

VINDICIAE GALLICAE
AND OTHER WRITINGS
ON THE FRENCH REVOLUTION

NATURAL LAW AND
ENLIGHTENMENT CLASSICS

Knud Haakonssen

General Editor

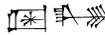
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*Vindiciae Gallicae
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on the French Revolution*

James Mackintosh

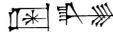
Edited and with an Introduction
by Donald Winch



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Frontispiece: Portrait of Sir James Mackintosh by Sir Thomas Lawrence, oil on canvas, exhibited 1804. Reproduced courtesy of the National Portrait Gallery, London.

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INTRODUCTION

The writings reprinted here trace James Mackintosh's involvement with the French Revolution from its hopeful beginnings in 1789 to the confused interlude between Napoleon's first and second abdications in favor of the restored Bourbon monarchy in 1815. They follow a path that was to become all too familiar to those who began as enthusiastic supporters of the Revolution, became disillusioned by its violence and autocratic outcome, and had to live with the consequences of renunciation for the rest of their lives. Those who wielded political ideas during this period ran the risks associated with handling high explosives—even those, like Mackintosh, who did so with eloquence, moderation, and learned illustration. Although Mackintosh shared this predicament with many others, his apostasy has some special features that lend historical interest to the way in which he attempted first to sustain and then to regain an intellectual stance on law and politics that would do credit to his upbringing as a Scottish “philosophic Whig.”

Mackintosh was twenty-five when he published *Vindiciae Gallicae* in 1791. He had left Scotland four years earlier to make a career in England, and having failed as a medical practitioner he was taking the first steps toward becoming a lawyer. Once settled in London he supported himself by journalism and had formed close associations with circles that were seeking reforms in the system of parliamentary representation. His defense of the French Revolution and its English supporters against Edmund Burke's charges in *Reflections on the Revolution in France* proved successful in advancing his prospects within the Foxite wing of the Whig Party in Parliament. It led to an invitation from some of its younger members to act as honorary secretary to the Association of the Friends of the People, and it was on behalf of this body that Mackintosh wrote the second work re-

printed here, an attack on the prime minister, Pitt the Younger, for renegeing on his own record as parliamentary reformer.

As a result of the violent turn of events in France after the September massacres of 1792, and the execution of Louis XVI and the outbreak of war between France and England in the following year, Mackintosh was forced to stage a retreat on all fronts. Although he continued to regard the war conducted against France by a coalition of European powers as both unjust and inexpedient, a war that for Burke had taken on the character of a holy crusade against revolutionary principles, Mackintosh became increasingly anxious to distance himself from his earlier defense of the Revolution. By 1796 he had made an elaborate personal apology to Burke and had begun to think of ways of making a public declaration of his change of view. The third work reprinted here, the introductory discourse to a series of lectures he gave on the “law of nature and nations” in 1799 and 1800, was the means he chose for revealing his change of position. It also served to advance his legal career, and it was through ministerial patronage that, in 1804, he obtained the post of recorder of Bombay, a judicial appointment that carried with it a knighthood. This gave rise to charges that he had sacrificed “principles” to “connections,” charges that dogged Mackintosh throughout his life and which his Whig friends were still anxious to rebut when they were repeated after his death in 1832.

Mackintosh hoped that his period of service in India would guarantee him financial independence and allow him to make progress with a number of scholarly projects: a history of England since the Revolution of 1688, a treatise on moral philosophy, and the life of Burke. Despite an ambitious program of reading, none of these projects was brought to fruition during the eight years he spent in India. Upon return to England in 1812, he resumed his political career and was returned as member of Parliament for Nairn in the following year. He also resumed his interest in French affairs and spent some weeks in Paris in 1814 before writing an article on the state of France for the *Edinburgh Review*, the last of the items reprinted here. It marks the end of a long period of engagement with French affairs and once more illustrates the hazards of attempting to combine punditry with sustaining a philosophical stance on politics. The article appeared during Na-

oleon's Hundred Days and ended with a firm prediction that a second Bourbon restoration was an impossibility, the event that actually occurred a few months later when Napoleon was defeated at Waterloo.

