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**Executive Power and Modern Liberty in  
Jean-Louis Delolme's Political Thought and its Reception**

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PhD Thesis in Intellectual History

University of Sussex

September 2020

**University of Sussex**

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**Jean-Louis Delolme's Political Thought and its Reception**

**Thesis Summary.**

Jean-Louis Delolme (1741-1806) is known as a theorist of balance of powers. The lack of contextualisation of his work is accompanied by contrasting interpretations of his politics as a republican, a liberal, a democrat and a monarchist. This thesis alternatively commences with his argument that the English system was the most democratic state that history ever witnessed. By locating his programme in the intellectual and historical context, it reveals his crucial account of the relationship between the executive power and the people's power. The work unravels his claim by tracing his intellectual debt to the notion of the selfish system. The English experience, he argued, offers a glimpse into how modern free states might avoid the demise of ancient republics with institutional solutions to the selfish human nature. For him, the ideal of popular sovereignty was best preserved in England because it effectively controlled the most powerful political power in a constitution namely the legislative. Unlike in other free states, the "favourite of the people" could not usurp the constitution by claiming popular sovereignty, as the monarchical executive maintained an extra-parliamentary relationship to the subjects. Moreover, the people, instead of investing all political power in their representatives, exercised parts of their political power in the form of "public censorial power" supported liberty of the press to influence the motion of the government. The second half of the thesis is dedicated to his reception. His British reception reveals a divided legacy as an advocate for power and a champion of liberty of the press. His argument for a strong executive power was adopted by critics of "republican" constitutional reforms while his support of press freedom was praised by prominent government critics such as John Cartwright and Junius. His influence on the American founding generation saw the consolidation of his legacy as an advocate for power in the creation of the presidential office within the federal republic. Meanwhile, his notion of public censorial power became largely forgotten. By tracing the dynamism of his legacy on both sides of the Atlantic, the thesis sheds light on the dubious locus of executive power in modern representative democracy beyond the narrow framework of the state of exception by offering a historical perspective on the formation of the office.

## **Acknowledgment.**

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## **List of Abbreviations.**

### **Adams, John**

*A Defence* *A Defence of the Constitutions of Government of the United States of America*, 1787.

### **Delolme, Jean-Louis**

*Constitution* ed., David Lieberman, *The Constitution of England*, Liberty Fund: Indiana Polis, 2007

*Parallel* *A Parallel Between the Constitution of England and the Former Government of Sweden*, 1772.

*Flagellants* *History of the Flagellants or Memorials of Human Superstition*, 1777.

*A Few Strictures* *An Essay Containing A Few Strictures on the Union of Scotland With England and On the Present Situation of Ireland Being and Introduction to Defoe's History of the Union*, London, 1786.

### **Viscount Bolingbroke**

*Remarks* *Remarks on the History of England, from the Minutes of Humphrey Oldcastle*. 2nd ed., 1747.

## Introduction.

In his *The Constitution of England* (1771), Jean-Louis Delolme argued that once properly understood, “we shall find England to be in reality a more Democratical [sic] State than any other we are acquainted with.”<sup>1</sup> The constitution did so, he claimed, by maintaining a constructive tension between the strong executive power and the people. Through the institutional arrangement of its legislative bicameral parliament, this tension propels the machine of the government and effectively keeps all powers in control. This “modern” interpretation of England as a representative democracy hitherto has not been seriously examined. The negligence is partly due to early interpretations of his work as sympathising with monarchism and its associated distinctions and orders.<sup>2</sup> This approach also regards his positive account of a strong executive power as a simple indication of conservatism. This thesis, alternatively, takes his argument that the English system was a modern representative democracy as its point of departure. By examining Delolme’s work as a part of this long and convoluted tradition, the work contributes to several issues in the history of political thought.

First, through the re-examination of Delolme’s programme, the thesis confronts the conceptual problem concerning the relationship between executive power and liberty in modern representative politics. Although there have been studies on the formation of modern executive power in the formative eighteenth century, “the first practical philosophies of executive power in an age of popular sovereignty” often focus on familiar figures like Jacques Necker and François Guizot in, for example, Rosanvallon’s *Good Government* (2018) despite Delolme’s important contribution to the debate.<sup>3</sup> Moreover, literature on the topic often articulates this issue through the framework of the “state of exception”. Put simply, even during the case of emergency, how can extra-legal executive acts be reconciled with political legitimacy? This is especially problematic from the perspective of liberal constitutionalism which believes that the government’s prime duty is to protect individual liberty, especially against the arbitrariness of the rulers through rule of law. This approach, however, is trapped within the legalistic framework and

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<sup>1</sup> Jean-Louis Delolme, *The Constitution of England*, ed., David Lieberman, (Indianapolis: Liberty Fund, 2007), 280. Henceforth referred to as *Constitution*.

<sup>2</sup> This line of interpretation is found in, for example, Joyce Appleby, “The Jefferson-Adams Rupture and the First French Translation of John Adams’ Defence,” *American Historical Review*, 73, no. 4 (1968): 1084-091.

<sup>3</sup> Pierre Rosanvallon, *Good Government: Democracy Beyond Elections*, (Cambridge, Massachusetts: Harvard University Press, 2018), 191.



fails to grasp the wider political implications and the historical context of the creation of modern executive power.

It is unsurprising that the most prolific groups of scholars who work on this topic are from the field of American politics. The majority of the recent literature warns against the extensive interpretation of the presidential power especially after George W. Bush's administration and the use of the executive power during the "War on Terror".<sup>4</sup> One of the few positive accounts of modern executive power and its extra-legal aspect is Harvey Mansfield's *Taming the Prince* (1989).<sup>5</sup> Mansfield supports his argument with a genealogical examination of the office from the absence of it in Aristotle's work, its later revelation in Machiavelli's *The Prince* (1513), and modern attempts to treat the office as an "errand boy" for legislative power especially after Rousseau's *Social Contract*. For Mansfield, the errand boy interpretation of the office is dangerous because it only hinders proper understandings of the office which inevitably leads to the difficulty in creating effective limits to it. A more recent collection edited by Fatovic and Kleinerman, *Extra-Legal Power and Legitimacy: Perspectives on Prerogative* (2013), proposes that existing secondary literature neglects the distinction between legality and legitimacy and presumptuously assumes that liberalism is part and parcel with legalism. Consequently, it argues that most studies on modern executive power attempt to comprehend the act of executive discretions during emergency by wrestling it into the legal framework. Unlike Mansfield, Fatovic and Kleinerman's collection proposes that the executive power within the liberal constitutional framework possesses "prerogative power" that can be exercised extra-legally but remains nonetheless constitutional. In short, the American Constitution already leaves room for the need of extra power of the executive in case of emergency.<sup>6</sup> Although the 2013 work seemingly goes beyond Mansfield's argument for the extra-legal power of this office, it still largely relies on emergency cases as the most revealing framework to understand the relation between modern executive power and its potential infringement of public liberty.

Delolme remains one of the few who contended that the strong executive power is among the key components of a successful modern representative democracy as a part of the scheme to prevent a complete claim of popular sovereignty and in so doing, preserve it as the political ideal.

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<sup>4</sup> John Yoo's infamous legal interpretation of the executive power under George W. Bush during "War on Terror" prompts numerous studies in the framework of the state of exception. John Yoo, "My Gift to the Obama Presidency; Though the White House Won't Want to Admit It, Bush Lawyers Were Protecting the Executive's Power to Fight a Vigorous War on Terror," *Wall Street Journal*, February 24, 2010. See, for example, Louis Fisher, "The Unitary Executive and Inherent Executive Power (Presidential Power in Historical Perspective: Reflections on Calabresi and Yoo's 'The Unitary Executive')." *University of Pennsylvania Journal of Constitutional Law*, 12, no. 2 (2010): 569-591.

<sup>5</sup> Harvey Mansfield, *Taming the Prince: The Ambivalence of Modern Executive Power* (Charles Village, Baltimore: John Hopkins University Press, 1993).

<sup>6</sup> Clement Fatovic and Benjamin A. Kleinerman eds, *Extra-legal Power and Legitimacy: Perspectives on Prerogative*, (Oxford: Oxford University Press, 2014), 5.

The contribution of the present study, however, is not to propose a simple solution to the problem of the executive power's potential encroachment upon public liberty. Rather, Delolme's examination of the English system expands our current rather narrow approach to the understanding of this office in the development of modern representative democracy. Through his work, the reader is reminded of the office's link to public opinion in the form of the Crown's royal relationship to its subjects, an extra-parliamentary scheme to alleviate the danger which popular politicians might create.<sup>7</sup> The executive power also functions to represent popular sovereignty in the form of "the depositary, of all the power and collective majesty of the Nation" in foreign affairs.<sup>8</sup> In other words, Delolme's positive account of the strong executive power stems from its ability to undermine popular support for prominent members of the parliament as well as to counterpoise the raw power of popular uprising.<sup>9</sup> The thesis contextualises Delolme's programme in the eighteenth-century debate on the locus of executive power in modern politics with the goal to preserve the ideal of popular sovereignty. By uncovering his contribution to the debate, it also hopes to be a fruitful investigation for twenty-first century readers in light of the present crisis in political legitimacy and contrasting views on how popular sovereignty should be manifested in and beyond the parliament, a problem which shows no sign of abating.<sup>10</sup>

To situate Delolme's intervention into the history of representative democracy and the ideal of popular sovereignty, Richard Tuck's *The Sleeping Sovereign* (2016) provides a helpful framework.<sup>11</sup> In Tuck's narrative, the defining characteristic of modern politics is the distinction between the sovereign and the government which allows the sovereign people to slumber in full authority as the government independently operates the business of the state. What unifies Jean Bodin, Thomas Hobbes, and Jean-Jacques Rousseau is the central role of political representation in carrying out the will of this dormant yet fully authoritative and crucially unitary popular sovereign.<sup>12</sup> Notably, few of these authors were interested in the constitutive role of liberty of the press and public opinion in the function of a state. The essential characteristic of the sovereign in

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<sup>7</sup> Delolme, 144.

<sup>8</sup> Ibid., 63.

<sup>9</sup> Ibid., 143.

<sup>10</sup> The recent example was the Brexit debate and the contrasting visions of sovereignty which different sides of the debate brought. For the outline of the debate see for example Jan Pieter Beetz, "Safeguarding, Shifting, Splitting or Sharing? Conflicting Conceptions of Popular Sovereignty in the EU-polity." *Journal of European Integration*, 41, no. 7 (2019): 937-53.

<sup>11</sup> Richard Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy*, The Seeley Lectures (Cambridge: Cambridge University Press, 2016).

<sup>12</sup> There is, of course, a distinction between Rousseau and Hobbes in their disagreement over the issue of representative sovereignty. For Rousseau "Sovereignty cannot be represented for the same reason that it cannot be alienated. It consists essentially in the general will, and the will cannot be represented. The will is either itself or something else; no middle ground is possible. The deputies of the people, therefore, neither are nor can be its representatives; they are nothing else but its commissaries. They cannot conclude anything definitively". Jean-Jacques Rousseau, *Rousseau: 'The Social Contract' and Other Later Political Writings*, (Cambridge: Cambridge University Press, 1997), 114. Here the focus is on their shared opinion on the distinction between sovereignty and government.

this view is its unity, reflecting the centrality of the metaphor of the body politic as exemplified by the idea of the artificial person of the state in Hobbes' case.<sup>13</sup> *The Sleeping Sovereign* also provides a second, contrasting view to this understanding of popular sovereignty in the work of, for example, Emmanuel-Joseph Sieyès who was critical of the Jacobins' radical democratic project and saw representative politics as a superior form of government in its own right.<sup>14</sup> In this second view, popular sovereignty is expressed via its various representatives. These representatives crucially reside in several sites simultaneously in the political system. These contestants such as Parliament and the head of the state, compete with one another without a clear winner to be the true representative of the people. In a similar vein, Bryan Garsten's reading of Benjamin Constant and James Madison is in line with this second group of thinkers.<sup>15</sup> In this second line of interpretation of popular sovereignty, another important form of the representation of the people is public opinion. This special role of public opinion in modern politics is exemplified by the work of a nineteenth-century legal scholar, Francis Lieber.<sup>16</sup> For him, the legal system and the government was "that institution or contrivance, through which the state, that is jural society, acts in all cases in which it does not act by direct operation of its sovereignty..." when in other cases society operates by and large directly through public opinion.<sup>17</sup> In this understanding, the government becomes even a lesser form of a representative of the people while the idea of the civil society became increasingly important at the dawn of the nineteenth century.<sup>18</sup>

The present work on Delolme's political thought, however, nuances this dichotomous understanding of popular sovereignty in the development of modern representative democracy. In his account, one finds both the underlying theme of the sleeping sovereign as well as the central role of public opinion as "public censorial power" which the people themselves exercise to ensure that the government works for the public interest.<sup>19</sup> For him, popular sovereignty is the power to

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<sup>13</sup> Quentin Skinner, "Hobbes and the Purely Artificial Person of the State," *Journal of Political Philosophy* 7, no. 1 (1999): 1-29.

<sup>14</sup> Nadia Urbinati, *Representative Democracy: Principles and Genealogy*, (Chicago: University of Chicago Press, 2008), 113-114. Emmanuel Joseph Sieyès, Michael Sonenscher ed., *Political Writings: Including the Debate between Sieyès and Tom Paine in 1791* (Indianapolis, Ind.; Cambridge: Hackett Publishing, 2003).

<sup>15</sup> Bryan Garsten, "Representative Government and Popular Sovereignty," in *Political Representation*, ed., Ian Shapiro, Susan C. Stokes, Elisabeth Jean Wood, and Alexander S. Kirshner, (Cambridge: Cambridge University Press, 2010) 90-110.

<sup>16</sup> Tuck, *The Sleeping Sovereign*, 255-6.

<sup>17</sup> Francis Lieber, *Manual of Political Ethics, Designed Chiefly for the Use of Colleges and Students at Law*, Vol. 1, (New Jersey: The Law Book Exchange Ltd., 2003), 273. cited in C. B. Robson, "Francis Lieber's Theories of Society, Government, and Liberty," *The Journal of Politics* 4, no. 2 (1942): 227-49. The notion of "jural society" connotes the centrality of the rule of law as the foundation of it. For Lieber's opinion on the task of political science to find an ethical foundation for a modern state as a necessary corner of the civil society see James Farr, "Francis Lieber and the interpretation of American political science," *The Journal of Politics* 52, no. 4 (1990): 1027-1049.

<sup>18</sup> More on the topic see C. B. Robinson, "Francis Lieber's Theories of Society, Government, and Liberty," *The Journal of Politics* 4, no. 2 (1942): 227-49.

<sup>19</sup> Delolme, 119.

awe but not to act. “The Power of the People is not when they strike, but when they keep in awe: it is when they can overthrow everything, that they never need to move.”<sup>20</sup> He contended that the sovereign people inevitably transform into a tool which popular leaders exploit for their private interest. Popular sovereignty retains its meaning only in a static state similar to the notion of potential energy in physics. In this regard Delolme’s account of English popular sovereignty strikingly resonates with Tuck’s sleeping sovereignty. However, unlike his predecessors and contemporaries who focused on the unitary but rather static and distant nature of the sleeping sovereign, Delolme painted a different picture based on his examination of English constitutional history. His account reveals how English modern liberty depended on the expressions of popular sovereignty through public opinion as well as the threat of popular resistance.<sup>21</sup> These forms of expression allow the people to influence the motions of the government with minimum risks of constitutional usurpations. Moreover, Delolme’s sleeping sovereign is described to be harmful once woken up. While Rousseau’s sleeping sovereign and representative democracy was a reluctant second-best form of republicanism, Delolme’s sleeping sovereign lies in lethargy for the benefit of the public.<sup>22</sup> This different starting point paves the way for his novel understanding of the constitutional arrangement of powers including the function of the executive power in preserving the constitutional balance. By insisting that liberty is augmented through representative politics according to this understanding of popular sovereignty, the next question is how to make the parliament work for the people. It is worth pointing out that in his analysis, the goal of the parliament is not to resemble the body of the people since to perfectly represent the sleeping sovereign is to defeat its own *raison d’être*. Rather, the question here is how to best prevent the parliament from being a vehicle of the politicians’ private interest. For Delolme, the English experience pointed to executive power.

The second contribution of this thesis is achieved through its contextualist approach. It reveals Delolme’s in-depth engagement with the Enlightenment debate on the relationship between human nature and history and its implication for the study of politics. The issue was central to the formation of modern representative politics because it was part and parcel with the question on the compatibility of republican principles with the modern world, especially as the ideological baseline for constitutional programmes. This philosophical concern was crucial to the political context of the late-eighteenth century with the emergence of America as a modern republic. Prior

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<sup>20</sup> Ibid., 219.

<sup>21</sup> Delolme did not endorse actual popular uprisings on the ground that it paves the way to power for demagogues but he strongly supports the utility of the threat of popular resistance as an effective tool to keep the rulers in check. On the relationship between popular resistance, liberty of the press and its role in the English system see chapter four.

<sup>22</sup> For Rousseau, representative politics can be seen as a legacy of post-Roman feudalism and in that regard, a regression. See Nadia Urbinati, “Rousseau on the Risks of Representing the Sovereign,” *Politische Vierteljahresschrift*, (2012): 650.

to this study, Delolme's constitutional thinking is often examined as a theoretical proposition, separated from his historical analysis, as well as the context in which it was formed. This approach is exemplified by Vile's *Constitutionalism and the Separation of Powers* (1977). Delolme is described as an inept disciple of Montesquieu. Vile's argument is based on the claim the Delolme's analysis erroneously endorses the obsolete seventeenth-century strict separation of powers based on the division of functions.<sup>23</sup> This line of enquiry is reductive and often leads to misunderstandings of Delolme's programme due to its limited constitutionalist scope.

Alternatively, this thesis traces Delolme's intellectual debt to the notion of science of man and politics, acknowledging his serious engagement with thinkers like David Hume and Adam Smith. He founded his programme on the understanding of human nature as passion-driven on one hand, and the legacy of English liberty, on the other. Since human nature is immutable, the secret behind the English system, he argued, must lie in the arrangement of its institutions. His science of politics approaches political institutions as embodied history, which can only be examined retrospectively. This premise prompted him to re-work the history of English liberty which he believed, originated from the resistance against the Norman Conquest. The first two chapters of the thesis are dedicated to uncovering his distinct intervention into the long-standing debate on the history of English liberty. They also reveal how his science of politics and its treatment of history is proposed as a superior approach to the language of civic republicanism found in other contemporary analyses of English constitution. Chapter three is dedicated to his critique of rival accounts in the work of Rousseau, Hume, and Montesquieu. Unlike the limited constitutionalist approach, by uncovering his methodology, the thesis acknowledges his constructive criticism of civic republican language and how it informs his stance on the superiority of modern representative constitution to popular politics.

