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COMMON LAW JURISPRUDENCE AND ANCIENT CONSTITUTIONALISM IN THE RADICAL THOUGHT OF JOHN CARTWRIGHT, GRANVILLE SHARP, AND CAPEL LOFFT*

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ABSTRACT. *A number of late eighteenth-century English parliamentary reformers synthesized arguments based upon reason and natural law with appeals to the 'ancient constitution'. This article aims to examine how such reformers were able to move to a democratic view of political agency while maintaining a rhetorically powerful appeal to constitutionalist precedent. It will examine how three of these radicals, John Cartwright, Granville Sharp, and Capel Lofft, collaborated in their utilization of the latent natural law maxims of the English common law, reviving the rationalist potential of the jurisprudence of Edward Coke and Christopher St Germain to democratize the seventeenth-century Whig conception of the ancient constitution. It will thereby show how reformers in the 1770s and 1780s challenged the domestic and imperial political status quo by exploiting the underlying ambiguities of the intellectual resources of their own 'respectable' legal and political tradition.*

I

The tendency of many late eighteenth-century English political reformers to appeal to a discourse of ancient constitutionalism has not received detailed scholarly analysis. This is in contrast to the use of that discourse in the context of the political upheavals of the seventeenth century, which has been the subject of several studies.[1] This lacuna leaves certain aspects of the political

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[1] J. G. A. Pocock, *The ancient constitution and the feudal law: a study of English historical thought in the seventeenth century* (1957; repr., Cambridge, 1987); Christopher Hill, 'The Norman Yoke' in *Puritanism and revolution: studies in interpretation of the English revolution of the seventeenth century* (London, 1958); Janelle Greenberg, *The radical face of the ancient constitution: St Edward's*

thought of the late eighteenth-century parliamentary reform movement opaque. For example, thinkers who are routinely characterized as using appeals to Anglo-Saxonism to underpin their arguments for reform, such as John Cartwright, advocated principles, such as universal manhood suffrage, that went considerably beyond the scope of the arguments of seventeenth-century Whig ancient constitutionalists, despite both ostensibly referring to the same historic polity. How was this old political language marshalled to new uses? The answer to this question is linked to the fact that reformers who appealed to the ancient constitution in the late eighteenth century rarely rested their claims solely on this basis. They invariably fused such historical arguments with a rationalist conception of natural law. This article aims to show how the latent intellectual resources existed within the English legal tradition to make this fusion plausible, and how they were used by reformers to democratize the ancient constitution.

This article defines late eighteenth-century radicalism as a set of interrelated practical and intellectual movements that 'challenged the fundamental political, religious, or social axioms' of the Hanoverian status quo, and, in particular, were critical of the policy of the British crown-in-parliament relative to its American colonies in the 1770s and 1780s, and the domestic oligarchy that prevailed as a product of the contemporary parliamentary system, which was widely perceived to be unrepresentative.[2] Within this radical paradigm, the focus of this article is on parliamentary reform, that is, an emphasis on the need to reform the parliamentary system as the precondition of radical institutional change. The reform movement encompassed a wide range of campaigns and organizations in this period, including in the late 1770s and 1780s the Associated Counties movement and its more radical offshoot the Society for Constitutional Information (SCI), and in the 1790s, artisan societies such as the London Corresponding Society (LCS).[3]

Although these movements have been subject to many ideological categorizations, a significant degree of unity, particularly in terms of an eclectic set of common intellectual inheritances, underpinned their radicalism. As a result, it is increasingly recognized that classifying reformers as exclusively indebted to one or other discourse of opposition is unhelpful. As Mark Goldie has stated, late eighteenth-century reformist thinkers were willing to 'translate

'laws' in early modern political thought (Cambridge, 2001); Alan Cromartie, *The constitutionalist revolution: an essay on the history of England, 1450–1642* (Cambridge, 2006).

[2] Ariel Hessayon and David Finnegan, 'Introduction', in Ariel Hessayon and David Finnegan, eds., *Varieties of seventeenth- and early eighteenth-century English radicalism in context* (Farnham, 2011), pp. 1–30, at p. 25. A 'functional' definition of radicalism is thereby assumed here.

[3] For classic accounts of these movements, see E. C. Black, *The association: British extraparliamentary political organisation, 1769–1793* (Cambridge, MA, 1963); Colin Bonwick, *English radicals and the American revolution* (Chapel Hill, NC, 1977); Edward Royle and James Walvin, *English radicals and reformers, 1760–1848* (Brighton, 1982).

between languages of politics which are too readily regarded by modern scholars as having been discrete or mutually exclusive', and various discourses were eclectically synthesized.[4]

One such synthesis united apparently differing conceptions of the fundamental rights of the people, either as a natural, or as a prescriptive part of the constitution. Previous scholarly assumptions that these views were mutually exclusive have been replaced by the recognition that ideal types of natural or ancient constitutional rights 'overlapped to a considerable degree and were accordingly invoked in isolation and in various mixtures'.[5] Indeed, conscious of the value of constitutionalism in late eighteenth-century England as a 'shared idiom of political legitimation', scholars have realized that most radicals were reluctant to abandon appeals to the English constitution, even when they argued on rational grounds: reason and history were not obviously separate categories.[6] Maintaining that they were the true heirs to constitutionalist traditions of liberty gave radicals rhetorical advantage.[7] As Belchem has stated, 'historical precedent, natural right and constitutional sanction all congealed to justify their radical claims'.[8] Thomas Paine's overt contempt for historical argument was exceptional, with limited purchase in the mainstream of reformist thought.[9] This recognition moves the historiography beyond the assumption that any appeal to historical rights stymied appeals to reason, necessarily constraining radical argument. However, there is little exploration in the scholarship of whether those who appealed to natural rights and the ancient constitution had a plausible or consistent basis for such a synthesis in their political and legal culture.

Addressing this question is indispensable to comprehending the transition from the Whig tradition to the age of democracy in England. It is the case that late-eighteenth century English parliamentary reformers did not typically use the word 'democracy' to describe their preferred polity, associating that word with ancient city-states or the popular element of the mixed constitution, as Mark Philp has recently highlighted.[10] Nonetheless, ancient constitutionalist reformers contributed to the process whereby radical thinkers sought

[4] Mark Goldie, 'Introduction', in Mark Goldie, ed., *The reception of Locke's politics* (6 vols., London, 1999), I, pp. xvii–lxxi , at p. xlv.

[5] Gregory Claeys, *Thomas Paine: social and political thought* (Boston, MA, 1989), p. 10.

[6] James Epstein, *Radical expression: political language, ritual, and symbol in England, 1790–1850* (Oxford, 1994), p. 26.

[7] John Belchem, 'Republicanism, popular constitutionalism and the radical platform in early nineteenth-century England', *Social History*, 6 (1981), pp. 1–32, at p. 12.

[8] Ibid., p. 9.

[9] Günther Lottes, 'Radicalism, revolution and political culture: an Anglo-French comparison', in Mark Philp, ed., *The French Revolution and British popular politics* (Cambridge, 1991), pp. 78–98, at p. 84.

