

## *Eighteenth Century: Montesquieu and America*\*

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How we regard the birth of liberty in North America greatly influences our appreciation of its value today. Scholarship has long and rightly portrayed its origins in traditions antedating the American Revolution. They derive it from the English Common Law, and see in the American founding a confirmation of that tradition of English law and custom. The colonists are regarded as having gradually acquired the arts of independent self-government from the historic practices of English indulgence. In that light, they have seen the Revolution as a break from English administration of the colonies, rather than as a decisive advance in theory and principles of self-government. Accordingly, they have systematically discounted the influences of thinkers—English, Scottish, and continental—in originating the Revolution. Rather, they insist, Whiggish activists borrowed the rhetoric of their English cousins to defend their unparalleled exertions on behalf of independence, but with little idea whatsoever of a way of life other than that for which colonial experience had prepared them.

There is considerable truth in this account, inasmuch as the Americans treasured most highly the rights and liberties of Englishmen. They began to defend and articulate their rights to life, liberty, and estates from the earliest date. The 1646 case of Robert Childs, *et al.* testifies powerfully to this history, and not alone. We would be neglectful, however, if we failed to note that these early challenges were generally directed toward colonial exercises of power—as was the rhetoric of Patrick Henry in the Parson's fee case of the late 1750s. In short, it was in the context of seeking out limitations on the colonial exercise of power that Americans so frequently and habitually invoked their ancient rights under the British constitution. This process reached its peak in the use made of the work *English Liberties*, by Henry Care. It was no accident, to be sure, that Care was probably the most radical of post-settlement Whigs. Yet he did not go far enough for the Americans. In the case of men like Sam Adams, his virulent anti-papery survived far better than his scholarly reliance on English law.

Accordingly, contemporary scholarship is wrong in its central claim—namely, that prior to the Revolution Americans did not meaningfully divide over questions of rights and liberties. They are also wrong to minimize the influence of modern political philosophy in the direction that debate ultimately took. Not only was it the case that the British Constitution ceased to offer adequate authority from the moment the imperial power itself came into question (the evidence for which may be gleaned from the Massachusetts General Court's instructions to its British agent, Jasper Mauduit, in 1762, which instructions elevated John Locke above immemorial usage).<sup>1</sup> It is more dramatically the case that Americans well before, in small groups to be sure, began to search for a more express articulation of the foundations of liberty. In the late 1740s a small group in Massachusetts, Sam Adams at its center, had already opened the quest—prior to the outbreak of the Seven Years' War and well before the questioning of imperial power. They published a short-lived but frankly political journal, taking North America and Americans, not just Massachusetts, as the natural arena and objects of their efforts.

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One member of this group, Daniel Fowle, provides the most dramatic evidence of the direction in which their thoughts turned. Fowle's work from 1754-1756 remains extant, though it has apparently been only rarely consulted. It is perhaps the first comprehensive discussion of the principles of government, in the tradition of the literature of the Revolution, written and published by an American. Fowle's *A Total Eclipse of Liberty* bridges the old and new worlds; aimed at exposing abuses of power in Massachusetts, it celebrates the English constitution and English liberties. At the same time, however, Fowle explicitly introduces reason and the "poor dim light of nature" as the standards of political judgment.<sup>2</sup> It is therefore no accident that his short essay contains all the essential forms and objectives of Revolutionary rhetoric, including the robust version of the consent of the governed and an express assertion of the right of revolution.

Where did Fowle derive the principles of his analysis? Primarily from the philosophical traditions of the west, including the eighteenth-century enlightenment and continental thought. Inasmuch as my particular concern is to discuss the status of liberty in the eighteenth century—and that primarily of Montesquieu—this last point is the one to which I will draw ultimate attention. Before I take up that direct discussion, however, I wish to set forth with some clarity the significance of Fowle's essay and its exact content (which, I believe, is no longer familiar to any scholar apart from my wife and myself).