Delolme's objective in presenting the English model as the paradigm for the possibility of liberty in the modern world is best understood in tandem with the legacy of English liberty in the eighteenth century. Voltaire, for example, praised the English as "the only people upon earth who have been able to prescribe limits to the power of Kings by resisting them; and who, by a series of struggles, have at last establish'd that wise government."<sup>24</sup> This reputation, however, was extremely controversial.<sup>25</sup> Despite his high praise of the English system, Montesquieu also famously warned against the future of its downfall, should the legislative become more corrupt

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<sup>23</sup> Maurice Vile, *Constitutionalism and the Separation of Powers*, 2nd ed. (Indianapolis: Liberty Fund, 1991), 115. Vile's passing comments on Delolme, while neglecting entirely his positive account of the Humean king-in-parliament scheme as a useful check mechanism, sheds light on his influential American reception.

<sup>24</sup> Voltaire, *Letters Concerning the English Nation*, ed. Nicholas Cronk (Oxford: Oxford Univ. Press, 1999), 34.

<sup>25</sup> See, for example, David Williams, "French Opinion Concerning the English Constitution in the Eighteenth Century," *Economica*, no. 30, (1930): 295-308.

than the executive.<sup>26</sup> The English system as a commercial, quasi-republican state was also criticised of its tendency towards instability by Scottish historians including Adam Ferguson in his *Essay on the History of Civil Society*.<sup>27</sup> Its reliance upon the detrimental logic of war finance and public debt is also elaborated in Hume's "Of Civil Liberty" as discussed in *Before the Deluge* (2007).<sup>28</sup> Delolme's *Constitution* proposes an alternative view of the English system as a modern free constitution which successfully preserves the ideal of popular sovereignty through its institutional arrangement. In order to fully appreciate Delolme's originality in his analysis of the English system and its political impact on the contemporary constitutional debates, a thorough examination of his reception which is free from the limitations of previous approaches are required.

The final chapters of the thesis reveal how his work greatly contributed to the development of modern republicanism in America as well as the more intricate British debates about monarchical and parliamentary power during the formative years of 1780s. In this regard, Delolme's work and its reception also significantly provides a window for observing some of the tensions in the ideas of modern liberty and modern republicanism. In Britain, his analysis of the benefit of English monarchical executive power was employed to address the problem of legislative despotism and the limits of republicanism as an ideological baseline for constitutional reform programmes. However, his notion of "public censorial power" and liberty of the press also attracted the attention of some constitutional reform enthusiasts. They were highly praised by prominent critics of George III such as Junius and John Cartwright as well as Jeremy Bentham and John Lind. Finally, chapter six on the American reception saw the adaptation and transformation of his analysis of the executive power in the debate on the American presidential office. Through the reading of Alexander Hamilton, John Adams, and the Jeffersonian circle, Delolme's work was associated with a vision for modern republicanism for a large-scale, commerce-based state, which benefits from the constructive tension between the executive power and the people. This vision was criticised by John Stevens in his *Observations on Government: Including Some Animadversions on Mr. Adams's Defence of the Constitutions of Government of the United States of America: and on Mr. De Lolme's Constitution of England* (1787). Its French translation and commentary by the Jeffersonian circle employs Delolme's account of modern republicanism to juxtapose with their agriculture-based, egalitarian republicanism which they

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<sup>26</sup> Montesquieu, *The Spirit of the Laws*, trans. and ed. Ann M. Cohler, Basia Miller, Harold Summel Stone. (Cambridge: Cambridge University Press, 1989 [1748]), book 11, chapter 6, 166.

<sup>27</sup> See, for example, Iain McDaniel, *Adam Ferguson in the Scottish Enlightenment*, (Cambridge, MA: Harvard University Press, 2013), 54-63.

<sup>28</sup> David Hume, "Of Civil Liberty" in *Hume, Essays: Moral, Political and Literary*, ed. Eugene F. Miller (Indianapolis: Liberty Fund, 1985), 96. More on the future of the English model and its critics in the eighteenth century see Michael Sonenscher, *Before the Deluge: Public Debt, Inequality, and the Intellectual Origins of the French Revolution*, (Princeton: Oxford University Press, 2007), 39-52.

deemed to be a better model for France amidst the vehement discussions about constitutional reforms pre-1789. Overall, the final chapter on Delolme's reception also reflects the decline in historical thinking of liberal constitutionalism, as it shows the complete separation of his account of executive power from the historical analysis that gives rise to it.

By weaving together bits and pieces of his programme previously overlooked or studied incomprehensively, the thesis tells a story of a distinct and largely forgotten variant of an argument for representative democracy. His programme places an active but limited executive power and the "public censorial power" as key components in keeping the legislative power from claiming the sole right as the representative of popular sovereignty. In this regard, contemporary American politics operates contra to Delolme's argument for representative democracy because the Presidential office is the closest indicator of popularity under the current electoral system.<sup>29</sup> As for the British counterpart, in a different parliamentary form but within similar trend, the executive power of the cabinet also has a strong link to popular support by the turn of the twentieth century with the rise of professional politicians coincided with the victory of mass democracy exemplified by the successful career of William Gladstone.<sup>30</sup> William Selinger in his *Parliamentarism: From Burke to Weber* (2019) points out the neglected ideal of deliberative parliamentarism and the gradual rise to prominence of the plebiscitary executive with the establishment of mass democracy in his examination of Max Weber's *Politics as a Vocation* (1919).<sup>31</sup> Delolme's *Constitution*, in this regard, also presents twenty-first century readers with an entry point into early forms of modern representative politics in the eighteenth century and its difficult relationship to executive power, as well as its antagonism against popular politics – whether in the form of popular politicians or popular uprisings led by demagogues. In Delolme's view, a modern representative constitution is always at risk when any political body can totally claim the popular support and effectively, the sovereign power. The monarchical executive power of the English system therefore was not there to be revered but to be an object of jealousy.<sup>32</sup> English liberty was the result of an institutional design which channelled the distrust inherent in human nature for the public good. This scheme was explicit when popular politicians like the Duke of Marlborough, despite his military success and overwhelming popular support, did not pose a threat to the constitution because of the existence of the monarchical executive power.<sup>33</sup>

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<sup>29</sup> Although the creation of the electoral college was presented as a compromise between direct popular vote and American states' local representative, compared to other offices in the American complex system, the American president is closest to holding a true popular support.

<sup>30</sup> William Selinger, *Parliamentarism: From Burke to Weber*, (Cambridge: Cambridge University Press, 2019), 196.

<sup>31</sup> Ibid.

<sup>32</sup> Delolme, *Constitution*, 145.

<sup>33</sup> Ibid., 149.

The contribution that the thesis makes to the study on the history of political thought can also be understood as a part of the recent scholarly interest in the relationship between republicanism and liberalism. Most notably, *Liberal Beginnings: Making a Republic for the Modern* (2008) explores canonical authors from Adam Smith, Benjamin Constant to James Madison for their evaluation of republican principles in the light of the new ideal of individual negative liberty as the political end of a modern constitution.<sup>34</sup> The study of this republicanism-liberalism convergence is more than ever relevant amidst the present crisis of liberalism which calls for the re-evaluation of the tradition and its critique as examined in the work of, among others, Philip Pettit and Quentin Skinner.<sup>35</sup> While liberty has proved to be a fruitful starting point in the investigation into this intellectual convergence, its philosophical focus often eclipses the extent to which the English model had on the development of liberalism. Selinger's *Parliamentarism: From Burke to Weber* has recently pointed out this gap in the literature and provides an in-depth historical examination of the "concrete, overarching project" of parliamentarism in its own right without which liberalism as we know it would not have been possible. The present work, instead, turns to the topic of executive power as a guiding question in this important line of research on the contribution of republicanism and its critique to liberalism. Alternatively, this thesis aims to demonstrate how the formation of modern executive power was also a crucial point of connection between republicanism and liberalism and in doing so, also broaden present studies on the topic beyond the framework of the state of exception by uncovering its function to prevent constitutional usurpations caused by potential factional claims of popular sovereignty.

Just as some scholars trace the origin of American presidential power back to the British royal prerogative, the thesis sheds light on its ambiguous locus in representative democracy through the transformation of the English royal executive power into the First Magistrate.<sup>36</sup> This formation of the English modern executive power in *Constitution* is best understood in tandem with Delolme's concern with the threat of legislative despotism.<sup>37</sup> Through the present study on his political thought and its reception, one can reflect on the absence of this strand of representative democracy which explicitly warns against the mixture of popular support with any constitutional power and the implications it echoes in today's politics in time of the rise of plebiscitary executive.

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<sup>34</sup> Andreas Kalyvas and Ira Katznelson, *Liberal Beginnings: Making a Republic for the Moderns*, (Cambridge: Cambridge University Press, 2008).

<sup>35</sup> Philip Pettit, *Republicanism: A Theory of Freedom and Government*, (Oxford: Oxford University Press, 1999). Quentin Skinner, *Liberty before Liberalism*. (Cambridge; New York: Cambridge University Press, 1998).

<sup>36</sup> Delolme, *Constitution*, 67, 73.

<sup>37</sup> William Scheuerman, "American Kingship? Monarchical Origins of Modern Presidentialism," *Polity* 37, no. 1 (2005): 24-53. On the political agenda of the Economical Reform to reduce the political power of George III see Ian R. Christie, "III. Economical Reform and 'The Influence of the Crown', 1780," *Cambridge Historical Journal* 12, no. 2 (1956): 144-54. On the relationship between Delolme's account of the executive power in the light of the plan for Economical Reform see Chapter Five.



## Scholarly Context and Literature Review.

Secondary literature disagrees on Delolme's politics. While some insist on the conservative and "monarchist" nature of his writing, others emphasize the liberal tendency of his constitutional ideas on checks and balances. The dispute concerning the nature of his work stems partly from the inadequate contextualization which leads to several and often contradictory interpretations. This section uses the question on the nature of Delolme's political thought to navigate the scholarly context and the literature review, in order to highlight the thesis' alternative view on his work. Instead of focusing on the terminological issue of republicanism, liberalism, or conservatism, the thesis reveals that the central theme of his work is the distinction between popular sovereignty and government in a modern representative constitution, and how the executive power can play a positive role in this political order. This theme cuts across forms of government as well as the categories of republicanism, conservatism, and liberalism. This is reflected in, for example, the reception of his arguments about the English monarchical executive power in the debate on the American presidential office.

The first reading perceives him as Montesquieu's disciple. This approach also often regards his work as supportive of the feudal society of orders, with the people, the nobility, and the king. *Constitution* was a lesser *Spirit of the Laws* and a blatant endorsement of the British Empire, turning a blind eye to its many flaws.<sup>38</sup> Delolme's language of checks and balances as well as the metaphor of the constitution as a machine was perceived as following Montesquieu's preference for social orders that underpin the balanced constitution.<sup>39</sup> This first approach includes Karl Marx's 1848 *The Crisis and the Counter- Revolution* which vehemently criticises Delolme and Montesquieu together. "the Montesquieu-Delolme worm-eaten theory" for Marx was nothing other than "worn-out phrases and long exploded fictions!"<sup>40</sup> In this reading, Delolme's constitutional theory which praises the English system wrongly assumes the significance of the institution of the Crown in any modern constitutional theory. Thomas Carlyle's *Signs of the Times* (1829) similarly categorises Delolme's political writing alongside other authors who favoured

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<sup>38</sup> See, for example, *Weekly Political Register*, Volume 6, ed. William Cobbett 1804, (London, 1804), 804. Delolme, along with Montesquieu and Blackstone, are portrayed as sarcastically as 'those eloquent panegyrists of our Constitution' who failed to see the reality of the oppressive British laws in Ireland.

<sup>39</sup> More on the topic see *Montesquieu's science of politics: Essays on the Spirit of Laws*, Cecil Courtney, Paul A. Rahe, Michael A. Mosher, Sharon Krause, Rebecca E. Kingston, Catherine Larrere, and Iris Cox ed., (Lanham, MD: Rowman & Littlefield Publishers, 2000).

<sup>40</sup> Karl Marx, *Neue Rheinische Zeitung*, 13 September 1848, the Marxists' Internet archive, accessed May 1, 2020, [https://www.marxists.org/archive/marx/works/download/Marx\\_Articles\\_from\\_the\\_NRZ.pdf](https://www.marxists.org/archive/marx/works/download/Marx_Articles_from_the_NRZ.pdf).

Montesquieu-inspired science of politics or what Carlyle dubbed the language of “Mechanism”. These authors relied on the metaphor of the society as a machine for their political enquiries. Carlyle was critical of this new approach as it neglects the moral aspect of the political life. In the nineteenth century, “[n]owhere...is the deep, almost exclusive faith we have in Mechanism more visible than in the Politics of the time.” The metaphor of the “Machine of the Society” rendered the philosophy of the age not; “a Socrates, a Plato, a Hooker, or Taylor who inculcates on men the necessity and the infinite worth of moral goodness...but a Smith, a Delolme, a Bentham, who chiefly inculcates the reverse of this,---that our happiness depends entirely on external circumstances; nay, that the strength and dignity of the mind within us is itself the creature and consequence of these.”<sup>41</sup>

This first line of enquiry continues in the later work of Joyce Appleby. She reads *Constitution* in the context of the American founding generation, under the label of a conservative and a monarchist who wanted to preserve the feudal social orders incompatible with the modern world. Her argument is informed by Delolme’s reception by John Adams as well as critics of his work such as Thomas Jefferson’s and his allies including Marquis de Condorcet and Philip Mazzei.<sup>42</sup> In Appleby’s narrative, Delolme’s contention for a strong and unitary executive power is explained by his penchant for monarchy and “a balanced government of commons, lords, and king, as in England”.<sup>43</sup> Her detailed historical investigation sets the main tenet for subsequent studies on Delolme by scholars on constitutional theory especially in the North American context with a strong focus on the subject of the monarchical root of modern republican executive power.<sup>44</sup> However, it relies on the interpretation of his work by the Jeffersonian circle and does not seriously engage with *Constitution* and its arguments in their own rights nor its various political roles on the other side of the Atlantic.

The second reading emphasises on Delolme’s quest for political stability through the arrangement of powers in the modern republican constitution. This line of enquiry benefits from a more rigorous contextualization of his work, revealing its influence in the debates on the English model its applicability on the continent.<sup>45</sup> Iain McDaniel’s “Jean-Louis Delolme and the Political

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<sup>41</sup> Thomas Carlyle, “Signs of the Times,” *Edinburgh Review* 49 (1829).

<sup>42</sup> Joyce Appleby, “The Jefferson-Adams Rupture and the First French Translation of John Adams’ Defence,” *The American Historical Review* 73, no. 4 (1968): 1084-091. For the criticism of Delolme by the Jeffersonian circle see Chapter Six.

<sup>43</sup> *Ibid.*, 1088.

<sup>44</sup> For Delolme’s “Hobbesian” influence on the Canadian constitutional design see Gregory Millard, “The Canadian Federalist Experiment: From Defiant Monarchy to Reluctant Republic,” *The American Review of Canadian Studies* 36, no. 4 (Winter, 2006): 698.

<sup>45</sup> Delolme played crucial roles in the late eighteenth as well as in the nineteenth century European politics which requires future research. However, it lies outside the scope of this present thesis which uses the topic of executive power and its relationship to modern constitutional liberty to navigate his political thought and its reception in Britain and America. There have been studies on Delolme’s reception in Germany and France namely Edith Ruff’s *Jean-Louis de Lolme und sein Werk über die Verfassung*

Science of the English Empire” sheds light on the relationship between Delolme’s idea of science of politics and the concern about the stability of modern extensive empires. It also crucially challenges previous assumption about Montesquieu’s influence on his work by highlighting Delolme’s extensive critique of *Spirit of the Laws*.<sup>46</sup> R.R. Palmer’s *the Age of Democratic Revolution* (1959) explores Delolme’s Genevan background and its influence on his analysis in *Constitution*. For Palmer, what persists throughout his work both as a young citizen of Geneva and later as an English “subject by choice” is his “intense dislike of government by oligarchy, coterie, or self-perpetuating aristocracy.”<sup>47</sup> For Palmer, this opinion, rather than monarchism, was shared by John Adams which explains Delolme’s positive reception by the framer. Delolme uniquely contributed to the debate on the problem of legislative despotism inherent in modern representative constitution through his analysis on the English monarchical executive power.

William Selinger’s *Parliamentarism: From Burke to Weber* (2019) brings to the fore the concrete project of parliamentarism as the forgotten aspect of liberalism during its formative years in the eighteenth century to cope with the issue of stability in the large-scale modern state. The English parliamentary system was central to this project. He accredits Delolme for acknowledging and embracing the rise of the English legislative power as the most dominant branch of the English constitution, creating a new kind of constitutional balance with the rise of the legislative power post-1688.<sup>48</sup> While it is true that Delolme recognised the establishment of legislative supremacy in England, he was far more concerned about new kinds of despotism which this new constitutional arrangement brought about than Selinger’s reading suggests. Richard Whatmore’s *Against War and Empire* (2012) tells a story of how Delolme was a part of the history of the small republic of Geneva and its intellectual influence on the European constitutional thinking. Delolme’s programme, it is argued, envisions the English model as “the only republic worth this name in the modern world.”<sup>49</sup> In “The role of Britain in the political thought of the Genevan exiles

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*Englands* (Berlin: Ebering, 1934) and Jean-Pierre Machelon’s *Les idées politiques de Jean-Louis de Lolme* (1741-1806) (Paris: Presses universitaires de France, 1969). Hans-Christof Kraus, *Englische Verfassung und politisches Denken im Ancien Régime 1689-1789*, (Munich: Oldenbourg) examines Delolme’s influence among the German liberals of the Vormärz.<sup>45</sup> Edouard Tillet’s “La place ambiguë de Jean-Louis de Lolme dans la diffusion du modèle anglais de l’Ancien régime à la Révolution française” in *Geneva, an English Enclave 1725-1815* investigates the influence of *Constitution* on the post-1789 French constitutional debate. For Delolme’s influence on the French Monarchien concerning the limitation of the French monarchical executive power and its disadvantages see Craiutu Aurelian, *A Virtue for Courageous Minds: Moderation in French Political Thought, 1748–1830*, (Princeton, NJ: Princeton University Press, 2012), 94-96.