[10] Mark Philp, 'Talking about democracy: Britain in the 1790s', in J. Innes and M. Philp, eds., *Re-imagining democracy in the age of revolutions: America, France, Britain, Ireland, 1750–1850* (Oxford, 2013), pp. 101–13, at p. 101.

to formulate a modern institutional form capable of embodying democratic ideas such as inherent human equality, and a corresponding equal right to political participation. This implies that their thought can be termed 'democratic' without much risk of anachronism. Indeed, as we shall see, there are examples of these reformers using the word 'democracy' when referring to representative government based upon universal suffrage. As such, we cannot fully comprehend the development of democratic thought in England without examining how the ambiguous intellectual resources of an historicist, Whig discourse were exploited in the service of new causes.

The purpose of this article is therefore to examine how an influential group of radical thinkers, associated with the SCI and addressing the context of the American crisis and its domestic implications, namely Major John Cartwright, Granville Sharp, and Capel Lofft, found the means within the assumptions of English common law jurisprudence to engineer, in a strikingly similar way, such a synthesis. These radicals took a strand of common law jurisprudence, associated particularly with Edward Coke and Christopher St Germain, which suggested that the common law had as its pre-eminent source the laws of nature, and was therefore always in conformity with reason, in order to fuse their interpretation of natural law with ancient constitutionalism. As these SCI reformers had their own increasingly radical conception of the political implications of the natural law, they were thus able to argue for a more democratic polity than any allowed for within the parameters of seventeenth-century conceptions of the historic constitution.

II

In order to understand the radicalization of ancient constitutionalism in the late eighteenth century, it is necessary to examine the historiographical background in terms of the political dynamics of the common law in the seventeenth century. Pocock's emphasis on the centrality of the common law to seventeenth-century constitutional thinking has been widely accepted. For Pocock, the perspective of the 'common–law mind', reaching its apotheosis in the thought of jurist Sir Edward Coke, framed the parameters of constitutional debate in seventeenth-century England.[11] For Coke, the common law was the one true law of England, defining the nature of its constitution. According to Pocock, Coke characterized the common law as immemorial and customary, and thereby embodying the accumulated wisdom of the nation, that which the artificial reason of the species had retained through the ages.[12] This led to a sense that the prescriptive rights and liberties of the English constitution were 'independent of the sovereign's interference', and therefore secure.[13]

[11] Pocock, *The ancient constitution*, pp. 30–1.
[12] Ibid., pp. 35–7.
[13] Ibid., p. 37.

Thinkers within this paradigm tended to stress the rights of the propertied against arbitrary taxation and prerogative, which implied a view of political rights as an elitist preserve.[14]

However, both Janelle Greenberg and Alan Cromartie have shown how the common law was conceived as underpinned by reason as well as custom. Greenberg has argued that, for seventeenth-century lawyers, the common law, as well as being customary, had to 'be consonant with natural law, divine law, and reason', with reason encompassing '"nature's laws for England"' as well as lawyerly 'artificial' reasoning.[15] In the context of the English Civil War and late Stuart period, Greenberg contends that these assumptions underpinned radicals' ancient constitutionalist arguments in favour of the contractual basis of government, the elective nature of monarchy, and the right of resistance.[16]

Cromartie contends that there was a persistent historic tendency within English common law thinking to give centrality to reason rather than custom as the underlying principle of law.[17] Indeed, Cromartie argues that, for Coke, the system of the common law had an underlying rationality implicit in its decisions, which implied a 'notion of law as reason' that was 'capacious'.[18] This notion included the idea, endorsed by Coke, that the 'law of nature' was 'part of the laws of England'.[19]

For Coke, an eclectic storehouse of principles, including those of the law of nature, could be invoked as implicit in the rational system of the common law, so long as it was guided by the 'professional erudition' of the legal profession.[20] In the Cokean tradition, the common law was thus seen as a 'kind of science of the English common weal, guided at every step by all the wisdom crystallized in the existing stock of legal maxims'.[21] This implied that, although parliament was formally supreme, 'judicial application of statutory law was moulded by conceptions of the English common weal allegedly implicit in the system'.[22] Coke claimed that the idea of the common good was not being used 'to over-rule the monarch so much as to interpret his and parliament's intention'.[23] However, the statement in his report of *Dr Bonham's case* that 'when an Act of Parliament is against common right and reason' the common law will 'adjudge such an Act to be void' could be construed as implying the possibility of statutory construction correcting the sovereign will.[24]

[14] Hill, 'The Norman Yoke', p. 62.
[15] Greenberg, *The radical face*, pp. 18–19.
[16] Ibid., pp. 27–8.
[17] Cromartie, *The constitutionalist revolution*, p. 199.
[18] Ibid., p. 202.
[19] Ibid., p. 210.
[20] Ibid.
[21] Ibid., p. 212.
[22] Ibid., p. 213.
[23] Ibid., p. 214.
[24] Ibid.; Mark Walters, 'Common law, reason, and sovereign will', *University of Toronto Law Journal*, 53 (2003), pp. 65–88, at p. 65.

In such an interpretation, the idea that the law of nature was a regulating principle of the common law could become dominant. Although the implicit reason that constituted the basis of the law could be interpreted in such a way as to subsume the common law's 'artificial reason' within its historical processes, nonetheless the Cokean notion of the underlying reason of the legal system, particularly when the ever-ambiguous concept of 'the laws of nature' was invoked, was clearly amenable to a rationalist interpretation. Furthermore, if the rationalizing process underpinning English law could be conceived as based upon more egalitarian criteria than conformity to the professional logic of lawyers, either in common law courts or parliament (which was itself conceived as 'court-like'), it was also amenable to a democratic construction, as Cromartie suggests.[25] The Levellers' lack of clarity regarding whether the proto-democratic rights they demanded constituted the 'rights of man' or 'the peculiar rights of Englishmen' was rooted in these ambiguities.[26] Leveller arguments in favour of a wider franchise can therefore be seen as examples of taking Cokean legal assumptions to a conclusion that was 'too democratic to be acceptable'.[27]

III

The ambiguities of common law jurisprudence were not confined to the seventeenth century. Several important studies have emphasized how many common lawyers of the eighteenth century attempted to show that English common law was a 'rational and coherent system' founded in natural law.[28] David Lieberman has shown how Blackstone, in his *Commentaries on the laws of England*, repeated the commonplaces of earlier jurisprudence, particularly the idea that positive laws, including the common law, had their 'foundation in nature or in natural law', and therefore nothing 'contrary to reason' could be law in England.[29] These ideas were widely accepted within the discourse of Blackstone's legal contemporaries.[30]

Blackstone's *Commentaries* were 'the apex of respectable Hanoverian ideological stasis', embodying many of the mainstream jurisprudential assumptions concerning the sources of English law, and illustrating the ambiguities of these assumptions.[31] As Lobban and Lieberman have argued, the apparently anti-positivist implications of Blackstone's premise that the source of a law's

[25] Cromartie, *The constitutionalist revolution*, pp. 268–9.
[26] Ibid., p. 271.
[27] Ibid.
[28] David Lieberman, *The province of legislation determined: legal theory in eighteenth-century Britain* (Cambridge, 2002); Michael Lobban, *The common law and English jurisprudence, 1760–1850* (Oxford, 1991).
[29] Lieberman, *The province*, pp. 38–45.
[30] Ibid., pp. 37–8.
[31] Goldie, 'Introduction', p. xxiii.

authority was its consonance with the laws of nature were counteracted by his defence of the 'absolute despotic authority' of the sovereign crown-in-parliament.[32] This was because Blackstone saw reason in terms of the rationality embodied in the processes of history, and ultimately his fear of Hobbesian chaos trumped his natural law precepts.[33]

