

MONTESQUIEU'S CONTROVERSIAL CONTEXT: *THE SPIRIT OF THE LAWS* AS A MONARCHIST TRACT

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Abstract: This article draws attention to the importance of early eighteenth-century debates about the nature of the French monarchy for our understanding of Montesquieu's masterpiece *The Spirit of the Laws*. By contrasting and comparing Montesquieu's views with those of, amongst others, Henri de Boulainvilliers and Gilbert-Charles Le Gendre, this article shows that *The Spirit of the Laws* defended an orthodox monarchist position. The evidence presented in this article therefore has important implications for the ongoing debate about Montesquieu's place in the history of ideas, suggesting that *The Spirit of the Laws* was written to bolster rather than to undermine the regime under which he lived.

Keywords: Montesquieu, despotism, monarchism, *The Spirit of the Laws*

Was the French monarchy turning into a despotism or not? In the early decades of the eighteenth century, this question was hotly debated by Louis XV's subjects. Some answered it in the affirmative. Henri de Boulainvilliers, for instance, an aristocrat and historian whose anti-absolutist *History of the Ancient Government of France* (1727) was widely read in the eighteenth century, believed that the power of the French king was no different from that of the Turkish sultan. After all, the king monopolized the decision-making process in France every bit as much as his Turkish counterpart did.² But the monarchy had its defenders as well. Gilbert-Charles Le Gendre, for instance, a royal advisor and man of letters, vehemently denied that the French monarchy was anything like an oriental despotism. Even though the king ruled alone, Le Gendre pointed out, the French were not subjected to the arbitrary will of their prince. Rather, the king's power was constrained by the existence of fundamental laws and by institutions such as the *Parlement* of Paris, which exercised a power of review over the lawmaking process.³

Compared to debates later in the eighteenth century, this dispute has attracted relatively little attention from intellectual historians.⁴ It had, of course, far less

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² Henri de Boulainvilliers, *Histoire de l'ancien gouvernement de la France, avec XIV. lettres historiques sur les parlements ou états-généraux* (2 vols., La Haye and Amsterdam, 1727).

³ Gilbert-Charles Le Gendre, *Traité historique et critique de l'opinion* (7 vols., Paris, 1741).

⁴ While the writings of Henri de Boulainvilliers have drawn some attention (see Harold Ellis's excellent book *Boulainvilliers and the French Monarchy: Aristocratic Politics in Early Eighteenth-Century France* (Ithaca, NY, and London, 1988), currently, no comprehensive study exists of the debate of the 1720s and 1730s comparable to Durand

dramatic consequences than the controversies of Louis XVI's time. Yet, the debate of the 1720s and 1730s is of considerable importance to the historian of political thought. More specifically, this debate is essential for our understanding of one of the key political texts of the eighteenth century: Montesquieu's *Spirit of the Laws*. Montesquieu's book, I will show, which appeared in 1748, was at least partially conceived as a contribution to this debate. Books two to eight of the *Spirit of the Laws* in particular, in which Montesquieu compared and contrasted monarchy and despotism at great length, were clearly meant to address the question which also held a central place in Boulainvilliers' and Le Gendre's writings: whether Louis XV's regime qualified as despotism or not.⁵

By reading the *Spirit of the Laws* alongside the writings of pundits like Boulainvilliers and Le Gendre, we can gain a better understanding of Montesquieu's intent in writing his text. More specifically, it will become clear that Montesquieu's position was much closer to that of an orthodox monarchist like Le Gendre than it was to that of an anti-absolutist writer like Boulainvilliers. Like Le Gendre, Montesquieu stressed the differences between a French-style monarchy and an oriental despotism; and again like Le Gendre, he expressly denied that the king had to share legislative power in order for France to be a non-despotic state. It is therefore not surprising that *The Spirit of the Laws* was frequently invoked in the second half of the eighteenth century to bolster the case for royal absolutism, rather than to undermine it.

By making these arguments, this article aims to throw new light on Montesquieu's theory of despotism. Montesquieu's hostile depiction of despotism is usually interpreted as a thinly veiled critique of the regime under which he lived. Thus, Melvin Richter, a prominent Montesquieu scholar, has argued that 'it was Montesquieu who, by reclassifying political regimes, made it pos-

Eccheverria's analysis of the controversies of the 1770s (*The Maupeou Revolution: A Study in the History of Libertarianism, France, 1770–1774* (Baton Rouge, LA, 1985)), or Lionel Rothkrug's analysis of pre-1715 debates (*Opposition to Louis XIV: The Political and Social Origins of the French Enlightenment* (Princeton, NJ, 1965)).

⁵ For a similar argument concerning the importance of early eighteenth-century debate about the nature of the French monarchy for our understanding of Montesquieu's *The Spirit of the Laws*, see Harold Ellis, 'Montesquieu's Modern Politics: *The Spirit of the Laws* and the Problem of Modern Monarchy in Old Regime France', *History of Political Thought*, 10 (1989), pp. 665–700. However, Ellis does not discuss Le Gendre's text, which is crucial, as I will argue, for our understanding of Montesquieu's position in the debate. Elie Carcassonne's classic study *Montesquieu et le problème de la constitution française au XVIIIe siècle* (Geneva, 1970 [1927]) places *The Spirit of the Laws* in the context of eighteenth-century debates about the French monarchy, but its focus is more on Montesquieu's influence in the second half of the eighteenth century than on the debate preceding Montesquieu.

sible to call the French monarchy despotic and the king a despot'.⁶ Similarly, Roger Boesche describes Montesquieu's analysis of despotism as 'an attack on the monarchies of Louis XIV and Louis XV'.⁷ This, however, is a fundamental misreading of *The Spirit of the Laws*. For all his hostility towards despotism, I will make clear, Montesquieu was by no means implying a critique of the eighteenth-century French monarchy. Exactly the opposite was the case. In the first eight books of the *Spirit of the Laws*, Montesquieu set out to show that the French monarchy, as it existed in the mid-eighteenth century, was very different from an oriental despotism.

Perhaps more importantly, the evidence presented in this article has major implications for the ongoing debate about Montesquieu's place in the history of ideas. *The Spirit of the Laws* has variously been described as a defence of the British constitution,⁸ of the feudal regime,⁹ of the classical republics of antiquity¹⁰ and of a French-style monarchy.¹¹ This debate might never be fully resolved, since Montesquieu remained deliberately agnostic on the question

⁶ Melvin Richter, 'Montesquieu's Comparative Analysis of Europe and Asia: Intended and Unintended Consequences', in *L'Europe de Montesquieu: Actes du Colloque de Gênes* (Naples and Oxford, 1993), pp. 329–48, quote p. 331.

⁷ Roger Boesche, 'Fearing Monarchs and Merchants: Montesquieu's Two Theories of Despotism', *The Western Political Quarterly*, 43 (4) (1990), pp. 741–61, quote p. 746. For similar views on Montesquieu's theory of despotism, see Mark Hulliung, *Montesquieu and the Old Regime* (Berkeley, CA, 1976); Sharon Krause, 'Despotism in the *Spirit of Laws*', in *Montesquieu's Science of Politics: Essays on the Spirit of Laws*, ed. David W. Carrithers, Michael A. Mosher and Paul A. Rahe (Lanham, MD, 2001), pp. 231–73; Thomas Pangle, *Montesquieu's Philosophy of Liberalism: A Commentary on the Spirit of the Laws* (Chicago, 1973), p. 216; Paul Rahe, *Montesquieu and the Logic of Liberty: War, Religion, Commerce, Climate, Terrain, Technology, Uneasiness of Mind, the Spirit of Political Vigilance, and the Foundations of the Modern Republic* (New Haven, CT, 2009), p. 193; and Joan-Pau Rubies, 'Oriental Despotism and European Orientalism: Botero to Montesquieu', *Journal of Early Modern History*, 9 (1–2) (2005), pp. 109–80.