<sup>46</sup> Iain McDaniel. “Jean-Louis Delolme and the Political Science of the English Empire”, *The Historical Journal* 55, no. 1 (2012): 21-44.

<sup>47</sup> R.R. Palmer, *The Age of Democratic Revolution: A Political History of Europe and America, 1760-1800*, (Princeton, New Jersey: Princeton University Press, 1959), 146. Delolme signed the dedication to the king of the 1784 edition as Subject by Choice.

<sup>48</sup> William Selinger, *Parliamentarism: From Burke to Weber*, (London: Cambridge University Press, 2019), 39-48.

<sup>49</sup> Richard Whatmore, *Against War and Empire: Geneva, Britain, and France in the Eighteenth Century*, (Yale University Press: New Haven and London, 2012), 113.

of 1782”, he employs the Genevan question concerning the distinction between government and sovereignty to navigate the intellectual formation of Geneva’s political exiles. Delolme exemplifies a departure from the tradition of unitary sovereignty to the balance of sovereign authorities characteristic of the English system. The English representative constitution, for him, was superior to a popular constitution because it could prevent abuse of power at the expense of public liberty more effectively.<sup>50</sup> All in all, the question of political stability for a modern representative constitution dominates this main line of investigation which perceives Delolme as a modern republican author. While the rigorous contextualisation of his work successfully reveals the complexity of his project than previously assumed by the nineteenth-century readers, this line of investigation still largely focuses on the parliamentary powers of the executive power and the legislative power with little engagement with the realm of civil society in his analysis of the English system.

The last line of investigation focuses on Delolme’s notion of public opinion and the notion of public censorial power. Carl Schmitt’s 1928 *Constitutional Theory* interestingly makes a remark on Delolme’s notion of “censorial power” as an example of how the eighteenth-century enlightened despotism was accompanied by the institutionalisation of enlightened public opinion as a mechanism to control state power. “Delolme speaks for the fact that the people exercise their special authority through public opinion, the power to censure. In the liberal demands of the nineteenth century, the idea of liberal freedom combines with this democratic idea.”<sup>51</sup> Schmitt intriguingly acknowledges the democratic elements inherent in the eighteenth-century notion of enlightened public opinion and its power in shaping the parliamentary agenda. However, he did not engage further with *Constitution* and the relationship of this censorial power to other constitutional powers. Similarly, “Liberty, metaphor, and mechanism: ‘checks and balances’ and the origins of modern constitutionalism” highlights Delolme’s originality in recognising the dynamic nature of the English constitutional balance of power with its feedback mechanism from the public opinion.<sup>52</sup>

Using the topic of executive power as its point of departure, as it is one of the most underexamined and controversial constitutional powers in modern representative democracy, the thesis moves Delolme out of Montesquieu’s shadow. It weaves together elements of his programme namely the executive power, national union, public opinion and the meaning of

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<sup>50</sup> Richard Whatmore, “The Role of Britain in the Political Thought of the Genevan Exiles of 1782” in *Genève, Lieu D'Angleterre, 1725-1814: Geneva, an English Enclave, 1725-1814*, Valérie Cossy, Bela Kapossy, and Richard Whatmore ed., (Geneva: Slatkine, 2009).

<sup>51</sup> Carl Schmitt, *Constitutional Theory*, Jeffrey Seitzer ed. (Durham and London: Duke University Press, 2008), 277.

<sup>52</sup> David Wootton, “Liberty, metaphor, and mechanism: ‘checks and balances’ and the origins of modern constitutionalism” in *Liberty and American Experience in the Eighteenth Century*, David Womersly ed. (Indianapolis: Liberty Fund, 2006), 209-274.

representation, previously examined individually and often outside its historical context. In doing so, thesis uncovers his significance to the eighteenth-century enlightenment political thought and broadens the horizon of contemporary scholarship on the idea of executive power and its relationship to modern constitutional liberty. His programme epitomises early attempts to explain the relationship between popular sovereignty and political representation positively to demonstrate the superiority of modern states to its popular counterparts. This mission of his political writing explains the confusion about the nature of his work in secondary literature which argues that his work was everything from liberal, conservative, monarchist, to republican, as it cuts across these political categories.

## CHAPTER ONE

### Science of Politics and Executive Power

The chapter locates Delolme's science of politics in the broader Enlightenment debate about self-interest and sociability and the post-Hobbesian development of passion-driven science of man and its implications to constitutional thinking. István Hont demonstrates how the formation of the modern state theories rely on the philosophical foundation of Hobbes' representative sovereignty which has adapted itself to the rise of commercial society in the eighteenth century.<sup>53</sup> By seeing Delolme's work in the light of this tradition, we can see the wide scope of his inquiry which goes well beyond the interplay of the legislative and the executive power in the parliament. In *Constitution*, one begins to see the importance of extra-parliamentary political powers as well as the notion of commercial society to his study of politics. Prior to the present study, the centrality of civil society to Delolme's programme has scarcely been examined. His argument for a unitary executive power is often read as a part of the literature on liberal constitutional checks and balances. The main goal of this chapter is to reveal how although his work shares several characteristics with the thinkers who believed in the passion-driven human nature exemplified by Thomas Hobbes, he did not come to similar authoritative conclusions. Instead, he argued that the legacy of English liberty once properly examined revealed that the deprived human nature could be managed by institutional arrangements. This institutional approach focuses on different kinds of powers at work in a political system regardless of the form of the government and later, allowed him to put forward a unique account of modern executive power and its constructive tension with powers in the realm of the civil society.

#### **Jean-Louis Delolme: A Member of the Council of Two Hundred, A Représentant, and An English Subject by Choice.<sup>54</sup>**

I begin with some personal background of Jean-Louis Delolme because his experience in Geneva and later, England, was crucial to the formation of his science of politics and his understanding of modern liberty. In some interpretations, his exile to England led to his

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<sup>53</sup> István Hont, "Jealousy of Trade: An Introduction," in *Jealousy of Trade: International Competition and the Nation-state in Historical Perspective*, (Cambridge, MA: Harvard University Press, 2005), 1-156.

<sup>54</sup> The dedication page of the 1784 edition of *Constitution* was signed "Subject by Choice, J.L. DE LOLME" referring to George III.

abandoning of republicanism.<sup>55</sup> However, agreeing with the analysis of Palmer in *The Age of Democratic Revolution*, the present work argues that the continuity in Delolme's political thought remains in his antagonism against the rule of the few especially in disguise of a republic.<sup>56</sup> This concern about powerful elites remained the central issue in his political writing and was the reason behind his preference for a "science of politics". This is because a science of politics, in his view, sees beyond the form of the government in its examination of liberty. His early years in Geneva witnessed the republic being torn between the ruling elites of the small councils (the Council of the Two Hundred and the Council of the Twenty-Five) and the General Council of all the citizens.<sup>57</sup> Delolme himself was a member of the Council of the Two-Hundred but he sympathised with the cause of the democratic *représentants*.<sup>58</sup> Being a citizen of Geneva in the eighteenth century and active in the political struggle meant that he was familiar with the question of popular sovereignty which was at the heart of the debate between the ruling elites and the general council.<sup>59</sup>

By the time he was twenty-two in 1762, Geneva had seen serious political challenges against the ruling patrician oligarchs. Delolme penned several pamphlets, arguing for the cause of the *représentants* to reform the constitution to its original popular sovereignty principle.<sup>60</sup> The last one was titled *La purification des trois points de droit souillés par un anonyme* which resulted in his exile from Geneva to England. In the pamphlet, the young Delolme directly addressed the question concerning the nature of the constitution and the expression of popular sovereignty in the constitution of the Genevan Republic. He wrote: "What, sir, is the Constitution? What is it this unknown Being that assigns functions to the General Council, to the Sovereign of the Republic? It is the nymph from whom Numa is said to have received his laws?...The Constitution is the totality of Laws, or Law in the collective sense. Law is the will of the Sovereign. The Sovereign in Geneva is the General Council."<sup>61</sup>

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<sup>55</sup> This reading is exemplified by William Selinger in his *Parliamentarism: From Burke to Weber*, (Cambridge: Cambridge University Press, 2019), 40.

<sup>56</sup> R.R. Palmer, *The Age of Democratic Revolution: A Political History of Europe and America 1760-1800*, (Princeton, NJ: Princeton University Press, 2014), 109.

<sup>57</sup> It should be reminded that who counted as citizens were in reality a small fraction of the population of Geneva.

<sup>58</sup> Richard Whatmore, *Against War and Empire: Geneva, Britain, and France in the Eighteenth Century*, (New Haven, Connecticut; London: Yale University Press, 2012), 112.

<sup>59</sup> Richard Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy*, (Cambridge: Cambridge University Press, 2016), 121.

<sup>60</sup> For the Delolme as a part of the Genevan-British intellectual and political connections see Richard Whatmroe, *Against War and Empire: Geneva, Britain, and France in the Eighteenth Century*, (2012), 112-133.

<sup>61</sup> Jean-Louis Delolme, *La purification des trois points de droit souillés par un anonyme*, (Geneva, 1767) English translation from R.R. Palmer, *The Age of the Democratic Revolution: A Political History of Europe and America, 1760-1800*, (Princeton, NJ: Princeton University Press, 2014), 102. This Genevan question of popular sovereignty and the institutional arrangement that is required for its preservation is examined through Delolme's criticism of Rousseau's Social Contract in chapter three.

His understanding of popular sovereignty before his exile to England, according to Joseph de Maistre, was probably directly influenced by Rousseau as he was Rousseau's former disciple when he was in Geneva.<sup>62</sup> Nonetheless, from the Genevan experience, he also formed a lifelong belief that political liberty cannot be subsisted simply by the correct form (namely the republican form) of the government. In his motherland, he witnessed how "the outward form" of the government was not a guarantee of political liberty. In England, Delolme became acquainted with critics of the English constitution including Jeremy Bentham and Samuel Romilly, a prominent legal reformer and a close friend of Bentham. He started writing *Constitution* one year after he came to England. The commercial success of the work despite its rough start came as a surprise even to its own author. Disappointed with the failure to secure a patronage which drove him to opt for the subscription scheme, Delolme wrote in the Advertisement of the 1784 English edition of the book that "I was preparing to boil my tea kettle with it [the printed copies]..."<sup>63</sup> This amusing anecdote is also referred to in one of Delolme's letters to Benjamin Franklin. He wrote: "I wish the Preface may amuse you: my design, in the first part of it, was to make the reader Smile, and at the Same time to Speak the truth."<sup>64</sup>

Although his life in England led to *res angusta domi*, he managed to stay within London's intellectual milieu.<sup>65</sup> This Genevan background as well as his personal relationship with political writers in London shaped his philosophical foundations, which have been overlooked by secondary literature. This chapter focuses on one important aspect of these foundations, namely the influence of the Scottish Enlightenment thinkers on Delolme's notion of science of politics.

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<sup>62</sup> Joseph de Maistre, *Against Rousseau: On the State of Nature and the Sovereignty of the People*, Richard A. Lebrun ed., (Montreal, Quebec: McGill-Queen's University Press, 1996), xxv.

<sup>63</sup> Delolme, *Constitution*, 10.

<sup>64</sup> "To Benjamin Franklin from De Lolme, 29 November 1781," *Founders Online*, National Archives, accessed April 11, 2019, <https://founders.archives.gov/documents/Franklin/01-36-02-0108>. [Original source: *The Papers of Benjamin Franklin*, vol. 36, November 1, 1781, through March 15, 1782, ed. Ellen R. Cohn. New Haven and London: Yale University Press, 2001, pp. 168–169.]

<sup>65</sup> Thomas Busby, *Arguments and facts demonstrating that the Letters of Junius were written by Jean-Louis de Lolme*, (London, 1816), 11. Busby allegedly interviewed a number of Delolme acquaintances after he passed away. The text also claims that Delolme was familiar with prominent Whig politicians including "Lord North, Mr. Fox, Mr. Burke, and Colonel Barre" In the same text, Busby also recorded how one of Delolme's acquaintances insisted that at one occasion, Delolme presented a copy of his *Constitution* to George III and in return, received only fifty pound as a reward. He allegedly commented on the occasion that "I ought to have kicked it about the courtyard of George the Third." Ibid.



## The Scottish Enlightenment and Science of Politics.

Delolme made several references to David Hume's political essays, William Robertson's *History of Scotland* (1758) as well as Adam Smith's *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776) in his political writing, especially in *Constitution*. From this, we know that Delolme engaged with the work of at least some of the most prominent authors of the Scottish Enlightenment. Moreover, he expressed his interest in Scotland as a part of "the British Empire in Europe", which was also the title of his essay published in Dublin in 1787. It was also later incorporated as an introduction to the re-printing of Daniel Defoe's *History of the Union*.<sup>66</sup> Delolme's *Constitution* was also well-received in Scotland after its first English edition was published in 1775. For example, there was an extensive book review of his masterpiece in *The Edinburgh Magazine* by Gilbert Stewart.<sup>67</sup> More importantly, Delolme's terminology in *Constitution* also proves beyond doubt that he was influenced by the Scottish Enlightenment tradition. Before the investigation on Delolme's appropriation as well as adaptation of science of politics, I first examine the notion of science of politics and its formation in Scotland to demonstrate why it became an attractive approach for Delolme and his delineation of the English system.

Although Delolme's work is often associated with the constitutional balance of powers between the legislative and the executive by legal scholars, the scope of his *Constitution* in fact covers the sphere of what is called civil society today.<sup>68</sup> This overlooked aspect of his science of politics might be the result of the lack of interest in the historical and intellectual context of his work which the present study aims to rectify. Considering his interest in the Scottish Enlightenment thinkers as above mentioned, it is likely that Delolme was inspired by the tradition and its treatment of the notion of the public which forms a crucial part in his delineation of the English system. Scotland after the 1707 Act of Union faced an intellectual challenge in their approach to the study of politics. When the centre of politics was shifted to Westminster, the change also compelled the Scottish literati to theorise the emerging and intellectually vibrant public discussions beyond the topic of Scottish parliamentary politics.<sup>69</sup> It gave birth to rich

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<sup>66</sup> This particular text is discussed in detail in Chapter Two.

<sup>67</sup> Delolme, Jean-Louis, *An Essay Containing A Few Strictures on the Union of Scotland With England and On the Present Situation of Ireland Being and Introduction to Defoe's History of the Union*, (London, 1786) Later republished as *The British Empire in Europe Part I, II and III*, (Dublin, 1787).

<sup>68</sup> Most literature on Delolme which examines his work under the topic of separation of powers rarely addresses the role of the public in his constitutional theory and mostly focuses on his account of the relationship between the executive and the legislative. See, for example, Maurice John Crawley Vile. *Constitutionalism and the Separation of Powers*, (Oxford: Clarendon Press, 1967), 105-106.

<sup>69</sup> Fania Oz-Salberger, "The political theory of the Scottish Enlightenment", in *The Cambridge Companion to the Scottish Enlightenment*, (Cambridge: Cambridge University Press, 2003), 158.

theoretical understandings of the idea of civil society which takes deep roots in this tradition and remains one of its most well-known aspects.<sup>70</sup> One of the works that best exemplifies this legacy of the Scottish Enlightenment is Adam Ferguson's *An Essay on the History of Civil Society* (1723-1816).<sup>71</sup>

Beyond the scope of science of politics, Delolme was also influenced by the tradition's scientific inspiration which seeks to explain politics in a similar manner that a scientist treats nature. The paradigm shift was caused by the established role of Newtonian physics as well as the later discovery of the gravitational force by the late-eighteenth century among the Scottish intellectual milieu. The Scottish Enlightenment's scientific aspiration is best exemplified by the fascination with, and the adaptation of, the Newtonian framework derived from his discovery of the laws of motion. This framework assumes that like the three governing laws of motion in the natural world, social phenomena can also be comprehended in terms of their relation to a set of general laws waiting to be discovered. The possibility of this claim was further proven by Newton's later discovery of the gravitational force. This idea of general laws is also underpinned by the normative belief in progress and the mission of "the enlightened" to dispel darkness, a metaphor for superstitions and ignorance, with the light of reason. This normative aspect of the scientific aspiration is explicit in Alexander Pope's epitaph on Newton: "NATURE and Nature's Laws lay hid in Night: God said, 'Let Newton be!' and all was light."<sup>72</sup> This sense of mission and the belief in progress is an important characteristic which the Scottish Enlightenment shared with the larger European Enlightenment.

David Hume in his *That Politics Might be Reduced to Science* (1741) best captures this scientific aspiration in the modern study of politics and its relation to the historical-comparative approach. Since human nature, like governing laws in science exemplified by the laws of motion, remains unchanged, the success and failure of different kinds of government in preserving the well-being of citizens should depend upon the way in which the political system is organised. The topic becomes particularly important for the modern audience amidst the decline of absolute government. "All absolute governments must very much depend on the administration; and this is one of the great inconveniences attending that form of government. But a republican and free government would be an obvious absurdity, if the particular checks and controuls, provided by the constitution, had really no influence, and made it not the interest, even of bad men, to act for

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<sup>70</sup> More on the topic see, for example, Norbert Waszek, *The Scottish Enlightenment and Hegel's Account of "civil Society"*, (Dordrecht: Kluwer, 1988). and Silvia Sebastiani, "Beyond Ancient Virtues: Civil Society and Passions in the Scottish Enlightenment." *History of Political Thought* 32, no. 5 (2011): 821-40.

<sup>71</sup> Adam Ferguson ed., Fania Oz-Salzberger. *An Essay on the History of Civil Society in Cambridge Texts in the History of Political Thought*, (Cambridge; New York: Cambridge University Press, 1995).

<sup>72</sup> Alexander Pope, *The Complete Poetical Works of Alexander Pope*, (1903).

the public good. Such is the intention of these forms of government, and such is their real effect, where they are wisely constituted.”<sup>73</sup> This particular quote captures an important aspect of the foundation of Delolme’s constitutional thinking which believes in the institutional remedy to the passion-driven human nature in the realm of politics.

