republic should be appointed avowedly, as the chief minister in a constitutional monarchy is virtually, by the representative body,” Mill argued, than that he be elected by the people.<sup>817</sup> Perhaps the clearest indication of how strongly opposed Mill was to an independent executive is found in his remarks on the constitution of France's Second Republic. I showed that during the debate over that constitution, Tocqueville supported the President's ministers sitting in the National Assembly. But Tocqueville did not go so far as to support the President himself being elected out of the Assembly. He thought that would be a recipe for corruption and intrigue.<sup>818</sup> Mill, by contrast, profoundly lamented the fact that France's president would not be directly elected out of the

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<sup>815</sup> John Stuart Mill, “Vindication of the French Revolution of 1848,” *CW*, vol. 20, 362. Mill also reiterates this same argument in *Considerations*. See Mill, *Considerations*, 525.

<sup>816</sup> *Ibid.*, 526.

<sup>817</sup> Mill, *Considerations*, 525

<sup>818</sup> Tocqueville, “Discours sur l'Élection du Président de la République,” 214-222

Assembly as well. “It is to be feared,” Mill wrote, “that the appointment of a President by the direct suffrage of the community, will prove to be the most serious mistake which the framers of the French Constitution have made.”<sup>819</sup>

Mill argued that through this measure, the framers had “introduced...into the still more fermentable elements of French society, what even in America is felt to be so great an evil—the turmoil of a perpetual canvass.”<sup>820</sup> Mill claimed that the constitutional commission’s unwillingness to create a bicameral legislature—which Tocqueville saw as its greatest mistake—was much less significant than its refusal to let the president be elected out of the legislature.<sup>821</sup> Mill argued that an executive elected from within the legislature, “and armed with the power of dissolving the legislature,” was “a more effectual check than any second Chamber upon the conduct of an Assembly engaged in a course of hasty or unjust legislation.”<sup>822</sup> For Mill, the power of dissolution was utterly essential. By not giving it to the president, Mill argued, the French after 1848 had set in motion a violent clash between the two great constitutional powers. “By placing face to face an Assembly and a first magistrate—each emanating directly from popular suffrage, and each elected for a term fixed, only capable of being abridged by death or resignation—the Assembly have organized a perpetual hostility between the two powers, replete with dangers to the stability of the Constitution.”<sup>823</sup>

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<sup>819</sup> Mill, “Vindication of the French Revolution of 1848,” 362

<sup>820</sup> Ibid.

<sup>821</sup> Tocqueville, *Recollections*, 173

<sup>822</sup> Ibid.

<sup>823</sup> Ibid., 363

In general, and not only with respect to France, Mill insisted that parliamentary government only worked when the executive was able to dissolve the legislature.<sup>824</sup> This is quite reminiscent of Benjamin Constant. Indeed Mill's whole conception of parliamentary government was nearly identical to Constant's. Mill claimed that it was Constant's disciple Adophe Thiers who had "erected the English practice of constitutional monarchy into a theory," with his "maxim, 'le roi regne et ne gouverne pas.'" <sup>825</sup> As a matter of constitutional dogma, Mill noted, this "maxim" had never been enshrined in England. And yet it represented, for Mill, exactly how English politics operated, and how the English public actually felt: "the nation... would be offended, and think their liberties endangered, if a king or a queen meddled any further in the government than to give a formal sanction to all acts of Parliament, and to appoint as ministry, or rather as minister, the person whom the majority in Parliament pointed out." <sup>826</sup> "The very essence" of English political practice, Mill argued, is "that the so-called sovereign does not govern." <sup>827</sup>

But while Mill believed that "the condition" of a monarch who "does not govern" had been "on the whole, faithfully observed" in England, in France, on the other hand, it had been repeatedly violated. <sup>828</sup> "No French king ever confined himself within the limits which the best friends of constitutional monarchy allow to be indispensable to its innocuousness: it is always the

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<sup>824</sup> Mill, *Considerations*, 525-526

<sup>825</sup> Mill, "Vindication of the French Revolution of 1848," 331. Whether or not Mill was aware of it, Thiers was only modifying Constant's own maxim, "The king reigns but he does not administer." See Constant, "Un dernier mot sur le refus du budget," 136.

<sup>826</sup> Ibid.

<sup>827</sup> Ibid.

<sup>828</sup> Mill, "Armand Carrel," 199

king, and not his ministers, that governs.”<sup>829</sup> According to Mill, “the power of an English king would appear to Louis Philippe a mere mockery of royalty.”<sup>830</sup> While Tocqueville never embraced the constitutional doctrine of a king who reigns but does not govern, Mill emphatically did. Remarkably, Mill argued that a parliamentary monarchy along the lines laid out by Constant was superior even to a republic. Where “a constitutional monarch does not himself govern, does not exercise his own will in governing, but confines himself to appointing responsible ministers, and even in that, does but ascertain and give effect to the national will,” Mill asked, “what more could be expected from a republic?”<sup>831</sup> His answer: nothing. All a republic would do was throw open “the highest office in the State ... as a prize to be scrambled for by every ambitious and turbulent spirit.”<sup>832</sup> It was only in European nations that were incapable of instituting the king as a genuinely neutral power, like France, that Mill advocated a republic.<sup>833</sup>

In addition to giving the king or president the power of dissolution, Mill’s other method for moderating a democratically elected parliament was to create a balance of opinions and interest within the legislature. “The practicability of any real check to the ascendancy of the majority,” Mill argued, “depends henceforth on the distribution of strength in the most popular branch of the governing body.”<sup>834</sup> Over the course of his life, Mill proposed a series of reforms

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<sup>829</sup> Ibid.

<sup>830</sup> Ibid.

<sup>831</sup> Ibid.

<sup>832</sup> Ibid.

<sup>833</sup> Mill argued that not only France, but most of continental Europe was in this condition, since “those who were for a king at all, wanted one who was a substantial power in the State”(Mill, “Vindication of the French Revolution of 1848,” 332). For all such nations, Mill recommended a parliamentary republic.

<sup>834</sup> Mill, *Considerations*, 515.

to the English political system which, he believed, would balance the most democratic parliament from the inside. The most important of these reforms were plural voting and proportional representation. Plural voting meant that more heavily weighted votes would be given to electors with superior intellectual abilities, judged by level of education.<sup>835</sup> Proportional representation meant that while members of the House of Commons were still to be elected from a given territorial district, voters would be free to cast their vote for a candidate in any district in the nation. Elections would also no longer be all-or-nothing affair: any candidate who attained the requisite quota of votes would be elected, regardless of the number of votes that other candidates in his district received.<sup>836</sup> Mill maintained that plural voting and proportional representation would help ensure a greater balance of social classes and intellectual perspectives within the legislature, preventing any tyrannical faction from being able to dominate.

What is especially striking is how radical a class balance Mill hoped to instantiate. In an ideal legislature, Mill argued, half of the representatives would represent the working classes: “if the representative system could be made ideally perfect, and if it were possible to maintain it in that state, its organization must be such, that these two classes, manual laborers and their affinities on one side, employers of labor and their affinities on the other, should be, in the arrangement of the representative system, equally balanced, each influencing about an equal number of votes in Parliament.”<sup>837</sup> The reason Mill could support a legislature that was equally

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<sup>835</sup> Ibid., 473-479

<sup>836</sup> Ibid., 448-466. Mill’s plan for proportional representation is drawn from Thomas Hare, *The Election of Representatives Parliamentary and Municipal, a Treatise by Thomas Hare*, (London: 1865), For an analysis both of Hare’s theory and the political movement for proportional representation, see Floyd Parsons, *Thomas Hare and Political Representation in Victorian Britain* (Basingstoke: 2009).

<sup>837</sup> Mill, *Considerations*, 447. It may seem ambiguous whether Mill was calling for half of the House of Commons to be from the working-classes, or merely represent them. But the final sentence, in which Mill says “*the majority of*

split between the working classes and the property-owning classes is that, in contrast to Tocqueville, Mill did not think that wealth or class was associated with political wisdom or statesmanship. Put another way: while Mill shared Tocqueville's worry that universal suffrage would lead to a legislature which legislated only in the interests of the numerical majority, Mill did not agree with Tocqueville that democratic legislatures would be more unstable, more incompetent, and less politically skilled than aristocratic legislatures.