I derive the significance of Fowle's work indirectly. Scholars like Spurlin and Lutz have conducted exhaustive surveys of Revolutionary and colonial thought for indications of intellectual antecedents. Spurlin considered Montesquieu alone, while Lutz surveyed the whole range of moral and philosophical literature. They agree on the enormous significance of Montesquieu, but largely confine his influence to a point when the direction of the Revolution had already been set. Lutz's more recent and more accurate work demonstrates Montesquieu's great importance but expressly maintains that the *Spirit of the Laws* served as a reference source in a context where, confronted with an accomplished Revolution and needing to establish a government, the founders were searching for guidance. In short, Montesquieu did not inspire the Revolution; he only provided much needed practical advice after it had occurred. Spurlin and Lutz agree: Montesquieu appeared in America only after 1760 and then mainly in the 1780s. This judgment was certainly a reasonable one from all direct and indirect evidence. In terms of direct evidence, we cannot find advertisements for Montesquieu's works prior to the 1760s and have few, if any, records of its being offered for sale. Further, few persons have ever uncovered citations prior to that period. In terms of indirect evidence, America was not exactly on the intellectual main line. While Montesquieu took Europe and England by storm, it is not unrealistic to think that a work published effectively in 1749 and translated into English in 1750 might take a few years to penetrate the less developed corners of the world. In fact, however, Daniel Fowle's essay reproduced extensive citations from the book in 1754. How early he saw it—and he refers to the book, not to someone else's citation—we are as yet unable to judge. Clearly, however, he saw it early. Further, he published an important part of it to his countrymen. The cause of liberty had a boost from the continent long before the King and parliament had become liberty's enemies. That is the significance of Fowle's work.

As to the content of *A Total Eclipse of Liberty*,<sup>3</sup> I am now required to tell Fowle's story. A printer-publisher in Boston, he was summoned before the Lower House of Assembly on 24 October, 1754 to answer questions concerning a publication entitled "Monster of Monsters." The House considered the anonymous piece a libel on itself and wished to find and punish those re-

sponsible. Fowle denied that he either authored or printed the piece. He admitted that he had handled it, receiving some ten copies which he offered for sale. He was vague about his knowledge of the source, indicating only that the pamphlets had been delivered to him by some youth, presumably employed by the printer. There was some indication that Fowle's brother, Zechariah, and a Royal Tyler were involved, but he did not say so squarely. In the end the House remanded him to the common jail, pending further word from the Speaker. There was no finding of guilt and no formal presentation of charges. But Fowle was jailed, and there began his work, *A Total Eclipse of Liberty*. He succeeded in writing only a few pages before pen and paper were removed from him. He spent forty-eight hours confined in the stone jail, and another three days in the jailer's quarter, during which time his distraught wife lost her health and miscarried. Fowle complained bitterly of this "*unheard of attack upon the Liberty of an Englishman, than which scarcely anything is dearer, if he has but the spirit of a Man....*" In his own words, the experience seemed thus:

I had no bed to lodge on, but a pillow and one blanket. I walked about, and when tired sat down, and heard the Clock strike every Time from 12 till eight. There is but one Window, and that without anything to keep off the Weather, as there is only several iron Bars, no Winder-shut, which the *Murderer was favour'd with*. The Place *stunk prodigiously*, which oblig'd me to tye my Handkerchief over my Mouth and Nose, for fear of being *suffocated*: worse than the *Smell of Brimstone*. I heard no Noise for some considerable Time; *All Nature seem'd to be dead*; the first stirring of any Thing I could hear, was the Noise of Rats, which seem'd to be of a prodigious size...<sup>4</sup>

After forty-eight hours of this Fowle was removed to the jailer's quarters, where an order was received commanding that he be released privately. Upon this news he responded, "I now desire that the same Authority that put me in, would by virtue of that same Power take me out, and not thrust me out privily."

On October 28<sup>th</sup> Fowle remained a prisoner, whereupon, in his account, he inserted a lengthy extract from "that approved piece," Montesquieu's *Spirit of the Laws*. He used those passages which recur throughout the founding era, culminating in *Federalist* number 47 in 1788. As he transcribed them, evidently from the translation of Thomas Nugent but corrected here and there against the French original, they read thus:

The [political] Liberty of the Subject is a Tranquility of Mind, arising from the Opinion each Person hath of his safety. In order to have this Liberty, it is requisite the Government be so constituted as *one man need not be afraid of another....*

When the Legislative and Executive Powers are *united in the same Person*, or in the same *Body of Magistrates*, there can be no *Liberty*; because Apprehensions may arise least the same Monarch or Senate should enact *tyrannical Laws*, to execute them in a tyrannical Manner.