Delolme himself was also fascinated with the rise of modern science especially on mechanics. One record mentions his interest in mechanical designs which he attempted to get patents although unsuccessfully.<sup>74</sup> His interest in natural science also was proven through his commission paid by Benjamin Franklin to translate Giovanni Battista Beccaria’s *Dell’ Eletticismo naturale ed artificiale* (On Natural and Artificial Electricity) (1753) into English.<sup>75</sup> His passion in natural science likely contributed to his later scholarly interest in the tradition of science of politics. Apart from his interest in natural science, another reason for Delolme’s interest in the work of the Scottish Enlightenment thinkers might derive from their shared concern about the inadequacy of civic virtues in understanding modern politics and the increasingly complex commercial society. Direct political participation in ancient republics no longer was the only criterion for liberty. To understand politics, he contended, one first has to re-think what underlying principles that govern people and their actions.

### **Delolme’s Science of Politics.**

I begin this section by highlighting the difficulty in outlining Delolme’s understanding of science of man or a study on human nature because he purposefully did not cover it in *Constitution*. He explained that:

To give a demonstration of the manner which all these things [components of the English system] are brought to bear and operated, is not...my design to attempt here [in *Constitution*]: the principles from which such demonstration is to be derived, supposed an enquiry into the nature of Man, and of human affairs, which rather belongs to Philosophy (though to a branch hitherto unexplored) than to Politics...It may, if the reader pleases, belong to the Science of *Metapolitics*;

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<sup>73</sup> David Hume, *That Politics Might Be Reduced to Science*, (1777).

<sup>74</sup> One acquaintance claimed that Delolme once presented a new design of a sail to “The Society for the Encouragement of Arts and Science” but the design was rejected. Busby, 1816, 15.

<sup>75</sup> “To Benjamin Franklin from Jean-Louis de Lolme, 26 November 1781,” Founders Online, National Archives, last modified June 13, 2018, <http://founders.archives.gov/documents/Franklin/01-36-02-0092>. [Original source: The Papers of Benjamin Franklin, vol. 36, November 1, 1781, through March 15, 1782, ed. Ellen R. Cohn. (New Haven and London: Yale University Press, 2001), 130. Giovanni Battista Beccaria’s, *Dell’ Eletticismo naturale ed artificiale*, (Turin, 1753).

in the same sense as we say *Metaphysics*; that is, the Science of those things which lie beyond physical, or substantial, things.”<sup>76</sup>

He acknowledged the foundational role of “the knowledge of Man” to all other sciences, echoing Hume’s contention in his preface to his *A Treatise of Human Nature* (1739). Hume famously wrote that “all the sciences have a relation, greater or less, to human nature; and that however wide any of them may seem to run from it, they still return back by one passage or another. Even Mathematics, Natural Philosophy, and Natural Religion, are in some measure dependent on the science of Man; since they lie under the cognizance of men, and are judged of by their powers and faculties.”<sup>77</sup> Despite the intention not to discuss science on man, his idea of human nature can nonetheless be distilled from not only *Constitution* but also from his other overlooked work such as *History of the Flagellants or Memorials of Human Superstition* (1777). This aspect of his political writing has previously been neglected by scholars who often only focus on his contribution to the genre of balance of powers theory.<sup>78</sup>

Delolme also further explained the relation between his science of politics and the understanding of human nature that:

In general, the Science of Politics, considered as an exact Science, that is to say, as a Science capable of actual demonstration, is infinitely deeper than the reader so much perhaps as suspects. The knowledge of Man, on which such a Science, with its preliminary axioms and definitions, is to be grounded, has hitherto remained surprisingly imperfect: as one instance, how little Man is known to himself... still remains an equally inexplicable mystery.<sup>79</sup>

The passage further reveals Delolme’s opinion on the current state of science of man which was incomplete due to previous misconceptions. The “preliminary axioms and definitions” on the study of human nature were mistaken, hence the need to ground the study of politics on a completely new footing. In this regard, the science of man was in an imperfect state, but this awareness also meant that it could, from this point in history, move into a progressive direction, reflecting the normative ground of the wider European Enlightenment.

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<sup>76</sup> Delolme, 275.

<sup>77</sup> David Hume, *A Treatise on Human Nature*, preface, (1739).

<sup>78</sup> With the exception of Iain McDaniel. "Jean-Louis Delolme and the political science of the English empire." *The Historical Journal* 55, no. 1 (2012): 21-44. The work nonetheless only engages largely with *Constitution*.

<sup>79</sup> Delolme, 2007, 14.

## The Rise of Commercial Society and the Inadequacy of Civic Republicanism.

Another important aspect of Delolme's science of politics that this chapter hopes to reveal is how it was a response to the revived interest in civic republicanism during the American crisis. In the Advertisement of *Constitution* he wrote that "had the like arguments [of his] in favour of the existing Government of this Country, against republican principles, been shown to Charles the First, or his Ministers, at a certain period of his reign, they would have very willingly defrayed the expenses of the publication", his science of politics aims at exposing defects of civic republicanism and its understanding of politics.<sup>80</sup> He also identified statesmen as his target audience and the ambition of the work to prevent civil upheaval and war which he associated with republican politics. The dangers of civic republicanism in the context of eighteenth century is twofold. First, politically it supported the "disunion of the Empire" at the expense of individual liberty as the direct cause of war.<sup>81</sup> But more importantly, civic republicanism was an inadequate approach to the study of politics by the time of the late-eighteenth century.

His science of man is critical of the idea of self-determination and direct participation in the law-making process as liberty as the starting point in political inquiries. Instead, he endorsed a negative definition of liberty as the absence of impediments, resonating with Hobbes.<sup>82</sup> This genre of literature is exemplified by Richard Price's *Observations on the Nature of Civil Liberty* (1776).<sup>83</sup> Delolme's project alternatively aims to understand human nature and its relation to the society beyond one's direct political participation in the polis. For him, the language of civic virtue cannot capture the complexity of the emerging commercial society, especially its role in shaping mores and consequently, politics. In other words, his analysis of English constitutional history also hopes to reveal how forces beyond the parliament shaped the modern constitution. Commerce was among the most important factors. He observed how "Commerce, besides, with its attendant arts, and above all that of printing, diffused more salutary notions throughout all orders of the people; a new light began to rise upon the Nation."<sup>84</sup> Due to "the unavoidable consequences of the progress of trade and civilization", the study of human nature, therefore, can no longer be understood narrowly in relation to one's direct participation in politics.<sup>85</sup> His interest

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<sup>80</sup> Delolme, 10.

<sup>81</sup> Delolme, 10.

<sup>82</sup> Delolme defined liberty as a state of being in a society in which "every Man, while he respects the persons of others, and allows them quietly to enjoy the produce of their industry, [can] be certain himself likewise to enjoy the produce of his own industry, and that his person be also secure." For an analysis of Delolme's understanding of liberty see section 1 of Chapter Four

<sup>83</sup> Richard Price, *Observations on the Nature of Civil Liberty, the Principles of Government, and the Justice and Policy of the War with America*, (London, 1776).

<sup>84</sup> Delolme, 48.

<sup>85</sup> Delolme, 259.

in the rise of commercial society places him firmly alongside the like of Mandeville, Hume and Smith.

The rise of commerce meant the study of politics has to take into account new forms of power beyond the parliament and crucially in the realm of the civil society. Following Mandeville, Delolme emphasised how public good and peace can be created by channelling passions via intricate institutional designs not limited to the law-making process.<sup>86</sup> Acknowledging Delolme as a theorist of civil society, Helmut Pappé made an interesting remark on Delolme's approach to the study of English history that, unlike Blackstone's *Commentaries on the Laws of England* (1765-1770), Delolme's approach is much more "sociological". Pappé interestingly argued that:

Blackstone had dealt with the formal institutions of the law and the constitution rather than their underlying reality. He was no sociologist who asks how people actually do behave, and how constitutions actually work. He failed to examine the psychological and sociological aspects which the eighteenth-century science of man, following Hobbes, Locke, Mandeville, Hume, Adam Smith, and their friends, had brought into being. In particular, the English constitution had been made a subject of sociological scrutiny by two foreign observers, Montesquieu and Rousseau. It was against the background of their work that Jean-Louis Delolme (1740-1806) wrote his searching examination of *the Constitution de l'Angleterre* in 1771.<sup>87</sup>

This chapter, in this regard, pursues this line of enquiry which acknowledges the centrality of the realm of civil society in Delolme's science of politics. For him, commerce is a form of expression of the human need for esteem. The premise of approbation or esteem-seeking in commerce can be understood in the act of trade. Delolme gave an example of how "it is a common complaint made by every Trader in regard to his gain, as well as by every Great Men in regard to his emoluments..." that they do not receive fair returns or recognition.<sup>88</sup> Interestingly, here he argued that financial transaction is only an expression of the underlying human nature which seeks approbation whether it is in the form of money or something else of value. Unlike previous approaches, Delolme's understanding of human nature as approbation-seeking can explain both economic and political activities. In a revealing passage, he concluded that:

To procure one's notions and opinions to be attended to, and approved, by the circle of one's acquaintance, is the universal wish of Mankind. Everyone shares this trait to be recognized, When the approbation of Mankind is in question, all persons, whatever their different ranks may be, consider

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<sup>86</sup> Istvan Hont, Mark Goldie, and Robert Wokler. "The Early Enlightenment Debate on Commerce and Luxury." Chapter. In *The Cambridge History of Eighteenth-Century Political Thought*, 377–418. *The Cambridge History of Political Thought*. (Cambridge: Cambridge University Press, 2006), 390.

<sup>87</sup> Helmut Pappé. "Sismondi's System of Liberty." *Journal of the History of Ideas* 40, no. 2 (1979): 251-66, 225.

<sup>88</sup> Delolme, 11.

themselves as being engaged in the same career: they look upon themselves as being candidates for the very same kind of advantage: high and low, all are in that respect in a state of primaevael equality...<sup>89</sup>

In politics, this yearning for approbation is translated into an inevitable quest for power. The need for approbation justifies Delolme's selection of the English system as his topic because its subjects alone enjoyed an exceptional degree of liberty despite "the avarice and lust of dominion inherent in human Nature."<sup>90</sup> Unless, he argued, "we are at the same time also determined to believe ... that partial Nature forms Men in this Island, of quite other stuff than the selfish and ambitious one of which she ever made them in other Countries."<sup>91</sup> With this starting point inherent in human nature, Delolme's work sometimes is perceived as a direct disciple of Hobbes. For example, one scholar argues that it was Delolme who introduced Canada's first prime minister, John A. Macdonald, to the Hobbesian character of the English constitution with an emphasis on the benefit of the stability of the Crown to public liberty.<sup>92</sup> It is true that Delolme's understanding of human nature with its "avarice and lust of domination" indisputably resonates with Hobbes' *libido dominandi* which arises first from the necessity of self-preservation.<sup>93</sup> However, this kind of Hobbesian interpretation of Delolme risks overlooking his different political conclusion from Hobbes', as it misses his important message, arguing that the English system was worthy of the modern world precisely because the stability of the English Crown uniquely stemmed from "free action, and not fear"<sup>94</sup>. The explicit rejection of fear as the foundation of the stability of the executive power in his account can be read as a deliberate rejection of the Hobbesian accusation. It also explains the absence of any references to Hobbes in all of his work despite blatant similarity in, for example, his definition of liberty.<sup>95</sup> The significance of commerce in Delolme's programme is also explicit in his account of the monarchical executive power which covers the role of "the superintendent of Commerce".<sup>96</sup> Although he only gave brief hints in *Constitution*, Delolme was well aware of how the rise of commercial civil society had transformed the scope of political analysis beyond the capacity of civic republicanism.

For the political implications of the esteem-seeking human nature, Delolme differed from Hobbes because for him, in the realm of politics, the selfish quality of human nature has both

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<sup>89</sup> Delolme, 12.

<sup>90</sup> Delolme, 228.

<sup>91</sup> Ibid., 323.

<sup>92</sup> Frederick Vaughan, *Canadian Federalist Experiment: From Defiant Monarchy to Reluctant Republic*, (Montreal, Quebec: McGill-Queen's Press, 2003) 72.

<sup>93</sup> More on the topic see, for example, Thomas A. Spragens and Antony Flew. *The Politics of Motion: The World of Thomas Hobbes*. (London: Croom Helm, 1973) 182.

<sup>94</sup> Delolme, 303.

<sup>95</sup> Echoing Hobbes, Liberty is defined as "every Man, while he respects the persons of others, and allows them quietly to enjoy the produce of their industry, be certain himself likewise to enjoy the produce of his own industry, and that his person be also secure." Delolme, pp. 169. I discuss his account of liberty in detail in Chapter Four.

<sup>96</sup> Delolme, 63.

convenient and inconvenient effects. Although it gives rise to the endless quest for power, it also makes the people in power always prefer to have the approval of the public. In this regard, to put it in Hume's words, their political authority is founded on public opinion regardless of the form of government.<sup>97</sup> This desire for public approval is independent of how they choose to act on it. In other words, an absolute monarch might choose to execute dissidents, but they always prefer that the people approve of their ruling. For Delolme, this desire for approbation on the side of the politicians has remained true since antiquity. He argued that "This desire of having their ideas communicated to, and approved by, the Public, was very prevalent among the Great Men of the Roman Commonwealth, and afterwards with the Roman Emperors; however imperfect the means of obtaining these ends might be in those days, compared with those which are used in ours. The same desire has been equally remarkable among modern European Kings, not to speak of other parts of the World; and a long catalogue of Royal Authors may be produced. Ministers, especially after having lost their places, have shewn no less inclination than their Masters, to convince Mankind of the reality of their knowledge."<sup>98</sup> The task of the science of politics therefore is to identify the kind of power arrangement which channels these passions inherent in human nature for public interest. For him, "A Constitution [is] the more likely...to procure in general the happiness of the People, in that it has taken Mankind as they are, and has not endeavoured to prevent everything, but to regulate everything..."<sup>99</sup>

Delolme's account of human nature as esteem-seeking being can also be found in his lesser-known work, *History of the Flagellants or Memorials of Human Superstition* (1777).<sup>100</sup> The book is about the history of the practice of self-flagellation. He argued that the practice has a pagan origin and is contradictory to Christian principles. Far from the serious tone of *Constitution*, the work is a tongue-in-cheek investigation of the practice of flagellation through different kinds of texts including numerous tall tales such as "the broken spectre". Scholars observe how this work was published for a financial purpose intending to be read for leisure in the form of popular history. While it is true that he struggled to make a living by writing, this chapter aims to reveal the continuity of his science of politics in this 1777 work.<sup>101</sup> Despite their seeming drastically

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<sup>97</sup> David Hume. "Of the first principles of government". In K. Haakonssen ed., *Hume: Political Essays in Cambridge Texts in the History of Political Thought*, (Cambridge: Cambridge University Press. 1994), 16-19.

<sup>98</sup> Delolme, 13.

<sup>99</sup> Delolme, 304.

<sup>100</sup> Jean-Louis Delolme, *History of the Flagellants or Memorials of Human Superstition*, (1777) Henceforth referred to as *Flagellants*.

<sup>101</sup> His poverty was recorded in numerous texts including in Thomas Mathias, *The grove. A satire: By the author of the pursuits of literature. With notes, including various anecdotes of the King*, (London, 1798), 23. "One whom, from north to south, from east to west, so great his worth, so high to praise his claim, her trump had blown, and honour'd was his name! Was honour'd? Is! Dis LOLME none would decry- But ah! how few for suff 'ring Genius sigh! All laud his work, its sterling merits feel, Yet, careless, see their author want a meal!"



different themes, *Flagellants* share the same aspiration with *The Constitution* in the way that they both aim to distinguish what Delolme called “coefficients” or elements of one system that are not a part of that system from its core essence or “the true spirit” of it.<sup>102</sup> From the broader perspective of the selfish system tradition, the work can be seen as a critique of moral rigidity which presents a flawed and therefore dangerous account of human nature. Like Mandeville, Delolme highlighted the inconsistencies between some interpretation of Christian principles that value extreme self-restraints and revealed how they are, in fact, a form of moral narcissism.<sup>103</sup>

In one footnote of *Constitution*, he argued that “Such new forms as may prove destructive of the real substance of a Government, may be unwarily adopted, in the same manner as the superstitious notions and practices described in my Work, intitled [sic] *Memorials of Human Superstition*, may be introduced into a Religion, so as to entirely subvert the true spirit of it.”<sup>104</sup> His opinion on *Flagellants* here reveals that despite the humorous tone of the work, it is still a continuation of his science of politics which changes its object of study from the history of English liberty to the history of Christianity. *Flagellants* aims to demonstrate that corporal punishment both inflicted upon by others and by one’s self “is an offspring of Idolatry and Superstition; that it ought to be banished from among Christians as an erroneous and dangerous exercise.”<sup>105</sup> The book is presented with the objective to outline the debate on the benefits and disadvantages of the practice of flagellation in the hope that future generations will have the resources to compare it with the form of punishment of their own time. In the preface of the work, he wrote that “In the first place, I proposed to myself the information of Posterity. A Period will, sooner or later, arrive, at which the disciplining and flagellating practices now in use, and which have been so for so many centuries, will have been laid aside, and succeeded by others equally whimsical.”<sup>106</sup> The preface also reiterates Delolme’s disapproval of severe corporal punishment which he explicitly condemned in *Constitution*. Delolme wrote highly of Cesare Beccaria’s famous *An Essay on Crime and Punishment* (1764) and its proposal for legal reform to eradicate “unnecessary circumstances of cruelty in all nations” found in their penal laws.<sup>107</sup> The historical work is organised around several tales and anecdotes of the people of all ranks concerning which in one way or another, concerns corporal punishment and accommodates with Delolme’s own commentaries. I argue that a closer look at these comments also reveals the underlying approbation-seeking characteristic of human nature.

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<sup>102</sup> Delolme, *Constitution*, 20.

<sup>103</sup> On Mandeville and the Epicurean critique of Christian and republican accounts of morality see John Robertson. “Hume, after Bayle and Mandeville.” Chapter. In *The Case for The Enlightenment: Scotland and Naples 1680–1760*, 256–324. Ideas in Context. (Cambridge: Cambridge University Press, 2005).

<sup>104</sup> Delolme, *Constitution*, 326.

<sup>105</sup> Delolme, *Flagellants*, 14.

<sup>106</sup> Delolme, *ibid.*, 5.

<sup>107</sup> here generally refers to laws that prescribe penalty.