The triumph of positivism in Blackstone's thought illustrates a wider point. As Lobban has shown, in practice most common lawyers were committed to positivist ideas that overruled their natural law precepts.[34] Ultimately, they conceived law as the product of the will of the sovereign legislature, either directly as statute law or indirectly, in that common law was seen 'as a body developed within the official forum of the courts, which derived their authority from the sovereign'.[35] This became the 'dominant view among English lawyers', from Matthew Hale in the seventeenth century to Blackstone in the eighteenth.[36]

However, as we have already seen, the opposite view, which saw the common law as gaining its legitimacy from its consonance with the 'underlying reason' of the law, often conceived in terms of natural law, had a venerable pedigree in the English legal tradition.[37] This pedigree was older, however, than Cokean jurisprudence, detectable, for example, in the thought of Tudor lawyer Christopher St Germain. St Germain's *Doctor and student*, a jurisprudential text dating from 1528, was a 'basic handbook for law students up to the time of Blackstone'.[38] It contained ample material to support the view that any law contrary to reason was void; indeed, as Walters has pointed out, in the seventeenth and eighteenth centuries it was with the idea of the 'supremacy of the law of reason over sovereign will … that St Germain's name came to be associated within the legal community'.[39] Such a view had the potential to be used to shape conceptions of the ancient constitution in ways as numerous as differing interpretations of the 'law of nature'. Precisely how did parliamentary reformers of the late eighteenth century use these ambiguities, and transform the 'harmless' underlying natural law maxims of the common law into a democratic 'mass of dynamite'?[40]

[32] Lieberman, *The province*, p. 49; Lobban, *The common law*, p. 30; William Blackstone, *Commentaries on the laws of England* (4 vols., Oxford, 1765–9), I, p. 156.

[33] Michael Lobban, 'Blackstone and the science of law', *Historical Journal*, 30 (1987), pp. 311–35, at pp. 324–5.

[34] Michael Lobban, 'Custom, nature, and authority: the roots of English legal positivism', in David Lemmings, ed., *The British and their laws in the eighteenth-century* (Woodbridge, 2005), pp. 27–58, at p. 28.

[35] Ibid.

[36] Ibid., pp. 28–51.

[37] Ibid., pp. 31–2.

[38] Franklin Le Van Baumer, 'Christopher St German: the political philosophy of a Tudor lawyer', *American Historical Review*, 43 (1937), pp. 631–51, at p. 631.

[39] Walters, 'Common law', pp. 79–85.

[40] J. C. D. Clark, *The language of liberty, 1660–1832: political discourse and social dynamics in the Anglo-American world* (Cambridge, 1994), pp. 2–3.

IV

The parliamentary reformers in question were John Cartwright (1740–1824), Granville Sharp (1735–1813), and Capel Lofft (1751–1824). These men were friends, all closely involved with the incipient movement for parliamentary reform. They formed a tightly knit political partnership in the late 1770s and early 1780s, underpinned by a profound intellectual harmony in terms of their treatment of the relationship between the law of nature, the English common law, and parliamentary reform.

They were members of the most radical wing of the movement for reform that had its origins partially in the crisis in the American colonies. The controversy over the British right to tax the American colonies reached crisis point with the Boston Tea Party of 1773, and the subsequent Coercive Acts, which aimed to reassert British domination. This provoked many English radical thinkers to challenge the idea that Britain had parliamentary sovereignty over the colonies, and to assert that the colonists had a right to government by consent and 'actual', rather than virtual, representation, which led to various schemes of reconciliation designed to accommodate American demands for representation while preserving union.[41] The questions raised about sovereignty, representation, and taxation in the American colonies translated to the domestic context; if individuals in the colonies were governed by the fiat of an unrepresentative king-in-parliament, then the people of Britain were arguably in a similar position.[42] The inequality of the parliamentary status quo left large cities without any representation whatsoever, the inconsistent borough and elitist county franchise qualifications left the vast majority of the population without a vote at all, and septennial parliaments made opportunities to choose representatives, for those fortunate enough to have a vote, sparse.[43] Although these concerns had emerged in the earlier context of the Wilkite movement, the American situation accentuated the sense of the unrepresentative nature of the British parliamentary system and gave crucial impetus to the movement for reform.

The similarities between the situation of the colonists and Englishmen, accompanied by the costly war between Britain and America, created, as Anthony Page has observed, 'the political and economic conditions in which a popular movement for reform of Parliament could flourish'.[44] In 1779, Christopher Wyvill founded the Yorkshire Association. The Association movement spread rapidly, but it soon became riven by division.[45] Some members supported only moderate 'economical reform', the reduction of government

[41] Bonwick, *English radicals*, pp. 57–8.

[42] Peter Miller, *Defining the common good: empire, religion and philosophy in eighteenth-century Britain* (Cambridge, 1994), pp. 365–6.

[43] H. T. Dickinson, *The politics of the people in eighteenth-century Britain* (London, 1995), ch. 1.

[44] Anthony Page, *John Jebb and the Enlightenment origins of British radicalism* (Westport, CT, 2003), p. 180.

[45] See Ian R. Christie, *Wilkes, Wyvill and reform: the parliamentary reform movement in British politics, 1760–1785* (London, 1962), ch. 3.

patronage. Others also supported differing degrees of parliamentary reform, usually based on the themes of reducing the length of parliaments, increasing the number of county members in parliament, equalization of constituencies, and extending the franchise. Advocates of parliamentary reform varied in their espousal of these principles. Some, such as Wyvill, advocated no more than triennial parliaments or widening the franchise to include householders or taxpayers. In the metropolis, however, a small group of thinkers was prepared to espouse more radical measures of reform. These men, such as John Jebb, Capel Lofft, and John Cartwright, congregated around the Westminster committee, established in 1780, and their ideas dominated the report of the Westminster subcommittee into the state of representation.[46] It advocated single-member, equal electoral constituencies, annual parliaments, universal manhood suffrage, and vote by ballot.[47] These proposals gained only limited support in the Association movement. In response, Cartwright, Lofft, Sharp, and others founded the Society for Constitutional Information in 1780, to 'diffuse throughout the kingdom, as universally as possible, a knowledge of the great principles of Constitutional Freedom'.[48]

Of these three men, two were involved in legal practice. Granville Sharp, an ordnance clerk and humanitarian campaigner, taught himself legal theory in order to lead the crusade to ensure that slavery would not be recognized in English law, which culminated in the famous Somerset case of 1772.[49] Although best remembered as an abolitionist, his legal studies drew him into advocating parliamentary reform and the American cause in his important but often overlooked work, *A declaration of the people's natural right to a share in the legislature* (1774). Capel Lofft was a barrister, and later an independent landed gentleman, devoted to polymathic scholarship, poetry, and reform.[50] His most substantial work was *Elements of universal law, and particularly of the law of England* (1779), an ambitious attempt to present English common law as an outgrowth of natural law.[51] The third, John Cartwright, an autodidact with a military background, was not directly involved in legal practice, but the frequent citation of legal sources in his pamphlets suggests careful legal self-instruction. He authored some of the foundational documents of the parliamentary reform movement in Britain, most famously *Take your choice!* (1776). He ceaselessly agitated for this programme until his death in 1824.[52]

[46] Ibid., pp. 107–9.