Again, There is no Liberty, if the *Power of Judging* be not *separated* from the Legislative, the Life and Liberty of the Subject would be exposed to *arbitrary Controul*; for the *Judge* would be the *Legislature*. Were it joined to the *Executive Power*, the Judge might behave with all the Violence of an Oppressor [violence and oppression].

There would be *an End of every Thing*, were the same Man, or the *same Body*, whether of the Nobles or of the People, to exercise these three Powers, that of *enacting*

*Laws, that of executing the Publick Resolutions, and that of judging the Crimes or Differences of Individuals [trying the causes of individuals].*<sup>5</sup>

Placed in the context of Fowle's ordeal, we should have less difficulty to hear the apocalyptic and revolutionary nature of Montesquieu's teaching. Where liberty (he had said "political liberty," but Fowle altered it) is not assured, man must fear man; without the separation of powers, laws will be tyrannically framed and executed; without separation of powers, judges act with all the violence of an oppressor (he corrected Nugent's "violence and oppression"); and everything would collapse if the different powers were exercised by the same man or men.

In fact, in colonial America as in Montesquieu's France, it was commonplace to find the powers of government promiscuously mixed. The case of Robert Keayne in Massachusetts, at a hundred years removed, but not very different in form from Fowle's case, testifies to this. Accordingly, these radical claims about the danger to liberty constitute as much an indictment in the one case, America, as in the other case, France. Moreover, even as Fowle celebrates English liberty, he has learned from this Frenchman of radical defects in that liberty. Hence, he is at the start of that train of reflections which produced the American Revolution and introduced a new, non-customary standard for the defense of Liberty. What is of great interest in this story is the fact that Montesquieu was also the last Enlightenment thinker on the continent who could have left such a legacy. In the very year Fowle wrote, Montesquieu completed the definitive version of his classical work and then died. In that same year, Jean Jacques Rousseau published his *Discourse on the Origins of Inequality Among Men*, which opened the modern assault on nature as a moral standard and natural rights as a source of political principles.

True, for Rousseau man was good in nature—if to be good it suffices to be peaceful and stupid. But that is the point: man in nature is not the man we know. The man we know, Rousseau held, is wicked. What changed him? "only the changes occurring in his structure, the progresses he had made and the knowledge which he has acquired."<sup>6</sup> Thus, in the "Second Discourse," in footnote "I," Rousseau repeats the critique he had offered in the "First Discourse on Science and the Arts":

It was not without difficulty that we succeeded in making ourselves so unhappy. When one considers, on the one hand, all the prodigious labors of men, so many profound sciences, so many invented arts, so much strength applied, abysses filled in, mountains leveled, rocks crushed, rivers made navigable, land cleared, lakes dug out, swamps dried up, enormous buildings erected on land, the sea covered with vessels and sailors, and when, on the other hand, one investigates with but little meditation the true advantages which have resulted from all this for the happiness of humankind, one can only be struck by the astonishing disproportion which exists between these things and deplore man's blindness... Admire human society as much as one may, it will be no less true that it necessarily inclines men to despise one another in proportion as their interests intersect....<sup>7</sup>

This art alone, this capacity for progress, for self-perfection, is the sole distinguishing characteristic of man for Rousseau. And it is a sufficiently ambiguous distinction that there is room to wonder where man begins and orangutan ends—or whether African cannot mate with orangutan. It is on this ground that Rousseau entertained the idea of a progressive development of humanity. The very uncertainty of humanity's identity renders a reliance on nature as a guide impossible. There could not be a more complete contrast with Daniel Fowle, who assumed not only that he could recognize men, but

That all Men are so *just*, that not any one *individual* would do any Thing he imagin'd injurious to his Neighbor, but that they were only liable to some Mistakes about their own and others' Rights ....<sup>8</sup>

The contrast was produced by the Enlightenment's inclination to follow in the paths of Galileo and Descartes, in the paths of natural science.