It is not an exaggeration to say that almost the entirety of Mill's 1835 review of *Democracy in America* centered on this theme. Mill was skeptical that Tocqueville's criticisms of American legislative statesmanship were accurate. And if they were, he credited that to America's fortunate circumstances—to there not being any need for truly excellent leadership—rather than to the lack of an aristocracy.<sup>838</sup> Most importantly, Mill contended that “the present race of English statesmen” was equally guilty of confused and unstable legislation as American legislators were.<sup>839</sup> Indeed Mill claimed that English parliaments had *always* displayed all of the flaws which Tocqueville attributed to democracy. “In the English aristocracy, there has surely been, at all periods, crude and ill-considered legislation enough,” Mill wrote, insisting “all our laws have been made upon temporary impulses. In what country has the course of legislation been less directed to any steady and consistent purpose?”<sup>840</sup> To anybody who pines “for the

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*each class*, in any difference between them, would be mainly governed by their class interests” suggests that he genuinely believed the representatives would be from the working class.

<sup>838</sup> John Stuart Mill, “De Tocqueville on Democracy in America [I],” in *Collected Works*, vol. 18, ed. J.M. Robson, (Toronto: 1977) 76-77. See also John Stuart Mill, “State of Society in America,” *CW*, vol. 18, 108-111.

<sup>839</sup> Mill, “De Tocqueville on Democracy in America [I],” 77

<sup>840</sup> *Ibid.*, 78



talents and virtues of those whom aristocracy chooses for its leaders”, Mill suggested they “read Horace Walpole or Bubb Doddington, that you may know what to think of them.”<sup>841</sup>

What Tocqueville had conflated, in Mill’s analysis, was the kind of aristocracy exemplified by Venice or Rome, in which a select set of individuals were “trained to government as a business,” and the landed aristocracies of England or France, which were for the most part no better trained in political thinking than your average group of Americans.<sup>842</sup> “The governing body” in aristocratic England and France, no less than in democratic America, “is so numerous, that the large majority of it do not, and cannot make the practice of government the main occupation of their lives.”<sup>843</sup> For Mill, political competence and social class were not intrinsically connected. This gave him confidence that a democratically elected legislature could be significantly more competent and enlightened than Tocqueville claimed.

In addition to supporting reforms that would create a greater balance of social classes within a democratically elected parliament, Mill also argued for reforms that would contribute to higher levels of political expertise. One was that the House of Lords be replaced by a meritocratic second chamber. Mill emphasized that such a “Chamber of Statesmen,” as he called it, would be “a body of special training and knowledge.”<sup>844</sup> Its members would consist of individuals who had shown long and distinctive service in administration, politics, or academia.<sup>845</sup> I noted already that, in contrast with Tocqueville, Mill did not generally believe a

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<sup>841</sup> Ibid.

<sup>842</sup> John Stuart Mill, “De Tocqueville on Democracy in America [II],” *CW*, vol. 18, 174

<sup>843</sup> Mill, “De Tocqueville on Democracy in America [I],” 79. For more on Mill’s distinction between the “Venetian” and “British” models of aristocracy see John Stuart Mill, “The Rationale of Representation,” *CW*, vol. 18, 21-24.

<sup>844</sup> Mill, *Considerations*, 516

second chamber was essential. He specifically acknowledged that the “Chamber of Statesmen” he envisioned would not be nearly equal in power to “the People’s Chamber.”<sup>846</sup> But his hope was that through its expertise, it would be capable of advising, and occasionally obstructing, the decisions of the lower House.<sup>847</sup> For the same purpose of bringing greater expertise to bear within parliamentary politics, Mill called for the creation of a select, expert committee within the House of Commons that would be exclusively charged with drafting all legislation.<sup>848</sup> According to Mill, “there is hardly any kind of work intellectual work which so much needs to be done not only by experienced and exercised minds, but by minds trained to the task through long and laborious study, as the business of making laws.”<sup>849</sup>

All of these reforms to Parliament were meant to be compatible with democracy based in near universal suffrage. For Mill, though not for Tocqueville, a democratic legislature could be both socially balanced and intellectually enlightened. The problems which Tocqueville suggested were inevitably associated with the legislature, Mill saw as eminently solvable. No less than Constant or Guizot, Mill envisioned Parliament as the institution at the very center of public life; the space in which the greatest and most significant political problems would be debated and fleshed out before the public. “The House of Commons is not only the most powerful branch of the Legislature,” Mill argued: “It is also the great council of the nation; the place where the opinions which divide the public on great subjects of national interest, meet in a common arena,

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<sup>845</sup> Ibid., 516-519

<sup>846</sup> Ibid., 513-516

<sup>847</sup> Ibid., 516

<sup>848</sup> Ibid., 428-432

<sup>849</sup> Ibid., 428

do battle, and are victorious or vanquished.”<sup>850</sup> Mill claimed that “besides being an instrument of government, Parliament is a grand institution of national education, having for one of its valuable offices to create and correct that public opinion whose mandates it is required to obey.”<sup>851</sup>

Parliament responded to public opinion, but its debates also formed, refined, and educated public opinion.<sup>852</sup>

Tocqueville could certainly be moved by this parliamentary ideal. I already noted his greatly admiration for the American Senate. He also was stirred by the parliamentary life of the Restoration, which far surpassed that of the July Monarchy in his mind.<sup>853</sup> Most importantly of all, given the sheer political impossibility, in Tocqueville’s eyes, of eliminating centralization and reinstating local self-government in France, parliamentary elections and debates were the only space that France had left in which political life could even happen.<sup>854</sup> Yet Tocqueville’s greater skepticism about the democratic legislature, and his particular way of formulating the constitutional alternatives facing modern states make this ideal seem much more difficult, and uncertain, than Mill’s political writings do.

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<sup>850</sup> Mill, “Recent Writers on Reform,” 348.

<sup>851</sup> Ibid.

<sup>852</sup> For an important treatment of Mill’s theory of legislative deliberation, and its role in both reflecting and educating public opinion, see Urbinati, *Mill on Democracy*, 42-122

<sup>853</sup> Tocqueville’s admiration for the political spirit and parliamentary rhetoric of the Restoration period is expressed in his correspondence with Royer-Collard. See Alexis de Tocqueville, “Lettre à Paul Pierre Royer-Collard” (July 28, 1841), and “Lettre à Paul Pierre Royer-Collard” (September 8, 1842), both in *Oeuvres complètes*, t. 11, ed. André Jardin, (Paris: 1970), 96, 112.

<sup>854</sup> In principle, Tocqueville continued to support decentralization during the July Monarchy, as well as in the immediate aftermath of 1848. See for instance Alexis de Tocqueville, “État général des esprits,” *OC*, t. 3, vol. 2, 223-224; and Tocqueville, *Recollections*, 167; as well as Alexis de Tocqueville, “L’elaboration du projet du constitution,” *OC*, t. 3, vol. 3, 66-67. But he recognized, and lamented, that the political support was not there. For a scholarly treatment of the politics of centralization during this period see Vivien Schmidt, *Democratizing France: The Political and Administrative History of Decentralization*, (Cambridge UK: 1990), 28-33

## The Victorian Debate over Patronage

Mill unequivocally supported a mass democratic franchise.<sup>855</sup> At the same time, Mill's strong advocacy of parliamentary institutions, and his unvarnished faith in the possibility of "government by discussion" strongly resemble the less-than-democratic French and English liberals who have been examined throughout this dissertation. In particular, Mill's strong emphasis on a balance of social classes and perspectives within the legislature is reminiscent of Whigs associated with the *Edinburgh Review* such as James Mackintosh—whom I discussed in chapter three of this dissertation.

