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**IN DEFENCE OF INTRINSIC HUMAN RIGHTS:
EDMUND BURKE'S CONTROVERSIAL PROSECUTION OF
WARREN HASTINGS, GOVERNOR-GENERAL OF BENGAL**

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Abstract

For the first time, this article examines the impeachment trial of Warren Hastings from a human rights perspective. Even now, the seven year impeachment trial retains a degree of controversy, particularly as to its merits, and to the motivation of Edmund Burke, the man responsible for holding Hastings to account. The trial resulted in the clash between the reality of Britain's colonial expansion for many contemporaries and a defence of the intrinsic human rights of the Company's Indian subjects. If for many, it is debatable as to how successful Burke was in raising awareness of 'human rights' and whether the impeachment trial brought about any tangible results; this article argues not only that Burke's awareness of 'human rights' as a concept which could be defended by a court of law was for the late eighteenth century revolutionary but also that its legacy has a current resonance. In order to address these issues an exploration is provided of the events which gave rise to the impeachment, namely the role of Edmund Burke, and the political and moral concerns surrounding the East India Company's administration of a substantial part of modern India and Bangladesh. The political attempts to hold the Company to account will also be discussed, with particular reference as to why Burke felt the need to impeach Hastings. Finally, consideration will be given to the use of impeachment as a method of accountability and parallels that can be drawn with the modern inquiry and the human rights dimensions thereto.

Keywords: Warren Hastings, human rights, East India Company, Edmund Burke and impeachment, Chilcot Inquiry.

Introduction

Human rights today are enshrined in the European Convention on Human Rights and the United Declaration of Human Rights. The concept of legal sanction for abuse of rights is on an international level demonstrated by the International Criminal Court at The Hague. The impeachment of Warren Hastings remains controversial as does Burke's role as the trial's instigator. However, amid the controversy, there was an attempt in the late eighteenth century to prosecute Britain's most important colonial administrator for abusing the rights of the indigenous population. Burke viewed the administration in Bengal as morally oppressive and corrupt, and guilty of breaching the rights of Indians. The Company's Indian subjects deserved good government and not just protection from violent and physical oppression. Without wishing to

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strain the term *human rights*, Burke held that rights (namely, the right of subjects to be governed for their benefit) were to be enjoyed by all humans regardless of geography. The protection of rights, was according to Professor P.J. Marshall an end in itself for Burke.²

Hastings had his successes and failures, but his actions as Governor of Bengal from 1772 to 1773 and Governor-General of Bengal from 1773 to 1785, undoubtedly did much to protect British dominance in India. This in itself was significant. The article will explore the reasons for the impeachment. Burke's concept of rights will be discussed, as will the development of the political consensus to impeach Hastings. Ultimately, the question remains, was the British political establishment concerned with correcting the human rights abuses of Company servants (as emphasised by the arbitrary acts committed by Hastings), or rather, was the impetus to impeach Hastings part of a bigger attempt by the metropolis, to assert control over the East India Company? The impeachment of Warren Hastings is as relevant today as it was then. Abuses of human rights and the abuse of position are no longer tolerated, yet they still persist. The events leading to the impeachment and the arguments employed by Burke occurred a few years before the outbreak of the French Revolution. The fact that the trial took place at all, is a monument to the content of the political dialogue that was sustained in Britain at the end of the eighteenth century.³ What other country in the 1780s would have impeached a person such as Hastings?

Warren Hastings – Company servant and political outsider

Warren Hastings was an employee of the East India Company and not a Crown servant. Thus, he owed a duty to the Company, alongside serving the interests of the British state. As Governor-General he was technically responsible for all the Company's affairs and the administration of its territories in India. As the first Governor-General of Bengal, Hastings proved to be by far the most controversial. As a Company servant he proved incapable of reforming the corrupt system which prevailed in Bengal. The system was accused of condoning the exploitation of patronage, the abuse of bribery, systematic extortion and oppression of the Company's subjects. Consideration will be give below to contemporary and academic

² P.J. Marshall, *The Impeachment of Warren Hastings* (Oxford University Press, 1965) pp.15-16

³ This was also the era of the campaign to abolish the slave trade, with politicians such as William Pitt the Younger and William Wilberforce as participants. See Seymour Drescher, *Econocide: British Slavery in the Era of Abolition*, 2nd edn, (University of North Carolina Press, 2010); Stephen Farrell, Melanie Unwin and James Walvin, *The British Slave Trade: abolition, Parliament and people* (Edinburgh University Press, 2007).

assessments of Hastings' tenure as Governor-General, and the charges which formed the grounds for impeachment.

Hastings never enjoyed domestic political support, and his position as Governor-General depended on his supporters within the Company. Crucial to this was support he received in the Court of Proprietors, the body that represented the Company's largest shareholders. It was in part because of the political attempts to weaken the power of the Court of Proprietors, that Hastings decided to return to England in 1785; to find himself faced with the prospect of impeachment. This article will attempt to answer in part why Hastings found himself, in 1788, before the House of Lords in Westminster Hall, standing accused of high crimes and misdemeanours.

2 The Issues Behind the Impeachment

To do this fully would require consideration of a number of issues, and this article does not intend to provide a definitive account of these. Instead, it will focus on the rationale for impeaching Hastings. It is important to appreciate the role of Edmund Burke. Born in Ireland, Burke was a philosopher and an influential Whig politician. It is safe to conclude that, but for Burke, there probably would not have been an impeachment. Burke's concerns were wider than that of Hastings' conduct; they covered the entire conduct and remit of the East India Company. Criticism of how the East India Company and its servants were abusing their position, pre-dated the intervention of Burke. Nonetheless, it was Burke who in 1783 led the legislative attempts to make the Company accountable to Parliament.

Whether or not the impeachment produced any tangible reforms is controversial. But what cannot be denied is that Burke succeeded in forcing Hastings to defend his conduct before the House of Lords and the nation. Where previous political attempts had failed to bring the Company under Parliamentary scrutiny, if not full control, Burke had succeeded in holding the Company's key representative in India to account for the failings of the system he had been responsible for whilst Governor-General. The actual impeachment trial process remains immensely controversial. Put simply, did Edmund Burke unfairly set out to ruin the career of Warren Hastings? Were there merits in the prosecution manager's case against Hastings? If there was some merit in the charges, did it justify the descriptions of Hastings as evil incarnate and devoid of all good character? Many academics such as Paul Langford doubt that Burke's

judgment of Hastings can be entirely justified.⁴ This is a view that Marshall, one of the leading historians of British India, has also supported, commenting 'It is impossible to endorse Burke's extravagant vituperative depiction of him in terms such as the "captain-General of iniquity".⁵

The constitutional crisis of 1783-84

The fall of Lord Shelbourne's ministry in 1783, over the terms of the peace treaty with the United States, left Britain without a government. Through a series of complex political events and intrigue, Charles James Fox joined forces with Lord North to form a coalition in 1783.⁶ Combined, both their Whig factions commanded the support of the House of Commons but George III initially refused to ask the coalition to form a government⁷. Having failed to find an alternative to the coalition, as William Pitt the Younger refused to form an administration, the king then threatened to abdicate and retire to Hanover.⁸ The king's reluctance to contemplate being in a position where he was forced to invite the coalition to form a government led to a constitutional crisis; one that threatened the eighteenth century constitution. Crucially, both before and after being in government, the coalition was able to command the support of the Commons. However, the king was initially adamant that he had the right to choose ministers who were personally amenable to him.⁹ The king, anxious to defend his prerogative powers which he believed entitled him to appoint the ministers that he wanted, only reluctantly invited Fox and North to form an administration and they never enjoyed full royal confidence.¹⁰ Once in power, as well as dealing with the American situation, the coalition was tasked with reforming

⁴ Paul Langford, 'Burke, Edmund (1729/30-1797)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004 (hereafter, *Oxford DNB*).

⁵ Peter J Marshall, 'Hastings, Warren (1732-1818)', *Oxford DNB*.

⁶ Lord North had headed the government from 1770-1782; in the Fox-North coalition he was to become Home Secretary.

⁷ John Cannon, *The Fox-North Coalition: Crisis of the Constitution, 1782-4* (Cambridge University Press, 1969) p.50. The coalition believed that the king's powers should be reduced and that the House of Commons should be able to have some choice over the selection of ministers. Both North and Fox believed in cabinet government rather than government by departments. North had agreed with Fox and had informed Fox, 'The King ought to be treated with all sort of respect and attention, but the appearance of power is all that a king of this country can have'. This extract is from Lord John Russell (ed.) *Memorials and Correspondence of Charles James Fox*, 4 vols, (Richard Bentley, 1853-57), vol II, p.38.

⁸ Cannon, *The Fox-North Coalition* p.99.

⁹ *Ibid*, p.70.

¹⁰ *Ibid*, pp.69-70. George III had guarded his prerogative powers against the House of Commons. Cannon states that the most effective power that the king had was to appoint ministers, as the right to veto legislation was in abeyance, the creation of peers dubious and the power to dissolve parliament too uncertain.

Indian affairs. The introduction of Fox's India Bill in 1783, was the most significant attempt by Parliament to assert control over the Company since the Regulating Act 1773.¹¹

The Bill would have finally made the Company accountable to Parliament.¹² The coalition (or rather Burke, who drew up the proposals) intended to pass control over the Company's commercial and political affairs to Parliament, bypassing the current administrative structure. Burke was adamant that the Bill was intended to benefit the Company's Indian subjects. However, the Bill was clearly not intended to strengthen the position of the Governor-General. It will be noted below, that Hastings had criticised the Regulating Act 1773 as limiting the ability of the Governor-General to act independently of his council. It was a 'suspicious' Bill according to Fox; one intended to prevent bad administration¹³. The Bill would create a Board of Commissioners to run the Company, who would take over responsibility from the Directors. The Bill intended to separate the political aspects of the Company from its commercial affairs, which would be run by eight assistants.¹⁴

The Bill proved controversial. According to C.H. Philips,

The Company was for the moment stunned, but by the 24th it had recovered its senses sufficiently to forward a petition urging that the Bill was an arbitrary defeasance of the Company's chartered rights and an unwarranted confiscation of private property'.¹⁵

The Court of Proprietors formed a committee that lobbied most constituencies against the Bill.¹⁶ Critics have accused Fox of abusing his position and attempting to seize the patronage of the

¹¹ The Regulating Act 1773 was regarded as being a failure. The Act had been passed to resolve the financial difficulties of the Company. The Company had promised to pay a yearly sum to the State and had defaulted. With the Company facing bankruptcy, Lord North's administration had intervened and supported the Company, but in return the government had attempted to gain control over the management of Indian affairs. The Act had created the position of Governor-General and the Council in Calcutta. This resulted in a state of virtual civil war between Hastings and the majority on the Council; because the Governor-General did not control the council and could be outvoted. Additionally, the Act created the Calcutta Supreme Court. The court would apply English law and would be headed by English judges. This led to a conflict between the existing legal system in Bengal and English Law. Such a conflict was resented and criticised by Hastings.

¹² Cannon, *Fox-North Coalition* pp.11; 106; 109, states that there was concern over the Madras servants' treatment of Governor Pigot, and the lack of government control over the Directors. The control the government could exercise was diluted by the power of the Court of Proprietors. The Court of Proprietors had prevented the recall of Hastings on several. The Proprietors had defied the House of Commons and prevented Hastings' recall, most notably in 1782, when the House had voted in support of a resolution tabled by Dundas.

¹³ *Ibid*, p.111.

¹⁴ William Hague, *William Pitt the Younger* (Harper Perennial, 2005) p.139.

¹⁵ C.H. Philips, 'The East India Company "Interest" and the English Government, 1783-4', *Transactions of the Royal Historical Society*, Fourth Series, 20, 1937, pp.83-101, especially p.86.

¹⁶ Philips, 'East India Company', p.88.

Company for his own political purposes. Importantly, the commissioners who were appointed to serve, were all associates of the coalition.¹⁷ Contemporary caricaturists (such as James Sayers) presented Fox as Kubla Khan, intent on usurping the finances of the Company.¹⁸ Pares notes that 'perhaps Fox has been somewhat unfairly treated from that day to this. Those arrangements were not the most important part of the Bill', however, he continues by pointing out that critics had 'argued that so long as the commissioners controlled Indian patronage, they and their friends would always have a majority in parliament itself'.¹⁹

The notion that George III might, if the Company was reformed, have Indian patronage at his disposal was also controversial; as this would risk overturning the constitutional settlement of 1688. Equally, the king had no wish to see the patronage of the Company at the Whigs' disposal. The House of Commons voted in support of the Bill. The king, with his power to veto legislation in abeyance, instructed Lord Temple to compel the House of Lords to reject the Bill. The king threatened that 'whoever voted for the India Bill were not only not his friends, but he should consider them as his enemies'.²⁰ Crucially, the king knew while he had failed in his previous attempts to find an alternative administration, he now could rely on Pitt to form a new administration.²¹ The threat worked and the Bill was defeated in the House of Lords. Following the Bill's defeat, the king demanded the resignation of the coalition. When this was not forthcoming, he dismissed the coalition and asked Pitt to form an administration.²² Pitt had been involved in the king's campaign to defeat the Bill in the Lords, assisting George III also in forcing the coalition out of office; but Pitt's administration lacked the support of the Commons. Now in opposition, the coalition attempted to force the king to dismiss Pitt, but he refused. It was clear that the king's actions, albeit unconstitutional, had attracted considerable public support. This is evidenced by an unprecedented number of popular petitions from across the country which

¹⁷ Cannon, *Fox-North Coalition* p.92. King George had refused to exercise his prerogative powers to create peerages, thus depriving the coalition of the patronage necessary to reward its followers. The successor administration was allowed to create peerages.

¹⁸ See James Sayers' 'Carlos Khan's triumphal entry into Leadenhall Street', 5 December 1783. The Company was based in Leadenhall Street and Sayers' caricature has Fox dressed as an oriental despot, sitting on an elephant, whose face is that of Lord North. Heralding Fox's arrival, is the trumpeter Edmund Burke. There is a map of Bengal hanging from Burke's trumpet. The caricature is implying that the coalition intends to loot the wealth of the Company.

¹⁹ Richard Pares, *King George III and the Politicians* (Oxford University Press, 1988), pp.126-127.

²⁰ Cannon, *The Fox-North Coalition*, p.133.

²¹ *Ibid*, p.133.

²² *Ibid*, pp.142-44.

defended both Pitt and the king²³. Cannon notes that 'No constitutional defence of the king's action is possible, nor was any attempted by his supporters'.²⁴ Nonetheless, the coalition had been forced from office.

An awareness of the subsequent chain of events triggered by this royal intervention is critical to any understanding of why the impeachment occurred. What is clear is that the Crown, with the support of the House of Lords, had protected the Company from coming under Parliamentary control or even being accountable to it. The king had been more concerned with protecting his prerogative powers (and keeping Fox out of power) than with defending the Company but nevertheless, the effect was that the Company benefited from the king's unconstitutional decapitation of a ministry – one that had commanded the support of the Commons.