We can discern the threat to liberty in this approach by considering its effect on Thomas Jefferson's thought in the context of America, where Jefferson tried to mate natural science and freedom. He, more than any other founder, was profoundly influenced by the European Enlightenment, and the result was some confusion in his own mind as to the force of American principles in the context of natural history. The confusion was sufficiently great that he almost repudiated the truths of the Declaration of Independence.

Jefferson's position, stated most forcefully in the *Notes on the State of Virginia*, has long been misunderstood and abused by scholars, who have accused him of being simply a racist. The controversy centers in an exchange Jefferson had with Benjamin Banneker. The case: Banneker's impassioned appeal of August 19, 1791 was that Jefferson (as Secretary of State as well as author of the Declaration) exert himself to remove the baseless prejudice of an inherent inferiority of black people. For the purpose Banneker condescended to make himself an exhibit. While he did not appeal to the instance of his producing an almanac, the formal occasion of his letter was to transmit that philosophical effort to a kindred soul. Thus, the implication was unavoidable that Banneker considered this a case made; his mathematical and astronomical abilities were the acquisitions of his race. He appealed to Jefferson, therefore, to join in procuring for black people "their promotion from any state of degradation to which the unjustifiable cruelty and barbarism of men may have reduced them." Banneker attributed the entire prejudice concerning the blacks' lack of "mental endowment" to the enforced brutishness of slavery.<sup>9</sup>

Jefferson responded by immediately recognizing the almanac as the "proofs you exhibit, that nature has given to our black brethren, talents equal to the other colors of men," although Banneker had treated the transmission as incidental and even apologized for including the messages in the one letter. Moreover, Jefferson saw the exhibit as aimed at the prejudice of color, with the distinction that Jefferson derived it not only from slavery but from the "degraded condition of their existence, both in Africa and America."<sup>10</sup> Jefferson, therefore, rejected Banneker's claim that the whole cause of black imbecility was American despotism. Much like Rousseau, he had *public*, if speculative, doubts about the place of the black man in the chain of being.

This story actually begins with Jefferson's *Notes*, in which he pondered whether black men were not inferior to whites. Scholars have assailed first the passages in the *Notes* and then Jefferson's response to Banneker (as well as later correspondence) as evidence of his indelible prejudice. They overlook in the *Notes* his prayer that matters stand other than they seemed.<sup>11</sup> The later charges center on the fact that Jefferson allegedly wrote in a private letter to Joel Barlow (some say Benjamin Rush, mistakenly) and questioned whether "Banneker had done the almanac or that any black man could have."<sup>12</sup> The implication has been that Jefferson spoke differently to his "white equal" than to Banneker, as well as differently in public and private. Obviously, the *Notes* are every bit as public as the Declaration was, and at the least Jefferson is exculpated from the charge of hypocrisy. We are concerned to know whether he is equally exculpated from the charge of confusion.

Jefferson returned to these questions in a letter to Joel Barlow on October 8, 1809. He

wrote concerning a Frenchman who had assumed the mission to prove black capacities, having taken up Rousseau's challenge. I quote at length:

He wrote to me also on the doubts I had expressed five or six and twenty years ago in the Notes on Virginia, as to the grade of understanding of the negroes, and he sent me his book on the literature of the negroes. His credulity has made him gather up every story he could find of men of color, (without distinguishing whether black, or of what degree of mixture,) however slight the mention, or light the authority on which they quoted. The whole do not amount, in point of evidence, to what we know ourselves of Banneker. We know he had trigonometry enough to make almanacs, but not without the suspicion of aid from Ellicot, who was his neighbor and friend [and employer, in laying out Washington, D.C.], and never missed an opportunity of puffing him. I have a long letter from Banneker, which shows him to have had a mind of very common stature indeed.<sup>13</sup>

Here, of course, Jefferson accepts Banneker's authorship, while retaining the suspicion that he was aided in the work. More importantly, he takes what little he finds in Banneker's mind as evidence sufficient as to "the grade of understanding of the negroes." What grade was that: "a mind of very common stature indeed." The term of reference for this "common stature," of course, has to be the intellectual attainments of white folk, since the questions grow out of the suspicion that the black mind was inferior to the common.