⁸ Pangle, *Montesquieu's Philosophy of Liberalism*; Hulliung, *Montesquieu and the Old Regime*; Rahe, *Montesquieu and the Logic of Liberty*.

⁹ Franklin Ford, *Robe and Sword: The Regrouping of the French Aristocracy After Louis XIV* (Cambridge, MA, 1953); Iris Cox, *Montesquieu and the History of French Laws* (Oxford, 1983).

¹⁰ Eric Nelson, *The Greek Tradition in Republican Thought* (Cambridge, 2004), pp. 156–76.

¹¹ Michael Mosher, 'Free Trade, Free Speech, and Free Love: Monarchy From the Liberal Prospect in Mid-Eighteenth-Century France', in *Monarchism in the Age of Enlightenment: Liberty, Patriotism, and the Common Good*, ed. John Christian Laursen, H.W. Blom and Luisa Simonutti (Toronto, 2007), pp. 101–20; Céline Spector, *Montesquieu: pouvoirs, richesses et sociétés* (Paris, 2004); Michael Sonenscher, *Before the Deluge: Public Debt, Inequality, and the Intellectual Origins of the French Revolution* (Princeton, NJ, 2007), ch. 2; Annelien de Dijn, 'On Political Liberty: Montesquieu's Missing Manuscript', *Political Theory*, 39 (2011), pp. 181–204.

of the ideal regime and probably intended his book to be read in different ways by different audiences.¹² But the evidence presented in this article does suggest that *The Spirit of the Laws* — to the extent that it was addressed to a mid-eighteenth-century French public — can be unequivocally described as a monarchist tract. Montesquieu, it will become clear, really meant what he said when he wrote in his preface that he hoped to give his reader 'new reasons for loving his duties, his prince, his homeland and his laws'.¹³

More about that later. First, we need to gain a better understanding of the debate about the French monarchy in the decades leading up to the publication of *The Spirit of the Laws*. In what follows, I will start by providing a brief sketch of the actual working of the French political system in the early eighteenth century. I will then go on to discuss the anti-absolutist discourse which took shape in the 1720s and 1730s. Finally, I will show how, in response, orthodox monarchists like Gilbert-Charles Le Gendre developed a defence of the French monarchy that in many ways prefigured Montesquieu's arguments in *The Spirit of the Laws*.

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During Montesquieu's lifetime, the central decision-making institution in France was the king and his court, that is, his chosen ministers. That was true during the final years of Louis XIV's reign, and it remained true after his death in 1715. Both the Regent, Philippe d'Orléans, who reigned during the new king's minority, and Louis XV, who started exercising power in his own name in 1723, left no doubt that they wanted to hold on to the absolute power exercised by their predecessor. Admittedly, in the first, uncertain years of his reign, the Regent experimented with a new cabinet structure, the *Polysynodie*, which aimed to involve the high nobility more closely in political affairs by allowing important decisions to be discussed in a range of newly established councils, rather than being made by the royally appointed secretaries of state as had been the case under Louis XIV. But the system functioned for only

¹² Montesquieu himself put a lot of emphasis on his constitutional agnosticism, not just in his published works but also in his private notebooks. 'Des tous les gouvernements que j'ai vus, je ne me préviens pour aucun', he wrote, 'pas même pour celui que j'aime le mieux, parce que j'ai le bonheur d'y vivre.' *Mes Pensées*, Pléiade, Vol. 2, nr. 201, p. 1040. Throughout, I refer to the *Oeuvres complètes de Montesquieu*, ed. Roger Caillois (Paris: Pléiade, 1949–51) as Pléiade; *Oeuvres complètes de Montesquieu*, ed. André Masson (Paris: Nagel, 1950–5) as Nagel; and *Oeuvres complètes de Montesquieu*, ed. Jean Ehrard, Catherine Volpilhac-Auger, *et al.* (Oxford: Voltaire Foundation, 1998–) as Voltaire Foundation.

¹³ Montesquieu, *The Spirit of the Laws*, ed. and trans. A. Cohler, B. Miller and H. Stone (Cambridge, 1989), p. xliv. For a similar view of Montesquieu's conservative intent in writing, see David Carrithers, 'Introduction: An Appreciation of The Spirit of Laws', in *Montesquieu's Science of Politics: Essays on The Spirit of the Laws*, ed. David Carrithers, Michael Mosher and Paul Rahe (Lanham, MD, 2001), pp. 12–15.

three years and was generally considered to be a failure due to the fact that it considerably slowed decision-making and created friction among the different councils and their members.¹⁴

The French monarchy of the first half of the eighteenth century therefore certainly qualified as absolute, as this term was defined in 1765 in Diderot's and d'Alembert's *Encyclopedie*.¹⁵ Even though the Crown's spokesmen recognized the right of (some of) the king's subjects, in particular the magistrates of the *Parlement* of Paris, to give him advice on political matters, they insisted that sovereign power in France was in the hands of the prince alone. In particular, the monarchy's advocates put great emphasis on the fact that the king was the sole source of legislative power in France. This had been understood, ever since the publication of Jean Bodin's *Six Books of the Commonwealth* in 1576, to be the main hallmark of sovereignty. Were a king to share legislative power with his subjects, Bodin had argued, or even with an elite, the monarchy would be transformed into a mixed government, and then ultimately it would become a democracy or oligarchy, depending on which part of the population was to gain control over lawmaking.¹⁶ This lesson was taken to heart not just by Louis XIV but also by his eighteenth-century successors, who all frequently asserted their monopoly over legislative power against any potential role for their subjects.¹⁷

When things were going well, royal absolutism raised few hackles. However, religious strife, financial difficulties and military defeats occasionally managed to sow doubt in the minds of Louis XV's subjects, not just about specific policies followed by the king but also about the French political system as a whole. Even during the reign of Louis XIV, the revocation of the Edict of Nantes in 1685 had led to an outpouring of pamphlets, published by

¹⁴ Roland Mousnier, *The Institutions of France under the Absolute Monarchy 1598–1789*, trans. Arthur Goldhammer (2 vols., Chicago, 1979–80), II, pp. 130–80.

¹⁵ This is how the chevalier de Jaucourt defined the concept 'absolute monarchy' in the tenth volume of the *Encyclopédie*: 'Monarchie absolue, (Gouvernement.) forme de monarchie, dans laquelle le corps entier des citoyens a cru devoir conférer la souveraineté au prince, avec l'étendue & le pouvoir absolu qui résidoit en lui originaiement, & sans y ajouter de restriction particuliere, que celle des lois établies.' Cf. *Encyclopédie, ou dictionnaire raisonné des sciences, des arts et des métiers*, etc., ed. Denis Diderot and Jean le Rond D'Alembert, University of Chicago: ARTFL Encyclopédie Project (Spring 2011 Edition), Robert Morrissey (ed), <http://encyclopedie.uchicago.edu/>, vol. 10, p. 636.

¹⁶ Jean Bodin, *Six livres de la république* (ARTFL Electronic Edition, 2009 [1576]). For an excellent account of Bodin's political thought in context, see Julian H. Franklin, *Jean Bodin and the Rise of Absolutist Theory* (Cambridge, 1973).