The period in which Mill lived and wrote was also the era in which the influence of Whig thought in Britain was at its greatest height. Before the 1832 Reform Act, the kinds of ideas expressed by the Edinburgh Whigs were limited to the reformist wing of the Whig party. In the decades following the 1832, however, their arguments had become increasingly influential throughout the whole spectrum of British politics. In particular, a wide range of Victorian political thinkers drew on their arguments to understand and advocate parliamentary government. The most famous proponent of parliamentary institutions during the Victorian Era was Walter Bagehot. But along with Bagehot, authors including Peter Aiken, Henry Brougham, George Cornwall Lewis, and the Third Earl Grey all prominently argued that it was better for officers

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<sup>855</sup> Mill supported universal suffrage, with exceptions made for citizens who were on public assistance, not paying taxes, or illiterate. Most radically of all, of course, Mill sought equal suffrage for women. See Mill, *Considerations*, 470-473, 479-481.

exercising executive functions to be selected from within the legislative assembly. In their eyes, the British approach to the legislature was decisively superior to American “presidentialism.”<sup>856</sup>

However along with this consensus in favor of parliamentary institutions, the Victorian period also witnessed significant debates over how to preserve and reform parliamentary government in England. The most well-known of these debate was over the suffrage. In 1832, England expanded the electorate with the aim of giving voting rights to the middle-class. Over the next three decades, culminating in the Second Reform Act of 1867, the working-class demanded a voice in parliament as well. British liberals sharply disagreed about whether, and how, to extend the suffrage to the working-classes. Mill’s contribution to this debate was his advocacy of near universal suffrage combined with proportional representation and plural voting.<sup>857</sup>

But if one important debate within Victorian liberalism was over the suffrage, another was over political patronage. A number of prominent Victorian liberals agreed with Guizot and Walpole that for there to be stable and effective parliamentary majorities, ministers needed to be able to appeal to the private interests of parliamentary representatives—as well as to ideas and principles. The Third Earl Grey was an important liberal politician, a friend and political ally of John Stuart Mill, and the author of the most important British treatise about parliamentary government prior to Walter Bagehot. Grey was also adamant that patronage was an indispensable component of parliamentary institutions. Whereas in non-parliamentary governments,

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<sup>856</sup> See Peter Aiken, *A Comparative View of the Constitutions of Great Britain and the United States of America*, (London: 1842), 90-97, 107-122; Brougham, *The British Constitution*, 279, 408-412; George Cornwall Lewis, *A Dialogue on the Best Form of Government*, (London: 1863), 87-94; and Earl Grey, *Parliamentary Government, Considered with Reference to a Reform of Parliament*, (London: 1858), 16-35.

<sup>857</sup> For an outstanding treatment of the debate over political representation leading up to the Second Reform Act see Robert Saunders, *Democracy and the Vote in British Politics*.

“corruption is an accident, if an accident which may very always attend them,” Grey wrote, for parliamentary governments something “akin to corruption” was essential to their very operation.<sup>858</sup> This was because of the patronage that ministers had to use to win over a majority of parliamentary representatives:

The possession and exercise, by the Ministers of the Crown, of a large measure of authority in Parliament, is the foundation upon which our whole system of government rests...this authority has from the first been maintained principally by means of the patronage of the Crown, and of the power vested in the Administration, of conferring favors of various kinds on its Parliamentary supporters.<sup>859</sup>

Grey believed that “a tendency to encourage corruption, and especially that kind of corruption which consists in the misuse of patronage must...be regarded as inherent in the system of Parliamentary Government.”<sup>860</sup> He was seconded on this point by William Rathbone Gregg, another influential liberal author from the Victorian period. The nephew of Walter Bagehot, Gregg was one of Tocqueville’s closest friends in England. Yet Gregg agreed with Grey, and Guizot, that something “akin to corruption” was a necessary force in parliamentary government. “All admirers of our representative system,” Gregg wrote, should “pause before they join in the...vehement denunciations of all undue electoral influences.”<sup>861</sup> For, such admirers “can scarcely disguise from themselves that some such influences,” which “it is not easy by any clear definition to distinguish from corruption—are inherent in, and apparently inseparable from the system on which parliamentary government is carried on.”<sup>862</sup> To be clear, Grey and Greg both

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<sup>858</sup> Grey, *Parliamentary Government*, 38.

<sup>859</sup> *Ibid.*, 39.

<sup>860</sup> *Ibid.*, 45

<sup>861</sup> William Rathbone Greg, “Parliamentary Purification,” *Edinburgh Review*, vol. 97, no. 200, (1853), 293

<sup>862</sup> *Ibid.*

saw parliament as a body that *primarily* governed through discussion and deliberation.<sup>863</sup> This was for them, no less than for Mill, the *raison d'être* of parliamentary government. But they did not have complete faith in deliberation. Like Guizot and Walpole, Greg and Grey could not imagine that parliamentary majorities might be formed on a regular basis *entirely* through discussion and deliberation. Some degree of patronage was usually required as well.<sup>864</sup>

However an increasing number of nineteenth-century English liberals were able to envision a parliamentary life in which patronage was completely abandoned as tool for forming effective majorities. They believed that the development of the modern press and the expansion of the suffrage in 1832 had revealed a new and more durable source of parliamentary stability, which would soon come to entirely replace patronage. This was the force of public opinion. In his influential *History of England*, Thomas Macaulay developed this argument at great length. According to Macaulay, parliamentary patronage had taken off in England during the eighteenth century because that was a period when the House of Commons was no longer overawed by the power of the Crown, but not yet dependent upon the deliberatively formed will of the public. It was “between the time when our Parliaments ceased to be controlled by royal prerogative and the time when they began to be constantly and effectually controlled by public opinion.”<sup>865</sup> During this transitional period, there was no clear force able to reliably create legislative consensus, so ministers had no choice but to turn to patronage to hold together a majority of

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<sup>863</sup> See for instance Grey, *Parliamentary Government*, 43-45, 74-75; and William Rathbone Greg, “Parliamentary Reform,” *Edinburgh Review*, vol. 96, no. 196, (1852), 469-471.

<sup>864</sup> Interestingly both Grey and Greg had more faith in deliberation than Guizot, and believed that he was far too extreme in his use of patronage. See Greg, “Parliamentary Purification,” 612; and Earl Grey, *Parliamentary Government considered with reference to a Reform of Parliament*, (London: 1864), 223.

<sup>865</sup> Thomas Macaulay, *The History of England*, in *Complete Writings*, vol. 6, (Boston and New York: 1899), 293

representatives.<sup>866</sup> But in the nineteenth century, through the development of the press as well as through electoral reform, the House of Commons was made dependent upon the public:

The House of Commons is now supreme in the state, but is accountable to the nation. Even those members who are not chosen by large constituent bodies are kept in awe by public opinion. Everything is printed: everything is discussed: every material word uttered in debate is read by a million of people on the morrow. Within a few hours after an important division, the lists of the majority and the minority are scanned and analyzed in every town ....At present, therefore, the best way in which a government can secure the support of a majority of the representative body is by gaining the confidence of the nation.<sup>867</sup>

By “public opinion,” Macaulay did not simply mean the majority preference in society at a given moment.<sup>868</sup> Rather he meant the same thing as Constant or Mill: a durable consensus on major political affairs that was reached after all the competing parties in society had the chance to make the strongest case possible for their position, both in the parliament and in the press.

Along with making it possible to carry on parliamentary government without patronage, George Cornwall Lewis, one of the major authors of civil service reform in England, argued that the growing strength of public opinion and public discussion was making Parliament more transparent. Corruption in the legislature was becoming ever more difficult to practice.<sup>869</sup> Yet these trends could be lamented as well as celebrated. A writer like Henry Brougham, who was inculcated in the classical eighteenth-century Whig fear of the Crown, rejoiced that the increasing dependence of parliamentary representatives upon public opinion made patronage nearly irrelevant. “In 1831 and 1832 the Parliamentary constitution was placed upon a wider and

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<sup>866</sup> Ibid., 294

<sup>867</sup> Ibid., 293

<sup>868</sup> The seminal account of “public opinion” and its changing meaning since the nineteenth century is Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, tr. Thomas Burger, (Cambridge MA: 1991)

<sup>869</sup> Lewis, *A Dialogue on the Best Form of Government*, 88.



more secure basis,” Brougham wrote.<sup>870</sup> And although “somewhat yet remains to be accomplished,” Brougham declared that “this great change is much more than sufficient to counterbalance all the increase of influence that has been acquired by the Crown since the Revolution.”<sup>871</sup> For Peter Aiken, on the other hand, a lawyer trained in Edinburgh, and steeped in the arguments of David Hume and Francis Jeffrey, the loss of the Crown’s influence meant a dangerously powerful legislature. Aiken doubted that public opinion could provide the same stability that the influence of the Crown once had. “By the passage of the reform bill”—which Aiken himself largely supported—“the transference of considerable power has been made from the executive to the popular branch of the legislature, to be exercised by its fluctuating majorities.”<sup>872</sup>