[47] Ibid., p. 108.

[48] The Society for Constitutional Information, *Tracts published and distributed gratis by the Society for Constitutional Information* (London, 1783), p. 1.

[49] The only account of Sharp's life is Prince Hoare, *Memoirs of Granville Sharp, Esq.* (London, 1820). No modern biography exists.

[50] G. M. Ditchfield, 'Lofft, Capel (1751–1824)', *Oxford dictionary of national biography.*

[51] The neglect of this work may be because it was originally published in Latin in two volumes, and Lofft only translated the first volume into English.

[52] Scholarship on Cartwright has been sporadic. The only modern biography is John Osborne, *John Cartwright* (Cambridge, 1972), which provides only a cursory account of his

Clearly, other figures were important within the contemporary reform movement and the SCI, such as Cartwright's associate John Jebb. However, Jebb did not write any systematic works on law or politics, and so it is difficult to conduct a thorough examination of his underlying legal and political assumptions. In so far as this is possible, Anthony Page has already attempted it in his study.[53] In contrast, Lofft, Cartwright, and Sharp have typically only been examined in passing by scholars.

This neglect has led to mischaracterizations and underdeveloped appraisals of their thought. The existing scholarship has tended to take two approaches, which are best illustrated by reference to Cartwright, the least neglected. One approach has been merely to characterise Cartwright as a straightforward ancient constitutionalist and ignore his appeal to natural rights altogether. For example, R. J. Smith argues that Cartwright represents the 'most flamboyant development' of the 'Saxonist theory'.[54] The Cartwrightian language of popular constitutionalism, seen as the characteristic discourse of the SCI, is often contrasted with the Painite language of natural rights in the historiography.

The other approach has been to acknowledge that Cartwright conceived political rights as natural, but without explaining how such an argument may have been synthesized with his ancient constitutionalism. Rachel Eckersley has rightly suggested that Cartwright's conception of 'Saxon mythology and natural rights were not mutually exclusive', and that atavistic constitutional rhetoric was used to reinforce reformist demands when natural rights claims were tactically problematic.[55] While correct, such statements fail to identify the language – common law jurisprudence – that made the fusion of natural rights and ancient constitutionalism found in the thought of Cartwright, Sharp, and Lofft comprehensible within their intellectual context.

V

Cartwright, Lofft, and Sharp enjoyed a close personal and professional relationship. Lofft mentions in a memoir that he was 'introduced to … a man of highly cultivated Taste and steady attachment to Freedom, Mr. Granville Sharpe [sic]' and 'Major Cartwright' in 'about' 1773 while studying for the law.[56] It seems

political thought. The main source on Cartwright's life is F. D. Cartwright, ed., *The life and correspondence of Major Cartwright* (2 vols., London, 1826), compiled by Cartwright's niece. Rachel Eckersley, 'The drum major of sedition: the political life and career of John Cartwright, 1740–1824' (Ph.D. thesis, Manchester, 1999), provides a forensic analysis of his thought and life, although it is somewhat constrained by its biographical nature.

[53] Page, *John Jebb*.

[54] R. J. Smith, *The gothic bequest: medieval institutions in British thought, 1688–1863* (Cambridge, 1987), pp. 137–8.

[55] Eckersley, 'The drum major', p. 230.

[56] Capel Lofft, 'Particulars relative to the life of Capel Lofft, Esq., communicated by himself', *Monthly Mirror: Reflecting Men and Manners*, 13 (1802), pp. 371–6, at p. 374.

likely that his friendship with Sharp in fact originated a little earlier, in 1772, during the Somerset slavery case. Sharp was the driving force behind the case, and Lofft was the law recorder who attended the court proceedings and authored a report on Lord Mansfield's decision.[57]

Sharp and Cartwright's friendship was established by 1775, the date of the first mention of Sharp in Cartwright's correspondence.[58] This correspondence coincided with a modest degree of fame for Cartwright as author of his first political pamphlet, *American independence*. As such, given Sharp's role in the pamphlet literature on this issue, it is likely that their respective contributions to the public debate on the American crisis attracted each other's attention, which may have been the origin of their connection. By 1777, their co-operation was close enough for Sharp to be making 'comments on various passages' of Cartwright's *Take your choice!,* comments that found their way into the second published edition of that work.[59]

The most tangible fruit of the trio's co-operation was the formation of the Society for Constitutional Information. Its gestation began in 1777 when Lofft, Sharp, and Cartwright met at Lofft's chambers at Lincoln's Inn to correct 'the Major's scheme of an Association for Political Reformation'.[60] Cartwright's correspondence with Lofft shows that he 'was anxious, in the year 1778, to form what he entitled "A Society of Political Enquiry"'.[61] In spring 1780, these discussions led to the formation of the SCI, of which all three men were founder members.[62]

Lofft and Sharp are referred to positively in Cartwright's *Life and correspondence* from the mid-1770s; Cartwright describes Sharp in one letter as 'a man of singular good sense'.[63] However, there is evidence of only limited correspondence between the three men in the 1770s. Since Sharp lived in London throughout the 1770s, Lofft continued as a barrister until 1781 at Lincoln's Inn, and Cartwright made regular trips to London to deal with publishers, it is likely that the men regularly met in person. There is, for example, evidence that Cartwright visited Granville Sharp at the Sharp family residence in Old Jewry.[64]

[57] See Hoare, *Memoirs*, ch. 4; William R. Cotter, 'The Somerset case and the abolition of slavery', *History*, 79 (1994), pp. 31–56, at p. 35.

[58] Cartwright, *Life and correspondence*, I, p. 59.

[59] John Cartwright, *The legislative rights of the commonalty vindicated; or, take your choice!* (2nd edn, London, 1777), second preface, p. 1; for confirmation that these notes were by Sharp, see John Cartwright, 'Universal suffrage: to Prince Hoare, Esq.', *Black Dwarf*, 4 Sept., 1822, pp. 343–55, at p. 349.

[60] Granville Sharp, 'Extract from Granville Sharp's pocket books/diaries', Gloucestershire Record Office, Granville Sharp papers, D3549/13/4/2, 3 Dec. 1777, also cited in: Page, *John Jebb*, p. 180.

[61] Cartwright, *Life and correspondence*, I, p. 120.

[62] Ibid., p. 134.

[63] Ibid., p. 100.

[64] Ibid., p. 136.

The three men's intellectual collaboration was extensive. Lofft produced an eight-page summary of Cartwright's 1780 work *The people's barrier*, which was published by the SCI.[65] Sharp wrote an appendix to a 1783 pamphlet by Lofft defending annual parliaments, elaborating on Lofft's arguments.[66] Cartwright and Lofft often quoted each other to support their arguments. For example, Lofft, in *Elements of universal law*, quoted Cartwright's *Legislative rights of the commonalty vindicated*, and, in turn, Cartwright directly cited *Elements of universal law* at several points in *The people's barrier*, calling it 'a mine of treasure'.[67] Cartwright's 1782 pamphlet *Give us our rights!* was dedicated to Lofft and Sharp (and John Jebb), whom he referred to as 'indefatigable fellow-labourers in the great work of vindicating the violated rights … of our country'.[68]

As this suggests, Jebb was also associated with this circle. He had a long-standing friendship with Lofft, having been a tutor at Peterhouse College, Cambridge, at the same time as Lofft was an undergraduate, and their friendship was sufficiently strong for Lofft to write an adulatory biographical sketch of Jebb shortly after the latter's death.[69] After Jebb moved to London in 1777 he became more keenly involved in the parliamentary reform movement, helping found and run the SCI with the three men.[70] There is, however, no evidence that Jebb collaborated closely with them in terms of the intellectual formulation of their ancient constitutional doctrines in the 1770s.