In one story, Delolme made a remark that “it really seems that there is a secret propensity in Mankind, for arduous modes of worship of all kinds. The observation has been made, that in the *Science of Morals*, speculatively considered, Men, whatever may be their private conduct, are most pleased with such maxims as are most rigid; and so, with respect to religious rites, do they seem to be most taken with, and most strongly to adhere to, such as are most laborious, and even painful.”<sup>108</sup> Moreover, he emphasised the importance of the society in shaping one’s religious and moral practice, echoing the centrality of “approbation” as he commented on how man, regardless of what they do in private, like to be perceived by others as pious. For Delolme, this yearning for approbation manifests in religion in the form of the race to the bottom in demonstrating one’s moral rigidity. The practice becomes a vicious circle of the quest for approbation which further reinforces the sense of pride. He commented on how the practice of self-flagellation leads to a form of moral narcissism which stems from pathological obsession with one’s own actions, since self-punishment requires constant attention to and evaluation of, one’s self and actions in order to “justify” the purification ritual. Delolme argued that; “a too curious self-examination may also lead to...the acts of pride, vanity, self-admiration and complacency...Vanity and a disposition to admire one’s self, are dispositions that are but too general among Mankind; and there is hardly a time in life at which we may be said to be perfectly cured of such worldly affections.”<sup>109</sup> Delolme argued here that the practice of self-flagellation has the opposite effect of what it intends to achieve, namely, to eradicate one’s attachment to worldly pain and pleasure. This vision of the society of the virtuous which places hope in man’s self-restraint, for Delolme, is doomed to fail due to its inability to understand pride inherent in human nature. Agreeing with Hobbes that pride always sabotages social cohesion, Delolme turned not to fear to fulfill his political programme in maintaining liberty under modern conditions but to regulate those passions via institutional arrangements.<sup>110</sup> More importantly, the re-examination of *Flagellants* reveal the persistence of Delolme’s engagement with notions associated with the Scottish Enlightenment’s science of man such as approbation, esteem, and pride, which are central to his political analysis.

### **Constitution as a System and a Machine.**

The success of the English parliament, Delolme argued, can be seen in the transformation of the representatives of the people’s private ambition into the interest of the subject. “Nothing can

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<sup>108</sup> Delolme, *Flagellants*, 311.

<sup>109</sup> Delolme, *ibid.*, 328.

<sup>110</sup> Istvan Hont, Mark Goldie, and Robert Wokler. “The Early Enlightenment Debate on Commerce and Luxury,” in *The Cambridge History of Eighteenth-Century Political Thought*, (Cambridge: Cambridge University Press, 2006), 390.

be a better proof of the efficacy of the causes that produce the liberty of the English, and which will be explained hereafter, than those victories which the Parliament from time to time gains over itself, and in which the Members, forgetting all views of private ambition, only think of their interest as subjects.”<sup>111</sup> The political architecture of the English parliament is not the subject matter of the chapter but here, the focus is on the underlying assumption about the transformative effect of political institutions in transposing passions into political interests. The latter, although driven by the thirst for power, are also guided and moderated by strategic calculation required in the political arena. This is when the state of nature becomes the political machine, as nature becomes civilisation.

Following the tradition of pitching passions against passions, Delolme opted for the “mechanical language” to explain how powers are at work in a political system to emphasise the centrality of institutional design.<sup>112</sup> The mechanical language broadly encompasses a large group of words which are connected by the central assumption that the constitution might be approached in the same way that a machine is understood through the interactions between its different components. It also often accompanies with the idea of politics as a system whose complex functions are governed by a certain set of laws.<sup>113</sup> Through the metaphor of the constitution as a machine, different kinds of power are explained in terms of “motions” and “equilibrium”. With this language, his science of politics allows for the discussion of liberty that is not restricted by the assumption about morality and virtues which he believed can easily “immediately cease with its cause” once the balance of powers is disturbed.<sup>114</sup> In other words, his moral scepticism made him question its capacity to safeguard liberty. He then turned to institutional solutions. In explicating the “complicated fabric” of a free constitution, he found the metaphor of the machine a useful one not least because it allows a value-free discussion but also especially because it sets aside previous prejudice against the executive power often associated with the institution of the monarchy.<sup>115</sup> In this part, I hope to elucidate how, for Delolme, the languages of “machine” and “system” do not imply universal truth nor mathematical certainty in the realm of politics. Rather, both are used mostly to allow for the discussion about the positive role of the executive power in maintaining the constitutional balance.

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<sup>111</sup> Delolme, 2007, 79.

<sup>112</sup> For an intricate study on the topic and Machiavelli’s pioneering role in the tradition see Albert Hirshman, *The Passions and the Interests: Political Arguments for Capitalism before Its Triumph*, (Princeton University Press, 2013), 31-42.

<sup>113</sup> David Wootton, “Liberty, Metaphor, and Mechanism: ‘checks and balances’ and the Origins of Modern Constitutionalism” in *Liberty and American Experience in the Eighteenth-Century* ed., Womersley, David, (Liberty Fund: Indianapolis, 2006), 209-274.

<sup>114</sup> Delolme, 324.

<sup>115</sup> Delolme, 41.

First, he used the idea of system to help get rid of the prejudices against the executive power by disregarding topics such as foreign dominion and military power. In doing so, he aimed to only keep the three powers within his “equation” of powers, namely the power of the people, the power of the elites, and the power of the Crown. Leaving the discussion of these constitutional powers to chapter four, here I focus on how his mechanical language paves the way for the discussion.

Delolme described *Constitution* as “a Book on systematical [sic] politics” in the Advertisement of the 1772 edition.<sup>116</sup> English constitutional history was described as “a system which is supposed to be so complicated as not to be understood, or developed,”<sup>117</sup> Throughout the book, he used “political system” to describe the function of a political entity and how it is sustained by the action and reaction between different powers. Notably, Delolme categorised his science of politics as similar to Montesquieu’s in *The Spirit of the Laws* (1748) as they were both “systematic writers”.<sup>118</sup> However, he contended that his science of politics was superior to Montesquieu’s because his includes “the real foundations of Power”.<sup>119</sup> By this, he referred to the causes which support the strength of these constitutional power such which lies beyond the parliament in the realm of civil society such as the House of Commons’ financial control of the Crown. The commercial society controls the executive power via the representatives of the people’s monopoly of the executive power’s subsidy, rendering it “in state of real dependence.”<sup>120</sup>

Comparing himself with a mathematician, he explained how his predecessors failed to exclude terms which do not constitute the “equilibrium” of the government. His science of politics, therefore “begins with freeing his equation from *coefficients*...it may be advantageous to the inquirer after the causes that produce the equilibrium of a government, to have previously studied them, disengaged from the apparatus of fleets, armies, foreign trade, distant and extensive dominions, in a word from all those brilliant circumstances which so greatly affect the external appearance of a powerful Society” but do not constitute the balance of the constitution.<sup>121</sup> Delolme’s idea of system distinguishes important components from ornamental parts and in doing so, also sets his science of politics apart from its predecessors. In his view, the practice of science of politics progresses towards a more solid understanding of man and politics by disregarding elements which do not constitute the principles of the constitution. Another difference between his science of politics and that of the author of *The Spirit of the Laws* is how Delolme strongly focused on the institutional differences between France and England above other of their shared

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<sup>116</sup> Delolme, 9.

<sup>117</sup> Delolme, 20.

<sup>118</sup> Delolme, 305.

<sup>119</sup> Delolme, 305.

<sup>120</sup> Delolme, 64.

<sup>121</sup> Delolme, 20.

characteristics. In this regard, Delolme's approach had some similarity with that of Hume in his essay *On National Character* (1748) which argues that:

To this difference in the original Constitution of France and England, that is, in the original power of their Kings, we are to attribute the difference, so little analogous to its original cause, of their present Constitutions. This it is which furnishes the solution of a problem which, I must confess, for a long time perplexed me, and explains the reason why, of two neighbouring Nations, situated almost under the same climate, and having one common origin, the one has attained the summit of liberty, the other has gradually sunk under an absolute Monarchy.<sup>122</sup>

The topic of monarchical executive power becomes the perfect object of study for Delolme's science of politics and its enquiry on the nature of modern liberty for many reasons. It brings to the fore the centrality of institutional arrangement of powers since other European monarchies did not enjoy this "summit of liberty" like England did. Moreover, by examining the nature of monarchical executive power, one can study the emerging idea of interest a restrictive mechanism as the princely power morphed to fit the modern mould.<sup>123</sup>

Beyond the idea of politics as a system and which elements of the political society that constitutes it, science of politics also relies on the metaphor of the machine to explain the English constitutional balance.<sup>124</sup> "[T]he stability of the Governing executive authority in England," he argued "and the weight it gives to the whole machine of the State, has actually enabled the English Nation, considered as a free Nation, to enjoy several advantages which would really have been totally unattainable in the other States."<sup>125</sup> Delolme's use of the metaphor belongs to what David Wootton calls the mechanical language. It is a part of the "a wider family of words" encompassing for example, "control," "clog," "counterpoise," and "equilibrium" all of which rely on the metaphor of a constitution as a machine and, consequently, the predictability of its function once the principles are discovered.<sup>126</sup> Delolme's employment of the metaphor, however, does not aim at predictability. Instead, his description of the English constitution as a machine specifically intends to allow a positive account of a strong executive power, something which he found existing approaches did not allow him to do. In his account the weight of the Crown is the most important factor which makes the English system balanced and therefore, stable unlike any other systems before it.

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<sup>122</sup> Delolme, 29.

<sup>123</sup> Hirshman, 2013, 33-4.

<sup>124</sup> The notion of balance as we know it today in constitutional theory is often used to described the three equal powers between the executive, the legislative and the judiciary. It has to be pointed out here that Delolme's use of the term is different from today's usage.

<sup>125</sup> Delolme, 275.

<sup>126</sup> David Wootton, "Liberty, Metaphor, and Mechanism: 'checks and balances' and the Origins of Modern Constitutionalism" in *Liberty and American Experience in the Eighteenth-Century* ed., David Womersley, (Liberty Fund: Indianapolis, 2006), 212.

Delolme's interest in the idea of balance is introduced to the reader as early as the cover page of his book. There Delolme selected a part of Ovid's *Metamorphoses* to be the epigraph of *Constitution*. The passage from Ovid was "Ponderibus librata suis", and Delolme's purpose was to compare the strength and balance of the English constitution with the perfection of how God created the universe; "Earth suspended in the sky, lying on her own foundation".<sup>127</sup> The emphasis here is how the English system, like Ovid's description of the earth, is self-balanced. The idea of a self-balancing system connotes dynamism within the system.<sup>128</sup> The metaphor of the machine helps him paint the picture of the English system which although highly dynamic as the constitutional powers "constantly balance each other", managed to maintain the function of the government with few successful attempts to change the constitution. The dynamic nature of the machine of the constitution is due to its "springs" which are human passions. "It is upon the passions of Mankind, that is upon causes which are unalterable, that the action of the various parts of a State depends. The machine may vary as to its dimensions, but its movement and acting springs still remain intrinsically the same; and that time cannot be considered as lost, which has been spent in seeing them act and move in a narrower circle."<sup>129</sup> The foundation mentioned here is the universal human passions which is the unalterable cause. It also paves the way for the comparative study between ancient republics and the modern English system. Delolme's positive account of the stability of the English system was written partly to offer a systematic analysis of the legacy of the political stability after the Hanoverian Succession in the first half of the eighteenth century. By using the metaphor of the machine with its component parts, Delolme argued how it was the executive power of the Crown which gave the necessary "weight" and stability to the machine of the British state.

This metaphor of the machine and human passions as its moving springs leads to the assumption that he proposed a kind of constitutional equation which like a mathematical formula, can be adopted by any state to achieve the same result. This line of reading of Delolme's constitutional theory, which divorces it from a serious examination of his methodology, risks assuming that for Delolme, a constitutional balance is conveniently achieved once a formula is discovered and only needs to be adopted in a different political system to achieve the same result. Delolme explicitly warned against this interpretation of his work. He contended that "The...advantages are peculiar to the English Government. To attempt to imitate them, or transfer them into other Countries, with that degree of extent to which they are carried in England, without at the same time transferring the whole Order and conjunction of circumstances in the English

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<sup>127</sup> Ovid, *Metamorphoses*, translated by Sir Samuel Garth, John Dryden, et al.

<sup>128</sup> The eighteenth-century translation and adaptation of Ovid's poem by John Dryden and Samuel Garth was crucially a response to Newton's discovery of the gravitational force. See Liz-Oakley Brown, *Ovid and the Cultural Politics of Translation in Early Modern England*, (Routledge, 2017).

<sup>129</sup> Delolme, 20.

Government, would prove unsuccessful attempts.”<sup>130</sup> He gave historical examples to support this contention in his remark on Ireland. He argued that, “The Irish Nation have of late succeeded to imitate several very important regulations in the English Government, and are very desirous to render the assimilation complete: yet, it is possible, they will find many inconveniencies to arise from their endeavours, which do not take place in England, notwithstanding the very great general similarity of circumstances in the two kingdoms in many respects, and even also, we might add, notwithstanding the respectable power and weight the Crown derives from its British dominions, both for defending its prerogative in Ireland, and preventing anarchy.”<sup>131</sup> Similarly “in the American Colonies, several articles of English liberty already appear impracticable to be preserved in the new American Commonwealths.”<sup>132</sup> Delolme’s science of politics emphasises how the differences in “circumstances” beyond political institution feed into and shape the constitution. Consequently, it explicitly warns against the presentation of the English model as a universal formula to be conveniently emulated by other nations.

The assumption about human nature as approbation-seeking in science of man does not simply lead to science of politics’ aspiration for a model of a perfect constitution. For Delolme, approbation-seeking human nature is expressed in various forms in different realms such as in the economy and in politics and can have both negative as well as positive effects on public liberty depending on the institutional arrangements of that political system. More importantly, these institutions are not a simple manifestation of principles in the real world but rather, an accumulation of previous generations’ decisions as well as their unintended consequences. Alternatively, the present work reveals how Delolme’s approach to the study of political institutions as embodied history is an integral part of his science of politics. The mechanical language and the idea of system is employed to justify his selection of certain political institutions which are a part of the constitutional balance. In doing so, his science of politics allows for the discussion of the relationship between the institution of the crown and the powers in the realm of civil society which is sometimes overlooked by constitutional theorists as shown in his later reception.

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<sup>130</sup> Delolme, 16.

<sup>131</sup> Ibid., 17.

<sup>132</sup> Ibid., 16.

## CHAPTER TWO

### Delolme as a Historian

#### Introduction.

This chapter examines Delolme's contribution to the debate on the origin and nature of the English system. The topic significantly related to the central question of how liberty was to be preserved in modern representative politics in the late-eighteenth as well as in the early decades of the nineteenth century. A popular constitution was no longer an option for emerging states like America. Unprecedented in both its scale and heterogenous population, the new republic shaped its institutional arrangements, drawing lessons both from the principles and critique of the Old World political thought, as the rest of the world keenly observed. The applicability and durability of the English system therefore was also crucial to this discussion. While the topic was famously addressed by canonical figures like Montesquieu and Hume, Delolme was distinct in his incorporation of a strong executive power into his paradigm for the possibility of liberty in the modern world offered by the English experience. A closer look at his historical analysis of English constitutional history reveals an intriguing vision for a modern free state that consists of the strong but limited executive power, the bicameral legislative parliament which monopolised both military and financial power, and a rigorous and active public. All of this, he argued, was the institutional culmination of the unintended consequences of the resistance against the Norman Conquest back in 1066. This contention requires a careful contextualisation and analysis to see its relationship to his idea of the English constitutional balance.

While the "checks and balances" aspect of his programme has been recognised, it is often divorced from his intricate historical analysis.<sup>133</sup> Delolme can be studied as a theorist of checks and balances, but this reductive approach fails to grasp the historical analysis of the English executive power's tension with the people and how it shaped what he titled the history of "public liberty".<sup>134</sup> In other words, the chapter argues that one can only fully understand his idea of a balanced constitution as a part of his attempt to answer the historical question of why the English system, unlike other European monarchies, did not descend into absolute monarchy and whether its success can be replicated in other modern states with different conditions. Through his narrative of the history of English negative liberty as an unintended consequence manifested in

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<sup>133</sup> The strictly constitutionalist approach to Delolme's analysis can be traced to early American scholarship such as John Woodward, "The Sources of the Constitution," *American Lawyer* 11, no. 5 (May 1903): 189-190.

<sup>134</sup> Delolme, 31.



the form of the political institutions of the English parliament, the chapter also elucidates his argument that a strong executive power is not only uncontradictory to modern liberty but also is requisite to it.

### **The History of English Liberty Before Delolme's *Constitution*.**

Delolme was well aware of the richness of the literature on the Anglo-Saxon origin of English history, as he addressed it on the very first page of *Constitution*. He made his standpoint clear that the Saxon Government “appears to have had little more affinity with the present Constitution.”<sup>135</sup> In doing so, he rejected an important historical argument which underpinned the Whig interpretation of parliamentary supremacy due to its ancient Saxon roots. The language of “ancient constitutionalism” argues that the origin of the English constitution was historically indeterminate but is allowed to be grasped in the mixtures of legal precedents and charters in the form of the common law tradition. One strand of this common law thinking also referred back to Tacitus' *Germania* as an authoritative text in supporting the common lawyers' historical argument that the Gothic *witenagemot* or the Saxon parliament was the origin of the English House of Commons. One example of a remnant of this line of argument can be found in Montesquieu's eighteenth-century *The Spirit of the Laws* (1748) whose inquiry is in line with Tacitus' argument that English liberty was found in the German forests.<sup>136</sup> By rejecting the relevance of the Saxon era, Delolme aimed to lay his historical narrative of English liberty on a truly modern basis. In particular, he rejected the underlying argument that historical antecedents are the most important grounds for the modern political authority of the House of Commons. His account, as it will be discussed in the second part of the chapter, decisively steers the discussion towards its utility to control the royal executive power and protect the interest of the people.

The Whig history of Saxon origins has to be understood in tandem with its rival account, namely the seventeenth-century Royalist narrative which aimed to justify the absolute power of the Stuart monarchs via their interpretation of the Norman Conquest. Robert Filmer in his *Patriarcha* (1620s-1630s) shunned the parliamentarian narratives of 1066 which rejected the comprehensiveness and transformative nature of the Duke of Normandy's invasion. The royalist conquest reading of the event, instead, insists upon both the legality and legitimacy of royal prerogative and the king's right to reject bills passed by the parliament as a political implication of 1066. According to this view, the Norman Conquest not only was a successful invasion but

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<sup>135</sup> Delolme, 23.