Another liberal author who believed that role of patronage in parliamentary government was being decisively superseded by the rule of public opinion was Walter Bagehot. Bagehot was among the most important theorists of parliamentary government in the second half of the nineteenth century. His conception of parliamentary government is also rather difficult to categorize. Like Necker, Bagehot defined parliamentary government as “the fusion of the executive power with the legislative power.”<sup>873</sup> “The efficient secret of the English Constitution,” Bagehot claimed, “may be described as the close union, the nearly complete fusion, of the executive and legislative powers.”<sup>874</sup> This decisively separated England from the

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<sup>870</sup> Brougham, *The British Constitution*, 253

<sup>871</sup> *Ibid.*

<sup>872</sup> Aiken, *A Comparative View of the Constitutions of Great Britain and the United States of America*, 115

<sup>873</sup> Walter Bagehot, *The English Constitution*, 224

<sup>874</sup> *Ibid.*, 210

United States, where “the legislative branch [is] absolutely distinct from the executive branch,” a distinction maintained by “the exclusion of the President’s ministers from the legislature.”<sup>875</sup> Yet if Bagehot was similar to Necker in arguing that parliamentary government enabled a “fusion” of executive and legislative functions, he was closer to Constant (and Mill) in arguing that the monarch was entirely uninvolved in the exercise of the executive power. For Bagehot, unlike Necker, the monarch was not really a component of the “fusion” of powers in a parliamentary government. “The queen is only at the head of the dignified part of the Constitution,” Bagehot argued.<sup>876</sup> For Bagehot, the actual executive power was located in “*the cabinet*... a committee of the legislative body selected to be the executive body.”<sup>877</sup>

Bagehot supported “cabinet government” over the American model because it prevented a violent clash between constitutional powers. His description of the impeachment of Andrew Johnson after the American Civil War reads like Necker or Constant writing about France in 1791: “a hostile legislature and a hostile executive were so tied together, that the legislature tried...to rid itself of the executive by accusing it of illegal practices.”<sup>878</sup> According to Bagehot, “the quarrel in most countries would have gone beyond the law and come to blows.”<sup>879</sup> In addition to preventing destructive conflict between the executive and legislature, Bagehot also claimed that the parliamentary system better channeled the political ambition of legislators, since

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<sup>875</sup> Ibid., 221

<sup>876</sup> Ibid., 211. See especially *ibid.* 226-241. The main functions that Bagehot assigned to the monarch were those of “dissolving the Commons and augmenting the peers,” exactly the neutral powers that Constant also envisioned a monarch exercising. (*Ibid.*, 344)

<sup>877</sup> Ibid., 211

<sup>878</sup> Ibid., 194

<sup>879</sup> Ibid., 194

it motivated them to compete for executive office. “To belong to a debating society adhering to an executive (and this is no inapt description of a congress under a presidential constitution) is not an object to stir a noble ambition.”<sup>880</sup> Unlike Constant, Bagehot was not generally worried that representatives who were unable to share in executive functions would engage in usurpation against the constitution. His fear was rather that they would be idle and inactive. They would fail to bring the proper energy and attention to political arguments, depriving the nation of an active political discussion.<sup>881</sup>

One of the most important analyses of parliamentary government before Bagehot’s, I noted, was the Third Earl Grey’s. Although there are important similarities between the two texts, an issue on which Bagehot clearly parted from Grey was political patronage. Whereas Grey saw patronage as an important tool for constructing stable legislative majorities, Bagehot agreed with Constant that patronage was extraordinarily counterproductive for this end. Rather than leading to stronger parliamentary majorities, Bagehot claimed, patronage only led to further instability.<sup>882</sup> Bagehot argued that a parliamentary majority based in shared principles was likely to be relatively stable. “A majority in parliament which is united by a sincere opinion, and is combined to carry out that opinion, is in some sense secure. As long as that opinion is unchanged, it will remain; it can only be destroyed by weakening the conviction which binds it together.”<sup>883</sup> On the other hand, Bagehot wrote, “a majority which is obtained by the

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<sup>880</sup> Ibid., 221

<sup>881</sup> Bagehot, *The English Constitution*, 216-218.

<sup>882</sup> See Walter Bagehot, “History of the Unreformed Parliament,” *CW*, vol. 6, 284-305.

<sup>883</sup> Ibid., 291

employment of patronage is very different.”<sup>884</sup> Its strength rests on a much narrower and more contingent calculation. As soon as there is any challenge to the reigning ministry, the moment it appears possible that the ministry might fall, support will immediately collapse. Its members will rush to whomever seems most likely to next have control over jobs and favors.<sup>885</sup> Bagehot argued that political patronage was the primary source of parliamentary “instability” in English history, particularly during the eighteenth century.<sup>886</sup> The greater stability and effectiveness of parliamentary life since 1832 occurred because ministries were increasingly finding a basis of political support in persuading public opinion, rather than in the use of patronage.

#### Mill and Tocqueville on Corruption: The Challenge of Patronage

Mill and Tocqueville agreed with Bagehot that parliamentary government ought to be carried on without any use of political patronage. Parliamentary majorities should be formed entirely through argument and deliberation, within the public at large as well as within the assembly, rather than through the personal interests of representatives. For both Mill and Tocqueville, the antithesis of this in the mid-nineteenth century was France’s July Monarchy, especially under the leadership of Guizot. Because of the vast number of politically appointed government positions, and the highly restricted electorate, the July Monarchy came to symbolize something nearly inconceivable: a parliamentary regime in which politics was carried out

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<sup>884</sup> Ibid.

<sup>885</sup> Ibid.

<sup>886</sup> Ibid.

*entirely* through the satisfaction of personal interests. In Mill's words, "a majority of the electors in a majority of the electoral colleges, is not too numerous a body to be bought; and bought it is, by distributing all public employments among the electors and their protégés; and by succumbing to the pretensions of every locally influential class interest."<sup>887</sup> France had become a regime under which, "corruption was carried to the utmost pitch that the resources at the disposal of the government admitted."<sup>888</sup>

Along with the rule of corruption, Mill identified a stunning absence of "recognized principles" in French parliamentary politics.<sup>889</sup> "The public mind is uninformed, and has no fixed opinion on any subject connected with government," Mill wrote.<sup>890</sup> "And "without clear and definite views, diffused and rooted among the public...there is nothing to restrain petty intrigues and cabals, or to support an honest Minister."<sup>891</sup> According to Mill, "the government of Louis Philippe" was "wrought almost exclusively through the meaner and more selfish impulses of mankind. Its sole instrument of government consisted in a direct appeal to men's immediate personal interests or interested fears. It never appealed to, or endeavored to put on its side, any noble, elevated, or generous principle of action."<sup>892</sup> Meanwhile, French citizens who refused to take part in the web of patronage were becoming increasingly demoralized and apathetic:

The best spirits in France had long felt, and felt each year more and more, that the government of Louis Philippe was a demoralizing government; that under its baneful influence all public principle, or public spirit, or regard for

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<sup>887</sup> John Stuart Mill, "Duveyrier's Political Views of French Affairs," *CW*, vol. 20, 301.

<sup>888</sup> Mill, "Vindication of the French Revolution of February 1848," 327.

<sup>889</sup> Mill, "Duveyrier's Political Views of French Affairs," 302.

<sup>890</sup> *Ibid.*

<sup>891</sup> *Ibid.*

<sup>892</sup> Mill, "Vindication of the French Revolution of February 1848," 325

political opinions, was giving way more and more to selfish indifference in the propertied classes generally, and, in many of the more conspicuous individuals, to the shameless pursuit of personal gain.<sup>893</sup>

One of these “best spirits in France,” whom Mill particularly cites as a critic of the July Monarchy’s corruption, was Tocqueville.<sup>894</sup> For over a decade, Tocqueville had been making all the same criticisms of French parliamentary politics that Mill had. In contrast to Mill, however, Tocqueville was not merely an observer of the regime, but a participant in it. From 1839 until the collapse of the July Monarchy in 1848, Tocqueville was a representative in the Chamber of Deputies. Throughout this whole period, Tocqueville saw legislative and electoral corruption as the most profound domestic political challenge facing France. “The scourge of political corruption is the great scourge of our age,” he wrote, “it vitiates representative government, it enervates administrative power. Everybody recognizes this.”<sup>895</sup>

Tocqueville believed that the high levels of patronage (which I documented in the previous chapter) had fatally undermined the legislature he was serving in. Every decision was settled through a “spirit of intrigue” rather than through debate and discussion.<sup>896</sup> The “parliamentary debates” which occurred were bereft of “all originality, all reality, and... all true passion.”<sup>897</sup> “Debates in parliament,” Tocqueville argued, were “exercises of wit rather than serious discussions.”<sup>898</sup> There was no meaningful difference between the competing political

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<sup>893</sup> Ibid., 326

<sup>894</sup> Ibid., 326-328

<sup>895</sup> Alexis de Tocqueville, “Notes de Tocqueville (1847?),” *OC*, t. 3, vol. 2, 727

<sup>896</sup> Alexis de Tocqueville, “Notes pour un discours (mars 1843),” *OC*, t. 3, vol. 3, 183

<sup>897</sup> Tocqueville, *Recollections*, 10.