VI

When their close personal and intellectual links are added to their common background in the traditions of the English common law, it is unsurprising that Sharp, Lofft, and Cartwright used an identical strand of common law jurisprudential thinking, emphasizing the underlying rationality of the common law, in their political writings. They often cited the same sources, and indeed each other, in order to harmonize their arguments from reason with the common law and thereby democratize the idea of the ancient constitution. These affinities justify examining their thought together.

All three utilized statements taken from sources such as Coke and St Germain to underpin their assertion that the basis of the common law of England, and

[65] Capel Lofft, *A summary of a treatise by Major John Cartwright entitled the people's barrier against undue influence* (London, 1780).

[66] Granville Sharp, *An appendix to the second edition of Mr. Lofft's 'observations on a late publication, entitled "A dialogue on the actual state of Parliaments"…'* (London, 1783).

[67] Capel Lofft, *Elements of universal law, and particularly of the law of England* (1 vol., London, 1779), I, bk iv, p. 113; John Cartwright, *The people's barrier against undue influence and corruption* (London, 1780), p. 1.

[68] John Cartwright, *Give us our rights!* (London, 1782).

[69] For Lofft's sketch, see John Jebb, *The works, theological, medical, political and miscellaneous of John Jebb*, ed. J. Disney (3 vols., London, 1787), I, p. 239.

[70] Ibid., p. 155.

therefore the constitution, was reason, and consequently that English common law must be in accordance with the law of nature. For example, Cartwright's 1780 work *The people's barrier* begins with a statement of the six fundamental ethical sources of the English law drawn from St Germain, with 'the law of reason' at the top of the hierarchy.[71] Cartwright then stresses how the law of reason regulates common law prescription. Quoting St Germain, he asserts that 'against the law of reason, or against justice, there is no prescription, or opposed statute, or custom'.[72] He also cites the authority of Coke for the statement that 'nothing which is against reason is lawful'.[73] Cartwright uses 'law of reason' and 'law of nature' interchangeably, conceiving legal reason as synonymous with 'the law of nature'.[74]

Granville Sharp, in his marginal notes on Cartwright's *Legislative rights*, glosses Cartwright's characterization of the Septennial Act as 'null and void…as being contradictory to reason' with the observation that proof of the idea that laws contrary to reason 'shall be HOLDEN FOR NONE' will be found in his own book, *A declaration of the people's natural right to a share in the legislature*.[75] In that work, Sharp declares that the 'general Maxims or Rules of Reason and natural Law are … by our Law writers … esteemed the first Foundation of the English Law'.[76] He invokes the same passage of St Germain's *Doctor and student* as Cartwright, and emphasizes in a footnote that 'Maxims … which arise from general customs' are 'inferior' to the first foundation, i.e. the law of nature.[77] Reason must, argues Sharp, be deemed the guiding spirit of the English law: 'the Elements and first Principles, of the Law consist of the most obvious and self-evident conclusions of REASON, which are implanted in our very NATURE'.[78]

Lofft was no less emphatic, declaring in *Elements of universal law* that 'our law… depends in its chief, essential and noblest part upon natural law'. [79] He also quoted Coke's dictum, taken from the first part of Coke's *Institutes of the laws of England*, also often cited by Cartwright, that 'the COMMON LAW of England…is the PERFECTION OF REASON'.[80] Likewise, Lofft's summary of Cartwright's *The people's barrier* emphasized St Germain's characterization of reason as the source and regulator of the English common law.[81] *Elements of*

[71] Cartwright, *The people's barrier*, p. 1.
[72] Ibid., p. 2.
[73] Ibid.
[74] See for example John Cartwright, *American independence the interest and glory of Great-Britain* (2nd edn, London, 1775), p. 4.
[75] Cartwright, *The legislative rights*, p. 62.
[76] Granville Sharp, *A declaration of the people's natural right to a share in the legislature* (London, 1774), p. xxxviii. Notice how 'reason' and 'natural law' are assumed to be synonymous.
[77] Ibid., p. xxxix.
[78] Ibid., p. xxx.
[79] Lofft, *Elements*, I, p. lx.
[80] Ibid.
[81] Lofft, *A summary*, p. 1.

universal law was itself a major source of influence for Cartwright; he singled it out as having 'a deserved pre-eminence', and often cited it.[82]

Indeed, the general purpose of *Elements of universal law* was to provide an account of how the principles of the law of nature were encoded into the common law, and by extension the English constitution. Lobban has shown how common lawyers in the eighteenth century had tried 'to put the common law into a systematic framework, to show that it had rationality and comprehensiveness'.[83] This often involved 'putting the law into a Roman structure, and showing that it could be related to a series of source-based rights, which could be derived from … natural law'.[84] A Roman structure usually consisted of an emulation of Justinian's *Institutes*. Eighteenth-century Institutist emulators of this tradition tended to 'preface their works with a chapter on laws in general, which stood as introductory pieces'.[85] Lobban argues that these modern Institutists often used only the structure of Roman civil law institutes, and did not always rigorously attempt 'to show that the common law could be seen to fit a deductive system of reasoning' from that law of nature.[86] He characterizes Blackstone as an exception to this, since his *Commentaries* tried 'to show that reason was embodied in the English law'.[87] Capel Lofft's *Elements* is a similar Institutist project, containing an introductory preface on the source of laws in general, and representing a structural attempt to show how the English common law was the product of a series of deductive conclusions from rational first principles.[88]

The problem with the Institutist approach as employed by Blackstone was that legal deduction from abstract first principles of reason did not sit easily with the content of the English common law.[89] Blackstone's definition of the rational laws of nature was vague, and he always deferred to existing custom and statutes over abstract principles of natural law in practice, although he attempted to maintain that existing law was in accordance with those principles by the presumption of the artificial rationality of custom. This ultimately meant that Blackstone's attempt to systematize the English common law into a deductive rational structure failed.[90]

Lofft, Cartwright, and Sharp, all of whom were familiar with Blackstone's *Commentaries*, reversed the dynamic of Blackstone's jurisprudence, by making the content of the common law defer to their conception of natural law, thus

[82] Cartwright, *The people's barrier*, p. 1.
[83] Lobban, *The common law*, p. 12.
[84] Ibid.
[85] Ibid.
[86] Ibid.
[87] Ibid., p. 27.
[88] Lofft originally wrote *Elements* in Latin, which gives a clue to his Roman structural inspiration.
[89] Lobban, 'Blackstone and the science of law', p. 334.
[90] Ibid., p. 333.

presenting their parliamentary reform platform as rationally implicit in the English constitution.[91] They first presented their principles, such as universal manhood suffrage, as rational, dictated by the laws of nature. They then attempted to show how these principles were necessarily implicit in the English common law, since nothing in the common law could be contrary to the law of nature. Let us examine how this dynamic was used to alter the political meaning of the 'ancient constitution'.