¹⁷ Louis XV, for instance, famously chastised the *Parlement* of Paris for its rebellious attitude during the *Séance de la Flagellation* of 3 March 1766, emphasizing that 'c'est à moi seul qu'appartient le pouvoir législatif sans dépendance et sans partage'. Cf. *Remontrances du Parlement de Paris au XVIII^e siècle*, ed. Jules Flammermont and Maurice Tourneux (3 vols., Paris, 1895), II, p. 557.

exiled Huguenot pastors and their supporters, in which the French monarchy was attacked as tyrannical and arbitrary. Similarly, the financial and military difficulties of the early decades of the eighteenth century led to doubts among some members of the French elite about the wisdom of a decision-making process from which they were effectively excluded. Even though opposition to royal absolutism was much less outspoken than it would become in the years leading up to the Revolution of 1789, in the early decades of the eighteenth century reforms were occasionally called for in privately circulated manuscripts and books printed on Dutch presses and smuggled into France. In this anti-absolutist literature, the royal monopoly on legislative power was attacked as being both illegal and illiberal and institutional reforms were proposed that would allow the French people, or at least an elite, to participate in lawmaking.

Opinion on what shape and form those institutions should take was greatly divided. Some members of the highest nobility, such as Louis de Rouvroy, the duke of Saint-Simon, believed that only their order, the Peers of France, should be on a par with the king in the decision-making process. A more generally held opinion was that the king should share with, or even hand over his legislative power to, the Estates General. This representative institution, which had come into being in the fourteenth century, had not been convened since 1614. The restoration of the Estates General became a common theme in the Huguenot pamphlet literature produced in the wake of the revocation of the Edict of Nantes, despite the fact that the Estates had come under the sway of the Catholic League during the wars of religion. During the transition from Louis XIV's reign to Louis XV's, aristocratic reformers such as François Fénelon and Henri de Boulainvilliers likewise called for the revival of the Estates General.¹⁸

Yet other publicists wanted to increase the role of the *Parlement* of Paris in French political life. The *Parlement* was first and foremost a legal institution. Its members were jurists, originally appointed by the king, although at the beginning of the seventeenth century the function had become hereditary. Over time, the *Parlement* had also acquired a political function through its right to remonstrate, that is, protest, against new laws that it deemed unconstitutional or simply unadvisable. This gave it a much more important role in the political system than its juridical origin would lead one to suppose. Although Louis XIV had curtailed the *Parlement's* right to remonstrate in 1673, this right had been restored in 1715 by Philippe d'Orléans, who officially and explicitly recognized the *Parlement's* right to advise him and the young king, Louis XV, about political affairs.¹⁹ However, the right to remonstrate was in

¹⁸ Both Saint-Simon's and Boulainvilliers' proposals are discussed in Ellis, *Boulainvilliers and the French Monarchy*.

¹⁹ During the *session parlementaire* of 12 September 1715. Cf. *Remonstrances du Parlement de Paris*, I, p. 7. For a history of the *Parlement* of Paris and its relationship with the Crown, see J.H. Shennan, *The Parlement of Paris* (Ithaca, NY, 1968).

turn limited by the fact that the king could overrule the *Parlement's* remonstrances by holding a *lit de justice* — an official meeting in which the king himself was present in the *Parlement*, not just his spokesmen. This gave the king the opportunity to personally command the *Parlement* to register a new law. It was customarily held that on those occasions the *Parlement* had no choice but to obey, so the *lit de justice* gave a *de facto* veto power to the king over the *Parlement's* remonstrances.²⁰

In the early decades of the eighteenth century, a number of voices were raised to argue that not the king but the *Parlement* should have the last say about legislation. In 1732, the anonymous author of the *Treatise on the Origins and Authority of Parlement of France, or the Judicium Francorum*, argued that Louis XV's usage of the *lit de justice* was unconstitutional. The *Parlement* of Paris was a direct descendant of the original assemblies of the Franks. It was not a purely judicial institution, but the representative of the French people. Without the consent of the *Parlement*, no new laws could be created. To do so would overthrow the ancient constitution of France and create an unbearable despotism, the author of the *Judicium Francorum* maintained.²¹

As an aside, it should be noted that until the 1750s most *parlementaires* themselves refrained from drawing such radical conclusions about their own political powers. The *Judicium Francorum* was in fact lacerated and burned by the common hangman on the orders of the *Parlement* of Paris, which hastened to put a distance between itself and this incendiary pamphlet;²² and in most of their pre-1750s remonstrances, the *parlementaires* were always careful to stress that they had no intent at all to usurp the king's legislative power. But the doctrine expressed in the *Judicium Francorum* played an important role in French political debate in the second half of the eighteenth century. Especially after 1753, as the *parlementaires* became embroiled in a bitter fight with the king and his spokesmen over Jansenism, ideas similar to those of the *Judicium Francorum* would be defended in ever more aggressive terms by the *Parlement* of Paris.²³

²⁰ The history of the *lit de justice* is a complex one and it wasn't always a tool of royal absolutism. For an overview, see Sarah Hanley, *The Lit de justice of the Kings of France: Constitutional Ideology in Legend, Ritual, and Discourse* (Princeton, NJ, 1983).

²¹ A discussion of the *Judicium Francorum* can be found in Carcassonne, *Montesquieu et le problème de la constitution française*, pp. 33–5.

²² Cf. the *Arrest de la cour du parlement du 13 aout 1732* (Paris, 1732) [Gallica Electronic Edition].

²³ On this shift in the *parlementaire* discourse after 1753, see Jean Egret, *Louis XV et l'opposition parlementaire 1715–1774* (Paris, 1970). According to William Doyle, the relationship between *Parlement* and Crown remained relatively harmonious until even later in the eighteenth century, more specifically until 1771, when Louis XV basically abolished the *Parlement*. Cf. William Doyle, 'The Parlements', in *The French Revolution and the Creation of Modern Political Culture: Vol.1 — The Political Culture of the Old Regime*, ed. Keith Baker (Oxford, 1987), pp. 157–67.

In short, the anti-absolutist pamphlet literature of the early decades of the eighteenth century called for a wide range of reforms, ranging from a plea for increased involvement of the peerage in the decision-making process to a restoration of the Estates General. However, all critics of absolutism were in agreement about a more fundamental issue: that the French king should give up his monopoly on legislative power. Saint-Simon, Boulainvilliers and the author of the *Judicium Francorum*, despite their considerable differences, all believed that the decision-making process in the French monarchy should not be solely in the hands of the king and his ministers but that the people (or part of the people) and its representatives should share legislative power, or even that the king's subjects should be considered the final legislative authority in the French monarchy.

In order to buttress these claims, anti-absolutists used two different arguments. First and foremost, they typically claimed that the monopoly on legislative power claimed by the French kings was illegal, a usurpation of powers that had originally belonged to the French people or their representatives. Boulainvilliers, for instance, used his considerable historical erudition to show that the royal monopoly on legislative power was a subversion of the ancient French constitution which had come into being after the conquest of Gaul by the Franks. Originally, the position of king had been elective and the prince was just the first among the band of noble Franks who together had conquered Gaul and who exercised power as a group.²⁴ Similarly, the *Judicium Francorum* depicted the ancient French constitution as one in which the king made his important decisions in conjunction with a popular assembly, which the author of the *Judicium* held to be the predecessor of the eighteenth-century *Parlement*.²⁵

In addition to this historical and legalistic line of reasoning, however, the reformers also used a more theoretical argument. The eighteenth-century French monarchy, it was claimed, in which the king exercised sole legislative power, was not just an illegal innovation; it was also an inherently illiberal regime. Indeed, the very nature of the French monarchy, as reformers argued, made liberty impossible. Since the king did not share his power with anyone, and since the people or their representatives had no opportunity to participate in making the laws, France was in fact ruled by the arbitrary will of one single person. As the author of the incendiary anti-absolutist pamphlet *The Sighs of an Enslaved France, which Longs for Liberty* (1689) put it: 'Today, in France, there is no Law apart from the Sovereign will of the Prince.'²⁶

²⁴ Boulainvilliers, *Histoire de l'ancien gouvernement de la France*.

²⁵ Carcassonne, *Montesquieu et le problème de la constitution française*, pp. 33–5. The debate about the historical origins of the French monarchy has been discussed at length in Ford, *Robe and Sword*.