Some scholars have imagined this phrase to imply defect, inferiority. They read the word "common" to mean base or vulgar (certainly a possible meaning), and there differ from me, who recalls the euclidean term "common notion" as the critical linchpin in constructing the intellectual edifice of geometry. That is, what Jefferson sought in every black mind was not evidence of genius but of ordinary intelligence, intelligence sufficient to warrant confidence that the axioms of nature would command the souls of ordinary black folk as they do those of ordinary white folk. That must be the level of intelligence of the common intellect, else the "consent of the governed" will lose all intelligibility. Here, then, is where confusion enters, for this is the light in which *Notes on the State of Virginia*, querying whether freed blacks could become citizens, developed Jefferson's doubts as forcefully and publicly as those doubts are ever developed anywhere. I give the relevant text:

In general, their existence appears to participate more of sensation than reflection.... An Animal whose body is at rest, and who does not reflect, must be disposed to sleep of course. Comparing them by their faculties of memory, reason, and imagination, it appears to me, that in memory they are equal to the whites; in reason much inferior, as I think one could scarcely be found capable of tracing and comprehending the investigations of Euclid...

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...notwithstanding these and other discouraging circumstances among the Romans, their slaves were often their rarest artists. They excelled too in science, insomuch as to be usually employed as tutors to their master's children ... not their condition then, but nature, has produced the distinction.—Whether further observation will or will not verify the conjecture, that nature has been less bountiful to them in the endowments of the head...

To justify a general conclusion, requires many observations, even where the subject may be submitted to the anatomical knife.... How much more then where it is a fac-

ulty, not a substance, we are examining; where it eludes the research of all the senses; ...let me add too, as a circumstance of great tenderness, where our conclusion would degrade a whole race of men from their rank in the scale of beings which the Creator may perhaps have given them.... I advance it therefore as a suspicion only, that the blacks ... are inferior to the whites in the endowment both of body and mind.<sup>14</sup>

In light of these passages everything should become clear. Jefferson's disagreement with Banneker over the source of black degradation derived from Jefferson's own confidence in the sufficiency of natural history to answer that question. Only natural history could provide such an answer as would remove the truth beyond mere political taste or sentiment. It would have been foolish to embrace the equality of blacks and whites, if to do so were to entail the denial of the natural rights on which the laws of free men were based. Such a result would have had to follow, if the political union of blacks and whites had to be forced against the evidences of natural history. If the souls of black folk could not be commanded by the axioms of nature, their political union with whites could not be based on that mutual consent which derives from recognition that all men are created equal—that is, black men could not recognize the equality of all men or the superiority of life in accord with natural right. It was not Banneker's appeal to the Declaration which could persuade Jefferson. It was rather the demonstration that Banneker possessed "a mind of very common stature indeed." This was for Jefferson not merely a disposition of the heart, for he regarded the agreement of natural history with natural right as the necessary foundation of that elevation of mind and body to which he aspired on behalf of all men.

Jefferson's proclivity for natural science betrayed him in this case into seeking a proof for the axiom that all men are created equal, which is not only impossible but oxymoronic. His problem emerges from his entertaining the question of humanity as a matter of natural science. As Euclid's common notions reveal, through the centrality of the term "equal" in the five axioms, the self-evidence and truth of axioms revolves around a principle of identity. That is, the native operation of the intellect is the distinction of same and other—the recognition of the principle of equality.

What that means in this case is that to recognize that all men are created equal, and to recognize all men as men, are one and the same. The one cannot be accomplished without the other. To push the question, Are blacks men? Are Indians men? Are Chinese men? Are Saxons men? Are Persians men? is already to deny the radical insight of the Declaration. Jefferson, speculating Rousseau-like on orangutans and near-men, threatened to overturn the liberating foundation of the American polity. Since in Rousseau human equality meant nothing, inasmuch as a changing and deviating nature constantly undermined the meaning of humanity itself, such speculation was vacuous. But for Jefferson, to whom humanity was founded in an immutable identity, such speculation was dangerous in the extreme, however natural in the context. To his credit, however, he protested to Barlow that "nothing was or is farther from my intentions, than to enlist myself as the champion of a fixed opinion, where I have only expressed doubt."<sup>15</sup>