The impact of the constitutional crisis cannot be underestimated. Burke's party were thrown out of office and the coalition was defeated by the king's supporters in the subsequent general election. The Tory government has been accused of being financially supported by the Company and its wealthy servants, notably men such as John Robinson²⁵ and Robert Atkinson,²⁶ the latter being the former agent of Paul Benfield who had come to notoriety in England as a result of his accrual of a huge fortune in India.²⁷ Burke regarded Indian money such as that accumulated by Benfield as being 'furnished by the oppression and devastation of

²³ *Ibid*, p.190. Cannon states that 200 public petitions were sent in support of the king, which was unprecedented. Fox was greeted in his own constituency with cries of 'No Grand Mogul! No India Tyrant, No Usurper! No Turncoat!'

²⁴ *Ibid*, p.142.

²⁵ Philips, 'The East India Company' p.96. According to Philips 'Robinson's Memoranda for the election of 1784 bear an interesting statement: " Parliamentary state of boroughs and situations with remarks, . . . and a wild wide calculate of money wanted for seats, but which I always disapproved and thought very wrong". Philips notes that perhaps he feared the organised buying of seats by the Indian interest. 'Nevertheless his fears did not stop him from approaching the "Nabobs" and magnates in question, nor Pitt from gathering subscriptions from them, and persuading the Company to oppose Fox at Westminster'.

²⁶ C.H. Philips, 'The New East India Board and the Court of Directors, 1784', *English Historical Review*, 55, 1940 438-46, pp.439-40. Atkinson had assisted George III and Pitt to cajole the House into rejecting the Bill. Atkinson, along with Benfield, was a creditor of the Nawab of Arcot and was responsible for trying to further 'ministerial and his own influence' at the Company's headquarters, plus the payment of the money owed him by the Nawab of Arcot. Crucially, Atkinson was involved in 'helping to organise Pitt's majority at the general election of April 1784'. Atkinson achieved the payment of these debts (see footnote 5), as in 1784 the new Board of Control 'ordered the payment of all the debts without investigation, thus fully meeting the wishes of Atkinson, Benfield, Macpherson, and others of the Arcot interest'.

²⁷ Peter J. Marshall, *The Making and Unmaking of Empires: Britain, India, and America c.1750-1783* (Oxford University Press, 2005) pp.236-37. Marshall states that after the death of Lord Pigot (sent to India to restore the Rajah of Tanjore, but obstructed by Benfield in particular), Benfield and other creditors 'felt obliged to extend their ambitions beyond trying to manipulate the Madras government to seeking also to influence the Company and ministers at home. Benfield bought himself into parliament in 1780'.

India'.²⁸ Horace Walpole noted that 'the [royal] court struck the blow at the ministers, but it was the gold of the Company that really conjured up the storm and has diffused it all over England'.²⁹ Such a view stresses the important role played by the Company, and its powerful employees, in supporting the king and thereby defeating the coalition. With the benefit of hindsight, Cannon is more cautious than the eighteenth century observers, and leaves open the view that there was a 'systematic attempt' by the Company to interfere; making the point that its actual role in these events is hard to trace. Nonetheless he does point out that 'some candidates at the general election were certainly tempted to hint that the resources of the Company were behind them'.³⁰ It is certainly arguable that those who stood to profit from seeing the coalition (with their anti-Company reforms) out of power might have provided support to candidates and fiscal incentives to voters, in order to help return anti-coalition candidates.

The opposition viewed the Company as playing a crucial role in the election. Burke accused Atkinson 'of keeping "a sort of public office or counting house where the whole business of the general election was managed"'.³¹ However, C.H. Philips argued that 'Great as was the part played by the Company in the general election, it was still vastly overestimated by the supporters of the Coalition'.³² Reflecting on the role of the Company in defeating the Bill, Peter Marshall argues that 'if Burke really believed that the "delinquency" of the Company's servants were "the ground upon which the late parliament stood and fell" he must have been the only person who did'.³³ Furthermore, Marshall doubts whether former servants would have had much interest in defending the Company.³⁴ But it is submitted that such a view is attractive, especially as men like Atkinson and Benfield had used their wealth to acquire a parliamentary following in order to defend *their* interests: namely, the repayment of the Nawab of Arcot's debts.

According to Pares, 'Fox himself never fully accepted the verdict [of the electorate]. In his eyes, the illegitimate origin of Pitt's Ministry, no matter how often ratified by the choice of the electorate, constituted a permanent taint that which could only be wiped out by resignation'.³⁵ Burke's motivations for impeaching Hastings are controversial (as much of the events

²⁸ Cannon, *The Fox-North Coalition*, p.219.

²⁹ *Ibid.*

³⁰ *Ibid.*, pp.220-21.

³¹ Philips, 'The East India Company', p.96.

³² *Ibid.*, p.97.

³³ Marshall, *Impeachment*, p.22.

³⁴ *Ibid.*, pp.24-25.

³⁵ Pares, *King George*, p.135.

surrounding the trial are), but it has been argued that his passion and unrelenting prosecution of the former Governor-General was obsessive, and that the campaign against Hastings presented a chance to release the frustration caused by the constitutional crisis of 1783-84.³⁶ As Paul Langford has written:

For the resulting frustration there has to be an outlet. Hastings was the unfortunate recipient of this energy. This not to say that there was any want of logic in the vigour with which Burke renewed his assault on the Governor-General. In his programme for Indian reform an exemplary inquisitorial prosecution had always seemed highly desirable. The entanglement of Indian questions in the constitutional crisis that had brought down the Fox-North coalition made its remedial value all the more evident.³⁷

It is easy to see why the events of 1783-84 cannot readily be disentangled from Burke's concerns over the welfare of Indians living under the Company's rule.

However, Parliament (including both the Whigs in opposition and the Government in the shape of Pitt and Dundas), did not give up attempts to bring the East India Company under some sort of control. The Regulating Act 1773 had been a product of state intervention to help the nearly bankrupt Company, facing a bill of £1,500,000 to the Government.³⁸ Parliament had loaned the Company £1,400,000 but had also responded to the crisis by attempting to exert control, by establishing the Council (to be filled by parliamentary appointees) and the Calcutta Supreme Court with jurisdiction to try Europeans; in effect to impose state control and curb abuses by Company servants.³⁹ The subsequent India Act 1784 was influenced by two Committees: the Select Committee whose members included Edmund Burke and the Secret Committee, chaired by Henry Dundas.⁴⁰ These Committees had investigated a wide spectrum of alleged corruption by and mismanagement of the East India Company and their Indian possessions. Of the two committees, Dundas' Secret Committee was the most influential, as it laid the framework for Pitt's India Act.⁴¹ As an ally of Pitt, Dundas' aborted attempts to draft legislation in 1783 on

³⁶ Conor Cruise O'Brien, 'Warren Hastings in Burke's Great Melody' in Geoffrey Carnall and Colin Nicholson (eds) *The Impeachment Trial of Warren Hastings* (Edinburgh University Press, 1989), pp.58-75, especially pp.71-72. O'Brien argues that Burke needed to get things off his chest and the impeachment provided an opportunity to do so. *Ibid.*

³⁷ Langford, 'Burke', *Oxford DNB*.

³⁸ Marshall, *The Making*, pp.210-12.

³⁹ *Ibid.*, p.212.

⁴⁰ The Select Committee was tasked with investigating complaints against the Calcutta Supreme Court. However, it took on a wider remit and investigated the company administration and Hastings. The Select Committee was guided by Philip Francis who supplied much of the evidence. The Secret Committee was concerned with the reasons for the outbreak of the Carnatic War.

⁴¹ Keay, *The Honourable Company A History of the English East India Company* (Harper Collins, 1991), p.389, quoting Lucy Sutherland, 'While the sensational and impassioned revelations of Burke's Select

reforming the Company were in part used by Pitt in his Act.⁴² Dundas, in 1782, had passed a resolution calling for Warren Hastings to be dismissed by the Company. This had been unsuccessful as the Court of Proprietors had defeated the Court of Directors' attempts to remove Hastings. The India Act 1784, which created the Board of Control, headed by Dundas, was intended to enable the government to assume more responsibility for Company rule in India. Unlike Fox's India Bill, however, the Act did not attempt clearly to separate the commercial and political roles of the Company.⁴³ C.H. Phillips has consequently called it a 'clever, dishonest bill'.⁴⁴

The Nabobs

Returning to the issue of the influence of the Company at home, the Company and its servants had regularly received negative publicity in Britain. The Company offered young men an opportunity to make a fortune. Those lucky enough to secure a position of a writer (albeit earning a small salary), could if they survived the hazards of India, amass a considerable fortune through private trade. They would be assisted by the authority of the Company and could rely on the Company's sepoys to intimidate the local population. The threat that these so-called 'Nabobs' posed to the constitutional status of Great Britain, in the eyes of Burke and his contemporaries, cannot be underestimated.⁴⁵ Returning home from India, these men were accused of buying their way into Parliament and marrying into the landed nobility. Benfield, a Company servant in Madras, had made his fortune through facilitating borrowing by figures like the Nawab of Arcot (the ruler of the Carnatic), and had then used his wealth to acquire a parliamentary following. Benfield was accused by Burke of supporting Pitt, and it did little to calm things down that the new government arranged the repayment of the Nawab of Arcot's debts to Benfield.

The Nabobs (Lord Robert Clive – Clive of India – being the most infamous) were the focus of much hostile parliamentary attention in the late 1760s.⁴⁶ Anxious to defend his own conduct

Committee "made some sweeping reforms inevitable", it was the more dogged and pragmatic deliberations of Dundas' Secret Committee which "laid down the nature of these reforms".

⁴² Michael Fry, 'Dundas, Henry, first Viscount Melville (1742–1811)', *Oxford Dictionary of National Biography*, (Oxford University Press, 2004).

⁴³ Cannon, *The Fox-North Coalition* pp.167-168.

⁴⁴ *Ibid*, p.169.

⁴⁵ According to Peter Marshall, there were continuing concerns about the corrupting influence of the nabobs in the 1790s. Marshall, *Making*, p.203 .

⁴⁶ Maya Jasanoff, *Edge of Empire: Conquest and Collection in the East 1750-1850* (Harper Perennial, 2006) pp.39-41.

whilst in India, and the acquisition of his considerable fortune (the product of establishing a puppet Nawab in Bengal), Clive was forced to return to Bengal in 1765, where he was tasked with reforming the 'Augean' stables of Company administration.⁴⁷ Ironically, Clive's calls for reforms (in classic poacher turned game-keeper mode) were attacked by Burke, who at that time was a defender of the Company and the Nabobs. Burke actually then announced his pride in the achievements of Company servants, saying 'I think there is something of a divine providence in it'.⁴⁸

The consensus to impeach Hastings

However, by the 1780s with Clive dead, Burke's attitude to the Company had changed. It was he who sounded the call for impeachment when Hastings returned to Britain in 1785. Burke had been assisted in the preparation of the charges by Philip Francis, a former member of the Calcutta Council. The decision to impeach Hastings depended on the support of the Pitt administration, since the Whigs were in opposition. Thus unless Pitt and his followers supported impeachment, then Burke's efforts could not produce anything other than heated rhetoric inside the Commons. It has been argued by Connor Cruise O'Brien, that Burke knew, from the outset, that the impeachment would fail; citing a letter Burke had written to Francis in 1785 when he commented that, 'We know that we bring before a bribed tribunal a prejudiced cause'.⁴⁹

Given that Burke's conviction that the Pitt administration was an ally of the East India Company, making it unlikely in his eyes that the Commons would vote for impeachment, the fact that Warren Hastings was impeached raises several questions.⁵⁰ What seems to have been crucial was the role played by Pitt and the influence of Henry Dundas.⁵¹ In considering why Pitt decided to support the impeachment, the historian is torn between emphasising the high-mindedness of the young Prime Minister or his calculated political gamesmanship, with an objective of defusing

⁴⁷ Clive had received a *jagir* for his part in promoting Mir Jafar to the position of Nawab of Bengal and providing military assistance in Bihar. This effectively made Clive a member of the Moghul aristocracy and entitled him to an income from the land, that he held as a feudal vassal of the Nawab. Notoriously, this land had been ceded to the Company and therefore the Company had to pay its taxes to Clive. Clive's actions in returning to India for a second term as Governor of Bengal in 1755 were motivated partly by a need to protect his income from Parliamentary reform. It is worth drawing a comparison between Clive and Hastings, as Clive unlike Hastings, had actively set about creating a considerable fortune from exploiting his position in the Company. See Jasanoff, *Edge of Empire* pp.40-41; Keay, *The Honourable Company*, pp.321-322; 371-373.

⁴⁸ Langford, 'Burke', *Oxford DNB*. The quote was originally taken from Paul Langford (ed.), *The Writings and Speeches of Edmund Burke*, (Oxford University Press, 1981), at 5.2.

⁴⁹ O'Brien, 'Warren Hastings', p.66.

⁵⁰ Langford, 'Burke', *Oxford DNB*.

⁵¹ O'Brien, 'Warren Hastings', p.66.

the wrath of Whigs whose electoral defeat remained an unresolved issue.⁵² Put simply, was Hastings a convenient lightning rod for Pitt, enabling him to divert the energies of the opposition from other issues. The impeachment certainly succeeded in neutralising the opposition's greatest orator for almost a decade.

3 Warren Hastings as Governor-General of Bengal

Warren Hastings' tenure as Governor-General of Bengal had proved extremely controversial. Hastings had attempted the reforms which the Directors wanted from him.⁵³ His revenue reform saw the land put to tender, where the highest bidder would collect rent on behalf of the Company; and the local population suffered as a result.⁵⁴ Hastings' reforms were based on a return to first principles; or in other words, restoring the 'best' features of Mughal rule. He believed both in governance by local methods and systematic reform. Hastings wanted to avoid the imposition of British values on native societies and was aware of the dangers of imposing of English law and governance upon the people of Bengal. He was thus critical of the creation of the Calcutta Supreme Court by the Regulating Act 1773, which applied English law to various situations in the territories under Company control. Indeed, he actually challenged its jurisdiction. Marshall notes that both Burke and Hastings believed that it was wrong to impose British culture, law and values on India.⁵⁵

Crucially, Hastings understood that the Company system was corrupt, excluding Company servants as far as possible from administration and revenue collection. He pursued a tortuous course where he 'discreetly shelved' the instructions of the Directors to investigate the alleged misconduct of Company servants, 'knowing that they would breed dissensions in his Council and distract attention from pressing business'.⁵⁶ Instead, he deliberately showed pragmatism by turning a blind eye to servants conducting illicit private trade and was unsympathetic when Lord Pigot, the Governor of Madras, was imprisoned by his council in retaliation for his attempting to curb abuses. Hastings actually supported Pigot's opponents (including Benfield) on the grounds

⁵² See C.C. Davies, 'Warren Hastings and the Young Pitt', *The English Historical Review*, 70, 1955, pp.609-22, where Davies states that Pitt's 'attitude to Warren Hastings, especially the reasons he gave for voting on the Benares charge, surprised, almost astounded his contemporaries. It has puzzled historians from Gleig to the present day, and will continue to do so until some fresh evidence is discovered'.