²⁶ Anon., *Les soupirs de la France esclave, qui aspire après la liberté* (s.l., 1689), p. 40. This pamphlet is often attributed to the Huguenot pastor Pierre Jurieu, but its more

The French monarchy was therefore no better than the most terrible Turkish ‘despotism’, as the reformers expressed it with a newfangled word derived from Aristotle’s Greek.²⁷ Boulainvilliers, for instance, wrote in the preface to his *History of the Ancient Government of France* that the French kings had come to yield to ‘a despotic power’ which was ‘more congenial to the Persians, Turks and other Oriental peoples than to our constitution’.²⁸ After Charlemagne, whom Boulainvilliers described as the last great and non-despotic king of France, none of the French kings had wanted to understand that ‘the French were originally a free people, both by dint of their natural love of liberty and by the fact that they originally had the right to choose their kings and to cooperate with them in the government’.²⁹ Only a restoration of the Estates General, which would allow the French people to participate again in the exercise of power, would bring liberty back to France.

Arguments such as these allow us to classify the discourse of reformers like Boulainvilliers as republican, as that term has been defined in the work of Quentin Skinner and others.³⁰ By accusing the French monarchy of being despotic because of the king’s monopoly on legislative power, the reformers were making a very specific claim about the nature and preconditions of freedom, a claim that was similar to that of late seventeenth-century English republicans like Algernon Sidney. Even though Boulainvilliers did not invoke the ancient republics of Greece and Rome — indeed, he explicitly rejected these as suitable models for France³¹ — and looked instead to the ancient French constitution, they nevertheless agreed with Sidney that freedom could be preserved only in a state in which the people or part of the people participated in government. This family resemblance between French anti-absolutism and English republicanism was even remarked upon by contemporaries; thus the Scottish philosopher David Hume described Boulainvilliers as a ‘noted republican’.³²

In other words, between 1689, the year of Montesquieu’s birth, and 1748, when the *Spirit of the Laws* was published, the French monarchy was repeatedly criticized as no better than an oriental despotism, and the creation of representative institutions was presented as the only way to restore freedom in France. The Crown, however, did not lack defenders. Boulainvilliers’ *History* likely author is Michel Le Vassor. Cf. G. Rieman, *Der Vefasser der ‘Soupirs de la France esclave’* (Berlin, 1934).

²⁷ On the conceptual history of despotism see R. Koebner, ‘Despot and Despotism: Vicissitudes of a Political Term’, *Journal of the Warburg and Courtauld Institutes*, 14 (3/4) (1951), pp. 275–302.

²⁸ Boulainvilliers, *Histoire*, I, preface (no pagination).

²⁹ *Ibid.*, p. 218.

³⁰ For a recent articulation, see Quentin Skinner, *Hobbes and Republican Liberty* (Cambridge, 2008).

³¹ Boulainvilliers, *Histoire*, preface (no pagination).

³² David Hume, *Political Essays*, ed. Knud Haakonssen (Cambridge, 1994), p. 200.

in particular triggered a spate of refutations. Historians such as Jean-Baptiste Dubos, a celebrated humanist and member of the French Academy, criticized Boulainvilliers' views on the origins of the French monarchy and argued instead that the French kings had always held absolute power.³³ But, and this is more important for our purposes, the reformers' more theoretical claim — that Louis XV's regime was in no way distinguishable from a Turkish sultanate — was challenged as well. At least one of the monarchy's advocates, Gilbert-Charles Le Gendre, the marquis of Saint-Aubin, argued that the reformers simply did not understand what a despotism really was. In order to make this argument, Le Gendre developed an innovative theory about the differences between monarchy and despotism which in many ways prefigured Montesquieu's own.

Although Le Gendre and his work have been all but forgotten today, he was quite a well-known figure in the first half of the eighteenth century. A former counsellor to the *Parlement* of Paris and Master of Requests (which was one of the most important royal posts, usually given to one of the members of the *Parlement*), Le Gendre belonged to the in-crowd of royal advisors. But he also served the king in his capacity as a man of letters. After reading Boulainvilliers' *History*, Le Gendre delved into the French past in order to refute Boulainvilliers' thesis. In the resulting book, the *Antiquities of the French Monarchy* (1739), he argued, like Dubos, that the kings of France had held absolute power from the very beginning, although in Le Gendre's book, the ultimate origin of that power was not explained by arguing that the French kings had succeeded the Roman Emperors (as Dubos had contended). Instead, he claimed that they owed their exalted position to God and to their ancestors' prowess in battle.³⁴

The *Antiquities*, however, was by no means Le Gendre's only or most important contribution to the debate about the French monarchy. In 1733, he published a six-volume work entitled *Historical and Critical Treatise on Opinion*, which was republished in a revised and expanded version in 1741. Like Pierre Bayle's *Dictionary*, on which the *Treatise* was modelled, it covered widely different topics, including book-length discussions of politics, moral philosophy, geometry and physics, as well as discursions on occult sciences such as astrology. Unlike Bayle's *Dictionary*, however, the *Treatise* was by no means intended as an attack on orthodox beliefs. Quite the contrary. In the many topics he discussed, Le Gendre usually came down on the side of orthodoxy, albeit in a philosophical manner, that is, without invocations of Scripture or revealed religion. Despite or perhaps thanks to its orthodoxy, the *Treatise* made quite a splash when it first came out. The first two editions were followed by another, posthumous, edition in 1758 and a pirated

³³ Jean-Baptiste Dubos, *Histoire critique de l'établissement de la monarchie françoise dans les Gaules* (3 vols., Amsterdam, 1735).

³⁴ Gilbert-Charles Le Gendre, *Antiquités de la monarchie françoise* (Paris, 1739).

version appeared in Venice in 1735, making the *Treatise* something of a best-seller by the standards of the first half of the eighteenth century.³⁵

Here we are mainly concerned with the fourth volume of the expanded 1741 edition of the *Treatise*, entitled ‘Of the Different Forms of Government’, in which Le Gendre analysed and compared five different forms of government — democracy, aristocracy, monarchy, mixed government and despotism — in order to come to the unsurprising conclusion that a French-style monarchy was the best of them all. Invoking authorities such as Jean Bodin, Thomas Hobbes and Bishop Bossuet, Le Gendre made all the usual arguments to support this opinion. Monarchy was the form of government ‘preferred above all others’ by ‘most authors who had discussed politics’.³⁶ It was the most natural form of government and the one most capable of combining prompt execution with the security of its subjects. In comparison, democracy was too unruly, aristocracy fostered irresoluteness, and mixed government was inherently unstable.

But ‘Of the Different Forms of Government’ was not simply a defence of monarchy in general. Le Gendre’s volume was more particularly directed against the accusations of reformers like Boulainvilliers — who Le Gendre described as ‘the committed partisan of disorder’³⁷ — that a French-style monarchy was no different from Turkish despotism. In order to combat this idea, Le Gendre came up with some highly original arguments, which are nowhere to be found in the works of absolutist predecessors like Bodin or Hobbes. While Le Gendre agreed with the reformers that despotic governments were ruled by the arbitrary will of a single person, he denied that this description applied to the French monarchy. The French king ruled according to the law, not according to his own caprice. At the same time, Le Gendre put great emphasis on the fact that the non-despotic nature of the French monarchy in no way implied that the king was subject to the consent of the people or anybody else. The king ruled in accordance with the law simply because he chose to do so, not because his power was in any way constrained or subjected to another power.