<sup>898</sup> Ibid.

parties except over “slight nuances;” their debates were a mere “quarrel over words.”<sup>899</sup> All that mattered were the negotiations going on behind the scenes about who would get what job: that was what determined how a majority of representative actually stood. “What was most lacking” in the Chamber of Deputies, Tocqueville wrote, “was political life itself.”<sup>900</sup>

Even worse than the consequences of political patronage within parliament were its effects on the rest of French political society. Just as ministers were giving out administrative positions and favors to maintain support from representatives, those same representatives were passing the places and favors down to voters, in order to win their support. “The corruption of the deputy by the minister,” Tocqueville argued, led to the corruption “of the elector by the deputy.”<sup>901</sup> Not only politicians, but also average citizens, were making all of their political decisions with an eye to personal interest. “Each elector sees more and more in politics the means of making a fortune. There is nothing left of opinion, except individual interest.”<sup>902</sup> Like Mill, Tocqueville argued that while many French citizens eagerly took to politics as a way to “make a fortune,” an even greater number lost all interest. “The whole nation” had become “bored” with debates in parliament, he claimed; profoundly dispirited by corruption, “the nation does not desert certain political opinions, it deserts politics itself.”<sup>903</sup> As “political life” becomes “only an occasion to satisfy particular interests,” Tocqueville lamented, “each citizen considers himself increasingly estranged from political life.”<sup>904</sup> The widespread disgust with corruption

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<sup>899</sup> Ibid.

<sup>900</sup> Ibid.

<sup>901</sup> Alexis de Tocqueville, “Fonctions publiques,” *OC*, t. 3, vol. 3, 215.

<sup>902</sup> Tocqueville, “Notes pour un discours,” 209-210.

<sup>903</sup> Alexis de Tocqueville, “Notes politiques,” *OC*, t. 3, vol. 2, 217.

turned numerous citizens entirely away from political involvement. It was an important contributor to the *individualism* that Tocqueville had so famously warned about in the second volume of *Democracy in America*.

Tocqueville blamed the leaders of the French legislature, and Guizot in particular, for making such extensive use of political patronage.<sup>905</sup> However he did not believe that patronage was solely the result of malevolent individuals being in power. Ultimately it could be traced back to the two great historical forces he had analyzed in *Democracy in America*: administrative centralization and growing equality of conditions. As Tocqueville explained in a note from the early 1840s, these were the two underlying sources of corruption:

1. The equality of distributions which makes for a great number of *discontents* and men having *hopes* or memories above their means, which leads them to desire places.
2. Centralization (produced or at least increased by that same equality) which produces a multitude of places and puts in the hands of the sovereign the power to accord them.<sup>906</sup>

Growing equality of conditions meant, according to Tocqueville, that there were now vast numbers of men seeking to better themselves, and that material gain and satisfaction had become the primary human goal.<sup>907</sup> On the other hand, administrative centralization, and the number of jobs available, meant that these men could turn to the state to attain financial advancement.<sup>908</sup> In addition to fostering generally materialist attitudes, the growing equality of conditions also

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<sup>904</sup> Alexis de Tocqueville, "Discussion de l'adresse," *OC*, t. 3, vol. 2, 198

<sup>905</sup> See Alexis de Tocqueville, "Discours prononcé à la Chambre de Députés," *OC*, t. 3, vol. 2, 753

<sup>906</sup> Tocqueville, "Notes pour un discours," 210-211.

<sup>907</sup> Tocqueville comprehensively analyzes the connection between growing equality of conditions and materialism, in its French context, in Alexis de Tocqueville, "Lettres sur la situation intérieure de la France," *OC*, t. 3, vol. 2, 95-121

<sup>908</sup> For Tocqueville's most sustained discussion of the relationship between centralization and patronage see Alexis de Tocqueville, "La centralization administrative et le système représentatif," *OC*, t. 3, vol. 2, 129-132



greatly increased the political power of the bourgeoisie. This had long been one of the central aims of French liberalism, and to a degree Tocqueville sympathized with it.<sup>909</sup> However by the late 1840s, Tocqueville was convinced that the dominance of the bourgeoisie, entrenched by the restricted suffrage, had become a major contributor to corruption, and a reason for the lack of meaningful disagreements and differences in French parliamentary life. As Tocqueville recounted in his memoir of the 1848 Revolution

Mistress of all, as no aristocracy ever has been or perhaps ever will be, the middle class, which must be called the ruling class, entrenched in its power, and shortly after in its selfishness, treated government like a private business, each member thinking of public affairs only in so far as they could be turned to his private profit.<sup>910</sup>

According to Tocqueville, “the bourgeoisie...settled into every office, prodigiously increased the number of offices, and made a habit of living off the public treasury.”<sup>911</sup> Politics “took on the features of a trading company whose every operation is directed to the benefit that its members may derive therefrom.”<sup>912</sup>

In a series of speeches and articles written during the 1840s, Tocqueville put forward an ambitious two-part plan to eliminate corruption from French parliamentary politics. In response to the ways in which administrative centralization was contributing to corruption, Tocqueville advocated the modernization of the French state. He demanded a system of competitive examinations governing entry to administrative positions; a standardized process of promotion and advancement within the bureaucracy, modelled on Prussia; and a prohibition on lower-level

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<sup>909</sup> See Tocqueville, “Notes de Tocqueville,” 720.

<sup>910</sup> Tocqueville, *Recollections*, 5

<sup>911</sup> *Ibid.*

<sup>912</sup> *Ibid.*

functionaries serving in the French Chamber of Deputies.<sup>913</sup> The aim of these reforms was to ensure that electors and representatives could no longer easily be given jobs and promotions in exchange for votes. Individuals would no longer think to become involved in parliamentary politics purely as a means of becoming wealthy.

In addition to promoting major administrative reforms, Tocqueville also strove to create a more principled and ideologically coherent opposition party within the legislature.<sup>914</sup> Tocqueville believed that the Chamber of Deputies—even the leftwing opposition he was a part of—was divided into too many small cliques, each motivated by personal interests and ambitions.<sup>915</sup> None of these factions had a clear and principled agenda that could attain wide public support. This was partly why ministries were repeatedly forced to turn to patronage: they had no strong following, either in the Chambers or in the nation, which would support them in office.

Tocqueville's efforts to develop a more principled and unified parliamentary opposition are reminiscent of Constant.<sup>916</sup> And like Constant, Tocqueville's broader vision of parliamentary life

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<sup>913</sup> See Tocqueville, "Discussion de l'Adresse," 204-205; and Alexis de Tocqueville, "La proposition Gauguier sur les incompatibilités parlementaires," *OC*, t. 3, vol. 2, 240-242. It is noteworthy that the class of functionaries Tocqueville wished to exclude from the assembly was not as large as that which Constant sought to exclude. As I noted in the previous chapter, Constant wanted to prohibit all administrative officers except the ministry from serving in the Chamber, while Tocqueville was willing to include some lower level functionaries (*ibid.*, 241).

<sup>914</sup> The exact ideology Tocqueville believed such a party should support varied over the 1840s. In the early 1840s (like Constant) Tocqueville argued that a leftwing party should primarily combat censorship, and appeal to the liberal principles of 1789, and to the Charter of 1830. See Tocqueville, "Lettres sur la situation intérieure de la France", 110-121; and Alexis de Tocqueville, "Manifest pour la nouvelle équipe *Du Commerce*", *OC*, t. 3, vol. 2, 124-125. By the eve of the 1848 revolution Tocqueville had moved much further to the left, supporting an agenda that would aid the working classes. For a biographical treatment of Tocqueville's move to the left see Hugh Brogan, *Alexis de Tocqueville*, (New Haven: 2006), 415-420. The roots of this shift are discussed in Roger Boesche, "Tocqueville and Le Commerce: A Newspaper Expressing his Unusual Liberalism," *Journal of the History of Ideas* vol. 44, no. 2, (1983), 277-292.