⁵³ Penderel Moon, *Warren Hastings and British India*, (English University Press, 1947), pp.144-45.

⁵⁴ Marshall, *The Making*, p.250.

⁵⁵ Marshall, *The Impeachment*, pp.181-82.

⁵⁶ Moon, *Warren Hastings*, pp.144-45.

that Pigot should also have been more pragmatic.⁵⁷ Hastings understood that, as Governor-Governor, he was exposed to many dangers and that he enjoyed very little government support. He was at war with his own Council (who actively sought to have him recalled and were openly gathering evidence against him), while the Directors and politicians expected that in return for their support, Hastings would appoint members of their family to key positions within the Company. Hastings also found the Company's other presidencies (Madras and Bombay) resisting his authority and keen to adopt their own foreign policy. Indeed this independent foreign policy would drag Bengal into costly wars with Mysore and the Maratha states (although Hastings supported Bombay in their scheme to place a puppet on the Maratha throne at Poona). With the outbreak of war with the French in 1778, Hastings faced the prospect of French intervention and coalition building in India. Faced with such difficulties, Hastings knew that in order to run his administration and protect himself from intrigue, he could not afford to be high-minded.

Hastings regularly clashed with his Council at Calcutta since all decisions needed to be approved by the five-man Council (including Hastings). With the Council engaged in a bitter internal war for much of Hastings' tenure as Governor-General, he faced a majority headed by Philip Francis which was mounting a campaign to undermine Hastings and get him dismissed. As far as possible, Hastings bypassed the Council, and so his rule was of a personal nature. He established good relations with Indian rulers; forming alliances with native states as equals and not as puppets. Although these alliances were intended to be for the Company's benefit, Hastings took controversial steps to save the British position in India (in the Rohilla War, towards the Begums of Oudh and in his treatment of Chait Singh) and so also supported the independent minded foreign policy of Bombay and Madras.⁵⁸ His behaviour was nonetheless despotic and arbitrary at times; something he attempted to justify by reference with the Mughal system of government and expediency. Hastings could be viewed as an enlightened despot: educated, enlightened, reforming but ruthlessly efficient. Tellingly, Lord Cornwallis, the man chosen to replace him, could hardly have been more different. Cornwallis was a pillar of the state as well as being a war hero like Clive (despite being defeated at Yorktown by George Washington and the French).

⁵⁷ Keay, *The Honourable Company*, p.399.

⁵⁸ Although the actions of the other presidencies were not directly sanctioned as policy by Hastings, who as Governor-General was technically superior, he found it expedient to support them when they occurred. This included sending reinforcements to assist Bombay against the Marathas after Bombay had supported a rival candidate at Poona, the Maratha capital.

Making the second British Empire possible?

Was Hastings the saviour of the British 'empire' in India?⁵⁹ But for Hastings' administration and his refusal to settle for peace at any costs, would the Company's position in India have become untenable?⁶⁰ According to Marshall, contemporary understandings of Hastings' role differed depending on whether the commentator was an ally or an enemy, with those in the latter category holding that the British Empire had been 'saved from a formidable challenge... in spite of him', not because of him.⁶¹ Marshall's own conclusion is that the British position 'had indubitably been saved' and that, whatever the viewpoint of Hastings contemporaries, 'Bengal had provided the resources which had enabled Indian and European enemies to be kept at bay'.⁶²

Hastings' policy was one of decisiveness and intervention, and on his own account he sought to resolve conflicts on his own terms. But his lack of control over the other Presidencies put him in a difficult position. In the Mysore Wars promoted by the Madras Presidency, however, he was furious when the Governor of Madras made a peace with Tipu Sultan that Hastings regarded as shameful peace on the grounds, he argued, that it would prove to be short-lived.⁶³ However despite this, his policy of decisiveness, his refusal to leave Bombay or Madras to sort out the problems of their own creating, combined with his actions to deal with the French, saved Britain's position in India during the American War of Independence. This was the only victory in the wider war for the British Empire, which included the loss of most of their North American colonies.⁶⁴ It contrasts with the attitude of the majority of his Council, headed by Francis, who favoured non-intervention and indecisiveness and so promotes the reputation of Hastings in the eyes of the historian.⁶⁵ According to William Hague, Hastings responded effectively to the Indian and French threat from 1779:

⁵⁹ Marshall, 'Hastings'. Marshall here provides an assessment on Hastings' claim to be the saviour of the Empire.

⁶⁰ Moon, *Warren Hastings*, p.226.

⁶¹ Marshall, *The Making*, p.370.

⁶² *Ibid*, p.370.

⁶³ Moon, *Warren Hastings*. In the event, Hastings was proved right since the 1784 peace with Tipu was short-lived. Like his father Haider Ali, Tipu Sultan was a formidable opponent of the Company and fought two more Anglo-Mysore Wars before his final defeat by Cornwallis. Had Hastings been able to defeat Tipu and then offer peace on his terms, would there as a consequence have been the basis for a long term peace which might have changed the dynamics of the British Raj later? For an interesting series of papers on Tipu's attempts to resist the Company see I. Habib (ed.), *Confronting Colonialism: Resistance and Modernisation under Haider Ali and Tipu-Sultan* (Anthem Press, 2002).

⁶⁴ Moon, *Warren Hastings*, p.231.

⁶⁵ *Ibid*.

He resolved the crisis with immense skill and ruthlessness, using, as one historian put it, 'diplomacy, bribery, threats, force, audacity, and resolution', demolishing every enemy and extending British power still further. In the process and perhaps inevitably, he committed acts of retribution against enemies and paid vast sums of money to allies. Such tactics produced the desired result, but, when written down on paper in the House of Commons and examined by high-minded people who had never set foot in India, they seemed to have a doubtful ethical basis, to say the least.⁶⁶

Hastings achieved peace, but it was at a cost and this enabled his impeachment.⁶⁷ Had he followed the advice of the majority on his Council, he would have possibly lost Madras and Bombay, the Indian Alliance would have remained unbroken, and the French would have regained a foothold in India. The successes of the Seven Years War would thus have been reversed. However, if Hastings expected rewards for his past services, then he was to find himself mistaken.⁶⁸ His achievements were steeped in controversy instead. Hastings had not pursued an interventionist foreign policy for the sake of territorial expansion. Both he and Burke shared the same ground in opposing an expansion of the Company's territory. Hastings instead favoured extending the Company's influence, by creating a system of alliances with the native states. One consequence was that Hastings encouraged Bombay's attempts to support a puppet ruler at Poona, and in doing so he used Bengal's resources to finance the scheme to support a rival candidate to the Maratha throne to prevent the French gaining influence. However, in this attempt to extend British influence he found himself facing an alliance of Indian states which meant that 'Hastings had to fight a desperate war on many fronts'. This proved costly as it drained 'Bengal's resources' and was to be used against him later.⁶⁹ His actions to raise the necessary revenue, when neither the British government nor Company could send him reinforcements and money because of the drain consequent on the American War of Independence, gave rise to the charges that focused on charges of his mistreatment of the Begums of Oudh and Chait Singh. Nonetheless Hastings' willingness to use force to convince his enemies of the Company's strength underpinned the expansion of British influence and, as Marshall comments, it did so sufficiently to enable its continuance after Hastings had left India.⁷⁰

⁶⁶ Hague, *William Pitt*, p.138.

⁶⁷ Mithi Mukherjee, 'Justice, War, and the Imperium: India and Britain in Edmund Burke's Prosecutorial Speeches in the Impeachment Trial of Warren Hastings' *Law and History Review*, 23, 2005, pp.1-29. Burke had accused Hastings of being a warmonger.

⁶⁸ Moon, *Warren Hastings*, p.234.

⁶⁹ Marshall, *The Making*, pp.255-56.

⁷⁰ Marshall, *The Impeachment*, p.185.

The financial situation facing the Company in the 1780s was dire and the Bengal administration (in order to continue the war effort, and support the other Presidencies) had to raise money from its own servants and from the use of bills of exchange which 'were drawn on London on a scale which threatened to create a new crisis'.⁷¹ Marshall observes that 'The situation would have been even worse if Warren Hastings had not resorted to levying resources from outside Bengal's borders'.⁷² Can Hastings' conduct be justified? The impeachment seems to suggest that there was, in the metropolis, an awareness that the rights of the Company's subjects were above military and commercial concerns. That being said, had Hastings refrained from acting, would his actions have been accepted as good government? Put simply Hastings required money – money that the metropolis was unable to provide. The Government and Directors had tried to remove him in 1776 and 1782 but had been defeated by his allies in the Court of Proprietors.⁷³ Hastings finally resigned, in part because of India Act 1784 took away the power of the Court of Proprietors; something Hastings viewed as an attack on his position, knowing he had lost the power to block any future attempts to replace him.⁷⁴

4 Was Hastings's Conduct in India Deserving of Impeachment?

Putting aside the flawed contemporary prosecution case, the question today remains whether Hastings' overall conduct was deserving of his seven-year-long ordeal and the subsequent destruction of his career? Marshall, when considering the merits of the impeachment trial, argues that it was undeserved, 'Few would now believe that he deserved impeachment, let alone being found guilty'.⁷⁵ Marshall notes that even Hastings' fiercest critic, Macaulay, did not believe that he deserved to be impeached.⁷⁶ Marshall provides a balanced account of Hastings' career, and evaluates his actions, within the historical context in which he operated. O'Brien is then one of the 'few' who have defended Burke's charges and the impeachment trial. He has written that, despite the irrationality of Burke's behaviour towards Hastings, 'There was a solid basis for the impeachment of Warren Hastings, and that the impeachment resulted in solid benefits for the people of India'.⁷⁷ O'Brien argues that the charges made against Hastings have 'not been shown to be inaccurate' and that when Hastings replied to the charges, his responses

⁷¹ Marshall, *The Making*, p.251.

⁷² *Ibid*, pp.251-252.

⁷³ Jeremy Bernstein, *The Dawning of the Raj: The life and trials of Warren Hastings*, (Aurum Press, 2000), p.163.

⁷⁴ John Riddy, 'Warren Hastings: Scotland's Benefactor?' in Carnall and Nicholson (eds), *Warren Hastings*, pp.30-57; 37.

⁷⁵ Marshall, 'Hastings', *Oxford DNB*.

⁷⁶ Marshall, *The Impeachment*, p.190.

⁷⁷ O'Brien, 'Warren Hastings', p.72.

'were generally bizarre, tangential and amnesiac, and never attained the status of a refutation'.⁷⁸ Furthermore, O'Brien argues that whilst the charges and detail introduced by Burke were 'remarkably consistent... Hastings' replies, on particular issues, appear in comparison, random and perfunctory'.⁷⁹

O'Brien, who had previously worked for the United Nations, is clearly advocating a view that Burke was not misguided in pursuing Hastings, and that the impeachment was deserved. O'Brien's view is not tempered by a consideration of the context of decisions Hastings made provided by the era in which they were made; such consideration as historians such as Sir Penderel Moon and Peter Marshall provide. They both offer varying degrees of criticism of Hastings, yet both ultimately rejected the view that Hastings deserved impeachment according to the mores of the time. By today's standards, Hastings conduct is unacceptable; but it would be wrong to judge him by the standards of the twenty-first century. If we were to do so, then Pitt who colluded with the king to bring down the coalition, would have also to be regarded as an enemy of the constitution, and unworthy of holding public office. However, Burke's defence of human rights is very attractive today, as unlike his contemporaries he genuinely believed in a form of good governance that would benefit the Company's Indian subjects. It will be argued that although Burke may have been ahead of his time and should be commended for his defence of universal human rights, his attack on Hasting was wide of the mark.

Did, then, Burke's impeachment trial and the rhetoric used serve any purpose?⁸⁰ Did the trial result in any tangible improvement in the human rights of Indian subjects of the company? Was good governance a result of the trial, and did it bring about an overall change of culture, including some restraint on company employee's aggressive policies, its exploitation of local peoples and events and its endemic corruption? Any answers to the above question are controversial. Importantly, whatever qualms contemporary British politicians and the public at large may have had about the conduct of Hastings and the acquisition of an empire, within a few years pride would be taken in what Hastings had achieved.⁸¹ Historians have voiced their

⁷⁸ O'Brien, 'Warren Hastings', pp.63-64.

⁷⁹ *Ibid*, pp.68-69.

⁸⁰ Burke's rhetoric has been compared with that of Cicero in the latter's prosecution of Verres. There is certainly a classical feel about the whole affair which is unsurprising given the emphasis on classics as the core of the curriculum in that period.. See Geoffrey Carnall, 'Burke as the Modern Cicero' in Carnall and Nicholson (eds) *Warren Hastings*, pp.76-90.

⁸¹ Jasanoff, *Edge of Empire*, p.48, has argued that in the 1780s '[t]he paranoia over nabobs had subsided' and that the British public had accepted British rule over India.

opinions about the merits of the trial, and their assessment of Hastings' conduct has depended upon often external factors and subsequent events.

Assessments of the merits of the trial and the overall record of Warren Hastings' administration depends on the identity of the author. Given the importance of Warren Hastings in the beginnings of academic interest in oriental learning, orientalists may be inclined to find it hard to reconcile Burke's charges, with the man who sponsored the organisation that became the Royal Asiatic Society, the translation of Sanskrit and the Bhagavad-Gita.⁸² Hastings was the only Governor-General to be able to speak the local language, enabling him to communicate with Indians on a personal basis. He attempted, via Dr Johnson, to establish a Chair in Persian at Oxford University.⁸³ His collection of Indian manuscripts later went on display in England,⁸⁴ When Burke drew upon the achievements of Indian law and traditions to undermine Hastings's defence for his actions as Governor-General, he was attacking a man who had based his administration upon the reform and use of Indian law and administration. Ironically, although Warren Hastings could be high-handed and cool, especially in the way he punished Chait Singh, he did respect what we would, today, call the 'human rights' of Indians and genuinely believed in equal treatment.⁸⁵

The Benares uprising and the arrest of Chait Singh

What happened at Benares in 1781 formed one of the articles of impeachment. Indeed, it was on this charge that Pitt first voted against Hastings. Chait Singh had been confirmed as ruler of Benares and had consequently agreed to make regular payments to the Company; but had fallen behind on the payments, and had then refused to supply the large number of cavalry demanded by the Company for its forces. Hastings arrived in Benares to resolve the crisis, and demanded that Chait Singh pay a large fine, which the latter refused to do. Subsequently, despite Chait Singh begging for forgiveness, Hastings' had him arrested. This led to a revolt in

⁸² Keay, *The Honourable Company*, p.422.

⁸³ W.H. Hutton, 'A Letter of Warren Hastings on the Civil Service of the East India Company', *The English Historical Review*, 44, 1929, pp.633-41; 640. In a letter to Lord Wellesley, Hastings discussed the creation of a college to train Company servants. Hastings stressed the importance of learning the local languages and told Wellesley of a plan he had made 35 years previously 'for the establishment of a professorship of the Persian language in the University of Oxford, and presented printed copies of it to all the gentlemen who had at that time the direction of the Company's Affairs... It met with no other encouragement and therefore dropped'.