Le Gendre began ‘Of the Different Forms of Government’ by developing a classification of governments. Using the Aristotelian criterion of who held power, he distinguished between different forms of government: democracy, aristocracy, monarchy and mixed government. But Le Gendre also added a new category: despotism. This form of government, he explained, resembled

³⁵ On the publication history of Le Gendre’s *Traité sur l’opinion* see *Models of the History of Philosophy — Volume II: From Cartesian Age to Brucker*, ed. Gregorio Piaia and Giovanni Santinello (Dordrecht, 2010), pp. 166–75. The *Traité* was apparently devoured by Jean-Jacques Rousseau in its six-volume edition of 1733 while he was studying with Mme de Warens. Cf. Pierre-Maurice Masson, *La Religion de Jean-Jacques Rousseau* [1916] (Geneva, 1970), Vol. 1, p. 90.

³⁶ Le Gendre, *Traité*, p. 262.

³⁷ *Ibid.*, p. 436.

monarchy in the sense that power was held by one single ruler. Nevertheless, monarchy was very different from despotism. In the latter, the relation between king and subject was akin to that between master and slaves, whereas a king was more like a father to his subjects.³⁸ Le Gendre placed great emphasis on the originality of this distinction. All of his predecessors, he claimed, had confused monarchy with despotism by arguing that the latter was simply a degeneration of the former. But despotic government was not simply the 'abuse' of royal government: they were 'two really distinct forms [of government]', 'based on rules that are different and even completely opposite'. In the kingdoms of the Orient and Africa (where Le Gendre located the heartland of despotism), the very constitution of the government allowed the sovereign to think that he could dispose of the possessions and life of his subjects 'without other motive than his will'.³⁹ While in a monarchy 'none could resist the king', it was nevertheless the case that if he abused the life and property of his subjects, if he destroyed the fundamental laws, he violated all the principles of monarchical government. 'Despotic government had no similar maxims.' Indeed, Le Gendre concluded that the principles of despotic and monarchical government were even more distinct from one another than the differences between democracy, aristocracy and monarchy.⁴⁰

It is important to note that, according to Le Gendre, the difference between monarchy and despotism wasn't just that life and property were much more secure in the former than in the latter. He also maintained that kings and despots wielded their power in very different ways. Like Boulainvilliers and the author of *Sighs of an Enslaved France*, Le Gendre argued that despotism was characterized by the arbitrary rule of a single person. There were no laws in a despotic form of government, he wrote; there was nothing but 'the will of the Prince'.⁴¹ As a result, despotism was based on fear: its subjects did what they had to do because they were forced to. 'Fear alone is the foundation of those [despotic] empires.'⁴²

A monarchy, on the contrary, was based on the rule of law, and that naturally inspired obedience in its subjects without the ruler having to have recourse to the threat of force. 'Monarchical government, absolute but paternal, is the opposite of Despotism', Le Gendre wrote. 'The one evokes faithful obedience, the other produces a dangerous slavery.'⁴³ In turn, this made monarchy a much more stable form of government. In a despotic state, Le Gendre argued, any form of discontent was capable of reversing the throne. Thus, the Turkish and Persian states were much more prone to revolutions than the

³⁸ *Ibid.*, p. 4.

³⁹ *Ibid.*, p. 6.

⁴⁰ *Ibid.*, pp. 7–8.

⁴¹ *Ibid.*, p. 255.

⁴² *Ibid.*, p. 256.

⁴³ *Ibid.*, pp. 261–2.

monarchies of France and Spain. The English republican thinker Algernon Sidney was therefore wrong, Le Gendre emphasized, to attribute disorder and revolution to monarchy. Those problems should be attributed instead to despotism alone.⁴⁴

If the main difference between monarchy and despotism was that in the first the rule of law was maintained, not the arbitrary will of a person, that did not mean that the king was subject to his people or that he had to share his power with anyone. This point was extremely important to Le Gendre, who devoted many pages of his book to a refutation of all authors who had ever argued that a king was subject to a higher authority. He attacked the sixteenth-century Scottish writer George Buchanan for having claimed that in monarchy the king was subject to the law and the law in turn to the people, and approvingly invoked Hobbes and Bossuet because they had made it clear that the king alone ruled in a monarchy. To the extent that kings ruled according to the law, they did so in accord with their own will, not because they were subject to a higher authority. Even the sacred oath administered at the beginning of a king's reign, Le Gendre maintained, did not imply that a monarchy was founded on a contract between king and people. The people in no way had the right to judge the observation of that promise. The king was responsible to God alone.⁴⁵

After highlighting the differences between monarchy and despotism in general, Le Gendre went on to make it clear that France did not fall under the second category. Instead, the French form of government, Le Gendre went on to explain, was a monarchy, which meant that the power of the king was exercised in accordance with the fundamental laws of the French nation. This did not mean, however, that the power of the king was subject to any checks or scrutiny in the course of its being actually exercised. It was neither a despotism nor a mixed government. 'The nature of the government of France is not familiar enough', Le Gendre wrote, and he went on to explicitly criticize the theories put forward by anti-absolutists like Boulainvilliers:

Nothing is more ordinary than that people form themselves ideas about this subject that are inexact, and about which false applications of events are made. I have encountered enlightened people who believe that the assemblies held under the name Estates General were as ancient as the monarchy; that legislative power belonged to these [assemblies]; that that body representative of the nation had the right to rule, to ordain, to reform; that its very power was superior to any other. Other people have seemed to me to be persuaded that the authority of the King was Despotic. These two opinions, so incompatible, are sometimes held by the same people, but both these extremes are very remote from the constitution of our government.⁴⁶

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*, p. 289.

⁴⁶ *Ibid.*, pp. 307–8.

Then how was the French monarchy different from a despotism? Le Gendre pointed to two aspects of the French political system: the existence of fundamental laws and the *Parlement*. He explained that while the king did not have the right to change the fundamental laws, such as the succession laws, yet, when he did choose to do so, nothing could prevent him. However, Le Gendre expected that the changes illegally made by one king would be reversed by his successor⁴⁷ — which, as his readers would recognize, had indeed happened in 1715 when the Regent had quashed Louis XIV's attempt to change the French succession laws in favour of his bastard sons. In short, the power of the king was 'absolute but paternal, tempered by laws which emanate only from his authority and for the observation of which he is responsible to God alone'.⁴⁸

In Le Gendre's account, the maintenance of the rule of law in a monarchy therefore seemed to be based mainly on the goodwill of the king. However, Le Gendre did indicate — in a move perhaps unsurprising for an *ex-parlementaire* — that there was one institution in France which did play a more active role in maintaining the rule of law: the *Parlement* of Paris. The *Parlement*'s right to remonstrate, he argued, was one of the fundamental laws of the French kingdom. It had always 'tempered' the king's 'absolute legislative power'.⁴⁹

However, it should be noted that Le Gendre was in no way making an argument similar to that put forward in the *Judicium Francorum*. Indeed, Le Gendre explicitly rejected the thesis put forward in the *Judicium*, which he described as a 'libelous attack on royal Majesty, injurious to the dignity of the *Parlement*, and filled with ridiculous opinions'.⁵⁰ The *Parlement* should in no way be considered, he argued, as the successor of any mythical representative assemblies or as a representative of the French people.⁵¹ Moreover, it in no way shared the king's legislative power. Even though the French people had the right to remonstrate against new laws through the *Parlement*, the king's power ultimately trumped that of the *Parlement*, as the king always had the right to overrule remonstrations.

In short, Le Gendre's 'On the Different Forms of Government' was clearly a monarchist tract, and it is no surprise that it was published in France with the official seal and approval of the king, or that Jean-Paul Marat compared it to Hobbes's work.⁵² But unlike monarchist predecessors such as Hobbes, Le Gendre was not simply content to argue for the superiority of monarchy on the grounds of the stability and peace it offered. He also explicitly and at length

⁴⁷ *Ibid.*, p. 319.

⁴⁸ *Ibid.*, p. 309.

⁴⁹ *Ibid.*, p. 375.

⁵⁰ *Ibid.*, p. 379.

⁵¹ *Ibid.*, p. 337.