The path cleared by Rousseau led at the century's end not only to Jefferson's confusion but to Kant and Hegel and ultimately to Nietzsche. In the course of time reason, revelation, and nature came to be supplanted by history as the principal moral cause to which most thinkers turned. Even in the French Revolution, where Montesquieu's work was remembered, the spirit of Rousseau ultimately prevailed. It realized itself in Hegel's identification of the Napoleonic consummation of that revolution as wisdom's dawning. Thus, the eighteenth century, and the Enlightenment, closed on a dismal note of anticipated slavery, fully realized in the form of the

modern totalitarianisms since. It did not bring liberty; it brought tyranny.

American liberty alone preserves historic evidence of the path not taken by Europe. Through it we are enabled to recover the true direction of Montesquieu's thought. We can ask what there was in his thought which enabled him to stop short of Rousseau's plunge. How was he enabled to preserve nature and natural rights in the face of what seemed Europe's philosophical fate? I have provided one answer to that question in a previous essay for the Academie Montesquieu on "Montesquieu and Natural Law."<sup>16</sup> Here I will content myself to describe the impact of Montesquieu through the eyes and experience of Daniel Fowle (and, by implication, Sam Adams).

While Fowle's experience may seem particular, he approached it throughout, more than John Peter Zenger did, as having general significance. He made this clear at the outset, when he apologized for the moderate tone of his work by his fear that "it should be accounted a libel" and some reader

be thrown into a stinking stone Gaol, though never so innocent, and suffer in the same Manner as if he was the real Author: without Law, and in direct opposition even to the poor dim Light of Nature, if I am not very much mistaken.<sup>17</sup>

Fowle's approach brings the light of nature to the support of law. Following the citation from Montesquieu, a lengthy citation from Henry Care was entered, in which Fowle fastened on those "Rights that from age to age have been deliver'd down to us from our Renown'd Forefathers...." Needless to insist, it would be a miracle if the "poor dim light of nature" concurred in every bequest from the past. Still, the singular freedoms enumerated by Care all eventuated in "this Truth, that when Liberty is once gone, even *Life itself grows insipid*, and loses all its Relish."<sup>18</sup>

*A Total Eclipse* divides into four parts, after the "Preface." The last part is an appendix, entitled "The Original of Civil Government, the Rights of the People, etc." In the final section Fowle recurred to the ultimate foundation of government, the right of consent, rather than to immemorial usage. He took as his authoritative model, Roman liberty, and the subjection of the "chief ruler" to the will of the people. This democratic sentiment flew in the face of British tradition, which entertained a notion of an original contract only as a point of departure and to which no return was conceivable. Under English principles, as Blackstone was later to codify, the people's original authority, once alienated, was alienated for good.

Fowle's intention to present a design of good government which could be defended "against the Invaders of our Liberties and Privileges" required him to go beyond English tradition. It required him to argue for enforceable limits on all delegated authority. In the course of his argument he adduced all of the principles which were later to coalesce in the ideas expressed in the Declaration of Independence. I quote at length:

this observed, 'No Governors are the natural Parents or Progenitors of their People,—Nor has God by any Revelation nominated Magistrates, shewed the Nature, or Extent of their Power, or given a Plan of Civil Polity for Mankind.' 'Tis also allow'd 'to constitute a State or Civil Polity in a regular Manner, these three deeds are necessary: First, a *Contract* of each *one* for *all*, that they should unite in one Society to be governed by one Counsel. And next a *Decree* or *Ordinance* of the People concerning the Plan of Government; and the Nomination of the Governors. And lastly, another *Covenant* or *Contract* between these governors and the People, binding the Rulers to a faithful Administration

of their Trust, and the People to Obedience.’<sup>19</sup>

Fowle’s plan envisions two contracts, an original and an operational or ongoing contract, identifying the people as the true sovereign. He did not overthrow the divine right of kings; he added to it a superior divine right of the people. He plainly conceived a written constitution as the organic and mediating tie between rulers and communities. And he sought some form of election of rulers by the whole society, albeit unspecified.