Although Mackintosh enjoyed a considerable reputation in Whig society, especially for his conversational powers, he never achieved the high executive office that his talents led him to expect. He found an outlet for his pedagogic skills as professor of law and general politics at the East India College at Haileybury, but he renounced a long-held dream of occupying the Edinburgh chair of moral philosophy when it became available in 1820 in favor of remaining at the disposal of his party in London. He managed to complete a three-volume *History of England* up to the Reformation but not the *History of the Revolution in England in 1688* (published in 1834 as a fragment). The nearest he came to writing a treatise on moral philosophy was his *General View of the Progress of Ethical Philosophy, Chiefly During the Seventeenth and Eighteenth Centuries*, a work for the *Encyclopedia Britannica* that completed a project begun by Dugald Stewart, who had held the chair of moral philosophy at Edinburgh when Mackintosh had been a student there.

Vindiciae Gallicae

Mackintosh's reply to Burke appeared late in a sequence of responses that began with Mary Wollstonecraft and continued with works by Catharine Macaulay, Joseph Priestley, and the first part of Thomas Paine's *Rights of Man*. As the Latin title indicates, and especially when compared with Paine's more popular and incendiary work (no mention of which appears in *Vindiciae*), Mackintosh's reply was written for an educated audience. While it vied with Burke in its use of rhetoric and historical learning, the distinguishing mark of Mackintosh's diagnosis of the state of French and English politics was his stress on "general causes." He claimed to be dealing with the "political and collective character" of institutions and events in France as opposed to Burke's emphasis on moral indictment and conspiracy between culpable individuals and groupings. On Mackintosh's reading of the evidence, prerevolutionary France suffered from a form of despotism attributable to the decline of its feudal aristocracy before other classes of

citizen had risen to take its place. Unlike England, France had not enjoyed the “natural” (if also “accidental”) benefits associated with the rise of the new commercial, professional, and moneyed classes, those who were better able to sustain representative institutions than the landed gentry. Since French society was incorrigibly diseased, the early measures taken to create new institutions around which the nation could be united were justified. These included the most revolutionary of the innovations, a unitary form of government centering on the National Assembly, the abolition of the corporate privileges attached to membership of the feudal ranks of nobility and clergy, and the nationalization of church property as backing for a new currency. Popular excesses and partial evils were not an essential part of the Revolution and could be attributed to the need to meet the threats posed by internal dissension and external invasion. In common with the Americans earlier, the French now had an opportunity to make conscious choices based on reason and the diffusion of more philosophical or scientific views on modern politics.

Mackintosh’s diagnosis and defense of the Revolution was based on an exuberant mixture of authorities: David Hume on the role of opinion and the middle ranks in politics and the impermanence of “Gothic” forms of government; Adam Smith on the connections between commerce, productive labor, and liberty; and Montesquieu’s account of the rise of absolutism in France at the expense of the *parlements*. To these was added invocation of a proud “Commonwealth” or republican tradition of resistance to absolute monarchy, with its Scottish heroes, George Buchanan and Andrew Fletcher, given due recognition. Finally, Mackintosh drew on the incipient historicism of “march-of-mind” assumptions contained in the work of the *philosophes* and Dugald Stewart: what could not be achieved at an earlier stage in the historical process was within the grasp of a new generation. Opinion was increasingly being formed by enlightened self-interest, giving philosophers a larger part to play in interpreting historical experience and in adapting institutions to meet the needs of a new “legislative age.” To this heady brew Mackintosh added a dash of Machiavelli on the occasional need to return to first principles and an appeal to Jean-Jacques Rousseau’s doctrines on equal “rights” and “general will.”

Mackintosh convicted Burke of failure to grasp the true nature of French institutions and the strains placed upon them by the impending bankruptcy of the ancien régime. Instead of invoking English constitutional history as the standard against which French developments should be judged, Mackintosh appealed to a more cosmopolitan European perspective, one that linked the fortunes of nations and had been enlightened by international commerce in goods and ideas. In place of Burke's appeal to precedent and inheritance, he was shifting the criteria for legitimate government into a future tense. Transparency rather than "imposture" was now required; a regard for public utility rather than mere deference to established authority was the emerging basis for citizenly obligation.