⁵² Jean Paul Marat, *Les chaînes de l'esclavage* (ARTFL Electronic Edition [1792]), p. 184.

defended Louis XV's monarchy against accusations by anti-absolutists like Boulainvilliers and the author of the *Judicium Francorum* that it was a despotic form of government. This claim, Le Gendre argued, rested on a confusion about the meaning of despotism and monarchy. These two forms of government were very different, because a monarchy was characterized by the rule of law while a despotism was not. The monarchy's rule of law, however, did not depend on the king sharing his power with anyone. It depended on the fact that the king was bound by the fundamental laws of the state and by the fact that there was an institution — the *Parlement* — which 'tempered' the absolute legislative power of the French kings. All of these arguments, as we shall now see, reappeared seven years after the publication of Le Gendre's 1741 *Treatise* in Montesquieu's *Spirit of the Laws*.

* * *

Montesquieu followed the debate about the French monarchy with considerable attention. Evidence from his notebooks and published work makes it clear that he had read Boulainvilliers' *History* closely, even though he was not overly impressed with the latter's historical knowledge.⁵³ Montesquieu also showed great interest in the debates between the *Parlement* of Paris and the Crown, transcribing several of the *Parlement*'s remonstrances into his scrapbook, the *Spicilège*.⁵⁴ Moreover, it is by no means unlikely, as Robert Shackleton has noted, that Montesquieu might have read Le Gendre's *Treatise*, at least the chapter 'On the Different Forms of Government', perhaps on the recommendation of Montesquieu's close friend Bernard le Bovier de Fontenelle, who in his capacity of royal censor had read the whole work in 1732 and read the additions for the second edition when Montesquieu was in Paris and frequently meeting him.⁵⁵

It is therefore not surprising that the question of the nature and future of the French monarchy loomed large in Montesquieu's writings. In his earliest publications he seemed to range himself on the side of the reformers. In the *Persian Letters* (1721), Montesquieu famously described Louis XIV as a 'despot' who admired the government of the Turks or Persians more than any in the world.⁵⁶ He also depicted monarchy as an inherently unstable form of government, incapable of holding the balance between the power of the king and that

⁵³ He repeated the negative judgment of Fleury about Boulainvilliers: 'On disait du comte de Boulainvilliers qu'il ne savait le passé, le present, ni l'avenir' (*Mes Pensées*, Nagel, nr. 2156). Note, however, that Montesquieu's biographer Robert Shackleton depicts Montesquieu as an admirer of Boulainvilliers' in his *Montesquieu: A Critical Biography* (Oxford, 1961), pp. 12–13 and p. 333.

⁵⁴ E.g. *Spicilège* nr. 278, 618 in Voltaire Foundation, Vol. 13, ed. Rolando Minuti, et al. (Oxford, 2002).

⁵⁵ Shackleton, *Montesquieu*, pp. 269–70.

⁵⁶ *Lettres Persanes*, Pléiade, Vol. 1, p. 184.

of the people. Monarchy was a 'violent condition', he wrote, which would necessarily be transformed into a republican form of government or, even more likely, a despotism.⁵⁷ In other words, Montesquieu seemed to suggest — much as Boulainvilliers or the author of *Sighs of An Enslaved France* — that there was no real difference between a French-style monarchy and an oriental despotism.

Further investigation, however, makes it clear that even in 1721 Montesquieu cannot simply be seen as a champion of the anti-absolutist camp. After having asserted that monarchies always ran the danger of degenerating into despotism, Montesquieu continued to argue that the way in which power was exercised in European monarchies was nonetheless very different from oriental despotisms. European monarchs, he pointed out through his mouthpiece, Usbek, exercised their power in a less 'expansive' (*étendue*) manner than Persian sultans. They did not want to shock the mores and religion of their peoples. Moreover, they understood — unlike Persian rulers — that it was not in their interest to go too far in the exercise of their power. More specifically, European princes realized that minor crimes should not be punished too harshly. Moderation was the secret of the stability of European states when compared with the many violent rebellions in Persia. 'Christian princes' therefore had 'an infinite advantage' over Persian sultans.⁵⁸

In the *Persian Letters*, in short, Montesquieu's views on monarchy were ambiguous and open to different interpretations. But this was no longer true of his mature work. Whatever ambiguity might have existed in Montesquieu's mind in the 1720s about continental monarchies had disappeared by 1748. In *The Spirit of the Laws*, Montesquieu depicted the monarchy not as an inherently unstable form of government but as 'a fine machine' which was characterized by stability and durability.⁵⁹ Even more strikingly, he had now come to embrace the opinion that there was a fundamental difference between the monarchical form of government — a regime which he identified repeatedly with France — and oriental despotism. Indeed, in the very first pages of the *Spirit of the Laws*, he drew a sharp distinction, like Le Gendre, between a French-style monarchy and oriental despotism — and he continued to develop and emphasize the nature and scope of those differences throughout his book.⁶⁰

⁵⁷ *Ibid.*, p. 218.

⁵⁸ *Ibid.*, pp. 281–2.

⁵⁹ Montesquieu, *Spirit of the Laws*, III, 5, p. 25.

⁶⁰ But compare Rubies, 'Oriental Despotism and European Orientalism', p. 121, who argues that 'in his analysis of despotism Montesquieu was heir to the contemporary French tradition of anti-absolutist writers represented by Michel Le Vassor's *Les soupirs de la France esclave* (1689–90) and the thinkers of the regency during the minority of Louis XV'.

At the outset of the *Spirit of the Laws*, Montesquieu famously distinguished between ‘three varieties of government’: republics (which included both democracies and aristocracies), monarchies and despotism.⁶¹ His analysis therefore differed somewhat from Le Gendre’s, who had listed democracy and aristocracy as two separate forms of government and who had also added mixed government as a category. But Montesquieu’s discussion of despotism and monarchy echoed Le Gendre’s *Treatise* almost word for word. Like Le Gendre, for instance, Montesquieu located despotism in the Orient, identifying it as the government of Turkey, Persia and China, while associating monarchical government exclusively with Europe. And, like Le Gendre, he described monarchies as far superior to despotism, on the grounds that they offered a far more stable form of government.⁶²

More importantly, Montesquieu, again like Le Gendre, also emphasized that monarchy was based on the rule of law, whereas a despotic state was subject to the arbitrary will of its ruler. When introducing his classification of governments, Montesquieu made it clear that monarchy was the government in which ‘one alone governs, but by fixed and established laws’, whereas despotism was the government of ‘one alone, without law and without rule’.⁶³ A few pages later, he again repeated this distinction: ‘The nature of monarchical government is that the prince has sovereign power, but that he exercises it according to established laws; the nature of despotic government is that one alone governs according to his wills and caprices.’⁶⁴

Unlike Le Gendre, Montesquieu emphasized that a monarchy required the existence of ‘intermediary powers’ which were absent in a despotism, and he attributed that role more specifically to a nobility. But at no point did he suggest that the nobility actually shared in the king’s sovereign power, or more specifically in his legislative power. Quite the opposite. As Michael Mosher has also pointed out, Montesquieu made it very explicit that the intermediary powers were ‘subordinate and dependent’ and that ‘the prince is the source of all political and civil power’.⁶⁵ The fact that he did not envisage the king and nobility as sharing in sovereign power is also clear from the imagery he used to describe the role of the nobility, talking about intermediary powers as ‘mediate channels through which power flows’,⁶⁶ or in other words, as conduits of power rather than a source of power in their own right.

⁶¹ Montesquieu, *Spirit of the Laws*, II, 4, p. 10.

⁶² Cf. ‘On the excellence of monarchical government’, in *ibid.*, V, 11, pp. 57–8.

⁶³ *Ibid.*, II, 1, p. 10.

⁶⁴ *Ibid.*, III, 2, p. 21.