<sup>915</sup> See Tocqueville, "Lettres sur la situation intérieure de la France", 117-118; and Alexis de Tocqueville, "Méfiance à égard du ministère et de son éventuel successeur," *OC*, t. 3, vol. 2, 91-92

<sup>916</sup> For Tocqueville's comments on parliamentary opposition see Tocqueville, "Manifest pour la Nouvelle Équipe Du Commerce", in *OC*, t. 3, vol. 2, 122-125; Tocqueville, "Lettres sur la Situation Intérieure de la France", 116-121. This was also a theme in *Democracy and America*. See Tocqueville, *Democracy in America*, vol. 1, 307-309.

was of a system of “parties of principle” which governed and exchanged power in turn, constantly making arguments to win support in the Chamber, and in the public. By the end of the July Monarchy, though not in the early 1840s, Tocqueville believed that such a system required an expansion of the suffrage beyond the bourgeoisie.<sup>917</sup> Only if a genuine variety of social interests were able to participate in French elections, would parties with truly conflicting programs and principles come into being.

### Private Money in Parliamentary Politics

In Tocqueville’s writings on French corruption, England always served as an important foil.<sup>918</sup> Because England did not have as vast an administrative state as France, or the same level of equality, Tocqueville argued that political patronage would never be as severe a problem there. But Tocqueville also noted that England suffered to a much greater degree than France did from corruption stemming from private wealth. As Tocqueville explained in a letter to William Rathbone Greg in 1853, “in England, corruption and intimidation principally come from the great property owners and in general from the rich; while with us, corruption and intimidation always come from agents of the government.”<sup>919</sup> Tocqueville’s disgust with the power of private

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<sup>917</sup> See especially Alexis de Tocqueville, “De La Classe Moyenne et du Peuple”, in *OC*, t. 3, vol. 2, 738-741. For Tocqueville’s efforts to develop a parliamentary opposition party in this later period see Alexis de Tocqueville, “Question Financière” in *OC*, t. 3, vol. 2, 734-737; and Alexis de Tocqueville, “Fragments pour une Politique Sociale” in *OC*, t. 3, vol. 2, 742-744.

<sup>918</sup> See Tocqueville, “La centralization administrative et le système représentatif,” 130.

<sup>919</sup> Alexis de Tocqueville, “Lettre à William Rathbone Greg” (July 27, 1853), in *Oeuvres complètes*, t. 6, vol. 3, ed. A.P. Kerr, (Paris: 2003), 155

money in English parliamentary politics was longstanding. While visiting England in 1835,

Tocqueville lamented:

The whole of English society is based on privileges of money...A man must be rich to be a Minister, since the style of living expected of him runs him into expenses much greater than what he receives from the state... A man must be rich to get into the House of Commons since the electoral expenses are immense.<sup>920</sup>

Many English liberals, including William Rathbone Greg and Walter Bagehot, were also angered by the “immense electoral expenses” required to be elected to Parliament.<sup>921</sup> Leslie Stephen, on the other hand, saw them as helping to ensure that the upper classes would still have an important role in Parliament even after the suffrage was expanded.<sup>922</sup> But there was arguably no British liberal who was more appalled by the high cost of running for office than John Stuart Mill.

In contrast with the contemporary United States, the debate in Victorian England over private money in electoral politics was not primarily a debate over how to restrict wealthy donors from giving money and favors to candidates. It was instead a debate over how to restrict wealthy candidates from giving money and favors directly to voters.<sup>923</sup> Mill’s concern about the role of private wealth in parliamentary elections can be traced through all his major political writings of the late 1850s and 1860s. But it was most of all in his parliamentary career that Mill confronted this problem. As a parliamentary candidate and representative, Mill spoke more frequently about campaign finance than he did about almost any other topic, declaring “what is at stake is nothing

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<sup>920</sup> Tocqueville, *Journeys in England and Ireland*, tr. George Lawrence and K.P. Mayer, ed. J.P. Mayer (New Haven: 1958), 91

<sup>921</sup> See Walter Bagehot, “John Stuart Mill upon the Increase of Corruption,” *CW*, vol. 6, 347-350; and Greg, “Parliamentary Purification,” 299-316.

<sup>922</sup> Leslie Stephen, “On the Choice of Representatives by Popular Constituencies,” in *Essays on Reform*, (London: 1867), 107-108

<sup>923</sup> The classic study of electoral corruption during the Victorian era is Norman Gash, *Politics in the Age of Peel* (New York: 1971).

less than the vitality of representative government.”<sup>924</sup>

It was partly due to circumstances that Mill became so involved in debates about campaign finance. The 1865 election in which Mill entered parliament was the most expensive election in English history. Officially 752,000 pounds were spent by candidates, but when hidden expenses were included, the number was actually close to a million pounds.<sup>925</sup> Thirteen of the representatives who were elected in 1865 were subsequently found guilty of directly bribing voters and lost their seat—although many contemporaries believed that was only the tip of the iceberg.<sup>926</sup> During his run for office in 1865, Mill refused to be involved in any of the corrupt aspects of English electoral politics. He famously did not pay a cent of his own money to get elected, and initially even refused to campaign at all. The vast majority of Mill’s canvassers were volunteers, and the few dollars Mill’s campaign spent also came from small donations by volunteers.<sup>927</sup>

Because of the massive amount of money spent in the 1865 election, in 1867 Benjamin Disraeli introduced legislation into the House of Commons that would make it easier to prosecute representatives who were accused of directly bribing voters.<sup>928</sup> Mill supported Disraeli’s bill, which passed in 1867. However even more significantly, Mill also attempted to pass a series of amendments to the bill which would have radically expanded its purview. Mill

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<sup>924</sup> John Stuart Mill, “Corruption at Elections,” in *Collected Works*, vol. 28, ed. J.M. Robson and Bruce Kinzer, (Toronto: 1988), 10.

<sup>925</sup> Cornelius O’Leary, *The Elimination of Corrupt Practices in British Elections, 1868-1911*, (Oxford: 1962), 28

<sup>926</sup> *Ibid.*

<sup>927</sup> For an extensive account of Mill’s 1865 election see Kinzer et.al., *A Moralist in and out of Parliament: John Stuart Mill at Westminster, 1865-1868*, 22-79

<sup>928</sup> For a discussion of Disraeli’s bill and the debate surrounding it see O’Leary, *The Elimination of Corrupt Practices in British Elections*, 33-43.

sought to have the bill not only target bribery, but also ban all paid-canvassing, since canvassing was “the greatest of all the sources of undue expense at elections.”<sup>929</sup> Mill argued to the House of Commons that paid canvassing was unnecessary in the age of newspapers, and corrupting of the whole electoral process. “A seat in this House ought no more to be obtained by private solicitation than by money payment,” Mill declared.<sup>930</sup> While Mill favored canvassing “done by volunteers,” in which “acquaintances may talk to acquaintances, and neighbors to neighbors, and win them over by persuasion and moral influence,” that was completely different from paying somebody to engage in such persuasion: “what moral influence has a man who is paid for his persuasiveness? And what would the electors lose if they could only be talked to by somebody who believes what he says, and cares enough about it to say it gratis?”<sup>931</sup>

Along similar grounds, Mill strongly supported an amendment sponsored by his close friend Henry Fawcett that would have changed how the returning officers (who oversaw elections) were paid. Rather than being reimbursed by the candidates, which was the conventional practice, Fawcett’s amendment would have made it that they were paid through taxes. Mill specifically challenged the notion, expressed by Disraeli and other opponents of the amendment, that this had nothing to do with corruption, that “in a purely legal point of view it does not belong to the subject of corrupt practices.”<sup>932</sup> He argued that “it belongs to a system of measures of which that relating to corrupt practices is the completion.”<sup>933</sup>

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<sup>929</sup> Mill, “Election Petitions and Corrupt Practices at Elections [10],” *CW*, vol. 28, 317

<sup>930</sup> *Ibid.*

<sup>931</sup> *Ibid.*, 318

<sup>932</sup> Mill, “Election Petitions and Corrupt Practices at Elections [9],” *CW*, vol. 28, 313