The debate provoked by Burke was as much concerned with the nature of the English constitution and the meaning of 1688 as it was with events in France since 1789. For Mackintosh the legacy of 1688 was genuinely revolutionary in the principles it had adopted, but it was also incomplete and had become corrupted. Royal "influence" and parliamentary venality had undermined the vaunted system of ministerial responsibility. The powers of impeachment and control over the state's finances possessed by the House of Commons were now merely nominal. Inequalities in the system of representation had become a form of oppression. The English statute book was a testament to "superstitious barbarism"; dissenters were excluded from the political nation; and the House of Commons no longer reflected popular will. It had become a conspiracy designed to implement ministerial edicts rather than a check on executive power. Revolution was not "at present" required in England, but it could be averted only by adopting reform. Events in France had "called forth into energy, expanded, invigorated, and matured" principles that had "so long suffered to repose in impotent abstraction" in the land of their birth.

It was on this note that the first two editions of *Vindiciae Gallicae* ended. In the section Mackintosh added to the third edition he confidently predicted that the Revolution would be permanent and that the efforts of a "confederacy of despots" to suppress it would fail. Such efforts would merely unite the French around their new institutions, and failure would mark the end of Gothic governments throughout Europe. Similarly, the

attempts by “church and king” mobs to harass dissenters and other English supporters of the Revolution were a desperate sign of the weakness of Toryism that could only contribute to its demise.

Letter to William Pitt

In *Vindiciae Gallicae* Mackintosh had charged Pitt with responsibility for reducing “popular control” over the House of Commons to a “shadow.” In this anonymous pamphlet articulating the position of the Association of the Friends of the People, he spelled out the reforms needed to make good the defects in the English constitution. He had moved on in one respect: he had either become less confident about the outcome of French events or, for tactical reasons, was maintaining that reforms were necessary whatever might be the outcome. Dissociating domestic reform from French principles had now become an essential part of the case for moderate reform according to English principles. In maintaining that success or failure of the revolution in France made reform essential, however, Mackintosh was still attempting to occupy the middle ground between Tory reaction and an increase in monarchical power on one side and democratical Paineite republicanism on the other.

Mackintosh’s proposals entailed—as previous reform efforts by Pitt himself had entailed—reduction in royal influence over the House of Commons via changes in the mode of election that would make it more “dependent upon the people, instead of being dependent on the Crown.” This was to be achieved via redistribution of those seats that could clearly be shown to be, if not actively corrupt, then unrepresentative of the many. No new principles of representation were on display, and references to the “people” and greater equality of representation remained vague abstractions. The attempt to prove that safe middle ground existed was doomed to failure in the circumstances created by periodic social upheaval taking place against a background of pan-European war with revolutionary France. The pamphlet represents Mackintosh’s most outspoken statement on the question of parliamentary reform. A quarter of a century was to elapse before he took up the cause again, and then it was to counter an

equally dangerous foe, the philosophic radical case for a uniform system of representation based on number alone.

Discourse on the Law of Nature and of Nations

This introduction to natural jurisprudence, defined as “the science which teaches the rights and duties of men and of states,” was initially published to allay the fears of Mackintosh’s hosts, the benchers of Lincoln’s Inn. He wanted to assure them that he was not about to repeat the errors of *Vindiciae Gallicae* by dealing with controversial constitutional issues, especially those connected with “first principles”: the origin of governments and what made them fit for legitimate obligation. In this he followed the example of his friend Dugald Stewart in the almost contemporaneous course of lectures on politics he was giving in Edinburgh. In the course of his lectures Mackintosh also launched a thinly veiled attack on the views of former friends within the reformist camp, notably the perfectibilist speculations of William Godwin, an action for which he later felt it necessary to make partial amends. Thomas Babington Macaulay, who was to inherit the material Mackintosh collected for his history of England, later defended his friend by saying that he was neither a Jacobin nor an anti-Jacobin. While the former judgment may have been accurate, Mackintosh came close to the latter in his remarks on Godwin; he also distanced himself from such earlier authorities as Rousseau.