⁶⁵ *Ibid.*, II, 4, p. 17. Cf. Michael Mosher, ‘Monarchy’s Paradox: Honor in the Face of Sovereign Power’, in *Montesquieu’s Science of Politics*, ed. Carrithers, Mosher and Rahe (Lanham, MD, 2001), pp. 159–230.

⁶⁶ Montesquieu, *Spirit of the Laws*, II, 4, p. 18.

The one power which Montesquieu explicitly described the king as sharing with his subjects was the power of judging. In a monarchy, this power was not to be exercised by the king or his ministers, but by the nobility. This issue was important to Montesquieu and he emphasized it several times in *The Spirit of the Laws*. In book two, he stressed that the nobility was to exercise certain privileges, more specifically 'the justices of the lords'. This term referred to a remnant of the feudal system enabling local nobles to exercise judiciary power on their fiefs independently from the Crown.⁶⁷ And in book six, he explained that the independence of the judiciary constituted a crucial difference between monarchy and despotism. 'In despotic states', he wrote, 'the prince himself can judge. He cannot judge in monarchies: the constitution would be destroyed and the intermediate dependent powers reduced to nothing; one would see all the formalities of judgments cease; fear would invade all spirits; one would see pallor on every face; there would be no more trust, honor, love, security, or monarchy.'⁶⁸

Apart from the independence of the judiciary, however, the real difference between a monarchy and a despotism was not to be found in its institutional machinery. Instead, it was located in the way in which power was exercised, as Montesquieu explained. Thus, he wrote that the way in which a king was obeyed differed substantially from the way in which a despot was obeyed. In a monarchy, honour was an important check on the extent to which a prince could expect to be obeyed, whereas in a despotism 'extreme obedience' was required. This difference existed even though in both systems power was exercised in the same way — by a single ruler. 'Though the way of obeying is different in these two governments, the power is nevertheless the same', Montesquieu emphasized.⁶⁹

Like Le Gendre, in other words, and in sharp contrast to anti-absolutists like Boulainvilliers, Montesquieu at no point suggested that the king had to relinquish his monopoly on legislative power in order to stave off despotism. Further scrutiny of the *Spirit of the Laws* amply bears out this conclusion. Thus the potential restoration of the Estates General was never even discussed in the *Spirit of the Laws*, as many scholars have remarked.⁷⁰ When Montesquieu did reflect on the role of national assemblies, as in the notes he jotted down while working on a (never completed) history of France, he tended to be dismissive. He compared them unfavourably to the assemblies of the Holy

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*, VI, 5, p. 78.

⁶⁹ *Ibid.*, III, 10, p. 30.

⁷⁰ As Michael Mosher puts it, 'in *The Spirit of the Laws* Montesquieu chose not to signal his awareness of the many occasions in which the French did assemble in both national Estates General and provincial assemblies. The latter continued to meet in Montesquieu's day. After reciting the facts of the national assemblies under the Merovingians and Carolingians, however, there is not a word to be found on this subject in the rest of *The Spirit of the Laws*.' Mosher, 'Monarchy's Paradox', p. 166.

Roman Empire. The Estates General, he remarked, had never shown any consideration for the general interest.⁷¹ Perhaps more surprisingly, Montesquieu also refrained from discussing the provincial estates in the *Spirit of the Laws*, although these were not a distant memory (like the Estates General) but a live reality which retained an important role throughout the eighteenth century, as Montesquieu knew full well.⁷²

More generally, it should be noted that Montesquieu, again in sharp contrast to Boulainvilliers, lacked any nostalgia for the ancient, feudal constitution. Montesquieu directly addressed the debate between Jean-Baptiste Dubos and Boulainvilliers about the origin of the French monarchy in the final two, historical, books of the *Spirit of the Laws*. He rejected Dubos' thesis that the French kings had inherited their authority from the Roman Emperors and that France had always been an absolute monarchy. But that did not mean that he subscribed to Boulainvilliers' idealized view of the feudal constitution. Montesquieu, as Céline Spector has pointed out, instead emphasized that the establishment of feudalism had led to a state of near-anarchy and that only the expansion of royal power under the house of Capet had brought back order and stability to France.⁷³

If Montesquieu showed little interest in the Estates General and other representative institutions associated with the ancient, feudal constitution, he did attribute a crucial role to the *Parlement* in distinguishing the French monarchy from a despotism. Like Le Gendre, who was a member of the *Parlement* of Paris, Montesquieu was a *président à mortier* in the *Parlement* of Bordeaux, one of the provincial sister-institutions of the *Parlement* of Paris. He was active as a magistrate between 1716, when he inherited his office from his uncle, and 1726, when he sold it again in order to raise money for travel. Although he didn't enjoy the duties of being a *parlementaire*, he clearly believed that the institution had a key place in the constitution of a monarchy.⁷⁴ In the *Persian Letters*, he had lauded the Regent for having restored the

⁷¹ *Mes Pensées*, nr. 595 and 596, Pléiade, Vol.1, p. 1098.

⁷² Indeed, in one of his earliest writings, the *Mémoire sur les dettes de l'état* (1715), Montesquieu had actually recommended the creation of provincial estates where they did not already exist in order for the king to be able to borrow more money at lower interest rates. For the full text of the *Mémoire*, cf. Pléiade, Vol.1, pp. 66–71. For a discussion of Montesquieu's proposals in context, see David Carrithers, 'Montesquieu and the Spirit of French Finance: An Analysis of his *Mémoire sur les dettes de l'état* (1715)', in *Montesquieu and the Spirit of Modernity*, ed. David Carrithers and Patrick Coleman (Oxford, 2002), pp. 159–90.

⁷³ Céline Spector, *Montesquieu, Liberté, droit et histoire* (Michalon, 2010), p. 267. But compare Cox, *Montesquieu and the History of French Laws*, who argues that Montesquieu was nostalgic for the feudal regime.

⁷⁴ On Montesquieu's short-lived career as a *parlementaire*, see Shackleton, *Montesquieu*, pp. 15–19 and 82–3, as well as Rebecca Kingston, *Montesquieu and the Parlement of Bordeaux* (Geneva, 1996).

right of the *Parlement* to remonstrate.⁷⁵ In the *Spirit of the Laws*, he argued that a 'depository of laws' — a clear reference to the *Parlement* — was just as indispensable to a monarchy as the intermediary ranks of the nobility.⁷⁶

But, again like Le Gendre, and unlike the author of the *Judicium Francorum*, Montesquieu was careful to emphasize that the *Parlement's* role was limited to that of judicial review, and that it in no way shared in legislative power. The role of the *Parlement*, he explained, was to 'announce the laws when they are made and recall them when they are forgotten'.⁷⁷ A few pages later, he emphasized again that the *Parlement* was not to act as a lawmaker in its own right, but that it improved the legislative process by slowing down any rashness on the part of the king: 'The bodies that are the depository of the laws never obey better than when they drag their feet and bring into the prince's business the reflection that one can hardly expect from the absence of enlightenment in the court concerning the laws of the state and the haste of the prince's councils.'⁷⁸

Montesquieu was in other words by no means a predecessor of the radical *parlementaire* movement that would gain momentum in the second half of the eighteenth century and that would come to identify itself as a representative of the people, with a power on a par with that of the king.⁷⁹ Indeed, one of the few times that Montesquieu actively involved himself in the debate between king and *Parlement* that flared up in the 1750s, he did so on behalf of the king. In 1753, Louis XV had exiled the *Parlement* from Paris, after it had gone on a judicial strike in order to protest against the treatment of the Jansenists, who, on orders of the Pope, were refused the sacraments. In response to these events, Montesquieu — who had little sympathy for the Jansenist cause — wrote to one of the exiled *parlementaires* and sternly advised him and his brethren to submit to the king's will if they did not want to overthrow the French constitution.⁸⁰

In *The Spirit of the Laws*, in sum, Montesquieu — knowingly or not — stuck closely to the doctrine established by Le Gendre in the latter's 1741 *Treatise*. Like Le Gendre, Montesquieu made a sharp distinction between monarchy and despotism. Unlike despotism, which depended on the arbitrary will of its ruler, a monarchy was based on the rule of law. Again like Le Gendre, Montesquieu made it clear that the maintenance of the rule of law did not require the existence of representative institutions like the Estates General. In a monarchy, as in a despotism, the king held a monopoly on legislative power. The power of a king was therefore just as 'absolute', in the Bodinian

⁷⁵ *Lettre Persanes*, Voltaire Foundation, pp. 380–1.