⁸⁴ Jasanoff, *Edge of Empire*, pp.107-08.

⁸⁵ Keay, *The Honourable Company*, p.419. According to Keay, Lord Cornwallis testified at his trial that Hastings was 'beloved by the people' and 'Even Macaulay his fiercest critic, would credit him with, "a popularity such as... no other Governor has been able to attain"'.

Benares, when Chait Singh's followers rebelled against the Company and the prosecution would later accuse Hastings of causing this. However, Marshall holds that the uprising in Benares was not spontaneous, and that there had been preparation.⁸⁶ Hastings' sepoys took heavy losses in the fighting and the Governor-General was forced to retreat to a fortified position until assistance arrived. Hastings argued that he could properly make demands of Chait Singh, as he was a *zamindar*, and collected revenue on the Company's behalf; this meant that he also had an obligation to provide the required fiscal and military support which the Company required at times of crisis. Hastings, unlike those managing the prosecution at his trial, did not regard the position of *zamindar* as being the same as a hereditary prince.⁸⁷ A hereditary prince possessed territory which was independent of the Company but a *zamindar* was effectively a Company servant, meaning that Hastings felt he had the right to make such demands.⁸⁸

The outbreak of war in 1778 had exhausted Bengal's finances. As Moon observed, 'If the war was to be effectively carried on, it was necessary to look elsewhere for the extra funds'.⁸⁹ He also argues that the actual demands on Chait Singh were neither 'harsh or unwarranted'.⁹⁰ However, Hastings' 'general treatment of him... was both severe and unwise; and judged by his own high standards of courtesy towards Indian notables, it was deplorable'.⁹¹ Furthermore, Moon states that his conduct cannot be justified by the financial problems of the Bengal Government, but resulted from the 'fatal temptations of despotic power'.⁹² The prosecution at the impeachment trial argued that such conduct could not be justified by expediency; and further, that in making additional demands on Chait Singh, Hastings had violated the earlier agreement between Chait Singh and the Company.⁹³ Moon asks the reader to judge Hastings by the standards which prevailed in India at the time. However, could Burke with his awareness that rights were inherent, have accepted that such arbitrary conduct was justified? A sovereign prince (depending on the different interpretations of a *zamindar*) had been bullied into paying an exorbitant fine and then arrested, apparently simply because the Governor-General was not content with his demonstration of loyalty and servitude. Arguably this is the conduct that is

⁸⁶ Marshall, *The Impeachment*, p.108

⁸⁷ Hastings' own view of Chait Singh's status, that he was not an independent ruler, is supported by Moon, *Warren Hastings*, p.257.

⁸⁸ Marshall, *The Impeachment*, pp.91-92, providing a discussion of the two schools of thought on the interpretation of a *zamindar*.

⁸⁹ Moon, *Warren Hastings*, p.255.

⁹⁰ *Ibid*, p.271.

⁹¹ *Ibid*.

⁹² *Ibid*, p.272.

⁹³ Marshall, *The Impeachment*, p.91.

expected of a villain in the guise of King John in the twelfth, and not a British official in the eighteenth, century. This episode shows Hastings at his worst – a tyrant, acting outside the restraints imposed by the rule of law. Yet it is controversial, not because this was Hastings' normal conduct towards Indian subjects and vassals of the Company. It is, rather, controversial because it was exceptional.

Nandakuma

This is another problematic episode – does it have racist undertones by the standards of either the eighteenth century or today? For a man who had reformed the Bengali legal system and codified Muslim and Hindu law, and who had challenged the jurisdiction of the Calcutta Supreme Court, Hastings' willingness to allow Maharajah Nandakuma to be tried for forgery by the Supreme Court and executed, is and was extremely controversial.⁹⁴ Nandakuma was a member of the Brahmin class and had been involved with Bengali politics. Local Indian elites realised that they could exploit the power struggle between Hastings and the majority on the Council by attaching themselves to a faction and involving Europeans in disputes between different factions by persuading them to exercise their power on one side or another. Hastings himself had used his Indian auxiliaries as part of his strategy against the Council majority, maintaining an intelligence service which ensured he and his allies were aware of their campaign against him.⁹⁵ Equally, the other members of the Council had, on their arrival in Calcutta, also begun to gather information from similar sources – to act as evidence against Hastings. Nandakuma came forward to them with an allegation against Hastings, claiming the Governor-General had improperly accepted presents. According to Moon in the charges that Nandakuma made against Hastings contained 'one element of truth'. This was that Hastings had, when visiting Murshidabad in 1772, 'received a sum of Rs.1,50,000 from the Mani Begum as a sumptuary allowance at the rate of Rs.2,000 a day'. Moon points out, though, that

There was, however, nothing underhanded about this. The payment was regularly entered in the accounts of the Nawab's treasury, and, although the allowance appears to have been grossly excessive, it was sanctioned by usage and had been paid at this rate both to Clive and Verelst.⁹⁶

⁹⁴ See generally Peter J Marshall, 'Nandakumar, Maharaja (1705?-1775)', *Oxford DNB*.

⁹⁵ Lucy Sutherland, 'New Evidence on the Nandakuma Trial', *The English Historical Review*, 72, 1957, pp.438-46; 445-46.

⁹⁶ Moon, *Warren Hastings*, p.155.

Moon defends Hastings and his comment on the conduct of the Council majority is telling, 'the majority raked through all the filth of Calcutta in search of mud to fling at him'.⁹⁷ Sutherland notes that some of accusations made about Company servants could have been true, but that others were clearly false.⁹⁸ Her argument is that given the conflict between Hastings and the Council majority, this was 'bound to mean the presentation of a mass of complaints and acquisitions against the Governor'.⁹⁹

However, after the allegation against Hastings had been made, Bolaki Das came forward accusing Nandakuma of defrauding an estate of a dead man. The coincidence this charge arising at precisely this time has led historians to believe that it was far from accidental. Was Hastings complicit in this? Sutherland argues that 'the case, arising from an old dispute, was brought to a head by Hastings's Indian friends for political reasons'.¹⁰⁰ However, Sutherland continued that Hastings was probably not involved in uncovering and reviving the case.¹⁰¹ The role played by Hastings' allies was nonetheless important, as 'Without the backing obtained from the supporters of the Governor-General the prosecution would probably not have got under way'.¹⁰² Sutherland argues that even if Hastings' allies did not find the charge, they nonetheless played a crucial role in preventing a settlement and thus ensuring that the case reached court.¹⁰³ Marshall comments also that 'It is difficult to believe that Hastings was ignorant of this'.¹⁰⁴ However Hastings was not the real mover behind the trial: it was his allies. Macaulay, though, was later to insist that Hastings was the mover behind the charge of forgery, 'it was then, and still is, the opinion of everybody, idiots and biographers excepted, that Hastings was the real mover in the business'.¹⁰⁵

The Calcutta Supreme Court had jurisdiction to try the case, and the case was heard by Chief Justice Impey, who was a good friend of Hastings. The fact the case was tried by the Supreme Court remains controversial since Hastings had challenged its jurisdiction and had criticised the imposition of English law in Bengal. In this case, however, he stood to benefit from this

⁹⁷ Moon, *Warren Hastings*, p.155.

⁹⁸ Sutherland, 'New Evidence', p.439.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*, p.461.

¹⁰¹ *Ibid.*, p.462.

¹⁰² *Ibid.*, p.464.

¹⁰³ *Ibid.*

¹⁰⁴ Owen Dudley Edwards, 'Macaulay's Warren Hastings' in Carnall and Nicholson (eds), *Warren Hastings*, pp.109-144; especially p.135.

¹⁰⁵ Thomas Babington Macaulay, *Warren Hastings*, first published 1841, (John Long, 1905), p.53.

imposition. Forgery was a minor offence in Bengal; however under English law it was a capital offence. Impey presided over the trial, something which has led many historians to regard Impey as serving the interests of Hasting and so denying Nandakuma a fair trial. After the jury had convicted, Impey sentenced Nandakuma to death – a sentence considered at the time to be overly harsh.¹⁰⁶ Historians have subsequently debated whether Hastings should have intervened to save his accuser from the gallows. In 1841, Macaulay stated that Hastings ought to have intervened.¹⁰⁷ By contrast, Moon defends Hasting, denying that he had a moral obligation so to do.¹⁰⁸ Moon does admit, though, that ‘The injustice of hanging Nandakumar for forgery can have been apparent to no one more than Hastings’, given that Hasting had ‘frequently complained’ that it was an ‘injustice’ to impose English law on Indian subjects.¹⁰⁹

A number of historians from Macaulay on have regarded the trial as ‘judicial murder’. Macaulay stated that Impey should have given the sentence a reprieve, ‘he acted unjustly in refusing to reprieve Nancomar. No rational man can doubt that he took this course in order to gratify the Governor-General’.¹¹⁰ Macaulay has characterised Impey as a man who, when ‘sitting as a judge’ had ‘put a man unjustly to death in order to serve a political purpose’.¹¹¹ However, Moon has insisted that Hastings ought not to be criticised for not intervening, since ‘the trial itself and the actual verdict were not in any way unfair’.¹¹² It was the death penalty, not the verdict that was indefensible, for Moon.¹¹³ Marshall defends Impey, arguing that he ‘hardly deserved’ the reputation given him by Macaulay.¹¹⁴ Sutherland inflects the debate by arguing that Nandakuma died because the Supreme Court was independent of the executive and immune to bribery and influence. Impey had later claimed that he would have granted clemency had the Council majority requested it; something dismissed by Sutherland as unrealistic¹¹⁵.

We cannot escape the link between Impey and Hastings, and the obvious benefit to Hastings as a result of the Nandakuma's conviction and sentence. However, if a criminal offence had been committed and a jury had found the defendant guilty, then the judge had the right to impose the

¹⁰⁶ Sutherland, ‘New Evidence’, p.438.

¹⁰⁷ Macaulay, *Warren Hastings*, p.60.

¹⁰⁸ Moon, *Warren Hastings*, p.166.

¹⁰⁹ *Ibid.*

¹¹⁰ Macaulay, *Warren Hastings*, p.59.

¹¹¹ *Ibid.*

¹¹² Moon, *Warren Hastings*, p.164.

¹¹³ *Ibid.*, p.165.

¹¹⁴ Marshall, *The Impeachment*, p.61.

¹¹⁵ Sutherland, ‘New Evidence’, p.465.

death penalty.¹¹⁶ Such a penalty was imposed in Britain and therefore the fault can be directed at the Regulating Act 1773. But it is also undeniable, according to Moon, that but for his attack on Hastings, 'Nandakuma would probably never have been prosecuted, and would certainly not have been hanged'.¹¹⁷

Assessments on the merits of the impeachment

Moon is critical of Macaulay's assessments of Hastings, believing that Macaulay's Whig allegiances rather than a dispassionate assessment of the evidence were responsible for making him hostile towards Hastings, 'As a good Whig, Macaulay had to believe that he had been guilty of great crimes; otherwise the impeachment, which the Whigs had sponsored, would stand condemned as a gross injustice'.¹¹⁸ However, it has been argued that despite his criticisms of Macaulay, Moon 'gave significant support to many of his conclusions' and that the man that they both portrayed in their respective biographies of Hastings can be readily reconciled.¹¹⁹ Macaulay was writing in 1841, in response to Gleig's biography of Hastings which threatened to become 'hero worship' of the man.¹²⁰ While seeking to criticise him, Macaulay was actually not devoid of all sympathy to Hastings and does give him credit for his achievements. Equally, Moon's biography is, whilst defending Hastings, critical of his treatment of Chait Singh, the vassal ruler of Benares.¹²¹

The debate is ongoing. Historians such as Keith Feiling, unable to accept the impeachment charges against Hastings, have dismissed Burke's impeachment as, 'an infamy... with his raving vulgarity' and 'trading on the enormous ignorance of his audience'.¹²² Peter Marshall's *The Impeachment of Warren Hastings* does acknowledge the Governor-General's failings, but minimises these by locating them within the wider historical context of the time, stressing instead Hastings' achievements.¹²³ Marshall, though, has been criticised by Burke's biographer Conner Cruise O'Brien for dismissing the substance in Burke's charges against Hastings.¹²⁴ Instead, O'Brien presents the impeachment as a valid indictment of Hastings and has written

¹¹⁶ Sutherland, 'New Evidence', p.438. Sutherland states that few doubted that Nandakuma was innocent.

¹¹⁷ Moon, *Warren Hastings*, p.161.

¹¹⁸ *Ibid*, p.329.

¹¹⁹ Dudley Edwards, 'Macaulay', p.142.

¹²⁰ *Ibid*, p.110.

¹²¹ Moon, *Warren Hastings*, p.271. Moon regards this as a blot on Hastings' character.

¹²² Carnall, 'Burke', p.77.

¹²³ See generally Marshall, *The Impeachment*.

¹²⁴ O'Brien, 'Warren Hastings', p.67.

that the charges were weighted in fact.¹²⁵ The Burke characterised by O'Brien may have used rhetoric and language that caused women to faint.¹²⁶ However, according to O'Brien, in his defence, Hastings could not produce evidence which clearly defended himself against Burke's charges – something where he differs from Marshall.¹²⁷ According to O'Brien, Marshall's assessment of Hastings is generally well balanced, but is open to criticism when, for instance, it comes to his assessment on the accusations of bribery.¹²⁸

Hastings as a subject is extremely controversial. He was very hardworking and achieved a great deal against remarkable odds. His Governorship was marred by the endemic infighting within the Calcutta Council which he did not cause. Nonetheless, he craved ultimate power in the Bengal Council, and expected to be rewarded upon his return from India. Faced instead with the threat of prosecution, Hastings reacted to Burke's attacks with disbelief and contempt. Historians have noted that Hastings' letters home were calculated propaganda and that Hastings and his allies were able to command considerable support in the Court of Proprietors. Should be seen not as the victim of unfortunate proceedings, but rather as someone who was capable of commanding support from many of the largest shareholders in the Company?

5 The Impeachment Trial: Legal and Political Recourse.

The British Parliament in the late eighteenth-century, much like the present day American Congress, could exercise the power to impeach public officials for committing offences termed high crimes and misdemeanours.¹²⁹ Although the impeachment trial is no longer part of British political life, impeachment as a process has become widely known to the British public through the United States, where Republican attempts to impeach Bill Clinton dominated the news in the late 1990s.¹³⁰ Impeachment trials take place in the political arena. However, to bring an impeachment charge, a criminal offence had to have been committed.¹³¹ Despite the political dimension and location, an impeachment was nevertheless a criminal trial and the rules of criminal procedure and evidence applied. The Commons would vote on each charge and

¹²⁵ Ibid, pp.63-69.

¹²⁶ It was Mrs Sheridan who famously fainted at Burke's description of atrocities.

¹²⁷ O'Brien, 'Warren Hastings', pp.63-69.

¹²⁸ Marshall, 'Hastings'; O'Brien, 'Warren Hastings', p.67.

¹²⁹ Pares, *King George*, p.93. See also Article 1 of the United States Constitution, which states that under Section 2 that the House of Representatives 'shall have the sole Power of Impeachment', whilst under Section 3, 'The Senate shall have the sole Power to try all Impeachments'.