<sup>136</sup> Montesquieu, *The Spirit of the Laws*, 1748, XI.6, 166.

also introduced feudalism to the island. Following this narrative, royalist historians argued that all subsequent political decisions and initiatives were to be understood in an absolute monarchical framework including the emergence of the House of Commons which is perceived as a gift from the king. Filmer's defence of the doctrine of passive obedience prompted numerous responses from authors who supported the parliamentary cause. Its intricate arguments provided abundant intellectual sources, adequate to sustain the life of the debate on the nature of political authority well into early eighteenth-century before the solidification of the victory of the moderate Whig ideology after the Hanoverian Succession in 1741.<sup>137</sup> Delolme was careful not to mention any of the royalist associations with the Conquest reading of 1066 despite his agreement about the transformative nature of the event. To further distance himself from the royalist accusation, he explicitly rejected any relevance of "the Doctrine of Passive Obedience" and deemed it "superstitious".<sup>138</sup> His explicit rejection of passive obedience to the monarch anticipates his own novel account of the benefit of the executive power which is founded on "the more solid and durable foundations of the love of order, and a sense of the necessity of civil government among Mankind".<sup>139</sup>

The Whig authors of the seventeenth century produced a plethora of intellectual responses to counter Filmer's royalist interpretation of the Norman Conquest and its consequent establishment of the absolute power of the monarch as the right of conquest. The historical work best exemplified this Whig response is the 1682 *Argumentatum is Argumentatum Anti-Normannicum* penned by William Atwood, Samuel Johnson, William Petyt as well as Edward Coke.<sup>140</sup> The *Argumentatum* is to be understood in the light of the historical debate which underpinned the idea of political authority during the Exclusion Crisis in 1679-81. Putting aside the weakness of the historical evidence, *Argumentatum* provides clear historical and political conclusions as well as propositions from the side of the Whig historians. Above all, they attempted to prove that William I did not impose an entirely new legal system on the island and this was partly due to his failed attempt to take total control of the land because of native resistance. *Argumentatum* not only rejects the conquest theory's main argument that the Norman invasion completely changed the

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<sup>137</sup> Due to the limited scope of this dissertation, the chapter only narrowly focuses on the resistance ideas penned in response to Filmer's *Patriarcha*. More on the life and intellectual activity of Filmer see Cesare Cuttica, *Sir Robert Filmer (1588 -1653) and the Patriotic Monarch: Patriarchalism in Seventeenth-century Political Thought*, (Manchester: Manchester University Press), 2012.

<sup>138</sup> Delolme, 54.

<sup>139</sup> Ibid.

<sup>140</sup> The historical work that best exemplify the Whig response is the 1682 *Argumentatum is Argumentatum Anti-Normannicum: OR AN ARGUMENT PROVING, From Ancient Histories and Records, THAT William, Duke of Normandy, Made no absolute Conquest of England by the Sword; in the sense of our Modern Writers*, Atwood, William, Johnson, Samuel, Coke, Edward, Petyt, William, London, 1682. This line of argument was responded to by Robert Brady's revisionist account of how the House of Commons "sprang out of rebellion" under Henry III see Pocock, J. G. A., "Robert Brady, 1627-1700. A Cambridge Historian of the Restoration," *Cambridge Historical Journal* 10, no. 2 (1951): 195.

nature of the government including all political and social relations but also assigned agency to the natives. It argues that the combination of moderation on the part of William I and the wisdom of the English rendered total domination and regime change impossible. Delolme's narrative was partly inspired by this argument although it rejects the overarching historical framework of ancient constitutionalism which is based on the pre-1066 existence of the parliament. The argument about the native resistance against foreign conquerors becomes the cornerstone of Delolme's account of the event and how it gave birth to the English unique political system despite a shared feudal beginning with other European countries.

After the Hanoverian Settlement in 1701, followed by the Hanoverian Succession in 1714, England enjoyed a relatively calmer political atmosphere. The political writing of Civil War radical Whigs like Sidney was replaced by the dominant moderate Whig ideology exemplified by the work of Rapin de Thoyras, with the belief in parliamentary supremacy, the mixed constitution, as well as the idea of limited monarchy. Under the Whig dominance, this period's debate on the English constitution and liberty changed the focus from the origin to the balance of the constitution.<sup>141</sup> The Septennial Act in 1716 fortified the political power of the moderate Whigs but at the same time, also saw the rise of the new Court-Country division which would bring the debate on the origin of the English liberty back to the political area most notably with the work of the *Craftsman* magazine authors, founded by the Tory Viscount of Bolingbroke and William Pulteney.

It was the establishment of the idea of parliamentary sovereignty and especially legislative dominance as the result of the settlement after 1688 which prompted a new necessity to address the overpowering legislative without rejecting its supremacy, in the language of the checks and balances. This urgency was most explicit in light of Robert Walpole's administration. Bolingbroke dedicated his work in the *Craftsman* to oppose Whig parliamentary dominance under the premiership of Walpole, which peaked with his success in influencing and manipulating the parliament via the king's influence and the system of royal patronage due to his close relationship to George I and George II. His *Remarks on the History of England* is the historical branch of the same project to undermine Walpole's administration. The work argues for the ancient history of "the spirit of English liberty" which has always been at odds with "the spirit of faction". When faction is in power, the situation calls for its exposure since the spirit of faction is always disguised as a guardian of the national interest. Bolingbroke wrote: "The Republication of the *Papers* is therefore, at this Time, most especially, reasonable. If we do not take Advantage of the standing Water of Faction, the Tide will soon turn one Way or the other, and carry all before it."<sup>142</sup> By

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<sup>141</sup> R. J. Smith, *The Gothic Bequest*, 44.

<sup>142</sup> Henry St. John Bolingbroke. *Remarks on the History of England, from the Minutes of Humphrey Oldcastle*. 2nd ed. Franklin, 1747, xiv.

approaching the debate on corruption beyond the realm of parliamentary politics using the language of the spirit of liberty and faction, he was able to turn Whig historiography against the Whig government by arguing that the Whig government under Walpole's premiership betrayed the seventeenth-century Whig legacy as champion of liberty against monarchical despotism.

The *Remarks*' reworking of the history of England traces the two kinds of spirit which have always been at odds with each other since the Norman invasion. *Remarks* reworks the events of 1066 by investigating existing narratives of the event before he concluded differently from the seventeenth century *Argumentatum* that William I did impose new laws after his successful invasion. He wrote "we may confess that he [William I] imposed many new Laws and Customs; that he made very great Alterations in the whole Model of Government; and that he, as well as his two Sons, ruled, upon many Occasions like *absolute*, not *limited*, *Monarchs*."<sup>143</sup> Bolingbroke placed the antagonism between the spirit of liberty and the spirit of faction at the centre of his philosophical history. The antagonism is manifested in history as, on one side, the encroachment of liberty by the Crown and the royalist politicians, and the protectors of ancient rights of the people (this includes, of course, the Bolingbroke-led opposition to the corrupted Walpolean parliamentary despotism) on the other.

From the balanced constitution criteria, he argued that "Great Britain, according to our present constitution, cannot be undone by parliaments; for there is something, which a parliament cannot do. A parliament cannot annul the constitution . . . The legislative is a supreme, and may be called, in one sense, an absolute, but in none an arbitrary power."<sup>144</sup> This problem of the arbitrary legislative power and the inadequacy of existing theoretical frameworks to address it would become the subject matter of Delolme's reworking of the English constitutional history and the background justification of his proposition for the strong executive power. Bolingbroke's narrative anticipates the comparative method which contrasts the English constitutional history with other European monarchical experiences as well as ancient republics to argue for the superiority of the English system in preserving the kind of liberty that is useful for the moderns, namely legal protection of the person and their property.

This new argument carefully avoids both the language of ancient constitutionalism as well as the absolutist implication of the seventeenth-century royalist interpretation of the Norman Conquest. John Hervey's *Ancient and Modern Liberty Stated and Compared* (1734) best exemplifies this new narrative. It was written as a reaction from the side of Walpole to Bolingbroke's polemics against the government. Before *Ancient and Modern Liberty*, Hervey published a more direct political attack on Bolingbroke and his circle titled *Observations on the*

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<sup>143</sup> Henry St. John Bolingbroke, *Remarks*, 1747, 53.

<sup>144</sup> Henry St. John Bolingbroke, *A Dissertation Upon Parties*, Letter XVII: Works, vol. iii, 271.

*Writings of the Craftsmen* (1730) focusing on exposing the unfairness and in his view, the historical errors which forms the basis of the *Craftsmen*'s polemics against Walpole.<sup>145</sup> Hervey's *Ancient and Modern* is more decisive in its tactic to rewrite history against Bolingbroke's newly created antagonism between the spirit of liberty and the spirit of faction. Using the comparative method, Hervey aimed to demystify the valorisation of ancient liberty in the Whig narratives altogether. He turned Bolingbroke's notion of the spirit of liberty against him by relocating the origin of English liberty to post-1688, thus rendering it essentially modern.

Hervey discussed the perfect equilibrium between the anarchy of "natural liberty" and the extremism of order in the form of authoritarianism and how there "never was, nor perhaps ever will be, any Form of Government where this Medium was so exactly hit..." as much as "it is impossible to judge of any human Institution, any more than of any human Virtue, but by Comparison."<sup>146</sup> Due to the inherent imperfection of political reality, to make a judgement against the ideal, for Hervey, is unfruitful. Therefore, Hervey turned instead to the comparative method which is in this case, a comparison between ancient and modern liberty, with the latter defined as legal protection of individual liberty which is argued to be the aim of a modern constitution. After stating the necessity of using the comparative method, Hervey went straight to his objective in writing this historical piece which is to demonstrate the errors in his contemporaries' political nostalgia and its being exploited as weapons against the government: "...the modern Authors on this Subject [liberty] have often insisted on the Faults of the present Government, by extolling the Felicity of Times past, and particularly on the Chapter of Liberty."<sup>147</sup>

For Hervey, between the Norman Conquest of 1066 and pre-Restoration, "whatever Changes happen'd in the Government, those Changes were nothing more than from one Tyrant, or one *Kind* of Tyrant to another."<sup>148</sup> Hervey identified the English constitution prior to 1688 as an absolute monarchy, unlike the contemporary limited monarchy which he explicitly endorsed. Hervey, foreshadowing Delolme, not only attempted to demonstrate the pre-eminence of the modern constitution and politics in general but also to present the comparative method as the most effective approach to the study of politics and the historical origin of English liberty. While Bolingbroke traced liberty back to the distant past of the Saxon epoch to reveal the degeneration of the spirit of liberty, defeated by the spirit of party in his contemporary politics, Hervey argued that liberty for the people never existed until after the Glorious Revolution. He wrote: "From King James the Second's Banishment, Abdication, Deposition, or whatever People please to call it, I

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<sup>145</sup> Hervey, John Hervey. *Observations on the Writings of the Craftsman*. (London: Printed for J. Roberts), 1730.

<sup>146</sup> Hervey, John Hervey. *Ancient and Modern Liberty Stated and Compared*, (London: Printed for J. Roberts), 1734, 4.

<sup>147</sup> *Ibid*, 4.

<sup>148</sup> *Ibid*, 6.

date the Birth of real Liberty in this Kingdom, or at least the Establishment, if not the Commencement, of every Privilege we now enjoy.”<sup>149</sup>

While Hervey’s work was pioneering, it also clearly had a strong political objective in responding to Bolingbroke. Another project of the period which engaged in depth with this narrative of English liberty as modern liberty is David Hume’s voluminous *History of England* (1754-61). Hume also made Bolingbroke and his *Craftsman* the point of departure of his philosophical history. But unlike Hervey who opposed Bolingbroke’s politics in his historical writing, Hume deemed the political objective of the Tory opposition to be achieved at the expense of historical accuracy and more dangerously, it also exacerbated party feud.<sup>150</sup> For him, the Stuart monarchs did not mistake the nature of the constitution.<sup>151</sup> It was nonsensical to discuss English liberty before the victory of the parliamentarians after the seventeenth century. Modern politics only truly began after the legal restriction of the Crown and the rise to power of the House of Commons as a capable legislative body. Hume’s narrative differs significantly from his predecessors who argued for the continuity of the English constitution and its Saxon freedom that only got usurped by tyrannical kings such as James II.<sup>152</sup> Similar to Hervey, Hume considered his project to be that of updating the obsolete Whig, and subsequently the “Country”, version of English historiography. But while Hervey fervently asserted that modern politics is superior to its ancient counterpart, Hume was more sceptical of the fate of what he called public liberty as opposed to personal liberty in the modern world and the rise of commercial society.<sup>153</sup>

Delolme contributed to the long historical and deeply political debate on the origin of English liberty. His main purpose was to put forward the argument that the strong but effectively limited executive power of the English system was an important factor behind the success of the English system in preserving liberty. As we know that he had read Hume’s *History of England*, it is possible that his choice to use the very term public liberty is also influenced by the Scottish historian’s work. However, Delolme was more optimistic about the rise of the commercial society and its role in supporting the formation of public liberty which manifested in the form of the English political institutions and their arrangement.

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<sup>149</sup> Ibid, 40

<sup>150</sup> Nicholas Phillipson, *David Hume: The Philosopher as Historian*, “A Philosopher’s Agenda for the History of England”, (Yale University Press), 1989.

<sup>151</sup> Duncan Forbes. *Hume's Philosophical Politics*. (Cambridge; New York: Cambridge University Press), 1975, 263.

<sup>152</sup> Duncan Forbes. *Hume's Philosophical Politics*. (Cambridge; New York: Cambridge University Press), 1975, 263.

<sup>153</sup> For more on Hume and liberty in commercial society see Berry, Christopher J. “The Dangers of Commerce.” Chapter. In *The Idea of Commercial Society in the Scottish Enlightenment*, 150–93. (Edinburgh: Edinburgh University Press), 2013.

## **Delolme as a Historian of the English Constitutional Liberty.**

In his *Against War and Empire*, Richard Whatmore indicates how Delolme's study of the history of English liberty relies on the idea of unintended consequences of the Norman Conquest. He contends that "de Lolme developed the argument that liberty in Britain was an unintended consequence of the importation of French despotism."<sup>154</sup> However, Whatmore does not specify how this played out in Delolme's historical narrative of the origin of English liberty and constitution. This chapter hopes to shed light on this aspect of his programme which has previously been underexamined and how it is crucial to his argument that a strong and unitary executive power is central to the success of English liberty.

Put simply, the existence of unintended consequences in history means the discrepancy between what one intends to do and the effects one produces on the society as a whole. John Burrow analysed the notion of unintended consequence as a moral complex: "A gap has been opened, a certain kind of innocence lost, and it cannot be closed so long as we retain the knowledge of it". This is because the notion of unintended consequence also implies "a disjunction between what we morally admire and what we sociologically discern."<sup>155</sup> For Burrow, this moral complex also welcomes a new approach to the study of politics which analyses social phenomena from the perspective of an observer rather than a participant. The notion of unintended consequences also gives a utilitarian tone to the social analysis.

The role of unintended consequence in the study of history was also examined by David Hume. In the political essay "Of the rise and progress of the arts and sciences" he argued that the difference between "causes" and "chances" is central to an enquiry into any human affairs. To distinguish the two, Hume provided the reader some clues: "What depends upon a few persons is, in a great measure, to be ascribed to chance, or secret and unknown causes: What arises from a great number, may often be accounted for by determinate and known causes."<sup>156</sup> The implication of this contention is that the focus of science of politics should not be on the effect of contingencies such as "the smallest incident in the health, education, or fortune of a particular person" upon the course of history. It also follows that the history of institutions, which reflect better "what arises from a great number" is more suitable as an object of study for the science of politics than the role of individuals. The history of political institutions as an appropriate object of study of the science of politics is also succinctly discussed by Adam Ferguson who explained

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<sup>154</sup> Richard Whatmore, *Against War and Empire*, (Yale University Press: New Haven), 2012, 121.

<sup>155</sup> John Burrow, *Whigs and Liberals: Continuity and Change in English Political Thought*, from the Carlyle Lectures in 1985, (Clarendon Press Oxford, 1988), 57.

<sup>156</sup> David Hume. "Of the Rise and Progress of the Arts and Sciences." in *Hume: Political Essays*, ed., Knud Haakonssen, (Cambridge: Cambridge University Press, 1994) 58–77.

in one sentence how political institutions are past unintended consequences materialised: “nations stumble upon establishments, which are indeed the result of human action, but not the execution of any human design.”<sup>157</sup> In Delolme’s work, we will see this critical distance at its finest in his examination of the institution of the Crown and the ripple effects of 1066 in the English constitutional fabric. More importantly, with this approach to the study of English constitutional history, Delolme aims to resolve the supposed “paradox” of why a strong executive power is not contradictory to liberty.

Unintended consequence and chance are brought to the fore in Delolme’s analysis of the origin of English liberty as stemming from the native resistance against the Norman Conquest. But while human nature has “that secret disposition which prompts Mankind to resist and counteract their Superiors,” the English system benefited from this spirit of resistance unlike its predecessors because it uniquely enshrined each legacy of resistance in institutional forms. Delolme carefully examined the success of each political institution, its formation throughout history, and how it helps preserve liberty by striking the balance between the chaos of popular politics and the absence of liberty in tyrannical regimes. 1066, in this narrative, also was the underlying cause of the later successful union of interest between the people and the nobility in forming their alliance against monarchs leading to later effective institutional barriers against future encroachment on the liberty of the subjects. This “paradox” of strong monarchs as the root cause of English liberty is in fact not paradoxical at all once one adopts the stance of Delolme’s science of politics which argues that English liberty can only be understood retrospectively and comparatively through history.

I begin chronologically with the interpretation and significance of the Norman Conquest in Delolme’s narrative. The account of this historic event significantly distinguishes Delolme’s narrative from his predecessors. He argued that “It is the era of the Conquest, that we are to look for the real foundation of the English constitution.”<sup>158</sup> This contention distinguishes him from the Whig historiography which accentuates the Saxon roots of English liberty pre-1066. However, at the same time, he also rejected the royalist historian of the seventeenth-century conclusion of the conquest that subsequently, English liberty and the English constitution was the gift from the king. His narrative alternatively argued that English liberty stemmed from the spirit of resistance against the Conquest regardless of the Saxon root as well as the imposition of feudalism by the foreign kings. In this regard, he also proposed an alternative account of English theory of resistance that does not base its legitimacy on the idea of natural right but on the political utility

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<sup>157</sup> Adam Ferguson, *An Essay on the History of Civil Society*, 1782.