VII

As we have seen, the idea of 'reason' in Cokean common law jurisprudence was amenable to a definition that included, but was not limited to, the laws of nature. However, Lofft, Cartwright, and Sharp tended to define legal reason *purely* in terms of their conception of the law of nature, using 'law of reason' and 'law of nature' as interchangeable terms. Neither did they root their conception of the law of nature in the concepts of Roman civil law, nor in the work of continental authors such as Grotius or Pufendorf. Rather, their sources were eclectic, and they often tended to state that any principle they approved of was 'self-evidently' part of 'the law of nature'. Many of their sources for these principles were taken from scripture, since they assumed that the laws of nature and laws of God were identical.

The foundation of their conception of natural law was the equality of human beings in terms of their rationality and moral potential. This was conceived as having important implications for the natural *political* rights human beings possess under civil government. Lofft used his statement that 'BY THE LAW OF NATURE, ALL MEN ARE EQUAL' to argue in favour of universal manhood suffrage.[92] Liberty, understood as 'the power of acting according to a person's own will', must be, by nature's principle of equality, a 'right common to all men'. Such a principle can be accommodated in political society only by establishing laws according to 'common consent', which implies the superiority of 'A DEMOCRACY OR COMMON-WEALTH', a form of polity that Lofft sees, interestingly, as perfectly compatible with representation.[93] The right of voting was, as such, a natural right; as Lofft put it, 'competency to elect is regulated by the natural right of adult discretion, not by the arbitrary distinctions of property'.[94] Cartwright also made the equality of human beings, understood as rational and free-willing moral agents, the centrepiece of the law of nature. In *Take your*

[91] Cartwright cited Blackstone frequently, and according to Crabb Robinson, Lofft worked on a translation of Blackstone's *Commentaries* into Latin. See the letter in the Gratz Autograph Collection, Pennsylvania Historical Society, English Poets, 11, 1, cited in David Drinkwater-Lunn, 'John Cartwright: political education and English radicalism, 1774–1794' (D.Phil. thesis, Oxford, 1971–2), p. 55.

[92] Lofft, *Elements,* I, part IV, bk II, ch. I, p. 11.

[93] Ibid., I, part IV, bk II, ch. II, p. 13; ibid., I, part IV, bk III, part III, bk IV, ch. I, p. 113.

[94] Capel Lofft, *An argument on the nature of party and faction* (London, 1780), p. 49.

choice!, he claims that God, as part of the law of nature, 'add[ed] free-will to rationality, in order to render [men] beings which should be accountable for their actions', and thereby able to choose.[95] The political consequences of this are clearly spelt out: 'All are by nature free; all are by nature equal; freedom implies choice; equality excludes degrees in freedom.'[96] As such, only if 'all the commons … have an equal right to vote in the elections of those who are to be the guardians of their lives and liberties' can a polity be said to be in accordance with 'the great constitution of moral government, called the law of nature'.[97]

The equality of individual moral agents implicit in this view was often adjoined with Christian expressions of human equality, particularly in the work of Sharp. Sharp took the biblical injunction that 'thou shalt love thy neighbour as thyself ' as the basis of the fundamental law of nature.[98] The equality of all human beings as possessors of 'this universal faculty…conscience' implied political democracy.[99] As Sharp wrote, since all human beings can 'distinguish Good from Evil, so they are equally enabled (and indeed entitled) thereby to judge concerning the Legality of all human Ordinances'.[100]

The roots of this common natural law perspective varied. Lofft and Cartwright were both theologically heterodox, espousing Unitarian views, though both had an Anglican background and were not formally connected to 'Dissent' in an institutional sense.[101] They were both partly indebted to the natural law arguments of rationalist Anglican latitudinarian and fellow non-Trinitarian thinker Samuel Clarke (1675–1729).[102] Clarke's endowment of every individual with free-will and rationality, and consequent ability to perceive the objective moral 'fitnesses and unfitnesses' of the 'nature and reason of

[95] John Cartwright, *Take your choice!* (London, 1776), p. 21.

[96] Ibid.

[97] Ibid., pp. 22, 9–10.

[98] Granville Sharp, *A tract on the law of nature and principles of action in man* (London, 1777), pp. 67–8.

[99] Sharp, *A declaration*, p. xxxviii.

[100] Ibid., pp. xxxvii–xxxviii.

[101] There is no evidence that either Lofft or Cartwright attended Unitarian places of worship, such as Theophilus Lindsey's Essex Street Chapel or George Walker's High Pavement Chapel in Nottingham, and both were, at least in early life, nominally Anglican. For Cartwright's combination of an Anglican background and Unitarian views, see Rachel Eckersley, 'John Cartwright: radical reformer and Unitarian?' *Transactions of the Unitarian Historical Society*, 22 (1999), pp. 37–53; for Lofft's, see Ditchfield, 'Lofft, Capel'.

[102] For Clarke's influence on Cartwright, see Miller, *Defining the common good*, p. 298. Lofft's political perspective seems to have been significantly indebted to Clarke's theological and philosophical emphasis on the importance of free-will and human reason, as well as his ethical realism. See, for example, Capel Lofft, *Remarks on the letter of the Rt. Hon Edmund Burke concerning the revolution in France* (2nd edn, London, 1791), pp. 31–2; Capel Lofft to Henry Crabb Robinson, 27 Jan. 1806, London, Dr Williams's Library, Henry Crabb Robinson Correspondence, fo. 33, in which he praises Ralph Cudworth, whose moral perspective was similar to Clarke's, as a "first rate" theological writer; and *Eudosia: Or, a Poem on the Universe* (London, 1781), p. 230, wherein he praises the "visions of philosophic glory" of Samuel Clarke.

things', was deemed to have made self-determination a prerequisite of a morally meaningful life; as Peter Miller has shown, contemporary reformers were prepared to extend such reasoning to collective self-determination in a political sense, and thereby argue for an extension of political rights to all individuals.[103]

Sharp, conversely, as an orthodox Anglican, saw the human ability to partake of the 'divine Knowledge' of morality through the universal faculty of the conscience as a by-product of the Fall. The 'criminal usurpation of forbidden knowledge' thereby obtained allowed Adam and Eve's offspring to 'be rendered accountable to THE ETERNAL JUDGE', capable of both salvation and, conversely, 'Sin and Death'.[104] Furthermore, Sharp saw the divinity of Christ, and, therefore, Trinitarianism, as necessary to assist human beings, for 'the true Dignity of Human Nature cannot be attained without the Divine Assistance', mediated through Christ. This was, unsurprisingly, not a sentiment shared by Lofft or Cartwright.[105] It may suggest that the theological route to radicalism was not as exclusively non-Trinitarian as J. C. D. Clark has argued.[106]

Nonetheless, all three conceived of political democracy as rooted in the moral equality and rationality of individuals. This view was often linked to the common Protestant emphasis on the 'priesthood of all believers' and importance of the relationship between the individual conscience, Scripture and God. Opposition to reform was often equated with Roman Catholicism and its elevation of unrepresentative religious elites over the conscience of the individual. Sharp called the idea of 'parliamentary omnipotence' a 'kind of Popery in Politics', and Cartwright referred dismissively to 'our political Popes, who would fain have us distrust our common sense and our feelings, and believe implicitly in their infallibility'.[107] Such rhetoric was calculated to appeal to the conventional equation of papism with tyranny, and Protestantism with liberty, in post-1688 English political culture.