¹³⁰ The last British impeachment was that of Henry Dundas, Viscount Melville in 1806. Dundas was acquitted.

¹³¹ Theo Dwight, 'Trial by Impeachment', *The American Law Register*, 15, 1867, 257-283, p.264

thereby decide if there was a case to answer. The Commons would then appoint prosecution managers, to prosecute the defendant at the trial. The House of Lords would then decide whether the prosecution had successfully established the defendant's guilt.¹³²

Impeachment trials had originated in the fourteenth century and were used against those of the King's officials who were accused of abusing their positions. They had taken a prominent role in the seventeenth century as the Stuart monarchs and Parliament had clashed, providing Parliament with the means to check the power of the executive. As Turley notes:

Rather than addressing criminal conduct exclusively, these English impeachment trials allowed Parliament not only to punish abusive officials but also to respond to Crown policies in the absence of more representative devices... During the 1600s, Parliament repeatedly used impeachment to exercise control over Crown officials in the absence of alternative constitutional means. Between 1620 and 1649, over one hundred impeachments were passed by the House of Commons.¹³³

It was impeachment which had helped secured Parliament's ascendancy over the Crown.¹³⁴ Parliament in the seventeenth century had initiated impeachment proceedings against, amongst others, the Earl of Strafford and Archbishop Laud. However, Strafford and Laud were eventually condemned without trial and executed by Acts of Attainder.¹³⁵ Acts of Attainder were 'pure legislative acts' and could be voted on by the House of Commons, whereas impeachment involved a judicial process.¹³⁶ It was as a consequence of the rule that criminal law, procedure and the law of evidence had to be applied in impeachment trials that the House had, in the 'excitement' of the day, resorted instead to Acts of Attainder to deal with these two royal servants.¹³⁷

Traditionally impeachment had been a way to make the monarch's officials accountable to parliament but the ascendancy of Parliament by the early eighteenth century meant that it then became a politically partisan device used by parties in power to punish their political enemies.¹³⁸ Parliament had no formal source of authority for impeachment trials but its fused legislative and judicial role saw Parliament hold itself responsible for holding individuals to account for 'criminal'

¹³² See generally A.W Bradley, 'Personal responsibility and government – a role for impeachment?' in Carnall and Nicholson (eds) *Warren Hastings*, pp.164-85.

¹³³ Jonathan Turley, 'Senate Trials and Factional Disputes: Impeachment as a Madison Device' *Duke Law Journal*, 49 (1999), 1-146, pp.11-12.

¹³⁴ Dwight, 'Trial by Impeachment', p.263.

¹³⁵ Bradley, 'Personal responsibility', p.168.

¹³⁶ Dwight, 'Trial by Impeachment', p.261.

¹³⁷ Dwight, 'Trial by Impeachment' p.266.

¹³⁸ Bradley, 'Personal responsibility' p.168.

acts of high crimes and misdemeanours. William Blackstone held that the 'union of legislative and judicial powers', whilst best avoided, could be justified in impeachment as the defendant 'may infringe the rights of the people and be guilty of such crimes as the ordinary magistrates either dares not or cannot punish'.¹³⁹ Therefore the House of Lords was the only court capable of bringing the defendant to trial.¹⁴⁰ Burke believed that because the Lords were not elected, they were the most suitable court to try Hastings. The House of Lords would be impartial and rise above the pure national interest; something that Burke believed the House of Commons was unable to do.¹⁴¹

The independent inquiry: A modern form of impeachment?

Impeachment as a method of public accountability had become obsolete even by the time of the Hastings trial, as parliamentary censure had become a more effective way of holding ministers to account.¹⁴² The Hastings and Dundas impeachment trials did nothing to convince contemporaries that it was an effective process. Writing in 1867, Dwight argued that there had been no impeachment in England for 50 years, because:

There is no *political* reason for impeachment, as the power of the Commons is never resisted by a minister or the Executive. In fact, it may be said in a representative government, that the absolute cessation of impeachment indicates that the legislative department has triumphed over the executive and his agents.¹⁴³

However, if impeachment was exercised today by Parliament it is worth considering whether any recent public figures would have faced anything more arduous than a public inquiry for alleged 'high crimes and misdemeanours'? The Chilcot Inquiry certainly invites comparison with the Hastings impeachment.¹⁴⁴ The Government of the day has agreed to investigate a controversial event, yet one which was supported by members of the then opposition and the star attraction is the former premier Tony Blair. The panel, diplomats and civil servants question Blair for an entire day; proceedings which are then dissected and broadcast by the media. This is very symbolic and the consequences of a negative finding by the inquiry are questionable. The Chilcot inquiry is much less than an impeachment, but it is also more than an inquiry; it is a

¹³⁹ William Blackstone, *Commentaries of the Laws of England*, (10th edn, vol IV, 1787) p.19.

¹⁴⁰ Dwight, 'Trial by Impeachment' p.263. According to Dwight the 'cumbrous process of impeachment' was resorted to because certain persons could exercise influence over the common law courts.

¹⁴¹ Mukherjee, 'Justice'

¹⁴² Pares, *King George* p.93. Turley, 'Senate Trials' p.21. Turley states that impeachment is no longer used in the United Kingdom, because 'Ultimately, the advent of the cabinet government and the ability of Parliament to force new elections were the chosen methods of addressing legitimacy issues'.

¹⁴³ Dwight, 'Trial by Impeachment', p.282.

¹⁴⁴ The Chilcot Inquiry is officially known as the Iraq Inquiry. See <http://www.iraqinquiry.org.uk/>.

media junket and prime time viewing. The rhetoric does not come from the inquiry members, neither are they prosecutorial in their approach – instead this dimension is supplied by commentators, members of the public and the audience. The fact that a former premier can be held to account at all is important. Short of a criminal investigation it would otherwise be difficult to imagine this degree of accountability. Whatever the findings of the inquiry, a former premier, ministers, senior civil servants and political aides have been required to answer some uncomfortable questions. This is actually what was important about the Hastings impeachment trial: it was the fact that there was a trial and that the reason for it was advertised as being the imposition of public accountability that was crucial. The actual outcome was irrelevant.

If the House of Commons could vote to impeach today, would impeachment be an option following a Report that might highlight serious errors of judgment and illegality by politicians and civil servants? Would modern politicians face the threat of impeachment after their time in government, or – as in the case of Dundas in 1806 – whilst serving on the front bench? The Hastings impeachment is controversial because it can be dismissed simply as symbolic and lacking substance. An alternative perspective is that it provided Parliament with the necessary recourse to hold a powerful figure to account for his actions, forcing a public explanation. Certainly Parliament has the legitimacy to do this, as it is the legal sovereign and represents the electorate. With the banking crisis and more recently the phone hacking allegations against News International, would Parliament be able to exercise accountability over the banking sector by developing the recourse to impeach anyone who is accused of gross incompetence or criminality that affects the public sector? Whatever the conclusion, it has to be accepted that, like the Chilcot Inquiry, an impeachment provided a spectacle and carried a clear message: however, symbolic and questionable its merits.

It is submitted that Parliament might resume a modified version of impeachment. It is acknowledged that this is controversial and invites deserved and heated criticism. Thomas Erskine had criticised the use of impeachment when there was a risk that an error of judgment could amount to a criminal charge, and where guilt or innocence would inevitably depend also on political factors.¹⁴⁵ However, unlike the United States, whilst the vote to impeach would be decided by the House of Commons, the actual case could now be referred to the Supreme

¹⁴⁵ Marshall, *The Impeachment*, p.66.

Court or another suitable judicial body, instead of being tried in the House of Lords.¹⁴⁶ This should prevent a purely politically motivated verdict, especially were the decision to impeach require a two-thirds majority for each charge in the Commons. Given the current party political system in the United Kingdom, impeachment would then realistically be reserved for matters that united the House. These would arguably be matters which are generally agreed to be in the national interest.

6 Impeachment was not a Natural Consequence

Warren Hastings when he returned in 1785 was not automatically destined to become the defendant in an impeachment trial. His tenure as Governor-General certainly was certainly controversial and Hastings had acquired dangerous enemies in Sir Philip Francis and in Burke. Francis is believed to have been the political satirist 'Junius', who had been a formidable opponent to the Government in the 1770s. But Hastings was also fortunate that Burke was now in opposition. As already commented, Hastings probably saw himself as deserving of praise for his considerable achievements as Governor-General, and equally, when this praise was not forthcoming, was inclined to feel victimised. The allegations about his conduct made by Francis and Burke soon amounted to an obstacle that prevented Hastings from receiving the rewards that he would have anticipated, a peerage or membership of the Company Board of Control. Burke may have wanted to impeach Hastings; but before Hastings challenged him to prove his allegations, there was little prospect of an actual impeachment trial.

Burke's Motivations

Impeachment served a useful device with a much wider target than Hastings to the men behind the trial. To Burke it was a statement that the Company was a viper and its young servants, who were returning from India with vast fortunes, were damaging the constitutional settlement of the Glorious Revolution. In Burke's opinion:

There is nothing in the boys that we are sending to India worse than the boys whom we are whipping at school... Animated with all the avarice of age, and all the impetuosity of youth, they roll in one after another; wave after wave; and there is nothing before the eyes of the natives but an endless, hopeless prospect of new flights of birds of prey and passage, with appetites continually renewing for a food that is continually wasting.¹⁴⁷

¹⁴⁶ It is acknowledged that the creation of the Supreme Court by the Constitutional Reform Act 2005 was intended to clearly separate the legislative and the judiciary.

¹⁴⁷ *The Writings and Speeches of Edmund Burke* at 5.402-3.

These so-called Nabobs were purchasing seats in Parliament through the rotten borough system and marrying into aristocratic families. Consequently, there was concern that the Nabobs and the Company, to whom they owed their fortunes, were gaining an undue and inappropriate influence in both Houses of Parliament.¹⁴⁸

When it came to the human rights of Indians and their exploitation by the Company, Burke also considered it his duty to make what he knew to be a forlorn stand. Burke viewed all people as having rights and when these rights were oppressed Burke, as in the case of what was alleged to be occurring in India, refused to remain silent. As he told Parliament in 1783, Burke believed that he was bound by a moral covenant 'to the whole human race'.¹⁴⁹ This moral covenant motivated Burke to protect others who were being oppressed. Historians have looked for specific reasons behind Burke's prosecution of Hastings and also his change of opinion over the role of the Company from the supportive attitude he had taken in the 1760s. At one level, Burke could be said to have been motivated by his detestation of oppression generally. Being from an Irish Anglican family, with a Catholic heritage, Burke could draw parallels with the treatment of the Indians and the Irish Catholics. As O'Brien has observed, Burke was generally critical of English domination and found a figure to represent all that was wrong with it in Hastings.¹⁵⁰ O'Brien notes that Burke's rhetoric incorporated a theme of revenge and it is therefore not too bold a statement to suggest that Burke was influenced by wider considerations than India and Hastings. Burke regarded the Company as a source of disorder to Britain and India, and with the outbreak of the French Revolution, he could also draw parallels between Hastings and the leaders of the revolutionary Jacobins.

Burke had originally become aware of corruption in the Company, when he had assisted his friend Will Burke, who had returned from India as the representative of the Rajah of Tanjore.¹⁵¹ Tanjore had been annexed by the Nawab of Arcot (also known as the Nawab of the Carnatic) in order to raise the necessary additional funds to service the debts which he owed to the Company's servants in Madras. The invasion had thus been authorised by the Madras Council. As already discussed, when Governor Lord Pigot had attempted to reverse the situation, he had

¹⁴⁸ Although a number of former Company servants were Members of Parliament, it should be noted that just because someone was once an employee, it did not follow that in a subsequent life they would support either the Company or Hastings. Indeed, they often pursued their own agenda, as in the case of Paul Benfield.

¹⁴⁹ O'Brien, 'Warren Hastings', p.71.

¹⁵⁰ Ibid, pp.70-72.

¹⁵¹ Marshall, *The Impeachment*, p.10.

been imprisoned by the Company servants, because they had refused to allow him to interfere in their commercial enterprises. The most notorious of the former Madras servants, Benfield, was an ally of the new government. Burke had assisted Will Burke to help restore the Rajah of Tanjore and had worked against those who had imprisoned Governor Pigot. Therefore, Burke was already inclined to see anyone who had supported the Nawab of the Carnatic as corrupt.¹⁵² As Marshall has pointed out, Burke also believed that Hastings was personally responsible for everything that happened in British India.¹⁵³

The East India Company was a product of a royal charter and regulated by Acts of Parliament, but Hastings and other Company servants had previously avoided being held to account by Parliament, because of the politics of Leadenhall Street. According to Carnall and Nicholson, 'The impeachment was all about accountability, and both Pitt and Burke claimed that the power to call Warren Hastings to trial was essential to the continued well-being of the British Constitution'.¹⁵⁴ Put simply, Burke was motivated by a belief that Hastings was not above the law and he had to account for his actions and the state of the system of which he presided, regardless of where his actions were committed and the circumstances in which Hastings found himself. By so doing, Burke believed he could attempt to save Britain from the 'shame and guilt' that were products of inaction.¹⁵⁵

The role of Philip Francis

The prosecution was assisted by Sir Philip Francis, who was a former member of the Calcutta Council and had been appointed as a parliamentary nominee under the Regulating Act 1773. It was Francis who had led the majority of the Calcutta Council against Hastings, for much for his tenure as Governor-General. Francis was a fierce critic of Hastings, and his role in the impeachment is often sidelined as he is summed up either as the vengeful rival who wanted to replace Hastings or more generously simply as an opponent of the corrupt system that he described. According to the former interpretation, once Francis had failed to remove Hastings, he returned home and duped the gullible and well-intentioned Burke into taking action against Hastings. According to the latter interpretation, Francis is portrayed as a highly capable politician who had validity in his critique of Hastings and who had challenged his acts as

¹⁵² Marshall, *The Impeachment*, p.10.

¹⁵³ *Ibid*, p.190.

¹⁵⁴ See 'Introduction' in Carnall and Nicholson (eds), *Warren Hastings*, p.5.

¹⁵⁵ *Ibid*, p.6.

Governor-General on that basis.¹⁵⁶ Marshall favours the latter interpretation, arguing that Francis was honestly but wrongly motivated by a belief that the governance of Bengal was incompetent, and that this incompetence was ruining Bengal for Britain.¹⁵⁷ Certainly since the days of Clive's promise of a land of abundant wealth, the Company had faced repeated financial crises and had repeatedly to be bailed out by the home government.