The foundations of justice and of the correlative science lay in the universal rules of individual morality, wherever these were to be observed in the historical record of mankind’s moral sentiments based on “observation of common life.” Mackintosh traces the history of attempts to codify systems of law, giving pride of place to Grotius, Pufendorf, and Montesquieu, while maintaining that circumstances were now ripe for a modern compend constructed on more scientific principles and encompassing the wider range of evidence of social life provided by modern communications and the travel literature. The lesson so far as innovations were concerned was one of prudence and caution, with time rather than human invention being credited with the most wisdom. The complicated machinery of the

“mixed” English constitution was now held to embody liberties lost to less fortunate nations.

Mackintosh had taken a dim view of the lawyer’s retrospective approach to liberty in *Vindiciae Gallicae*. Burke was indicted by being aligned with the “mysterious nonsense” of Coke and Blackstone, those who argued on the basis of mere prescriptive genealogy and precedent. In the discourse, gradualism, indeed denial of the wisdom of constructive innovation, was the message, with Burke now being cited positively for his understanding of the need for slow adaptation of institutions to local circumstances and habits. Mackintosh advised the lawyers in his audience that legal knowledge was essential to history but equally that legal skills without comparative-historical understanding were barren. History now supported caution; its laws, when not respected, will undo the unwary reformer. Constitutional guarantees of liberty could not be found in a single written document à la Paine and the declaration of rights.

Even when unnamed, Scottish authors remained influential. Thus Mackintosh followed the line taken by Hume and Smith in abandoning the idea of an original social contract in favor of a stadial form of history, in his stress on liberty as security under the rule of law, and in his desire to make the machinery of law and government proof against the knavery of rulers and fellow citizens. But he departs, in conclusion, from these secular mentors, as Stewart had done before him, in making the rules of justice part of “that eternal chain by which the Author of the universe has bound together the happiness and the duty of His creatures.” A more mundane act of piety can be seen in Mackintosh’s attempt to reconcile the positions of Fox and Burke, leaders of the two wings of the Whig Party sundered by the French Revolution.

On the State of France in 1815

Mackintosh’s article was largely based on observations made during his visit in the previous year, though, ostensibly, it was prompted by two tracts by his friend Benjamin Constant and other recent works by English visitors to France. Between his own visit and the appearance of the article, Napoleon had escaped from Elba and formed an army that forced Louis XVIII

to leave France. Mackintosh recalls the brief hope of the first restoration that legitimacy and the liberties established by the Revolution could be combined, while at the same time he draws attention to those changes in the “condition and character of the French people” generated by a quarter of a century’s experience of revolution and war that made restoration of monarchy “as palpably hopeless as it is manifestly unjust.” In scorning the deliberations of the allies at the Congress of Vienna, and when criticizing the conduct of the restored monarchs, he shows the same hostility to the “confederacy of despots” he had first revealed in *Vindiciae Gallicae*. Although Mackintosh proved to be no more prescient about French and European events in 1815 than he had been in 1791, this does not detract from his analysis of the permanent changes in the structure of French society produced by the Revolution.

NOTE ON THE TEXTS USED IN THIS EDITION

The first edition of *Vindiciae Gallicae* appeared in April 1791, followed by a second in July correcting misprints that had arisen as a result of haste. A third edition appeared in August, containing an additional concluding section on the probable consequences of the French Revolution for European governments. The copy text employed here is that of the third edition, with the original pagination indicated by angle brackets. A fourth edition appeared in 1792; it varies only in its pagination. Since then the edition that has mostly been cited is that contained in Robert J. Mackintosh (ed.), *The Miscellaneous Works of Sir James Mackintosh* (3 vols., London, 1846, 3:2–166). This edition is marred by the numerous deletions and changes of wording and sense introduced by the editor, Mackintosh's son, presumably in an attempt to burnish his father's reputation.

All of Mackintosh's references to Burke's *Reflections* have been converted to refer to the Liberty Fund edition, Edmund Burke, *Reflections on the Revolution in France*, volume 2 of *Select Works of Edmund Burke* (Indianapolis: Liberty Fund, 1999).