<sup>933</sup> *Ibid.*

Both of these amendments were voted down by the House of Commons. But what they together demonstrate is that Mill's aim during the debate was not only to fight bribery, but also to reduce the influence of private money in elections more generally. Mill sought not merely to eliminate *illicit* monetary expenses, but rather all forms of monetary expenses.<sup>934</sup> This was one of Mill's major political goals even before he entered parliament. In *Considerations on Representative Government*, Mill argued that all "expenses out of the candidate's own pocket" as well as "any expenses whatever beyond the deposit of 50l...should be illegal and punishable."<sup>935</sup> One of the reasons that Mill had so strongly supported proportional representation was that he believed it would create a means for nationally prominent individuals to enter parliament without having to go through the whole expense of winning a local parliamentary election.<sup>936</sup>

Part of Mill's opposition to the role of private money in elections stemmed from his belief that it contributed to an imbalanced legislature, in which only the wealthy were able serve. A member of Parliament was elected "not as the best man, but as the best rich man, who can be had."<sup>937</sup> Mill argued that a Parliament composed only of rich men would be unaware of the whole set of grievances and problems facing the country.<sup>938</sup> But additionally, and parallel to both his and Tocqueville's criticisms of the effects of patronage in France, Mill especially targeted the

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<sup>934</sup> While Bruce Kinzer and John Robson discuss Mill's efforts to expand the scope of Disraeli's bill, they do not emphasize the fundamental thought underlying these efforts: Mill's enlarged understanding of the meaning of "corruption," which he applied not only to bribery, but to all private money spent in elections. See Kinzer et. al., *A Moralist in and out of Parliament*, 107-112.

<sup>935</sup> Mill, *Considerations*, 496

<sup>936</sup> Mill, "Recent Writers on Reform," 366

<sup>937</sup> John Stuart Mill, *Thoughts on Parliamentary Reform*, *CW*, vol. 19, 321

<sup>938</sup> For Mill's broader argument against a parliament excessively inhabited by the wealthy see especially John Stuart Mill, "Representation of the People [3]," *CW*, vol. 28, 65-68.

way that money in elections corrupted the motives of political actors. By paying vast sums of money to win representative office, candidates ensured that voters would see their election as “a personal favor to be solicited,” and would therefore not even begin to engage in judgments about political principles, and about the “personal fitness” of candidates.<sup>939</sup> For the wealthy, on the other hand, a place in Parliament threatened to become merely a social accoutrement. The reason for restrictions on all campaign finance, Mill argued to the House of Commons, was to “diminish the number of men in this House, who came in, not for the purpose of maintaining any political positions...but solely for the purpose, by a lavish expenditure, of acquiring the social position which attended a seat in this house.”<sup>940</sup> Mill declared that only with a representative who did not spend any of his own money to be elected, “we may be completely assured that they are elected from public motives; that they are the men who voters really wish to see elected...on account of the principles they represent.”<sup>941</sup>

While Disraeli’s bill targeting bribery was successfully passed by Parliament, Mill failed in all his attempts to include broader restrictions on campaign finance. In a sad coda to his involvement in that debate, Mill was defeated for re-election the next year by a Tory candidate who outspent the entire Liberal ticket in Westminster by five to one.<sup>942</sup> Tocqueville’s long struggle to combat patronage during the July Monarchy was also unsuccessful. Yet it could be argued that neither of their efforts was ultimately in vain. Among the fundamental laws of the French Third Republic, passed in 1875, was a drastic prohibition on administrative functionaries

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<sup>939</sup> Mill, “Thoughts on Parliamentary Reform,” 320.

<sup>940</sup> Mill, “Election Petitions and Corrupt Practices at Elections [3],” *CW*, vol. 28, 280.

<sup>941</sup> *Ibid.*

<sup>942</sup> O’Leary, *Elimination of Corrupt Practices in British Elections*, 50



serving in the Chamber of Deputies.<sup>943</sup> Seven years later, in England, William Gladstone succeeded in passing the most sweeping anti-corruption legislation in English history—legislation far more ambitious than Disraeli’s earlier bill. The Corrupt Practices Act of 1883 was largely in line with Mill’s recommendations fifteen years earlier. It banned a wide range of electoral expenditures beyond bribery, and placed strict limitations on the amount of money candidates and their supporters were allowed to spend on each election.<sup>944</sup>

Mill and Tocqueville’s opposition to bribery and patronage flowed straightforwardly from their conviction that electoral campaigns and parliamentary debates had be waged entirely through arguments and principles. They shared with Constant and Bagehot the belief that there was a radical disjuncture between a Parliament in which members were elected, and decision were made through deliberation and discussion, and a Parliament in which power was wielded through ministers who were able to satisfy the personal interests of voters or representatives. Tocqueville’s strategy for reforming French parliamentary politics was, I have noted, particularly reminiscent of Constant’s. But where Mill and Tocqueville differed from Constant or Bagehot, and were closer, perhaps, to eighteenth-century figures like Burke or Bolingbroke, was that they did not see corruption as primarily leading to parliamentary gridlock and instability.<sup>945</sup> The most disturbing fact of all, during the 1840s, was that Guizot seemed able to hold onto a parliamentary majority, despite his extensive use of patronage.

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<sup>943</sup> Duguit and Monnier, *Les constitutions et les principales lois politiques de la France*, 332-334

<sup>944</sup> O’Leary, *Elimination of Corrupt Practices in British Elections*, 173-178. For a more skeptical evaluation of Gladstone’s bill see Kathryn Rix, “The Elimination of Corrupt 73, (2008), 96-97.

<sup>945</sup> At moments Tocqueville does make this Whiggish claim. See for instance Tocqueville, “Notes pour un discours (mars 1843),” 183, 185.

What the July Monarchy so powerfully indicated, to both Mill and Tocqueville, was that the very possibility of free government was threatened by corruption. “In nations with free institutions,” Tocqueville argued, “public spirit is the soul of government.”<sup>946</sup> “Absolute monarchies can live without the action of public opinion and political life. Free governments cannot, because it is necessary for the daily movement of the whole political machinery.”<sup>947</sup> Liberty would not survive if parliamentary actors were solely motivated by personal interests, rather than by general ideas and sentiments. And yet Mill or Tocqueville do not completely cohere with the eighteenth-century British discourse against corruption either. For while they both despised Louis-Phillipe, and saw him as fully implicated in French political corruption, neither thought that the consummation of corruption would necessarily be a legislature completely subjugated to him.<sup>948</sup> What makes this especially clear is the fact that there were, during the July Monarchy, a host of influential French liberals who very much believed that Louis-Phillipe intended to use corruption as a means of enslaving the Chamber of Deputies. They saw the eighteenth-century campaigns against Robert Walpole and George III as the direct model for their own opposition program.

When Charles Rémusat introduced a proposal for combatting patronage in 1847, his speech was a veritable lecture on English history. It began with the initial conflicts over patronage under Charles II and William III, then traversed the political movements against Walpole and George III, before concluding with the present debate in France—a debate which

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<sup>946</sup> Tocqueville, “Notes de Tocqueville, 724

<sup>947</sup> Ibid.

<sup>948</sup> See Tocqueville, *Recollections*, 6-10; Mill, “Vindication of the French Revolution of February 1848,” 325-326

Rémusat viewed as parallel to the controversies of eighteenth-century England.<sup>949</sup> Adolphe Thiers' intervention in the debate over patronage was equally devoted to this theme. His analogy between Walpole—"that celebrated minister" who "governed for twenty years and had the time to study all the methods of seizing control of Parliament"—and Guizot was perhaps too transparent to be effective.<sup>950</sup> None of Guizot's critics, however, saw themselves more in the tradition of eighteenth-century England than did Duvergier de Hauranne. Hauranne's pamphlet *De la Reforme Parlementaire et la Reforme Electoral* was the most important statement of the parliamentary left's opposition to Guizot during the 1840s. It weaved together all the different complaints about the July Monarchy—the corruption, the influence of the Crown over the choice of ministers, the limited suffrage—into a single unified process, leading to the destruction of political liberty. The fourth chapter of this pamphlet stands as the one of the most complete and in-depth histories of the eighteenth-century English debate over corruption written during the nineteenth century.<sup>951</sup> According to Hauranne, Louis Phillippe exemplified the same threat to parliament that "the two greatest political writers of England, Bolingbroke and Burke have perfectly explained."<sup>952</sup> Just as in England "after 1688," so in nineteenth-century France, "prerogative has been succeeded by influence, and violence by corruption."<sup>953</sup>

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<sup>949</sup> Charles Rémusat, "Députés Fonctionnaires Publics," *Annales du Parlement français*, vol.9, (Paris: 1848), 364-372.