Francis's influence on Burke has also been debated by historians. O'Brien has questioned how much influence he had on Burke, drawing attention to their split in 1790 and arguing that Burke was his own man.¹⁵⁸ Such an argument would save Burke from being Francis's dupe and an unwitting instrument of revenge. Crucially, it would also save the impeachment from being regarded as a well-intentioned, but a wholly undeserved, ordeal. Marshall, for instance, regards the return of Francis to England, as the 'turning point in Burke's relations with Hastings'.¹⁵⁹ He argues that prior to Francis's return, Burke 'could still refer to him [Hastings] as a "respectable person"; a year later he was classing him as one of the "Indian delinquents" and calling for his punishment'.¹⁶⁰ Yet Marshall also admits that despite Francis's role (in supplying the Select Committee, which was investigating Indian affairs with 'inflammatory material'), Burke 'did not need Francis to tell him that much was amiss in India'.¹⁶¹ This view prevents Burke from being the dupe, but it still highlights the importance of Francis in Burke's decision to declare himself irrevocably against Hastings.

Like Hastings, Francis had been appointed by the Directors to reform the system in India. Moon has argued that Francis arrived in India prejudiced against both the Company and Hastings.¹⁶² He apparently made an automatic assumption that a climate of endemic corruption existed and that everything that Hastings did, whatever the merits of the decision, was motivated by corruption and intended to serve a corrupt purpose. Unlike Hastings, Francis was a man who owed his position solely to the government and therefore had no sympathy for the Company servants.

¹⁵⁶ Macaulay, *Warren Hastings*, p.43.

¹⁵⁷ Marshall, *The Impeachment*, pp.15-16.

¹⁵⁸ O'Brien, 'Warren Hastings', pp.63-64.

¹⁵⁹ Marshall, *The Impeachment*, p.14.

¹⁶⁰ *Ibid*, p.14.

¹⁶¹ *Ibid*, pp.14-15.

¹⁶² Moon, *Warren Hastings*, p.138.

The Whigs – politics or an awareness of human rights?

Charles James Fox, one of the prosecution managers, sided with Burke for political reasons and used the impeachment to bait Pitt into defending the indefensible, viz, the Company. So far as Fox was concerned, the trial 'was less about India and more about the crisis of 1782-1784 in England'.¹⁶³ Hastings and the Company had been temporary allies of the King in 1783, over the coalition's attempts to establish political control over the Company, and the King had used his patronage to destroy the coalition. Interestingly another of the trial managers, Richard Sheridan, later admitted to Hastings that his place as a prime mover behind the impeachment, had been motivated entirely by a desire for personal political advancement.¹⁶⁴ According to O'Brien, Sheridan was no enthusiast for impeachment and had previously tried to negotiate with Hastings in 1783. After the 1784 election, Sheridan was one of the Members of Parliament 'who wanted to hear no more about India'.¹⁶⁵

Parliamentary concern generally and the role of the House of Commons in the impeachment

In the Hastings impeachment trial, the East India Company was being held to account by Parliament, through the person of Hastings. By having the ability to impeach Hastings, Parliament could make a strong statement condemning both the East India Company and Warren Hastings' tenure as Governor-General of Bengal. However, despite the initial interest in the trial in 1788, Parliament and especially Burke's own party grew tired of the whole affair.¹⁶⁶ Indeed, as Marshall has emphasised, there was no major parliamentary debate on India for quite some time after the impeachment. The Company continued to manage its commercial affairs, albeit held in check by Dundas' Board of Control, while Hastings' successors as Governor-General, Lords Cornwallis and Wellesley, fought wars against the native princes and considerably expanded British territory and influence in India, especially the latter.¹⁶⁷

¹⁶³ L. G Mitchell, 'Fox, Charles James (1749-1806)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004.

¹⁶⁴ Jeremy Bernstein, *The Dawning of the British Raj. The Life and Trials of Warren Hastings*, (Ivan R Dee, 2000), p.285.

¹⁶⁵ Conor Cruise O'Brien, *Edmund Burke*, (Vintage, 2002), p.185.

¹⁶⁶ Marshall, *The Impeachment*, pp.188-89.

¹⁶⁷ Edward Ingram (ed.), *Two Views of British India - The private correspondence of Mr. Dundas and Lord Wellesley: 1798-1801* (Adams and Dart, 1969). Lord Wellesley clashed with the Company and the Board of Control. According to Edward Ingram Wellesley 'was most interested in expanding Britain's territory and influence in India' and used the army as a political tool to do this (pp.8-10). Wellesley presented himself as the saviour of British India and Ingram states that 'He bitterly resented the slightest check' and seemed to demand unlimited authority (p.11). It would appear that the Crown's appointee was just as capable of craving power and pursuing his own aims as any Company servant.

In order to impeach Hastings, the House of Commons would need to investigate the alleged crimes. Here Burke, Sheridan and Fox led the Whigs in calling for impeachment. The Commons, between 1786 and 1787, debated and voted on the actual charges that were to form the Articles of Impeachment. These years were crucial, as it is here argued that Burke's achievement was not the actual House of Lords trial but rather, that the House of Commons voted to impeach Hastings. Burke, as a member of the recently defeated government, could never realistically have expected to carry the Tory government with him in voting against Hastings.

Crucially, the opposition needed the majority of the House to support the case for impeachment. Sheridan's celebrated speech may have swayed many an MP, nonetheless as each charge was read out, debated and voted on, it seemed that the impeachment would fail.¹⁶⁸ However, it was Pitt whose behaviour proved so pivotal. At first Pitt was neutral and expressed that he was neither for Hastings or Burke.¹⁶⁹ On the Benares charge, Pitt made a speech that commended Hastings and then suddenly halfway through it, changed tack and supported the impeachment. With Pitt now in support of the Benares charge, a majority of the House voted to impeach Hastings on it.

It is a source of controversy among historians as to why Pitt changed his position midway through his speech. He had originally invited Hastings to defend himself in the Commons but Hastings consequent defence, which lasted two days, was both boring and condescending. According to Hague, 'Failing to take his cue from Pitt and to argue in a short statement that his alleged crimes were more than counterbalanced by his achievements, he mounted a lengthy rebuttal which lasted well over a full day, and the latter part of which had to be read out by the clerks'.¹⁷⁰ According to O'Brien, 'In seeking to prove that his, "political conduct was invariably regulated by truth, justice and good faith", he had set himself an impossible task'.¹⁷¹ As a result of his arrogance and conceit, Hastings lost considerable parliamentary sympathy, especially as those hearing Hastings's defence were disappointed in their expectations of 'high drama'.¹⁷²

The government did support Hastings on the Rohilla charge. Dundas, although censuring Hastings, had said that his reappointment by Lord North in 1773 had shown official

¹⁶⁸ Bernstein, *The Dawning*, p.236.

¹⁶⁹ J. P.W Ehrman and A Smith, 'Pitt, William (1759–1806)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004.

¹⁷⁰ Hague, *William Pitt*, p.231.

¹⁷¹ O'Brien, *Edmund Burke*, p.183.

¹⁷² Marshall, *The Impeachment*, p.47.

endorsement of his conduct and the charge was defeated 119 to 67 votes. Fox, as leader of the opposition, delivered the Benares charge and thereby hoped to trap Pitt, as leader of the government, into personally defending Hastings. Had Pitt defended Hastings, he would have upset important liberal friends such as Wilberforce.¹⁷³ By supporting the impeachment on this charge, Pitt was able to escape Fox's trap. It also meant that subsequently the Whigs could not blame the government for all the company's misdemeanours. This allowed Pitt to continue to play an ambivalent role, claiming neutrality and breaking with those who might have favoured supporting Hastings. Pitt needed to defend himself from the earlier charges of unconstitutional behaviour and from the consequences of supporting the Nabobs over the Nawab of Arcot's debts.¹⁷⁴ Were Pitt's actions motivated purely by political expediency?

It is important to consider the consequences for Pitt had he chosen to defend Hastings. The new Board of Control, which Dundas unofficially headed, had agreed without debate or investigation in 1784, to establish a fund to pay the creditors of the Nawab of Arcot.¹⁷⁵ This was embarrassing both to Dundas and Pitt. Dundas was thus open to charges of corruption and Pitt's own reputation was tarnished.¹⁷⁶ Many Company servants had contributed financially to Pitt's victory in 1784 and had gained a direct benefit from the fund. According to O'Brien, Burke drew a parallel between Pitt and Nero, and the iniquities in British India with those of Imperial Rome, when he attacked Pitt:

All the acts and monuments in the records of peculation; the consolidated corruption of the ages; the patterns of exemplary plunder in the heroic times of Roman iniquity, never equaled the gigantic corruption of this single act. Never did Nero, in all the insolent prodigality of despotism, deal out to his Praetorian guards a donation fit to be named with the largesse showered down by the bounty of our Chancellor of the Exchequer on the faithful band of his Indian sepoy.¹⁷⁷

Hague dismisses this interpretation, and the other argument that Pitt's actions were influenced by Dundas.¹⁷⁸ Pitt and Dundas had spent the morning before Pitt's speech together, and both their contemporaries and historians have questioned the extent of Dundas' influence over Pitt's change of position.¹⁷⁹ It had been Dundas who had led the House to censure Hastings in 1782.

¹⁷³ Hague, *William Pitt*, p.232.

¹⁷⁴ *Ibid*, pp.232-34

¹⁷⁵ O'Brien, *Edmund Burke*, p.184.

¹⁷⁶ Keay, *The Honourable Company*, p.418, states that Pitt and Dundas found it expedient to capitulate to the nabobs over Arcot.

¹⁷⁷ O'Brien, *Edmund Burke*, p.178.

¹⁷⁸ Hague, *William Pitt*, pp.232-34.

¹⁷⁹ Bernstein, *The Dawning*, p.217.

Dundas had twice been thwarted in his attempts to have Hastings recalled by his allies in the Court of Proprietors. Did Dundas regard Hastings as threat to his position on the new Board of Control? This is a view that is supported by Moon.¹⁸⁰ But William Wilberforce was critical of those sceptical of Pitt's motivation in supporting the Benares impeachment charge, believing that those who saw him as influenced by political expediency as doing Pitt a great disservice.¹⁸¹ Hague has argued that it was the financial impropriety of Hastings' administration which offended Pitt and explains his change of heart.¹⁸² The speech that was pivotal to the success of Burke's campaign, saw Pitt begin by attacking Burke and Fox, and then suddenly shocking the Chamber by criticising Hastings for his oppressive treatment of Chait Singh. The level of fine was, according to Pitt,

beyond all proportion exorbitant, unjust, and tyrannical... this act of oppression was such as ought to be made one of the articles of that impeachment, being in his judgement a very high crime and misdemeanour.... This proceeding destroyed all relation and connection between the degrees of guilt and punishment; it was grinding; it was overbearing.¹⁸³

According to Marshall, 'It seems to have been the unanimous opinion of all those who were in close contact with him that [Pitt] had judged the case entirely on what he had believed to be its merits, and without any ulterior calculations'.¹⁸⁴ Marshall dismisses the theory that Dundas and Pitt had deliberately intended to vote against Hastings, in order to remove him as a rival in Indian policy.¹⁸⁵ Subsequently Pitt voted for further charges and helped the Whigs to frame the articles of impeachment. In a speech in 1787 Pitt told the Commons that the House was 'called upon by every motive of honour and consistency, by their regard for the national character as well as their own' to vote for the impeachment¹⁸⁶. The result of the impeachment was that the Whigs were temporarily distracted. Burke would be forever consumed by his campaign against Hastings. By supporting Burke, the government had reduced the potency of the still unresolved constitutional crisis of 1783-84.¹⁸⁷

¹⁸⁰ Moon, *Warren Hastings*, p.317.

¹⁸¹ Hague, *William Pitt*, pp.232-34.

¹⁸² *Ibid*, p.233.

¹⁸³ *Ibid*, pp.232-233.

¹⁸⁴ O'Brien, *Edmund Burke*, p.184.

¹⁸⁵ Marshall, *The Impeachment*, pp.30-31.

¹⁸⁶ Introduction, in Carnall and Colin Nicholson (eds), *Warren Hastings*, p.2.

¹⁸⁷ Langford, 'Burke', *Oxford DNB*.

7 The Impeachment Trial

The House of Commons having voted to impeach Hastings it was then for the House of Lords in their judicial capacity to decide Hastings' guilt.¹⁸⁸ The Lord Chancellor, Lord Thurlow, had the main responsibility for the proceedings. Thurlow was an old school friend of Hastings, who had lobbied Pitt to make Hastings a peer, and was to prove an invaluable ally to him as he was also a highly capable politician. The trial was a major public spectacle and took place in Westminster Hall. As Hastings was accused of committing criminal offences, he should strictly have been interred in the Tower of London for the duration of the trial.¹⁸⁹ Considering that the trial lasted seven years however, from 1788 to 1795, imprisonment would have only added to the ordeal of the trial. Tickets were sold and those in attendance from time to time included the Prince of Wales, Queen Charlotte and other members from the London *haut ton*. Fanny Burney, the celebrated novelist was quite regularly in attendance and kept a diary of proceedings. For all its pomp and spectacular dimension, the trial was a genuine attempt to hold the Company to account.

The trial procedure

Hastings was fortunate that his friend Thurlow was responsible for overseeing the impeachment, since it meant Hastings had an ally who would determine how the trial would be organised and the procedures that were to be used. Marshall identifies the problems that the prosecution faced in terms of obtaining evidence, including the difficulties of compelling witnesses to testify against Hastings and the refusal of Hastings to hand over his personal papers.¹⁹⁰ Burke certainly understood this as he argued that the charges of oppression of Indians could not be proved by producing evidence as it would be hard to obtain this from India. While Burke attempted to argue that morality was above the law and that consequently, given the scale of the alleged offences, special rules should apply since the law as it then stood was not adequate.¹⁹¹ He maintained that 'an impeachment should not be held to the ordinary standards of proof and the rules of evidence that applied to common crime in the ordinary

¹⁸⁸ David Lewis Jones, 'The Judicial Role of the House of Lords before 1870', in Leo Blom-Cooper *et al* (eds) *The Judicial House of Lords 1876-2009*, (Oxford University Press, 2009), pp.3-12, especially p.11. Members of the Lords, both those with legal qualifications and lay peers could hear appeals. In the later, politically sensitive, case of Daniel O'Connor, the lay peers were persuaded to leave the chamber and not vote by the then Prime Minister, Robert Peel. The Lord Chancellor was the only peer forced to hear the appeal; the rest of their lordships were volunteers. Subsequent reforms of the judicial role of the House saw the creation of life peers specifically to hear such appeals.

¹⁸⁹ Bradley, 'Personal responsibility', p.167.

¹⁹⁰ Marshall, *The Impeachment*, p.72.