Overall, the sources utilized by Cartwright, Lofft, and Sharp to give their reformist principles the sanction of the 'law of nature' were eclectic. For example, the principle of self-preservation as the fundamental law of nature, found in most natural law authorities, but usually attributed to Locke by the radicals, was often invoked to justify the right of voting as the expression of the natural right to preserve oneself.[108] Often, they simply underpinned their conceptualization of proposed reforms as in accordance with the law of nature by

[103] Miller, *Defining the common good*, ch. 6.

[104] Sharp, *A tract*, p. 31.

[105] Ibid., pp. 211–12.

[106] For reasons of space, full justice cannot be done here to Sharp's combination of theological orthodoxy and political radicalism. For the background, see J. C. D. Clark, *English society, 1688–1832: ideology, social structure and political practice during the ancien regime* (Cambridge, 1985), pp. 277–8.

[107] Sharp, *A declaration*, p. xxix; Cartwright, *American independence*, p. 7.

[108] See, for example, Sharp, *A declaration*, p. 17; Cartwright, *American Independence*, postscript, p. 27.

an assertion of their 'self-evident' nature, 'evident in themselves, familiarly and generally understood' as Lofft put it.[109]

In the 1770s and 1780s, constitutional practice did not accord with these 'self-evident' principles. For Lofft, Sharp, and Cartwright, however, if the common law and the constitution were necessarily in accordance with reason (understood in terms of their conception of natural law), as many common law jurisprudential authorities were interpreted to have asserted, and if the principles of natural law prescribed practices such as universal manhood suffrage, then the common law of England, and therefore the constitution, must have contained, and should be made to contain again, these practices. Since the constitution could be deduced from the first principles of natural law, the common law had to be interpreted in a rationalized way. Deviation from these principles must have been an innovation whereby the common law was superseded by the rule of irrational sovereign will via statute. Statutes contrary to what they deemed rational, such as the Septennial Act, were particular targets on this analysis.[110]

In this conception, Coke's idea of the reason underpinning the common law as rooted in the 'professional erudition' of the legal profession and the inherent rationality of the system, which included, but was not reducible to, the laws of nature, was replaced by a definition of reason seen purely in terms of 'natural law'. Natural law was seen in turn as a law accessible to every individual as a rational moral agent, itself decreeing that equal and universal human moral competence; in other words, a new criteria for the means by which the law conforms to 'reason'. Cartwright, Lofft, and Sharp accordingly believed that statutes should be mere instruments whereby parliament, seen as the highest court in the land, channelled the reason of every individual moral agent into the law-making process, perfecting the common law. This would represent a situation whereby the constitution could be restored to its underlying accordance with the law of nature. As such, they looked for common law precedents to show how the common law, and hence the ancient constitution, were consonant with their democratic principles, and therefore with their construction of the law of nature. This often involved exploiting the ambiguity of, or misinterpreting, the maxims and principles of common law authorities.

For example, in *The people's barrier*, Cartwright uses a bricolage of maxims eclectically purloined from common law authorities, supposedly expressing both the spirit of the common law and 'the law of reason', to this effect. One such maxim, taken from *De laudibus legum Angliae*, a work by the early common law authority Sir John Fortescue, is that 'no king of England can change or make laws, or raise taxes, without the assent or consent of his whole kingdom in parliament expressed'.[111] A similar statement, that 'law, to

[109] Lofft, *An argument*, p. 7.

[110] See Lofft, *Elements*, I, p. lx; Granville Sharp, *The law of liberty* (London, 1776), p. 21; Cartwright, *The legislative rights*, pp. 55–60.

[111] Cartwright, *The people's barrier*, p. 4.

bind all, must be assented to by all', taken from Thomas Branch's collection of miscellaneous common law principles and maxims, *Principia legis et æquitatis*, is also cited.[112] Cartwright used these statements to back up his argument that all men, regardless of their property, should be allowed to vote for their representatives in parliament, and thereby consent to the laws. Cartwright contended that, historically, 'our statutes and ordinances spoke no other language than what was perfectly consonant' with these maxims (interpreted to sanction universal suffrage), such rational principles necessarily being implicit in the 'reason' of the English law.[113]

Lofft and Sharp used identical arguments and sources. Lofft observes that, historically, 'every freeman was present' in parliament by the means of 'a representative of his own choosing', since 'it is a maxim in the most ancient records of our jurisprudence' that 'no man shall be bound but those who assent'.[114] Sharp, at the start of *A declaration*, begins by reasserting the foundational point that 'the Common Law of England teaches us, that examples and precedents are not to be followed if they are unreasonable'.[115] One principle of 'natural equity' that must therefore underpin the common law, as a 'maxim of the English constitution', is that the 'law, to bind all, must be assented to by all', the same citation that Cartwright had used in *The people's barrier,* attributed to the same source, *Principia legis et æquitatis.*[116] Indeed, he then attacks Pufendorf for refusing to 'rank [this principle] with the Laws of Nature', attributing this to Pufendorf's schooling in the principles of the civil law, some of which are 'highly unreasonable and contradictory to the general equity' of the principles of 'Common Law of this Kingdom'.[117] Sharp is attempting to replace some of the assumptions of civil law and continental natural law theorists with his own principles as the historic basis of the stock of natural law principles underpinning the common law.

These attempts to show how the maxims of the common law were consonant with rational principles were flawed. Arguing that such common law maxims were proof of the presence of universal manhood suffrage within the common law are misinterpretations, misconstruing 'assent' as meaning the right to vote, and conceiving 'the people' more expansively than originally intended. This was because the historical accounts of the radicals were factually incorrect.[118] Whether Cartwright, Sharp, and Lofft were aware of these shortcomings or not, the strategy of using the authority of common lawyers'

[112] Ibid.
[113] Ibid., p. 31.
[114] Capel Lofft, *Observations on a late publication, entitled 'A dialogue on the actual state of parliament,' and also on a treatise entitled 'Free parliaments'* (London, 1783), p. 13.
[115] Sharp, *A declaration*, p. ii.
[116] Ibid., p. v.
[117] Ibid., p. vii.
[118] See Janice Lee, 'Political antiquarianism unmasked: the conservative attack on the myth of the ancient constitution', *Historical Research*, 55 (1982), pp. 166–79.

jurisprudential statements of the accordance of common law with reason, combined with creative interpretations of common law maxims designed to harmonize them with rationalist reformist demands like universal manhood suffrage, allowed them to argue within the boundaries of the powerful discourse of popular constitutionalism.

VIII

The radicals, therefore, ultimately deferred to abstract rational prescriptions, altering their accounts of the customs to fit in with these prescriptions while impugning the statutes contrary to them, a strategy that was the precise opposite to Blackstone's attempt to solve the problem of the contradiction between natural law principles, the common law and parliamentary sovereignty. With Blackstone, a countervailing positivism triumphed; with Lofft, Sharp, and Cartwright, the anti-positivist precepts latent in Blackstone's work became dominant, and consonance with the law of nature, mediated through the natural reason of individuals, trumped the will of the sovereign.