<sup>158</sup> Delolme, 24.



of resistance. He addressed the political implication of the historiography on the Norman Conquest on the very first page of *Constitution*:

It has been a favourite thesis with many Writers, to pretend that the Saxon Government was, at the time of the Conquest, by no means subverted; that William of Normandy legally acceded to the Throne, and consequently to the engagements, of the Saxon Kings; and much argument has in particular been employed with regard to the word *Conquest*, which, it has been said, in the feudal sense only meant *acquisition*. These opinions have been particularly insisted upon in times of popular opposition: and, indeed, there was a far greater probability of success, in raising among the People the notions familiar to them of legal claims and long established customs, than in arguing with them from no less rational, but less determinate, and somewhat dangerous, doctrines, concerning the rights of Mankind, and the lawfulness of at all times opposing the force to an oppressive Government.<sup>159</sup>

Delolme not only told the reader where he stood in the debate concerning the meaning of 1066 but also how the language of ancient constitutionalism was exploited in support of popular “opposition”. Most likely, he addressed the seventeenth-century historical work on the nature of 1066 and its importance in defining the nature of the English system. On one hand, James I’s 1610 *Speech to Parliament* insists that it was an absolute monarchy. On the other hand, the common lawyers argued that the origin of the House of Commons is time immemorial. The passage reveals his awareness of the strong political implications in the historiography of the origin of English liberty. He acknowledged the magnitude of the transformative effect of the Conquest. After 1066, “almost the whole landed property in the Kingdom was at that time transferred to other hands, a new System of criminal Justice introduced, and the language of the law moreover altered, the revolution may be said to have been such as is not perhaps to be paralleled in the History of any other Country.”<sup>160</sup> However, he was also quick to distinguish his narrative from the royalist conquest interpretation of 1066 which used it to justify the unlimited power of the king in absolute monarchy.

Concerning methodology in acquiring the knowledge of the event, Delolme followed William Temple’s *Introduction to the History of England* (1695). Temple’s work was cited to demonstrate the untenable flaw that belied the truth of the ancient constitution narrative; how the ancient Saxon government had “left us in story... but like so many antique, broken, or defaced pictures, which may still represent something of the customs and fashions of those ages, though little of the true lines, proportions, or resemblance.”<sup>161</sup> Temple’s opinion in the debate on the origin of the English constitution stands at odds with Delolme’s, since Temple also discussed the Gothic origin of the constitution.<sup>162</sup> However, I argue that Delolme referred to Temple in his historical works, not for

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<sup>159</sup> Delolme, 24.

<sup>160</sup> Delolme, 219.

<sup>161</sup> William Temple. *Introduction to the History of England*. 1695.

<sup>162</sup> William Temple, *The Works of Sir William Temple*, Volume II, London, 1720, 531.

his interpretations but for his methodology in writing history. Temple was one of the minority of antiquarians and historians of seventeenth-century England who was aware of the indefensibility of discussing the nature of pre-Norman Saxon government with any great confidence.

Delolme did not oppose the idea of resistance against tyrannical rulers but he questioned the utility of the doctrine of natural rights as the basis of a legitimate resistance. He commented on how the doctrine of natural right was exploited for the cause of popular resistance during the seventeenth century. Despite his critical tone of the doctrine of natural right which he deemed “somewhat dangerous”, his own account of resistance simply has a different focus away from the question of legitimacy. Instead, it emphasises the institutional implications of a resistance in the *longue durée* of English constitutional history. In other words, he was more interested in the unintended consequence of resistance and its role in shaping what he called “public liberty” than the question of the legitimacy of the resistance.

Most importantly, 1066 also crucially shaped England into a unitary kingdom. This point and its later constitutional implications is conveyed through his comparative analysis between England and France and different fates of their royal powers. Delolme compared the establishment of liberty with the action of planting a seed to connote the long duration and the right historical conditions it requires before liberty flourishes. The event of the Norman Conquest initiated the feudal system which was a shared Northern European experience but what distinguished the course of English history from its continental European counterparts is “an immediate and sudden consequence of that conquest which introduced it.” In comparison with French feudalism which gradually formed itself, “the Kingdom of England, on the contrary, in consequence of the sudden and violent introduction of the same system, became a compound of parts united by the strongest ties, and the regal Authority, by the pressure of its immense weight, consolidated the whole into one compact dissoluble body.”<sup>163</sup> The sudden formation of absolute monarchy in England imposed a thorough shock to the native nobility and commoners alike. The comprehensiveness of the new system forced the nobility to form “close and numerous confederacies...they even compelled to associate the People in them, and make them partners of public Liberty.”<sup>164</sup> Delolme compared the weight of the royal authority and the spirit of liberty with how one grows a tree. The seed of liberty “In England...lying at a great depth, being covered with enormous weight [of the king]...It was the excessive power of the King which made England free, because it was this very excess that gave rise to the spirit of union, and of concerted resistance...”<sup>165</sup>

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<sup>163</sup> Delolme, *Constitution*, 28.

<sup>164</sup> *Ibid.*, 31.

<sup>165</sup> *Ibid.*

The first implication of the Norman Conquest in Delolme's narrative is its lasting effect on the nature of the English royal power. This union between the nobility and the people was made possible due to the exceptional formation of English feudalism which was abrupt and forceful, and it shaped the kind of state that England became, namely a unitary kingdom. "England was not, like France, an aggregation of a number of sovereignties: it formed but one State, and acknowledged but one Master, one general title. The same laws, the same kind of dependence, consequently the same notions, the same interests, prevailed throughout the whole."<sup>166</sup> The English unitary interest was formed in opposition to the centralised royal government. From the beginning, all subjects acknowledged the distinction between their cause and interest of the governmental body. This drastic separation of the people and the government was fundamental to the formation of the successful English representative system.

Secondly, the Norman Conquest was a double-edged sword to the nobility. The concerted resistance between them and the commoners "insisted that, for the future, every individual should be intitled [sic] to the protection of the law" which unintentionally "become a bulwark which was, in time, to restrain their [the nobility's] own."<sup>167</sup> This unintended consequence of the Norman Conquest is compared to the seed which requires the right conditions to grow. English liberty did not begin to emerge until "about forty years after the Conquest that we see the...causes begin to operate."<sup>168</sup> Resistance against 1066 in Delolme's narrative functions similar to Montesquieu's idea of *spirit* which guides the reader through the ups and downs of English constitutional history. The "spirit of liberty, union, and sober resistance"<sup>169</sup> also led to the establishment of *Magna Carta* under the reign of King John (1116-1216). The event was portrayed as "a general confederacy" between subjects from all orders due to their shared interest in limiting the power of the despotic king. However, the union also crucially foreshadowed the decline of the ranking system as well as the rise of commercial society in which traditional rankings were replaced with more sophisticated forms of social classes.

This "spirit of resistance" persisted and began to reveal its effect in the formation of the English House of Commons. In the reign of Edward, he argued that "the tide [a metaphor of the magnitude of feudalism imposed by 1066] was seen gradually to subside; the laws which protect the person and property of the individual, began to make their appearance" due to the new arrangement of power.<sup>170</sup> This account of the establishment of a form of negative liberty within the legal framework is crucial to the English system. After 1215 the nascent form of the House of Commons emerged. In Delolme's narrative, the early form of the House of Commons was an

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<sup>166</sup> Ibid., 35.

<sup>167</sup> Ibid., 33.

<sup>168</sup> Ibid., 34.

<sup>169</sup> Ibid., 44.

<sup>170</sup> Ibid., 43.

unintended consequence of Edward's need to gain financial support for his war against Scotland. However, due to the economic and political aftermath of revolts by barons under the previous Henry III reign, Edward "In order to raise subsidies therefore, he was obliged to employ a new method, and to endeavour to obtain through the consent of the People, what his Predecessors had hitherto expected from their own power. The Sheriffs were ordered to invite the Towns and Boroughs of the different Counties to send Deputies to Parliament; and it is from this era that we are to date the origin of the House of Commons."<sup>171</sup> Here he agreed with the seventeenth-century royalist Robert Brady that the House of Commons was to be dated to the reign of Edward I.<sup>172</sup> However, in this new narrative, he crucially added the financial factor to counter the royalist interpretation that it was a gift by the king. Alternatively, he emphasised the pecuniary necessity which forced Edward to be more compromising with the people than previous monarchs. However, it was not until "Under Edward the Second, [when] the Commons began to annex petitions to the bills by which they granted subsidies" that they began to enjoy "the dawn of their legislative authority."<sup>173</sup> In Delolme's narrative, the legal protection of the subjects, although legally asserted in the *Habeas Corpus*, did not materialize until the people had channels through which they could assert their political power and the House of Commons was one of those. Political institutions, he implied, were shaped by external forces beyond the realm of the government, one of the most important being economic power.

Nonetheless, Delolme was also quick to suggest that the political power of the House of Commons was in its infancy and was a far cry from its modern form. The crucial point, for Delolme, was that it established a legal channel through which some part of the Commons could voice their concern legally:

They were in those times called up only to provide for the wants of the King, and approve of the resolutions taken by him and the assembly of the Lords. But it was nevertheless a great point gained, to have obtained the right of uttering their complaints, assembled in a body and in a legal way—to have acquired, instead of the dangerous resource of insurrections, a lawful and regular means of influencing the motions of the Government, and thenceforth to have become a part of it.<sup>174</sup>

Resonating with the earlier point about the utility of resistance in shaping institutional safeguards of public liberty, Delolme here contrasted it with the notion of insurrections which relies on the

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<sup>171</sup> Ibid., 39.

<sup>172</sup> Ibid., 214 Pocock, in his seminal *Ancient Constitution and the Feudal Law* (1987) makes a remark that "Brady's feudal interpretation of the period from the Conquest to Edward I to show that the House of Commons, being of late origin and created gradually by a series of royal summonses to men below the rank of tenant in chief, owes its existence to the king's will and must accept the place in the constitution—that of an adjunct to the king's council, a petitioner and assentient in legislation—which the Freeholder's Inquest had allowed."

<sup>173</sup> Ibid., 44.

<sup>174</sup> Ibid.

creation of abnormality to gain its political momentum hence its inherent danger despite the shared goal of influencing the motion of the government.

The origin of the English parliament therefore stemmed from the necessity to alleviate the risk of popular insurrection by incorporating the power of the people into the institutional fabric of the constitution. In Delolme's account, the continuity was stressed between the ripple effects of the Norman Conquest and the formation of the English system including the institution of the House of Commons. The incorporation of the people's power into the nascent form of the parliament helps support his argument that English liberty, as legal protection of the subject, was enhanced by the limitation of the monarchical executive power, not by the eradication of its. This point will be further developed in his account of English liberty after the Glorious Revolution concerning the military power.

### **English Liberty after 1688 and the limitation of the monarchical power.**

The role of resistance in shaping English constitutional history is presented in Delolme's treatment of monarchical executive power. The formation of the office reflects the future of the English system as representative and "democratical" [sic].<sup>175</sup> Due to the office's attachment to the institution of the Crown, English executive power was not only unified but also rendered itself a natural target of public scrutiny and, consequently, effective limitation. In Delolme's historical analysis, the English executive power became effectively separated from the legislature with permanent distrust between the branches, which was crucial for the future English constitutional "system of distrust."<sup>176</sup> In other words, from the beginning, English executive power was formed in the way that it familiarised the people with their duty of popular oversight required for a successful modern representative politics. But for the executive power to work for public liberty, it first has to be defanged. Delolme claimed that the English system did so in the seventeenth century.

The era is central to his account of the development of English liberty because it saw the victory of the spirit of resistance against the encroachment of public liberty by despotic monarchs which culminated in further restrictions of their power, namely the civil control over military power. The scheme's unintended consequence was that it made public opinion the only foundation of English political authority and makes English kings and queens modern monarchs

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<sup>175</sup> Delolme, 280.

<sup>176</sup> Here I adopt Jeremy Bentham's vocabulary in Jeremy Bentham, *Political Tactics*, eds. Michael James, Cyprian Blamires, and Catherine Pease-Watkin. (Oxford: Clarendon Press), 1999, 37.

of limited power and in doing so, paves the way for the formation of modern executive power. This civil control of military power also further emphasises Delolme's argument that the historical development of English liberty diverged from its continental European counterparts' historical path. The development in the history of English liberty is crucial to his argument of the exceptionality of the English experience distinct from other European monarchies.<sup>177</sup> Delolme's reading of the spirit of resistance against the Norman Conquest as the guiding topic renders his account of the turbulent era of the seventeenth century distinct from the better known account of David Hume in *The History of England* which dates the origin of English liberty much later namely after 1688.

Hume famously contended in his deathbed interview on 7 July 1776 that, he hoped to "...leave that history, of which you are pleased to speak so favourably, perfect as I can" and that he had become a greater friend to the Stuart family as his research deepened. The interview also recorded how Hume also hoped that his work would leave 'the first two of the Stuart never again to be attacked.'<sup>178</sup> Delolme's account of the Stuarts however did not quite grant this wish. The nature of the constitution under the Stuarts was a contested topic which has strong party implications. On one hand, Whig historians insisted that they violated the principles of the ancient constitution and therefore, the dethronement of James II was legitimate as a constitutional resistance against a despotic ruler. On the other hand, especially in Hume's account, the monarchs did what was within their power in an absolute monarchy framework. While he shared the hope to write an English history to eliminate party bias with Hume, Delolme differed from him significantly on the nature and meaning of the seventeenth-century constitution. His narrative grants more emphasis on "the spirit of resistance" and its institutional embodiments than the civilising effect of commerce.

Mr. Hume is rather too anxious in his wish to exculpate James the Second. He begins the conclusive character he gives of him, with representing him as a Prince whom we may safely pronounce more unfortunate than criminal. If we consider the solemn engagements entered into, not by his predecessors only, but by himself, which this Prince endeavoured to break, how cool and deliberate his attack on the liberties and religion of the People was, how unprovoked the attempt, and in short how totally destitute he was of any plea of self-defence or necessity, a plea to which most of the Princes who have been at variance with their Subjects had some sort of more or less distant claim, we shall look upon him as being perhaps the guiltiest Monarch that ever existed.<sup>179</sup>

For Delolme, James II did violate the liberty of the people and the *raison d'être* of a political society which he declared earlier in the book to be the protection of the individuals as manifested

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<sup>177</sup> Delolme, *Constitution*, 257-8.

<sup>178</sup> *Boswell in Extremes*, 1776-78, ed. Charles M. Weis, Frederick A. Pottle, 1971, 14, referred to in Graeme Slater, "Hume's Revisions of *The History of England*". *Studies in Bibliography* 45 (1992), 133.

<sup>179</sup> Delolme, 297.

through the historical development of the English constitution. And crucially, this form of negative liberty can be traced as far back as to the thirteenth century. In Delolme's narrative, the English limited monarchy and the materialisation of "the whole end and design of political societies" in the form of the equal legal protection of the subjects (found in *Magna Carta* and later confirmed in the *Habeas Corpus*) proved the nature of the English constitution as a limited monarchy before the reign of the Stuarts despite some encroachments under the Tudors.<sup>180</sup> In this narrative, the later dethronement of Charles I was therefore constitutional. He explained how the commoners "Finding among themselves Men of the greatest capacity, they undertook that important task with method and by constitutional means; and thus, had Charles to cope with a whole Nation put in motion and directed by an assembly of Statesmen."<sup>181</sup>

He further explained how in this era, the spirit of liberty was supported by the remnant of the shared sentiment against the "established faith" of Catholicism in the Tudor reign of the previous century which saw the rise of the Church of England. "The notions of religion, by a singular concurrence, united with the love of liberty: the same spirit which had made an attack on the established faith, now directed itself to politics: the royal prerogatives were brought under the same examination as the doctrines of the Church of Rome had been submitted to; and as a superstitious religion had proved unable to support the test, so neither could an authority pretended unlimited, be expected to bear it."<sup>182</sup> Delolme's narrative of the spirit of liberty allows the continuity of the English rejection of Catholicism with the later century resistance against the doctrine of divine right of kings famously outlined in James I's 1609 speeches to the Parliament. This remark on the Tudor era is in stark contrast with Hume's analysis of the same period. Remarkably, Delolme's account rejects Hume's emphasis on the rise of the intermediate rank due to commerce under the Tudor as an important point in the development of the English history. In Hume's narrative, under the Tudors "The cities increased [sic]; the middle rank of men began to be rich and powerful; the prince, who, in effect, was the same with the law, was implicitly obeyed;...in the interval between the fall of the nobles and the rise of this order, the sovereign took advantage of the present situation, and assumed an authority almost absolute."<sup>183</sup> This shift in property relations caused by the emergence of this new class is crucial in Hume's examination of the rise of the English commercial monarchy. For Delolme the rise of commerce was also acknowledged. However, in his narrative its importance is best reflected in the form of financial restrictions as a modern scheme to limit the power of the Crown by the representatives of the people. "[I]n these days," he wrote "when everything is rated by pecuniary estimation, when gold is become the great moving spring of affairs, it may be safely affirmed, that he who depends on

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<sup>180</sup> Ibid., 36.

<sup>181</sup> Ibid., 48.

<sup>182</sup> Ibid.

<sup>183</sup> David Hume, *The History of England*.

the will of other men, with regard to so important an article, is, whatever his power may be in other respects, in a state of real dependence.”<sup>184</sup>

Another legacy of 1688 that Delolme highlighted beyond the Habeas Corpus is the civil control over the army. After the dethroning of James II, the King’s standing army in peacetime became illegal, along with other new terms such as parliamentary control over tax imposition. It was another assertion of the contract between the Crown and the people beyond what has been achieved then violated by the Tudor monarchs. They “...repair the breaches that had been made in the Constitution, as well as to prevent new ones; and advantage was taken of the rare opportunity of entering into an original and express compact between King and People.”<sup>185</sup> Delolme argued that in a modern free state, the executive power of the crown cannot simply rest on military power, because that would fundamentally breach the historical contracts between the crown and the people. More importantly, holding military power is simply a weak basis for the political authority of the executive power. Delolme discussed this extensively in his analysis of English constitutional history during the Commonwealth period under Oliver Cromwell. Despite his military power, which allowed him to establish the Commonwealth, Cromwell struggled to establish his political power. “Even after he had *purged*, by the agency of Colonel Pride and two regiments, the Parliament that was sitting when his power became settled, thereby thrusting out all his opponents to the amount of about two hundred, he soon found his whole authority endangered by their proceedings, and was at last under a necessity of turning them out in the military manner with which everyone is acquainted” without any success in establishing his authority as a politician.<sup>186</sup> In Delolme’s opinion, Cromwell could not master the art of political authority, which in modern politics derives its basis from public opinion and mandate. Delolme’s account of modern monarchical executive power categorically rejects the usefulness of military power in maintaining the political authority. He also further clarified this point in his criticism of Adam Smith’s alleged argument that “That degree of liberty which approaches to licentiousness, can be tolerated only in Countries where the Sovereign is secured by a well-regulated standing army.”<sup>187</sup> Smith failed to take into account the historical circumstances which gave rise to the English monarchical power and deemed the monarch’s ability for “re-action” to the people’s “licentiousness” necessary and it can be easily supported by a standing army.<sup>188</sup> Smith “has deemed a Government to be a simpler machine, and an army a simpler instrument, than they in reality are.”<sup>189</sup> The army, Delolme warned, consists of soldiers who also are driven by the same

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<sup>184</sup> Delolme, *Constitution*, 64.