¹⁹¹ O'Brien, *Edmund Burke*, pp.192-93.

courts'.¹⁹² Instead, he argued, the 'enlarged and solid principles of state morality' should apply.¹⁹³ This ruling effectively killed off the impeachment from the outset as it was hard to gather evidence from India.¹⁹⁴ Thurlow, justifiably, was adamant that this was a criminal trial and whatever the fusion of politics and the law, the rules of evidence would still apply.¹⁹⁵ He did have good authority for rejecting Burke's submissions and holding that the normal rules of evidence would apply.¹⁹⁶ While rhetoric could not carry the same weight as admissible evidence, Burke realised that the success of the proceedings depended on rhetoric that would turn the public against Hastings.¹⁹⁷ Therefore he ensured that he played to the wider audience outside the Lords, ensuring that way that his speeches would reach the public.¹⁹⁸

In order to avoid in the Lords the outcome of proceedings in the Commons (where each charge had been voted on separately, producing a risk that one successful prosecutorial speech could sway the Lords to vote against Hastings on at least one charge), Thurlow persuaded the Lords to agree to hear the entire prosecution and defence arguments, before they deliberated on all the charges. Thus, there would be no real chance that a single emotive speech could sway the Lords to find Hastings guilty on a single charge as it was discussed.¹⁹⁹ Furthermore, Thurlow hoped that 'without the drama of Hastings answering each charge as it was made, the public would lose interest in the case long before he came to make his general answer to the charges as a whole'.²⁰⁰ The actual trial lasted from 1788 to 1795, during which the Lords heard the prosecution charges and the subsequent defence by Hastings. It is important to note that the duration of the trial was not anticipated in 1788, and that the total number of days devoted to the trial did not regularly exceed twenty days a year.²⁰¹

¹⁹² *Ibid*, p.188

¹⁹³ *Ibid*, p.200

¹⁹⁴ *Ibid*, p.201. See also O'Brien, 'Warren Hastings', p.67; Dwight, 'Trial by Impeachment', p.267, fn.1. The Lords were advised on evidence throughout the trial by judges.

¹⁹⁵ O'Brien, *Edmund Burke*, pp.200-201

¹⁹⁶ Dwight, 'Trial by Impeachment', p.267. Dwight quotes Richard Wooddeson, *A Systematic View of the Laws of England ; as Treated of in a Course of Vinerian Lectures, Read at Oxford, During a Series of Years, Commencing in Michaelmas Term, 1777*, vol 2 (1792), p.11. Wooddeson observed that 'The trial differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crime and punishments, prevail. For impeachments are not framed to alter the law, but to carry it into more effectual execution'.

¹⁹⁷ Langford, 'Burke'. *Oxford DNB*; O'Brien, 'Warren Hastings', p.66

¹⁹⁸ Marshall, *The Impeachment*, p.84

¹⁹⁹ Bernstein, *The Dawning*, p.236

²⁰⁰ O'Brien, *Edmund Burke*, p.201

²⁰¹ Bernstein, *The Dawning*, pp.222-264

8 An Overview of the Charges

There were 20 articles of impeachment and these can be divided into four groups of charges. These are the treatment of the Begums of Oudh by Hastings; his treatment of Chait Singh; the alleged abuse of position; and corruption including the use and receipt of bribes. Two of the most infamous charges brought against Hastings by Burke and others were not actually included as charges in the impeachment process. These were the Rohilla War and the 'Judicial Murder' of Maharajah Nandakumar, which Burke had failed to get the Commons to include. A brief examination of one of the charges shows the difficulties that the prosecution managers faced at the time, and also subsequent scholarship in reaching a definitive conclusion.

The Begums of Oudh

The Begums of Oudh were the mother and widow of that *wazir* of Oudh who had died in 1780 owing a considerable debt to the Company for the cost of the Oudh garrison required for defence by the *wazir*. At the time of his death and the consequent dispute between his son and the Begums over his wealth, Hastings administration was desperately in need of a repayment of that debt as Britain was fighting the American colonists, the French and Spanish, and so could not send bullion to support the Company's war effort in India at a time when the Company's position was far from secure. As Moon has argued, if the war to maintain its position was to be sustained, 'it was necessary to look elsewhere for extra funds'.²⁰² Thus Hastings visited Oudh to recover the £1,400,000 debt, but doing so upset the settlement over the former *wazir's* will reached between the Begums and his son.²⁰³ It also upset a decision by the Council majority, to protect Begums' rights to a substantial fortune worth £2,000,000 and two *jagirs*. In 1781 Hastings and the *wazir* reached a settlement where the *wazir* supported Hastings in seizing the fortune allotted to the Begums. Hastings had no qualms as he believed that the *wazir* had a right to the money, and consequently the Company, as his creditors, was within its rights in assisting the *wazir* to seize the Begums' money. As Moon points out, 'Under Muhammeden law the Begums had no right to it, and they were amply provided for otherwise'.²⁰⁴ For Moon, the problem was that the settlement with the Begums had been guaranteed by the Company and so Hastings displayed ill-faith by breaching this. However, Kabir-Ur-Rahman Khan disagrees with Moon, arguing that under Muslim law, the Begums were entitled to their fortune, and being from

²⁰² Ibid, p.255.

²⁰³ Marshall, *The Making*, p.253.

²⁰⁴ Moon, *Warren Hastings*, p.149.

a noble family would have legitimately acquired an independent fortune.²⁰⁵ Marshall, however, accepts that Hastings was correct that the £2,000,000 belonged to the *wazir*; pointing out, however, the *wazir* had agreed to renounce any rights over this money.²⁰⁶ Given the contemporary British attitude to women's rights independently to own and manage property, Hastings may well have been convinced that the Begums had no right to the fortune and would probably have found many of his peers in Britain agreeing with him. However, the core of this charge in the impeachment process was whether, in the seizure of the money, the Begums and their servants were ill-treated? Burke's rhetoric painted a picture of ill-treatment, Moon amongst other historians is adamant that they were not.²⁰⁷ The issue in human rights terms is that even if there was only very limited physical ill-treatment, the Begums were forced to hand over a considerable portion of their wealth and was Hastings, at the time, justified in acting as he did? The Begums actually wrote during the trial to support Hastings, pointing out that they certainly were not left impoverished and that they respected Hastings as a friend of the late *wazir*. It has been further claimed in justification of Hastings' actions that the Begums had sided with Chait Singh. While these charges have never been proved, Marshall argues that 'It is almost certain they had taken an active part [intriguing] against the Company'.²⁰⁸

The core of Hastings' defence was that that it was wrong to judge his actions by British standards.²⁰⁹ Burke famously attacked Hastings' defence with reference to geographical morality:

[T]hese gentlemen have formed a plan of geographical morality, by which the duties of men, in public and private situations, are not to be governed by their relative relation to the great Governor of the Universe, or by their relation to mankind, but by climate, degrees of longitude, parallels, not of life, but of latitudes: as if, when you have crossed the equinoctial, all the virtues die... This geographical morality we do protest against; Mr Hastings shall not screen himself under it... the laws of morality are the same everywhere, and that there is no action which would pass for an act of extortion, of peculation, of bribery, and of oppression in England that is not (the same act)... in Europe, Asia, Africa, and all the world over.²¹⁰

Hastings argued also that his acts were legal under the arbitrary nature of the subcontinent and founded in Muslim law and custom. This defence was challenged by Burke by arguing 'that the

²⁰⁵ Kabir-Ur-Rahman-Khan, 'The Impeachment: Certain issues of International Law' in Geoffrey Carnall and Colin Nicholson (eds.) *The Impeachment Trial of Warren Hastings*, (Edinburgh University Press, 1989), pp.145-63, p.159.

²⁰⁶ Marshall, *The Impeachment*, p.113.

²⁰⁷ Moon, *Warren Hastings*, p.278.

²⁰⁸ Marshall, *The Impeachment*, pp.121-22.

²⁰⁹ Mukherjee, 'Justice'.

²¹⁰ O'Brien, *Edmund Burke*, pp.195-196.

Mughal emperors were not arbitrary or despotic' and that 'all discourses of sovereignty based in the will were illegitimate'.²¹¹ Burke criticised Hastings' defence based on the existence of a system based on oriental and despotic power:

Mr Hastings comes before your lordships not as a British Governor answering to a British tribunal, but as a *subahdar*, as a *bashaw* of three tails. He says, 'I had an arbitrary power to exercise: I exercised it... It was disagreeable to me... (but) no other power can be exercised in that country'.²¹²

Burke's critique is powerful; he told the House of Lords 'Think of an English Governor tried before you as a British subject, and yet declaring that he did govern on the principles of arbitrary power!'.²¹³

After seven years of prosecution and defence speeches the Lords reached their verdict, though out of the entire House, only 30 Lords felt themselves sufficiently familiar with the charges to vote.²¹⁴ On every charge there was a majority to acquit Hastings. Thurlow's role in the final Lords deliberations was crucial, as he regularly reminded the House that where the prosecution had not adduced sufficient evidence, they should acquit Hastings on that charge.²¹⁵ Throughout the deliberations Thurlow performed the services of a loyal advocate for Hastings. The final decision was an anticlimax as the trial which had started with so much publicity, had been long superseded in the public and political thought.

9 What Did the Trial Achieve?

The impeachment was about the rights of Indians, which Hastings and, implicitly the Company, had abused. Historians such as Moon are sceptical as to how much the impeachment trial achieved, as the reforms in the India Act 1784 (which did provide improved protection for Indian rights) predated the trial. Moon has argued that the belief that the impeachment focused attention on Company abuses and brought about a new order is mistaken, pointing out:

The iniquities of the Company's servants were not brought to public notice by the speeches at Hastings's trial – they had been notorious and the constant theme of parliamentary discussion throughout the preceding years, and all the essential measures which brought about a reform were taken before and not after the impeachment.²¹⁶

²¹¹ Mukherjee, 'Justice', para 55.

²¹² O'Brien, *Edmund Burke*, p.196.

²¹³ Ibid, p.196.

²¹⁴ Bernstein, *The Dawning*, p.258.

²¹⁵ Ibid, pp.258-64.

²¹⁶ Moon, *Warren Hastings*, pp.323-24.

Moon continued to argue that it was the India Act 1784, not the impeachment, which brought the Company under government control and created accountability in its proceedings, and so an improvement in protection for Indians.²¹⁷ Furthermore, that by choosing Lord Cornwallis to replace Hastings as Governor-General, the government ensured a reform of the Company's servants.²¹⁸ His conclusion is that 'the impeachment synchronised with a real change for the better; but it was not its cause. It served no useful purpose at the time; but it has acquired a symbolic value in the eyes of posterity'.²¹⁹ If Moon's assessment is correct, then the results were minimal and the real engine of reform was the parliamentary attempts firstly to make the Company accountable to Parliament, and secondly to end the corruption of and abuses by Company servants, producing the India Act 1784 and appointment of Lord Cornwallis as Governor-General.

A comparison with Lord Charles Cornwallis

However, O'Brien challenges Moon's assessment of the lack of importance of the impeachment proceedings. Although, according to O'Brien, the impeachment 'failed in a technical and legal sense', it did succeed 'in the wider sense'. Burke, he argued, realised that the impeachment would fail, it was this wider impact that Burke had sought to bring about a change in 'the methods of governing India'.²²⁰ Certainly the appointment of Lord Cornwallis ended the abuses that Burke 'had accused Hastings of preserving'.²²¹ However, Cornwallis had the power that Hastings would have needed to reform the system, and was denied (i.e. control over the Council); and additionally, unlike Hastings, Cornwallis was not dependent on the Company for support and therefore did not find it necessary to use patronage or to turn a blind eye to illegal private trading.²²² According to Marshall, Cornwallis succeeded in separating 'private profit from most offices in Bengal'; he also was able 'largely to insulate the service from the pressures of patronage from home in a way that the politically insecure Warren Hastings could not afford to do'.²²³ It is interesting in this context to read the correspondence between Dundas and Lord Wellesley during the latter's time as Governor-General from 1798-1805. Dundas attempted to

²¹⁷ Ibid, p.324.

²¹⁸ Ibid.

²¹⁹ Ibid, p.325.

²²⁰ O'Brien, 'Warren Hastings', p.70.

²²¹ Ibid.

²²² Keay, *The Honourable Company*, p.419.

²²³ Marshall, *The Making*, p.225.

restrain Wellesley.²²⁴ He informed Wellesley that in his view, the quarrel between Hastings and the majority were alterations which:

[W]ent to a degree of personal animosity incompatible with the conduct of anything resembling government, but I do conceive, that the very great and independent powers which have since been conferred on the Governor-General, were intended and do in fact operate as a very substantial remedy to that mischief.²²⁵

O'Brien relies upon the conclusions reached in the *Oxford History of India*, which regard the positive impacts of impeachment as firstly, a sign to junior servants that certain kinds of behaviour were unacceptable; secondly as holding the head of government there responsible for misgovernment; and thirdly as serving as a warning that in the future, servants would be held to account for misconduct.²²⁶ Marshall, however, observes that the key reforms implemented by the India Act 1784 and by Lord Cornwallis occurred before the impeachment. Furthermore, he doubts whether, after the impeachment, the public was any more aware or interested in India and the abuses which took place there than they had been before. In fact, Marshall argues that post-1790, public interest in India actually declined.²²⁷ Nonetheless, if such assessments that the impeachment achieved little are to survive the attack of Burke's biographer O'Brien, it is necessary to consider the contextualising circumstances of the impeachment trial. Mukherjee has argued that the impeachment should be seen in context of parliamentary frustration with the failure of various administrations to successfully reform and hold the East India Company to account:

It was in the aftermath of the loss of the American colonies and the failure of the Regulating Act of 1773 and the two India Bills in Parliament to bring about effective reform in the East India Company's administration of India that the impeachment trial of Warren Hastings began.²²⁸ If the impeachment was Burke's creature, then the god-father must be Pitt and the new government, who allowed the opposition to pursue the impeachment until 1795.²²⁹ Burke and Pitt For whatever reasons, Burke and Pitt had both attempted legislative reform of the management of India through the Company. Although both pieces of legislation had had different objectives, both were aimed to increase governmental control over the Company. As

²²⁴ Ingram, *Two Views*, pp.294-95.

²²⁵ *Ibid*, p.295.

²²⁶ O'Brien, 'Warren Hastings', p.70.

²²⁷ Marshall, *The Impeachment*, pp.187-89.

²²⁸ Mukherjee, 'Justice', para 23.

²²⁹ Although the administration 'harassed its managers until 1790', what is crucial is that 'Pitt, with his safe majority in the Commons, could have called off the impeachment at anytime'; see O'Brien, *Edmund Burke*, p.201.

parliamentarians, they both had different reasons for subjecting a private company to legislative control and as a result effectively controlling the company's management of its own property and affairs. These reasons will be discussed below. Moon's assessment is one that is attractive, but there are caveats.

Firstly, the impeachment was needed by both Burke and Pitt for different reasons. Burke regarded Pitt's administration in its attitude to India as corrupted by the Company and it may be argued that for reasons of political expediency, Pitt needed to distance himself from the Company and its former servants. Burke was clearly unconvinced that the India Act 1784 would end the corrupt abuse of power exercised by the servants, or the threat posed by Indian patronage and wealth to the British Constitution. For him, the impeachment trial was about holding the Company to account and dispelling the notion that British standards of morality, trusteeship, civilisation and accountability did not apply in India. Burke presented the metropolis with his view of human rights; that they must, by the very nature of those rights, extend to the Company's Indian subjects. Burke consequently rejected the right of the Company to rely on arbitrary rule to govern their territories. This, especially, was where Burke and Hastings' view of the authority of the Governor-General differed. Hastings believed that local custom necessitated his style of government, as evidenced by his treat of Chait Singh. Burke refused to countenance the exploitation of the Company's subjects, seeing it not as practical expediency but as a tactic to enable Company servants to amass a private fortune.²³⁰

In this context, it needs to be remembered that Hastings had demonstrated his dislike of what he identified as corruption and exploitation early on in his career; notably when he had supported the rights of the Nawab of Bengal against abuse by Company servants. At that time Hastings was serving on the Council of Henry Vansittart in Bengal, where he had supported the Governor in his fight with the other Councillors. The majority on that Council had refused to allow the Nawab to impose restrictions on the Company's servants, in order to prevent them from taking part in illicit private trading and so from exploiting the Company's privileges at the expense of the Nawab's subjects and revenues.²³¹

Secondly, the impeachment was symbolic and that symbolic value cannot be underestimated. Whatever the merits of Hastings and his administration, Parliament and English law had finally

²³⁰ Langford, 'Burke'.