Lofft expressed this view emphatically, declaring: 'Natural Law prescribeth that right be preserved to all, every where and by all means at whatever cost; for this is an internal obligation to natures capable of moral knowledge, without respect to consequences or external ends.'[119] In direct response to Blackstone's legal positivism, Sharp contended that 'that worthy Gentleman needs only to be reminded, that if it should unfortunately happen, that "what the Parliament doth" is in the least contrary to the Laws of Reason, Nature … it is null and void'.[120] Cartwright likewise argued that 'whatsoever command contradicts nature, divine revelation and common sense, must be *malum in se*, bad in itself; and no power nor authority whatsoever can give such an ordinance the force or virtue of law'.[121]

This had thoroughgoing practical implications. As we have seen, the natural law, as they conceived it, dictated the equality, rationality, and free-will of all individuals, which theoretically invested sovereignty in the people, and, practically speaking, in a reformed parliament as a genuinely representative institution, notions their jurisprudential assumptions implied 'must' have underpinned the historic constitution. The implications of this for the dominant, Blackstonian conception of parliamentary sovereignty, in the context of the debates on the American crisis, were far-reaching.[122]

Defenders of the status quo assumed that the British crown-in-parliament had the right to impose its will upon the American colonists. For Cartwright, Sharp, and Lofft, however, the fact that the law of nature underpinned and regulated

[119] Lofft, *Elements*, I, p. 191.
[120] Sharp, *A declaration*, pp. 234–7.
[121] Cartwright, *The legislative rights*, pp. 55–6.
[122] H. T. Dickinson, 'The eighteenth-century debate on the sovereignty of parliament', *Transactions of the Royal Historical Society*, 26 (1976), pp. 189–210, at p. 190.

the constitution meant that no such legislative fiat could be constitutionally imposed upon the colonists without their consent. Thus, Cartwright contended that asserting British parliamentary sovereignty over the colonies was in principle '[assuming] a right of repealing the irrevocable laws of God'.[123] Cartwright referred to 'the glorious illegality' of the Boston Tea Party rebels, with the caveat that it is only 'illegal', 'if every statute, whether just or unjust, be properly comprehended in the word law', a statement implying that civil disobedience was justified when statutes, such as the Coercive Acts, were contrary to the law of nature.[124] Likewise, Sharp contended that 'the only right proposition' consistent with the 'principles … of Law, Equity, and sound Politicks' that underpin the English common law and constitution would be 'to do justice to our brethren of America' by acknowledging the principle 'of paying no other taxes than what are voluntarily granted by the people or their legal representatives'.[125] In *Give us our rights!*, Cartwright even endorsed domestic civil disobedience on these grounds, arguing that 'every one who is denied his vote for a representative, has a constitutional, and I will add, a legal exemption from taxes'.[126]

Cartwright took this discourse to its logical conclusion. For him, the constraints of the ethical sources of law meant even the people could not be allowed to breach them, and thereby their own moral agency (unlikely as that was in his view). For example, Cartwright argued that even if the people had approved the Septennial Act, 'it still…could not in the nature of things have obtained the virtue of law'.[127] This implied that the true 'sovereign' was, strictly speaking, the law of nature, rather than the people. Institutionalizing this idea was difficult. Cartwright's attempted solution went further than mere equitable statutory construction; he envisaged popular juries adjudging upon conflicts between statutes and the laws of nature, a form of judicial review facilitated by codifying those fundamental laws in the form of a written constitution.[128] Coke's reliance on the specialist 'artificial' reason of common lawyers was therefore replaced by Cartwright's belief that the equitable principles underlying the common law and the constitution were accessible to every individual as a rational moral agent.[129]

[123] 'A letter to Edmund Burke, Esq', appended to Cartwright, *American Independence*, p. 9.
[124] Cartwright, *American independence*, p. 61.
[125] Sharp, *A declaration*, p. 35.
[126] Cartwright, *Give us our rights!*, p. 17.
[127] Cartwright, *The legislative rights*, p. 60.
[128] John Cartwright, *An appeal, civil and military, on the subject of the English constitution* (London, 1799), pp. 257–8; John Cartwright, *A letter to the duke of Newcastle* (London, 1792), p. 101.
[129] There is a tension here: though Cartwright envisages the possibility of the people's consciences betraying reason, his solution is a further appeal to the people in the form of a popular judicial review by jury. The implication is that the impurities of even a reformed representation may require direct recourse to the people.

IX

Whereas seventeenth-century conceptions of the ancient constitution stressed the rights of the propertied against arbitrary taxation and prerogative, the jurisprudence drawn on by Cartwright, Sharp, and Lofft allowed them to radicalize the common law in such a way as to encode into the English constitution the rights of the *unpropertied* masses against arbitrary taxation and *parliamentary* sovereignty.[130] The Cokean conception of the common law as reason was revived and interpreted in a way that stressed the regulatory role of the law of nature as accessible to the 'erudition' of all, rather than just lawyers. By conceiving the 'law of nature' in such a way as to emphasize that political rights were inherent in the 'natural right of adult discretion', the common law, and thereby the ancient constitution, was given a heavily democratic construction. Cartwright, Sharp, and Lofft never cited Leveller sources, probably due to the problematically subversive connotations of Levellerism. However, there are echoes of the more radical Levellers in how they exploited the ambiguities between history and reason latent in the mainstream of Cokean common law jurisprudence to present the democratic rights of *all* Englishmen as both particular and natural. Cromartie concludes that the democratic potential of the Cokean idea that 'law was reason' was one cause of the 'post-Restoration disappearance of Coke's variety of legal theory'.[131] This disappearance was, however, only temporary; its resurrection came in the 1770s.

The conception of the dictates of the laws of nature advocated by Cartwright, Sharp, and Lofft tended to determine the nature of the ancient constitution that their common law scholarship 'uncovered'. In substance, this represented, to quote Clark, 'a revolution of natural law against common law' within the English legal and political tradition.[132] However, the synthesis of common and natural law sanctioned by their jurisprudential sources lent plausibility to their retention of an historical form for substantially rationalist arguments. Such a synthesis was influential in giving respectability to the popular constitutionalism of future waves of reformers, such as the radicals of the LCS, who cited the arguments of Cartwright and Sharp as their main inspiration in the 1790s.[133]

This anti-positivist, rationalist, and individualist jurisprudential paradigm also accorded with the mainstay of Protestant appeals to the spiritual and moral competence of the individual conscience. Just as, for Protestants, human will and institutions had no power to overturn the laws of God, as contained in

[130] This jurisprudence may have been applied to other issues, such as slavery. For example, see Sharp's *A representation of the injustice and dangerous tendency of tolerating slavery* (London, 1769), pp. 134–5.

[131] Cromartie, *The constitutionalist revolution*, p. 271.

[132] Clark, *The language of liberty*, p. 4.

[133] 'Thomas Hardy's account of the origin of the London Corresponding Society', in Mary Thale, ed., *Selections from the papers of the London Corresponding Society* (Cambridge, 1983), pp. 5–9, at p. 5.

Scripture and interpreted by individuals, so human will in the political sense of sovereign decrees had no power to overturn the laws of nature, which were also ultimately God's laws, as perceived by the individual political agent's conscience. The patriotic, Whiggish rhetorical force of appeals to this broad Protestant inheritance, despite differences of theological outlook, may provide evidence in favour of an approach to the relations between religion and radicalism in the era that emphasizes the commonalities of English Protestant experience rather than divisions between Dissent and Anglicanism, especially in light of the increasing appreciation of the tradition of enlightened and rational Christianity within the Church of England.[134]

[134] On this, see Knud Haakonssen, ed., *Enlightenment and religion: rational dissent in eighteenth-century Britain* (Cambridge, 1996).