These provisions of political philosophy—derived from the proposition that no man is the natural ruler (or parent) of any other—Fowle derived from a standard of right, as opposed to English inheritance. On this right, he argued, if there is no such thing, “there could be no Oppression or Injustice, for Oppression or Injustice is when that which is another’s Right is detained or taken from him against his Consent.”<sup>20</sup>

It must come as no surprise, therefore, that in Boston in 1754 he also preached a right of revolution, without which a rule of right, or higher law, remains inefficacious. Representatives have “no more than a *delegated* Power from the Fountain (anticipating George Washington and the *Federalist*, among others), chose for the Defense and Protection of the People.” They hold their power conditionally, not only “from” but “by” the people.

So that it’s natural, nay a Duty, when the common Rights of this Community is trampled upon, or only the Liberty of *one* is attempted against, and that made a *Precedent* of, then they are perfidious to their Trust, and that Moment forfeit all the Power committed to them; the Alarm then ought to be given, but with *Prudence* and *Moderation* ....<sup>21</sup>

One would think this Lockean in its form, but for Fowle’s faith in the efficacy of revolution. Locke, too, conceived that the original contract constituted an irretrievable surrender of rights—not in right, to be sure, but for all practical purposes. Fowle, however, considered a patient, suffering people as “herds of miserable abject Slaves or Beasts of Burden, rather than civil Polities of rational Creatures.” To him, “the point in hand is very short.” Either representatives—kings included—are limited in their power or they are not. He concluded that “there is no middle State betwixt *Slavery* and *Freedom*.”<sup>22</sup>

At the heart of Fowle’s view of the origins of civil government, then, is a view of representation which itself reposes on a principle of right conceived as deriving from the nature of things—human equality. That is precisely the point which Fowle drew from his reading of the *Spirit of the Laws*. What seems to have prevented Montesquieu’s plunge into the European abyss was a view of government as conditional, not total, itself deriving from a view of the individual man, of human equality as the fundamental datum.

In the very middle of the Enlightenment, whose direction was to apply an ever increasing power over nature to man himself, Montesquieu held a different course. While modern political philosophy in general adopted the idea that human polity was purely arbitrary and conventional, Montesquieu considered it necessary in the course of nature. On the basis of this distinction one would think that Hobbes, for instance, would emphasize choice or consent over determination, while Montesquieu would emphasize some form of determinism. And so he has often been misinterpreted, by those departing from his discussions of the force of climate and *moeurs* in determining the conditions for human laws.

In fact, however, Hobbes produced the greater determinism, precisely because, there being no non-arbitrary standard on which to found human society, superior force alone prevailed

and set in motion a course of events as determined as a stone's flight. Montesquieu, on the other hand, albeit realist enough to concede the power of superior might, found in the necessities of nature ample ground for choice. Particularly, arguing that man could not live but by choosing, while nevertheless inclining to choose the natural course, there was a moral force which prevailed in determining people's constitutional courses.

The signal fact about the eighteenth century was that there was no liberty to speak of throughout the monarchies of Europe. The eighteenth century opened on a note established by Louis XIV in France, absolute monarchy: "*I'état, c'est moi.*" While the victories of Marlborough secured the settlement of liberties in England, they did not contribute materially to any political improvement in Europe. Montesquieu turned to the English constitution precisely because it alone boasted a constitution which promised liberty. Indeed, all eighteenth-century reflection turned to England, in order to appreciate such niceties as the trial by a jury of one's peers.

Eighteenth-century political philosophy—Enlightenment thought—turned largely to the world of science and the idea of relieving man's estate through mastery over nature. Its implicit reliance on a democratization of science, and hence society, went unnoticed, until Rousseau forced it upon the attention of the world. Montesquieu redirected it by raising the question of political alternatives in a way which had not received as close attention since Aristotle. He indicated that European monarchies, "the monarchies that we know," did not have liberty for their direct object.<sup>23</sup> He did so, however, in a context in which he had clarified liberty as an object for man. That is, he derived from nature, even natural necessities (to speak in mores) a standard by which to assess the politics of his era. While other Enlightenment thinkers (Voltaire included) had regarded nature primarily as an object of material reflections, Montesquieu charted a different course. That course was not followed in the balance of the eighteenth century. Rousseau, though writing almost exclusively in the realm of political philosophy, does so to the effect of denying the existence of a human nature (man is infinitely pliable), rejecting reason as a source of political principles (the general will is not a rational will), and giving birth to the school of historical determinism (the first man to chain off a plot of ground and get away with it changed forever the condition of man).