⁷⁶ Montesquieu, *Spirit of the Laws*, II, 4, p. 19.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*, V, 10, pp. 56–7.

⁷⁹ See above, note 23.

⁸⁰ *Correspondance*, Nagel, Vol. 3, pp. 1465–9. Michael Mosher likewise draws attention to the importance of this letter in his article 'Monarchy's Paradox'.

sense of the word, as that of a despot. The main difference between the two forms of government, from an institutional point of view, was that monarchies required the existence of an institution like the *Parlement*, which would exercise a power of judicial review in the lawmaking process, and that the exercise of judicial power was to be attributed to the subjects rather than to the king.

Montesquieu was able to make these arguments, it is important to note, because he rejected the republican theory of liberty which undergirded the discourse of anti-absolutists like Boulainvilliers. As we have seen, Boulainvilliers believed that liberty required the participation of the people, or at least part of the people, in the decision-making process. It was only by subjecting the king's power to the consent of the people that arbitrary rule could be prevented. A free people was therefore a self-governing people, a people that, as the Franks had done, elected its kings and made the important decisions communally, in an assembly. Montesquieu, however, as I have argued at greater length elsewhere,⁸¹ explicitly criticized this republican theory of liberty in the famous book eleven of the *Spirit of the Laws*. 'It is true that in democracies the people seem to do what they want, but political liberty in no way consists in doing what one wants', he wrote. Political liberty — meaning the liberty one enjoys as a citizen — was something very different: it was the rule of law: 'In a state, that is, in a society where there are laws', as Montesquieu put it, 'liberty can consist only in having the power to do what one should want to do, and in no way being constrained to do what one should not want to do.' That kind of liberty could exist in a French-style monarchy just as much as in a self-governing republic.

To be sure, in the *Spirit of the Laws*, as in the *Persian Letters*, Montesquieu did not ignore the possibility that European monarchies like the French state might someday degenerate into despotism. He warned that in the wake of 'long abuse of power or by a great conquest' 'neither mores nor climate' would protect Europeans against despotism and that even in Europe 'human nature would suffer' as already was the case in the other continents.⁸² But there is no reason to think that Montesquieu believed this to be an imminent threat for France. At other points in the *Spirit of the Laws*, he emphasized just how unlikely he felt the possibility of despotism taking hold in Europe to be. In book seventeen, he argued that geographical differences had generated in Europe 'a genius for liberty'.⁸³ Moreover, by describing despotism as a threat to monarchies, Montesquieu was by no means making a subversive statement. After all, even an orthodox monarchist like Le Gendre had granted that monarchies ran the danger of declining into despotism.

⁸¹ De Dijn, 'On Political Liberty: Montesquieu's Missing Manuscript', pp. 181–204.

⁸² Montesquieu, *Spirit of the Laws*, VIII, 8, p. 118.

⁸³ *Ibid.*, XVII, 6, pp. 283–4.

It is therefore clear that we need to make short shrift of the long-standing idea that Montesquieu's description of despotism was meant as a thinly veiled critique of the regime under which he lived. Precisely the opposite was the case. By highlighting the fundamental differences between a French-style monarchy and oriental despotism, Montesquieu wasn't criticizing the regime under which he lived, he was actually doing the opposite: he was defending Louis XV's regime against one of the most trenchant accusations made against it by anti-absolutists like Boulainvilliers.

* * *

This message did not fall on deaf ears in the eighteenth century. Catherine the Great, for instance, one of Montesquieu's most astute readers, enthusiastically excerpted the *Spirit of the Laws* in her own major contribution to eighteenth-century political thought, the *Nakaz* or *The Grand Instructions to the Commissioners Appointed to Frame a New Code of Laws for the Russian Empire* (1767). This three-hundred page document outlined Catherine's proposals for a reform of the Russian judicial system, but it also contained a more general discussion of her constitutional theory. After describing Russia as a monarchy in which the authority of the sovereign was 'absolute',⁸⁴ albeit tempered by the existence of 'intermediary powers', more specifically a judiciary court which had the right to 'remonstrate' against new laws, she went on to deny that this meant that this form of government deprived men of their liberty. 'General or political liberty does not consist in that licentious notion, that a man may do whatever he pleases', Catherine wrote, echoing Montesquieu. 'In a state or assemblage of people that live together in a community, where there are laws, liberty can only consist in doing that which every one ought to do and not to be constrained to do that which one ought not to do . . . The political liberty of a citizen is the peace of mind arising from the consciousness, that every individual enjoys his peculiar safety.'⁸⁵

Catherine was by no means the only committed absolutist who drew on the *Spirit of the Laws* to make the point that monarchy was capable of providing its subjects with political liberty, in the sense of the rule of law. Another example is provided by count Ewald Friedrich von Hertzberg, a Prussian politician and Frederick the Great's right-hand man. In a 1784 speech to the Berlin Academy, Hertzberg quoted from the *Spirit of the Laws* to argue that European monarchies were very different from Asian despotisms. The 'free and tempered monarchy' typical for Europe did not treat its subjects as slaves. It preserved the rule of law because even though 'a single sovereign held both executive and legislative power', such a state was ruled by 'fundamental

⁸⁴ Catherine II, *The Grand Instructions to the Commissioners Appointed to Frame a New Code of Laws for the Russian Empire*, trans. Michael Tatischeff (London, 1768), p. 71.

⁸⁵ *Ibid.*, p. 76.

laws' and 'intermediary bodies'.⁸⁶ A similar usage was made of the *Spirit of the Laws* in the context of debates about the Danish monarchy⁸⁷ and, of course, in France itself, where Montesquieu's authority was invoked by staunch defenders of royal authority such as Jacob Nicolas Moreau.⁸⁸

As these examples suggest, Montesquieu's defence of monarchy as a non-despotic form of government was one of his most influential contributions to eighteenth-century political thought. The *Spirit of the Laws* is now of course best remembered for its celebration of the British constitution in the famous sixth chapter of book eleven. The first eight books, in which Montesquieu distinguished monarchy from despotism, are read much less frequently. But in the eighteenth century, Montesquieu's arguments about the difference between monarchy and despotism resonated loud and clear in the whole of Europe. Far from undermining French-style monarchy as a political ideal, it therefore seems that the *Spirit of the Laws* helped to maintain its viability in the second half of the eighteenth century and, what is more, that Montesquieu had deliberately set out to do so.

Annelien de Dijn

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⁸⁶ Ewald Friedrich von Hertzberg, *Sur la forme des gouvernemens et quelle en est la meilleure? Dissertation qui a été lue dans l'assemblée publique de l'Académie de Berlin le 29. Janvier 1784 pour le jour anniversaire du Roi* (s.l., s.d.), pp. 20–1.

⁸⁷ Henrik Horstboll, 'Defending Monarchism in Denmark-Norway in the Eighteenth Century', in *Monarchisms in the Age of Enlightenment: Liberty, Patriotism and the Common Good*, ed. Hans Blom *et al.* (Toronto, 2007), pp. 175–93.

⁸⁸ Daniel Roche, *France in the Enlightenment*, trans. Arthur Goldhammer (Cambridge, MA, 1998), pp. 253–78.