The *Letter to Pitt* is based on the original pamphlet published in 1792.

The copy text of *A Discourse on the Law of Nature and Nations* is taken from the *Miscellaneous Works* (1:341–87). Additional material, chiefly footnotes, has been supplied from the third edition published in 1800. To this have been added extracts from the lectures printed in the son's edition of the *Memoirs of the Life of the Right Honourable Sir James Mackintosh* (2 vols., London, 1836, 1:111–22).

Finally, the copy text used here for Mackintosh's article for the *Edinburgh Review* on "The State of France in 1815," is taken from *Miscellaneous*

Works (1:185–202). The ending of the article omitted by the son has been added in an appendix and has been taken from the original article (no. 48, February 1815, pp. 505–37).

An asterisk, dagger, or double dagger indicates Mackintosh's original notes. Editorial notes identifying sources and giving translations are numbered. Editorial intrusions into the author's notes are made between square brackets.

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It would not have been possible to complete this edition without the expert assistance and persistence of Dr. Rachel Hammersley, Leverhulme Special Fellow at the University of Sussex and now lecturer in Historical Studies at the University of Newcastle-upon-Tyne, whose own work on the role of the Cordelier Club during the French Revolution will be published next year. The scholarly apparatus of notes, chronologies, and the *dramatis personae* are almost entirely her work. I am also grateful to Wendy Robins for help in the comparison of the various texts at an early stage in the project. For translation of most of the Latin and Greek quotations I am chiefly indebted to Leofranc Holford-Strevens, with my colleague Dr. James Shiel coming to the rescue on some quotations previously overlooked.

VINDICIAE GALLICAE.

DEFENCE
OF THE
FRENCH REVOLUTION
AND ITS
ENGLISH ADMIRERS,
AGAINST THE ACCUSATIONS OF
THE RIGHT HON. EDMUND BURKE;
INCLUDING
SOME STRICTURES ON THE LATE PRODUCTION
OF
MONS. DE CALONNE.

BY JAMES MACKINTOSH,

OF LINCOLN'S INN, ESQUIRE.

THE THIRD EDITION, WITH ADDITIONS.

LONDON:

PRINTED FOR G. G. J. AND J. ROBINSON,

PATERNOSTER-ROW.

1791

Advertisement

Had I foreseen the size to which the following volume was to grow, or the obstacles that were to retard its completion, I should probably have shrunk from the undertaking; and perhaps I may now be supposed to owe an apology for offering it to the Public, after the able and masterly Publications to which this controversy has given occasion.

Many parts of it bear internal marks of having been written some months ago, by allusions to circumstances which are now changed; but as they did not affect the reasoning, I was not solicitous to alter them.

For the lateness of its appearance, I find a consolation in the knowledge, that respectable Works on the same subject are still expected by the Public; and the number of my fellow-labourers only suggests the reflection—that too many minds cannot be employed on a controversy so immense as to present the most various aspects to different understandings, and so important, that the more correct statement of one fact, or the more successful illustration of one argument, will at least rescue a book from the imputation of having been written in vain.

Little Ealing, Middlesex,

April 26, 1791.

Advertisement to the Third Edition

I now present the following Work to the Public a third time, rendered, I hope, less unworthy of their favor.—Of *Literary Criticism* it does not become me to question the justice, but *Moral Animadversion* I feel it due to myself to notice.

The vulgar clamor which has been raised with such malignant art against the friends of Freedom, as the apostles of turbulence and sedition, has not even spared the obscurity of my name. To strangers I can only vindicate myself by *defying* the authors of such clamors to discover one passage in this *volume* not in the highest degree favorable to peace and stable government. Those to whom I am known would, I believe, be slow to impute any sentiments of violence to a temper which the partiality of my friends must confess to be indolent, and the hostility of enemies will not deny to be mild.

I have been accused, by *valuable friends*, of treating with ungenerous levity the misfortunes of the Royal Family of France. They will not however suppose me capable of *deliberately* violating the sacredness of misery in a palace or a cottage; and I sincerely lament that I should have been *betrayed* into expressions which admitted that constuction.

Little Ealing, August 28, 1791.