<sup>950</sup> Adolph Thiers, "Discours sur les députés fonctionnaires, prononcé le 17 mars 1846, à la Chambre des Députés," *Discours parlementaires de M. Thiers*, vol. 7, (Paris: 1880), 108

<sup>951</sup> Hauranne, *De la Reforme Parlementaire et la Reforme Electoral*, 113-138

<sup>952</sup> *Ibid.*, 301

<sup>953</sup> *Ibid.*

Because of their shared opposition to patronage, Tocqueville and Hauranne were often allied in parliament. Many of their arguments are the same. But the primary difference is that Tocqueville, like Mill, depicted corruption as a danger to public life without making the *telos* of corruption the subjugation of the legislative assembly by the Crown. That could happen. But it did not need to, and the sense of Tocqueville or Mill's writings on the July Monarchy is that to focus on that single potentiality means to miss the much broader challenge. Corruption destroyed political liberty by contributing to materialism and individualism, and to the radical loss of civic energy. It ranked among the deep pathologies that threatened freedom in the modern world. Whether Louis-Phillippe would be the tyrant that benefitted from this loss of civic engagement, or whether some entirely different power did, or even none at all, was a question of eminently secondary importance. This is evinced by their relentless criticisms of bribery in England, a form of corruption that did not raise the specter—for either of them—of parliament being subjugated to a monarch.

## Conclusion

This chapter has examined Alexis de Tocqueville and John Stuart Mill as theorists of, and participants in, the modern parliament assembly. On the one hand, I have shown that Mill and Tocqueville developed powerful and distinctive critiques of parliamentary corruption. On the other hand, I have demonstrated that they strongly disagreed about the nature and merits of parliamentary government more generally. Most significantly, Tocqueville was willing to praise and admire the independent American executive, who tempered the legislature through his veto.

Mill refused to do so. In contrast to Tocqueville, he sought to moderate and temper the legislature through the parliamentary power of dissolution, and through creating a perfect balance of opinions and social classes within parliament.

What is the meaning of this striking incongruity? How could Mill and Tocqueville have held such different conceptions of the legislature as an institution, even as they articulated such remarkably similar critiques of legislative corruption? I have suggested in this chapter that a crucial reason for their divergence was that Tocqueville never accepted, indeed seems to have barely even mentioned, the constitutional theory of “a king who reigns but did not govern.” Tocqueville always conceived of there being a king or president who exercised executive functions, and an elected assembly that was responsible for legislative functions. For Tocqueville, a parliamentary government simply meant that the executive’s ministers sat in the legislature, which held them politically responsible. It did not mean, as it did for Mill and Constant, that ministers *were* the executive.

I have shown that this led Tocqueville to conceive of a very harsh tradeoff. Either the legislative assembly would be the most powerful branch of government, like it was in America, and prone to tyranny and instability. Or it would be less powerful than the executive, like it was in France, therefore necessitating a parliamentary system which was prone to internal gridlock and patronage. In both cases, Tocqueville saw possibilities for reform and improvement. A democratic legislature could be checked to some degree through strengthening the executive. A parliamentary legislature could be freed of patronage, though perhaps never of gridlock. But neither path seemed likely to lead to a truly deliberative assembly, in which power was exercised through principled arguments and wide-ranging discussion.

This ultimately gives Tocqueville's campaign against corruption a very different valence than Mill's. When one takes into account both the harsh constitutional tradeoffs that Tocqueville laid out, as well as the tendency towards corruption that was pregnant in both centralization and increasing equality of conditions, it becomes clear that overcoming parliament corruption, and establishing a legislature defined by meaningful argument and principled discussion ranks for Tocqueville as among the most difficult achievements of modern politics. Tocqueville did not have Mill's faith that enlightened parliaments and "government by discussion" would be a major force in modern politics.

## Conclusion

Mill and Tocqueville's disagreement about the merits of American constitutionalism, and their differing judgments about the prospects of democratic assemblies raise crucial questions for political theory that we have yet to move beyond. They are also questions that have continued to preoccupy political theorists. A far more extreme skeptic than Tocqueville about the viability of "government by discussion" in a democratic age was Carl Schmitt, the figure with whom I began this dissertation. Schmitt was among of the most significant twentieth-century thinkers to wrestle with the legacy of parliamentary liberalism.<sup>954</sup> But his ultimate judgment was that parliamentary liberalism, and in particular its commitment to a deliberation, had become a utopian fantasy. Schmitt argued that "the ideas of Burke...Guizot, and John Stuart Mill" were completely "antiquated" in a political world defined by complex administrative bureaucracies, legislative corruption, national emergencies, and mass elections.<sup>955</sup> Within the legislature, decisions were made by "the representatives of the big capitalist interests" rather than through open "parliamentary debates."<sup>956</sup> "It is like a satire" to say that "in parliament ideas meet" Schmitt declared.<sup>957</sup>

At the polar opposite from Schmitt stands the young Woodrow Wilson. What is striking is that Wilson identified nearly all of the same political challenges that Schmitt did. Like

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<sup>954</sup> For his examination of these themes see Carl Schmitt, *The Crisis of Parliamentary Democracy*, 23-50; and Carl Schmitt, *Constitutional Theory*, tr. Jeffrey Seitzer, (Durham NC: 2008), 167-252, 328-378.

<sup>955</sup> Schmitt, "On the Contradiction between Parliamentarism and Democracy," 7

<sup>956</sup> Schmitt, *The Crisis of Parliamentary Democracy*, 50

<sup>957</sup> Schmitt, "On the Contradiction between Parliamentarism and Democracy," 7

Schmitt, Wilson abhorred the fact that so much of legislative decision-making had come to be conducted in a byzantine system of committees rather than before the whole legislature.<sup>958</sup> He thought that Congress in the United States had utterly failed to function as a “deliberative assembly.”<sup>959</sup> Wilson also recognized the difficulties of integrating an entire modern state into a process of political deliberation, and the equal challenge of reconciling a commitment to constitutionalism with the need for executive action and administration.<sup>960</sup> Yet whereas Schmitt thought that liberalism was the greatest obstacle to wrestling with such challenges, Wilson thought that it contained the most powerful answers to them.

The argument of this dissertation suggests that in one respect, Wilson was the more perceptive student of liberal thought than Schmitt. The problem of corrupt negotiation replacing deliberation in parliament, and the challenge of integrating executive and administrative power with a strong legislature were in no way as novel as Schmitt suggests. I have argued that the liberal theory of parliamentary government emerged out of the eighteenth-century English debate over patronage; a debate in which advocates of the integration of executive and legislative power were pitted against opponents of corruption. These debates would continue well into the nineteenth century, profoundly shaping the development of liberalism. Rather than taking the parliamentary theories of French and English liberals as an obstacle to thinking through

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<sup>958</sup> Wilson, *Congressional Government*, 60-129. Compared with Schmitt, *Crisis of Parliamentary Democracy*, 49-50.

<sup>959</sup> Wilson, *Congressional Government*, 95-101, 184-185; Wilson, *Constitutional Government in the United States*, 82-111. Like Tocqueville, Wilson viewed the American Senate as far superior to the House of Representatives. “Its debates are often enough unprofitable, are too often marred by personal feeling and exhibitions of private interest...but they are at least the only means the country has of clarifying public business for public comprehension” (Wilson, *Constitutional Government in the United States*, 135)

<sup>960</sup> See Woodrow Wilson, *The State: Elements of Historical and Practical Politics*, (Boston: 1889), 580-592. Wilson was also prone to the same disturbing racialized nationalism as Schmitt (among many instances see *ibid.*, xvi, 622-623).



contemporary crises of representative government—as Schmitt suggests—we are better off taking them as a resource: as a history of sophisticated attempts to think through the challenges of representative institutions.

For Americans, this tradition of thought is a particularly important resource. I argued in this dissertation that the liberal commitment to parliamentary government crystalized after the destruction of the French Constitution of 1791, a constitution similar in crucial respects to the American constitution. The liberal response to that event was centered on the threat of *legislative* tyranny and usurpation—a danger that has faded in significance. But in the course of confronting that particular challenge, liberals made a compelling case against executive officers being separated from the legislature. Such an arrangement, they claimed, was defective at fostering meaningful political deliberation, and prone to destructive gridlock. Given the omnipresence of both these complaints in American political discourse today, we would do well to take this tradition of liberalism especially seriously.