The fact that Montesquieu made liberty over virtue the fundamental organizing principle of political life altered completely the modern conception of politics. As virtue required a comprehensive, all-powerful state, so liberty called into being the idea of a state limited by the superior prerogatives of citizens. That contrast might alone explain the difficulty Europe experienced in taking Montesquieu's teaching to heart.

Montesquieu did not go unheeded in North America, however. Although his understanding of the English constitution was under assault in England at the end of the eighteenth century, on the North American continent it had inspired a new English constitution—one in which the roles of the people and their parliament had been reversed. The people became for the first time in history the exclusive guardians of their constitution, conformable to the vision of Daniel Fowle. The new theory of representation had become the concrete form of the idea of liberty in the modern world. Montesquieu was its creator and, for that reason alone, eighteenth century Europe the source. In North America it became what Daniel Fowle wished, that liberty for which everyone had "as high Esteem ... as the ancient *Romans* had, that they made it one of their Goddesses..."<sup>24</sup>

## ENDNOTES

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<sup>1</sup> The General Court wrote to Mauduit June 12, 1762: “The natural Rights of the Colonists, we humbly conceive to be the same with those of all other British Subjects, and indeed of all Mankind. The principal of these Rights is to be ‘Free from any superior Power on Earth, and not to be under the Will or Legislative Authority of Man, but to have only the Law of Nature for his Rule.’” Massachusetts Archives, xxii, 247.

<sup>2</sup> Daniel Fowle, *A Total Eclipse of Liberty* (Boston: 1755).

<sup>3</sup> And the subsequent *Appendix to a Total Eclipse of Liberty* (Boston: 1756), which concludes, “there is no middle State betwixt Slavery and Freedom.”

<sup>4</sup> Fowle, *A Total Eclipse...*

<sup>5</sup> Ibid.

<sup>6</sup> Jean Jacques Rousseau, *Discours sur l’origine de l’inégalité parmi les hommes* (Paris: Editions Garner Freres, 1962), fn. i, p. 100.

<sup>7</sup> Ibid.

<sup>8</sup> Fowle, *A Total Eclipse...*

<sup>9</sup> Benjamin Banneker, *Copy of a Letter from..., to the Secretary of State, with his Answer* (Philadelphia: Daniel Lawrence, 1792), 15 pp.

<sup>10</sup> Thomas Jefferson, to Benjamin Banneker, August 30, 1791, *Writings of Thomas Jefferson*, Andrew A. Lipscomb, ed. (Washington, D.C.: Thomas Jefferson Memorial Association, 1904).

<sup>11</sup> Thomas Jefferson, *Notes on the State of Virginia* (New York: Harper Torchbooks, 1964), “Query XVIII,” pp. 155-156.

<sup>12</sup> Thomas Jefferson to Joel Barlow, *Writings*.

<sup>13</sup> Thomas Jefferson, to Joel Barlow, October 8, 1809, *Writings*, vol. XII, p. 322.

<sup>14</sup> Jefferson, *Notes*, “Query MV,” p. 138.

<sup>15</sup> Thomas Jefferson to Joel Barlow, October 8, 1809.

<sup>16</sup> “L’Éthique de Montesquieu: Principe de la fondation de la démocratie américaine,” *Actes* 2, 95-128 (1986), Academic Montesquieu (Bordeaux).

<sup>17</sup> Fowle, *op. cit.*, p. 4.

<sup>18</sup> Ibid.

<sup>19</sup> Fowle, *An Appendix to the Total Eclipse of Liberty* (Boston: 1756), pp. 20-25.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Charles de Montesquieu, *De l'esprit des lois*, Bk. XI, Ch. 7.

<sup>24</sup> *Total Eclipse...*