²³¹ Moon, *Warren Hastings*, pp.42-57.

held him to account. Mukherjee has argued that the legislative attempts to hold the company to account had been a failure; that the 1773 Regulating Act simply created a conflict between the existing system of law and the Supreme Court. Consequently, it 'failed in its objective of making the Company's administration in India accountable to the British state... [and] brought the administration in India to a standstill'.²³² This can be evidenced by the perpetual conflict between the Supreme Court, the Governor-General and the Council. Hastings had avoided parliamentary recall in 1776 and 1782 but when he did return, he then faced criminal charges. The subject for those charges was the welfare of the Company's Indian subjects and the value to be placed on the legal systems which had existed in Bengal prior to the establishment of Company rule.²³³ Burke's rhetoric is full of outrages, abuses and cruel scenes of rape and murder. In response to such rhetoric, Hastings crucially could not justify his actions by reference to the location, as Burke had rejected a differential geographical morality, holding that the natural law and common law applied to India and thus the rights of the Indians were protected.²³⁴ Hastings' claims that he was acting in accordance with local custom was also attacked by Burke, who argued that existing Indian law and property rights had been violated, thus attempting to undermine any attempt to defend Hastings' actions as subject to the local conditions.²³⁵

In essence, the trial could be seen as a clash between competing ideals of imperialism.²³⁶ What would the Company's, *vis-à-vis* Britain's, role be in India? Burke's writing and his prosecution speeches presented the British role as ideally benevolent, bringing civilisation in return for the economic benefit of occupation and protecting the rights of the Indians. Hastings and Burke both agreed in regarding the Company as occupying part of the old Mughal Empire. Consequently, Hastings had attempted to justify his actions with reference to the system which the Company had inherited. In fact, he strove to create permanency but not supremacy, by reforming the administration of Bengal along the first principles of the Mughal administration. But to enable this he reformed and codified Hindu and Muslim Law. Hastings insisted that Company officials were to be educated and that they should be fluent in the local languages and have an awareness of the achievement of Indian civilisation. He did believe that Britain should not attempt to force her values and culture upon the peoples of India. Hastings sought defensive

²³² Mukherjee, 'Justice', para 21.

²³³ *Ibid.*

²³⁴ O'Brien, *Edmund Burke*, pp.195-96; Mukherjee, 'Justice'.

²³⁵ See generally Khan, 'The Impeachment'.

²³⁶ Mukherjee, 'Justice'.

alliances based on trust, and to some extent equality, with the local powers. His foreign policy was one of increased influence through alliances, rather than naked territorial expansion. Hastings would not have wanted to create the foundations of the Victorian Raj, where Indians were removed from key positions within the administration, and where there was a divide based on ethnicity. Marshall has written that 'Partly in reaction to him, British administrations in India would be more closely bound by the rules and more distant from Indians'.²³⁷ These administrations would be headed by a Governor-General who was a creature of the government of the day and in direct communication with the Board of Control, unable to speak the local languages and pursuing their version of national policy. An example of this type of figure would be Lord Wellesley, clashing with both the Company and the Board of Control, as he used the resources at his disposal to further British territorial expansion. This resulted in the Raj and the segregation of Europeans and Indians in India.²³⁸

Mukherjee sees the Company's policies in India as 'to make the maximum profit from the colony in the shortest possible time'; policies where the losers were the Indians.²³⁹ He has argued that Burke's efforts to impeach Hastings were a rejection of the associated territorial sovereignty of such policies and of any justifications for the exercise of arbitrary power in India. That is not to say that Burke or the other prosecution managers would not have wished to see the occupation of Bengal producing a profit for Britain. From such a perspective, the impeachment could be seen as a test case, as Parliament would be holding Hastings (and also, implicitly, the Company) to account for bad governance, corruption and for acting above the law in a foreign country. Mukherjee argues that 'The judgment given in this trial, therefore would be crucial, because it would serve as a precedent and constitute the primary source of critical discourse on colonialism in India'.²⁴⁰ He regards the trial as the rejection by Burke of the idea that English common law and the fundamental principles of Natural Law did not apply to India, something crucial to his challenge to the main line of Hastings' defence.²⁴¹ Mukherjee has argued that 'The central question, was could the people of India make an equal and universal claim with British subjects to the rights deriving from the principles implicit in common law'?²⁴² Simply by impeaching Hastings the British State rejected the territorial nature of common law and had

²³⁷ Marshall, 'Hastings', *Oxford DNB*.

²³⁸ See William Dalrymple, *White Mughals: Love and Betrayal in Eighteenth-Century India* (Flamingo, 2002).

²³⁹ Mukherjee, 'Justice', para 18.

²⁴⁰ *Ibid*, para 37.

²⁴¹ *Ibid*, paras 45-46.

²⁴² *Ibid*, para 43.

extended it to acts committed by the Company overseas; therefore the corporate privileges of the company were no defence in law.

The impeachment was as much about the previous two decades, as it was about Hastings' administration. Hastings' achievements were considerable and his efforts to reform the administration of Bengal and end corruption may have not been very successful, but they were in the circumstances actively pursued. Hastings correctly identified that better training would help solve the problem of corruption. Later, writing to Lord Wellesley, Hastings argued that it was better that men entered the Company's service, after receiving an education 'and while they are unfamiliarised to the habits of vice, indolence and dissipation'.²⁴³ However, to the politicians and the British public, the Company – as a result of the corruption of their servants and Hastings' alleged oppressive and expansionist policies – had ruined the cash cow that was Bengal.²⁴⁴ Even to his harshest critics, Hastings was not the source of this oozing ulcer of corruption, yet he was a Company man; one who was seen as condoning and expounding the abuse of Indians living under Company rule. As such, Hastings was seen as the embodiment of all that was wrong with the Company.²⁴⁵

Conclusion

Ultimately, the career of Warren Hastings demonstrates that however great an individual's achievements, his claim to be the saviour of the British position in India, his regard for the rights and the history of other cultures on what he saw as their own terms, and a desire to make alliance based on mutual respects, could not necessarily act as a defence to a challenge from a different interpretation of those actions which was unequivocally based on an appeal to a higher morality. The rougher edges and arbitrary peripheries to Hastings' conduct, coupled with the corrupt system that contextualised his actions, prevented him from becoming a 'great man' in the eyes of his contemporaries. Indeed the trial condemned Hastings to the political

²⁴³ Hutton, 'A Letter of Warren Hastings', p.641.

²⁴⁴ Clive had promised a great return from the Company's role in Bengal. This was proved unsubstantiated and the Company was unable to meet the promised payments to the government and faced bankruptcy.

²⁴⁵ See Brian Smith, 'Edmund Burke, the Warren Hastings Trial, and the Moral Dimension of Corruption' *Polity*, 70, 2008, 70-94.

graveyard.²⁴⁶ Even 200 years later it has the effect of igniting enough controversy, to make an academic nervous when attempting to offer an assessment of Hastings.

It can be easy on the one hand, to become caught up in the emotions of Burke's rhetoric and view Hastings as an oppressive pantomime villain, and on the other hand admire his achievements and then conveniently brush over his failings.²⁴⁷ Whatever the practical effect of the impeachment and whether the reforms introduced in the 1780s and 1790s owed any debt to Burke's accomplishment, the impeachment remained important as a symbol of accountability. Burke publically charged Hastings with a wholesale abuse of rights and corruption before the nation, in Westminster Hall. It was here that Charles I had been tried by Parliament, in order to hold the monarch to account for dragging England into civil war. O'Brien concluded, that as a result of the impeachment trial, 'Burke established the principle of accountability in a way that nobody connected with the government of India would forget. The ultimate acquittal did not erase memory of the ordeal'.²⁴⁸

Many imperial administrators and historians have been critical of the impeachment, since Hastings could be regarded as the reluctant founder of the Raj. Lord Curzon, for instance, was an ardent admirer of Hastings.²⁴⁹ However, the impeachment has attracted supporters from that quarter: E. A. Bond held that the impeachment would, 'always be regarded as honourable to the country from the motives which originated it and the purposes it was intended to serve'.²⁵⁰ Writing in the 1960s, Marshall argued that whilst there was truth in some of the charges, ultimately the prosecution managers 'deserved to lose'.²⁵¹ Marshall claims that had Edmund Burke seen Hastings in perspective, then he would have understood that he did not deserve to be impeached and that 'It was Burke's tragedy that he could not see Hastings in perspective'.²⁵² Did the prosecution managers regret the impeachment? Fox and Burke became estranged and Fox quickly lost interest in the impeachment, whilst Burke grew closer to the government. The Whigs viewed Burke increasingly as an embarrassment and were relieved, when the ordeal was finally over. Burke's legacy can be said to be that in the late eighteenth century, the rights of

²⁴⁶ Patrick Turnbull, *Warren Hastings*, (New English Library, 1975), pp.223-24. The Prince Regent had informed the Tsar and the King of Prussia that Hastings was 'the most deserving, and at the same time one of the worst used men in the empire'.

²⁴⁷ Langford, 'Burke', *Oxford DNB*

²⁴⁸ O'Brien, *Edmund Burke*, p.204.

²⁴⁹ Moon, *Warren Hastings*, p.336.

²⁵⁰ Carnall and Nicholson, 'Introduction', *Warren Hastings*, p.4.

²⁵¹ Marshall, *The Impeachment*, p.87.

²⁵² *Ibid*, p.190

subject people were at the forefront of British political debate. Burke was a proponent of trusteeship and the responsible exercise of power for the benefit of those subjected to British rule. His awareness that rights did not depend on geography and had to be protected by the full force of the British Parliament, stood him apart from his own party who embarked on the impeachment with Burke, yet quickly tired of the whole affair.

Hastings had never wanted to create the modern idea of the British Raj. His actions were based on protecting the Company's position and establishing alliances with local rulers. He acted on the spot and took measures that might be controversial, then and now. He could be single-minded and act without considering how his actions would play out at home; one reason why he clashed with his Council. Hastings believed that he had the authority to rule and resented the limitations placed on his position under the Regulating Act 1773. His rule was of a personal nature and so were alliances with the Indian powers. He attempted to curb abuses by relying on locals, whilst centralising control in Calcutta and removing the puppet Nawab of Bengal. He may have turned a blind eye to abuses, but he needed support on the ground and was ultimately a Company man, driven by the survival of a commercial holding and reforming the system to make a profit.²⁵³ This pragmatic streak in Hastings's personality produced policy that was inconsistent with Burke's argument that the rights of the oppressed had to be protected and abuses could not be justified, however Hastings much tried to base his actions upon the customs of Indian rule.

This article has reviewed the trial from a human rights perspective. It is submitted that the trial achieved a contemporary awareness of the abuses which were committed by the Company. For some, it remains questionable how prevalent this awareness was, and whether this influenced the political consciousness of those tasked with administering British rule in India. After all, within a few years of the trial India became a national interest, with the Governor-General appointment by the metropolis and serving only the interests of the British state. Nonetheless, this article has demonstrated that it was Burke's awareness of human rights, and the duty of mankind to protect the rights of others, that had gripped Britain in the mid 1780s. Further, Burke's defence of intrinsic human rights was not marred by political expediency or party political considerations. Instead, Burke was perhaps unique amongst his contemporaries in his dedication to prevent human rights abuses. This dedication brought about the impeachment, yet

²⁵³ Smith, 'Edmund Burke', p.78.

it has also led to Burke receiving considerable criticism for the zeal in which he prosecuted Hastings. But Burke's was a lasting legacy.

If Britain was to be the new Rome, then Burke had clearly demonstrated that it was not acceptable for British proconsuls to rule in accordance with their own view of the local customs. What Burke achieved in destroying Hastings' career was a demonstration that Parliament would not disregard abuse and corruption and let them go unpunished. Whether Hastings deserved to be the target for this demonstration is another matter. However, if the merits of impeaching Hastings are separated from Burke's defence of the Company's Indian subjects, then it is possible to view the trial as the precursor to the campaign to prevent the abuse of the Congo by King Leopold of the Belgians,²⁵⁴ as well as the trials which have taken place on that issue since the Second World War. Marshall viewed Burke as having a 'single-minded devotion to the interests of Indians' which gave him a 'unique position' and which 'would have distinguished him in any period'.²⁵⁵ It is submitted that to view the impeachment from a human rights perspective is to see the trial for its uniqueness, its groundbreaking focus on human rights abuses and above all the understanding that people of different races should not be exploited.²⁵⁶ This perspective has the merit of avoiding much of the distracting debate surrounding whether Hastings deserved his ordeal, as instead the focus is on Parliament having voted to prosecute a defendant accused of gross human rights violations. Recent events underline the importance of the impeachment on its own account, regardless of the deserts of the individuals involved.

Accountability remains something considered crucial to ensure good governance, the prevention of corruption, the legal use of executive power and the protection of human rights, witness the recent Iraq inquiry. The Chilcot Inquiry has, once again, relied on an element of very public accountability about the political decision to invade Iraq in March 2003. Whilst impeachment may be consigned at the moment to the history, it is submitted that the benefits of active Parliamentary scrutiny and the ability to prosecute in exceptional circumstances should not be ignored. Recently, two Parliamentary Committees publically held the London

²⁵⁴ See Adam Hochschild, *King Leopold's Ghost: A Story of Greed, Terror and Heroism in Colonial Africa*, (Pan, 2006, 2nd edn).

²⁵⁵ Marshall, *The Impeachment*, p.187.

²⁵⁶ The idea of commercial advantage for Britain was never doubted. However, there would need to be benefits for those ruled by the British. Hence why Burke drew parallels between the Company in India and the Romans and their approach to empire building, something much emphasised by nineteenth century imperialists – though they put an emphasis on the benefits of civilisation and Christianity. See Judith Rowbotham, Miscarriage of Justice? Postcolonial Reflections on the 'Trial' of the Maharajah of Baroda, 1875, *Liverpool Law Review*, 28 (3), 2007, 377-404.

Metropolitan Police and senior executives at News Corporation and News International to account for their role in the phone-hacking controversy.²⁵⁷ There are thus parallels to be drawn between the Chilcot Inquiry and the impeachment of Warren Hastings; not least O'Brien's percipient statement about the latter that while individuals may escape legal sanction, this does not 'erase memory of the ordeal'.

²⁵⁷ The Select Committees were the Home Affairs Committee and the Culture, Media and Sport Committee.