<sup>185</sup> *Ibid.*, 43.

<sup>186</sup> *Ibid.*, 281.

<sup>187</sup> *Ibid.*, 288 cited Adam Smith’s *An Inquiry into the Nature and Causes of the Wealth of Nations*, book 5, chapter 1, part 1, paragraph 41, 1776.

<sup>188</sup> *Ibid.*

<sup>189</sup> *Ibid.*, 291.



passions which drive all people to seek to promote their private interests. Only through complex arrangement of constitutional power, including a full civil control of military power, a modern executive power becomes useful in the preservation of public liberty.

The settlement of the seventeenth century English Civil War resulted in the re-affirmation of English liberty in the form of both the legal protection of the subject in *Habeas Corpus* as well as the fortification of their political power through the rise in power of the House of Commons and their control of the king's subsidy as well as the civil control over military power. In other words, in Delolme's narrative, the English king post-1688 became fully a sovereign of a constitutional monarchy. To demonstrate the nature of the English limited monarchy and a free constitution, Delolme contrasted the English monarch with the French king who "never repairs to that Assembly [the Parliament of Paris], to signify his intentions, or hold a *Lit de Justice*, without the most over-awing circumstances of military apparatus and preparation, constantly choosing to make his appearance among them rather as a military General rather than a King."<sup>190</sup> For Delolme, the history of English liberty post-1688 even further distinguishes itself from other European experience despite their similar beginning as a form of feudal society.

Delolme employed the comparative method to the study of European monarchies to demonstrate the differences of the English system that made the royal executive power useful for the formation of public liberty. Not only did he rely on a comparison between England and France to support his argument on the unique historical conditions and unintended consequences that gave rise to English liberty, he also conducted a comparative study between England and Sweden in his *A Parallel between the English Constitution and the Former Government of Sweden* (1772).<sup>191</sup> This compact work further explicates how the fall of the nobility and the benefit of having a strong executive power is central to Delolme's understanding of modern liberty.

**English Liberty and Swedish Liberty: *A Parallel between the English Constitution and the Former Government of Sweden* (1772).**

Beyond England, there are few better examples of a fusion between republicanism and monarchy than that seen in the eighteenth-century Sweden. This constitutional question is manifested in numerous titles the Age of Liberty was given; from a royal republic to aristocratic despotism (*aristokratisk despotism*) which was how Gustav III depicted the regime in the same

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<sup>190</sup> Ibid., 272.

<sup>191</sup> Delolme, *A Parallel between the English Constitution and the Former Government of Sweden*, 1772. Henceforth referred to as *Parallel*.

period.<sup>192</sup> Sweden's Age of Liberty was coined in 1750s to highlight how the Swedish constitution successfully limited royal power for the benefit of public liberty.<sup>193</sup> Gabriel Bonnot Mably, for example, praised it as the best model of modern legislation, superior to the British constitution in its preservation of liberty.<sup>194</sup> Delolme's comparative work on Sweden and England, in this regard, also responds to such opinions held by Mably. The Swedish and the English constitutions had deeper meaning to the contemporaries as they were central to the eighteenth-century debate on the institutional designs that best preserve modern liberty.<sup>195</sup>

In *Parallel*, Delolme aimed to delineate "real powers" at work in the two states to prove that the strong nobility can pose a formidable threat to a constitution especially when it is much stronger than the executive power of the Crown. He crucially challenged the previous diagnosis of English history by Hume and Montesquieu who contended that the weakness of the nobility as a mediating power results in the imbalance of the constitution after the reign of the Tudors. Delolme, however, did not reject the mediating role of the nobility but in the case of Sweden, he attempted to demonstrate how an overly powerful nobility can slowly perturb the constitutional checks and balances despite the republican "outward form" of the constitution.<sup>196</sup> More importantly, in this comparative study, he put forward the argument that the mere existence or the absence of the institution of the Crown matters little to the preservation of liberty. Rather one has to closely examine the distribution of legislative and executive power in different political bodies within the constitution.

Delolme began by acknowledging the topicality of "the late revolution in Sweden" for his target audience which was the British public. The revolution here refers to the coup of Gustav III in August 1772 which effectively ended the Age of Liberty.<sup>197</sup> Placing "Power" at the centre of his political analysis, Delolme firstly declared his interest in the study of power defined as "...not a subordinate and precarious power, as that, for instance, of a Minister; but of a self-existing executive authority, for which he or they who possess it are the only indebted to the Nation; and

<sup>192</sup> Henrika Tandefelt, "The Image of Kingship in Sweden, 1772–1802", in Ihalainen et al., *Scandinavia in the Age of Revolution*, 41–54.

<sup>193</sup> Bo Lindbert, *Den antika skevheten: Politiska ord och begrepp i det tidig-moderna Sverige* (Stockholm: Kungl. Vitterhets historie och antikvitets akademien, 2006), 186. Cited in Nokkala Ere Pertti, "Rewriting Eighteenth-Century Swedish Republican Political Thought: Heinrich Ludwig von Hess's *Der Republikaner* (1754)," *History of European Ideas* 42, no. 4 (2016): 502–515, 504.

<sup>194</sup> Gabriel Bonnot Mably, *De l'étude de l'histoire*, revised by Barbara Negroni (Paris: Fayard, 1988), 188: 'C'est le chef-d'œuvre de la législation moderne, et les législateurs les plus célèbres de l'antiquité ne désavoueroient pas cette constitution où les droits de l'humanité et de l'égalité sont beaucoup plus respectés qu'on auroit dû l'espérer dans les temps malheureux où nous vivons'. Cited in Pertti, "Rewriting Eighteenth-Century Swedish Republican Thought", 504.

<sup>195</sup> Despite the limited scholarly interest in the Swedish constitution as an important contribution to the study on the notion of republican liberty see Pertti, "Rewriting Eighteenth-Century Swedish Republican Thought", 503.

<sup>196</sup> Delolme, *Parallel*, 19.

<sup>197</sup> Michael Roberts, *The Age of Liberty: Sweden, 1719–1772*, 1986, I.

with respect to the use of it, are dependent of [sic] no individual”.<sup>198</sup> In Delolme’s programme, the executive power’s existence as an individual force distinct from the legislative power is crucial for the constitution to function based on mutual and constant vigilance between the two branches. This vision is decisively distinct from Rousseau’s account of the executive power as merely an executor of the legislative will or in Mansfield’s word, an errand boy interpretation of the office.<sup>199</sup>

Delolme then outlined the relationship between his research topic and the method of studying it. To examine real powers at work, he argued that one has to distinguish between the form of a constitution and how it works in practice. For Delolme, the delineation of real powers made his work stand out from other contemporary political writers. “Let us take care not to fall into an error, common indeed to those who have written on politicks. Imagining Government by the dint, and as it were, magical effect of an original convention, made once for all, in their inquiries on the liberties of the Nations, they never went farther than the perusal of the books in which the laws of those Nations were contained.”<sup>200</sup> This can be read broadly as an attack on the social contract (or the “original convention”) outlooks on politics. Delolme insisted that English modern liberty can only be studied retrospectively through the historical and comparative method as opposed to the theoretical approach because there were elements of unintended consequence and the gap between theory and practice that were not captured in “the books in which the laws of those Nations were contained”. *A Parallel* already adumbrates Delolme’s paradoxical account of authority, resistance, stability, and liberty which is to be examined more closely in his *Constitution*.

After establishing his method of study, Delolme demonstrated how during the Age of Liberty, the Swedish nobility took total control over the constitution because of their dominance in all political branches. The legislative branch consisted of the senates and numerous committees of which the members are the commons. This, in effect, weakened the unity of the commons and resulted in the nobility having a decisive majority in the legislative branch. This meant that, as the majority in the legislature, the nobility proposed laws for their own interest. In the executive branch, the Swedish king, unlike the English, could not appoint the members of the Privy Council nor could he select ministers. Moreover, unlike the English monarch, the Swedish king did not possess a prerogative:

In consequence of such a union of the Executive Power, with the active part of the Legislative, that is, with the exclusive power of proposing laws and remedies, the whole force of Government becomes united with the only Power that might regulate and repress it. The Nobles, in their respective capacities,

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<sup>198</sup> Delolme, *Parallel*, 3.

<sup>199</sup> Hervey Mansfield, *Taming the Prince: The Ambivalence of Modern Executive Power*, (John Hopkins University Press), 1993, 2-3. Delolme’s account of the constitutional dynamism based on the idea of distrust, jealousy, and pride is examined in Chapter Four.

<sup>200</sup> Delolme, *Parallel*, 12.

wink at each other's oppressions; they wink likewise at the unjust exertions of the governing Power, because they are not exposed to them.<sup>201</sup>

For Delolme, this is why the Swedish Age of Liberty was in fact, the age of the nobility's exploiting the constitutional advantage under the protection of the republican form. Playing with the theme of the apparent and the actual, Delolme contended that in Sweden before the 1772 coup, "if, setting, aside the deception from the words *Republick* [sic], *Assemblies of the People*, or even of *Peasants*, we examine into the fact, we shall see the liberty of the subject, reduced to a mere shadow, never to have extended beyond the appearance of the privileges they had the name of enjoying."<sup>202</sup>

In conclusion, distinguishing himself from previous historians on the historical development of European monarchies, Delolme had a sceptical view on the nobility as a mediating power between the Crown and the commons. For him, the nobility becomes dangerous once a part of it has a share in the executive power. Although *A Parallel* as a historical writing is rather short and limited in terms of its references, it is beneficial for the study of oligarchical disposition of republicanism. For Delolme, Sweden and England differed significantly by their effectiveness in controlling the nobility especially by the use of the executive power. It resulted in the Swedish system's failure to nurture individual liberty both during the Age of Liberty and after the coup which ended it.

**Scottish and Irish Liberty in Delolme's "A Few Strictures of the Union of Scotland with England and on the Present Situation of Ireland Being an Introduction to Defoe's *History of the Union* (1786)".**

The rise and fall of the nobility and the notion of the public also persist in Delolme's historical work on Scotland and Ireland as a part of the British Empire. He welcomed the prospect of the legislative union between the two kingdoms. However, he was also concerned with the sovereign executive monarch that rules over two kingdoms, with independent parliaments. In this scenario, the royal executive power becomes financially independent and manoeuvres the military support of one kingdom against the other. He also warned against the distinctions between Scotland and

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<sup>201</sup> Ibid, 19.

<sup>202</sup> Ibid, 49.

Ireland that would give rise to challenges which the Anglo-Scottish union did not encounter. The work, in this regard, ends the chapter with the question about the applicability of the English constitutional principles in different historical contexts which previously has been overlooked by constitutional theorists who mainly focused on his idea of a balanced constitution, divorced from the historical analysis. Moreover, it also reveals Delolme's previously overlooked serious engagement with the constitutional structure of the post-imperial Britain after its loss of the American colonies and the continuity of his critique of what he deemed to be the republican reform of the constitution. The issue is a part of the wider problem concerning the preservation of peace in Europe after the Treaty of Paris.

The essay is best understood in the historical context of Pitt's 1785 commercial propositions which called for the military support of Ireland for the British Empire as well as a hereditary revenue that would increase according to the Irish economic growth in exchange of a free trade agreement within the British Empire. Its failure was followed by the government's discussion on the future legislative union of the two kingdoms. The Irish issue came to the attention of the public after the loss of the American colonies inspired political movements in Ireland. Delolme's essay was first published as an introduction to the re-publication of Defoe's *History of the Union of Great Britain* which was first published in 1709 in celebration of the historic 1707 Union Act. The republication of it amidst the discussion about the Anglo-Irish union therefore was an apt selection. That Delolme, an author who was personally praised by Pitt in the parliament, was selected to contribute an introductory essay to the discussion, was therefore understandable. Despite his general supportive stance on the union, he also warned against complications that might arise due to the complex Anglo-Irish history. This might explain why his analysis on Ireland was cut short. From page 72 to the last page of 95, the essay was completed by another anonymous author. Thomas Busby claimed that his interview with "Mr. Spilsbury", who was Delolme's acquaintance revealed that he had a lawsuit with Stockdale who was the publisher.<sup>203</sup> *The Monthly Review* of 1787 also points out the discrepancy between Delolme's "impartial" observation on the subject of Ireland and the second half of the essay which explicitly supports Pitt's position.<sup>204</sup> Nonetheless, this dispute did not obstruct the republication of this introduction as a standalone essay titled *The British Empire in Europe* (1787). In this new edition, Delolme kept the original essay on Scotland but the second part on Ireland has minor changes. For example, details of the 1785 Navigation Act were added which is important to the present examination of the relationship between the executive power and foreign dominations. This chapter, therefore, will mostly rely on the 1787 version of the essay in its examination of Ireland.

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<sup>203</sup> Thomas Busby, *Arguments and Faces Demonstrating that Letters of Junius Were Written by John Lewis De Lolme, LL. D.*, London, 1816, pp. 12.

<sup>204</sup> *The Monthly Review*, London, July-December 1787, 501-2.

Delolme continued his discussion on the independence of the executive power that rules over two kingdoms from his analysis which first appears in *Constitution*. “[U]nder Charles the First, the regal power was obliged to submit to the power of the People, the king possessed other dominions besides England, viz. Scotland and Ireland, and therefore seemed to enjoy the same advantages as the Kings of France, that of reigning over a divided Empire or Nation.”<sup>205</sup> In this comparative work between the Anglo-Scottish and the Anglo-Irish history, the question of executive power, foreign dominions, and modern liberty was examined to inform the public of the pros and cons of Pitt’s proposition for the legislative union.

The essay begins with his examination of the Anglo-Scottish relation up to the union in 1707. He first pointed to the geographical proximity which rendered the kingdom of Scotland a target of the ambition of English kings as far back as Edward I. The transformative event, however, was after the union of the Scottish and the English Crowns under James IV and I. After the union of the Crown, the military aggression between Scotland and England was transformed into the rivalry between the English and the Scottish subjects for the attention of the ruling monarch. “In the midst of this mutual rivalry [sic] and opposition, King James enjoyed a secured power: each Kingdom reciprocally supplying the means of keeping the other in awe and subjection.”<sup>206</sup> This analysis echoes his account of the success of English liberty which stems from the unity of interest between the nobility and the people against the Norman kings. The union of the crowns, in contrast, initially brought prosperity to the monarch at the expense of the liberty of the subjects of both kingdoms. This analysis also resonates with his account of how the English constitution might lose its celebrated liberty with the initiation of the direct subsidy from the American colonies to George III if the monarchical executive power is freed from the financial control of the English parliament in *Constitution*.<sup>207</sup> The unity and the strength of the executive power can only be channelled for the public good if it entirely depends on the House of Commons for subsidy. In this essay, the success of this principle is portrayed as deeply linked to the historical formation of the constitution.

The unintended consequence of the 1603 union, nonetheless, began to emerge during the English Civil War which resulted in the defeat of the executive power by the united interest of the English and the Scottish subjects against the tyrannical monarch. Delolme here emphasised the alleged originality of his argument in linking the British dominion of Scotland and the union of the Crowns, to the defeat of Charles I. He claimed that:

Historians have observed that the great internal change of circumstances that had taken place in England, about the times of Charles the First, hindered the situation of the King very difficult; but they

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<sup>205</sup> Delolme, *Constitution*, 49.

<sup>206</sup> Delolme, *A Few Strictures*, 1786-7, 11.

<sup>207</sup> Delolme, *Constitution*, 332.

have not taken sufficient notice how much this difficulty was farther increased by the accession of another Kingdom. To have two Kingdoms to manage at once: the one [Scotland] full of the spirit of turbulence and restlessness and the other perfectly well disposed to imitate the example, was a task infinitely beyond the skill of Charles successfully to compass.<sup>208</sup>

What other historians missed before him was how Scotland “thrown of her obedience” to England “at the time of the Revolution, or since, sufficiently prove that it was no unfavourable circumstance to English liberty.”<sup>209</sup> The Scottish disobedience to Charles I also had an unintended consequence in the improvement of English liberty as the English subjects’ imitated the Scottish “spirit of anarchical turbulence” and united in their cause with the Scottish subjects against the monarch<sup>210</sup>. He explicitly identified the union of interest between the Scottish and the English subjects as the prime factor.<sup>211</sup> This analysis is reminiscent of his account of the Norman Conquest and its by-product of uniting the subjects of all ranking against the foreign kings and giving birth to English liberty. The essay therefore reveals how his account of the executive power and the schemes to control it are intertwined with the historical examination of the power struggle between the rulers and the ruled.

Nonetheless, the closer union between Scotland and England also later saw the rise of a new obstruction to liberty, namely the party spirit which is employed by Delolme to describe obstructions against the union of interest between the English and the Scottish subjects. By party spirit, he meant a kind of political passion which “pestered so many other free States, making of the same Nation as it were two distinct People.”<sup>212</sup> In the case of Scotland, he referred to the increasing religious tension especially among the Catholics caused by the maltreatment of the English parliament. In Delolme’s account, the Act of Settlement of 1701 which disqualified future Catholic members of the royal family to inherit the throne was the trigger of this episode of the Anglo-Scottish dispute. The Scottish Parliament retaliated in the form of the 1707 Act of Security with the help of “Party in Scotland which gained popularity through its opposition to England.”<sup>213</sup> The Act demands free trade in exchange of Scotland’s acceptance of Queen Anne as the new monarch.<sup>214</sup> Delolme described the act as “in reality, a Bill of exclusion against the Possessor of the Crown of England.”<sup>215</sup> This prompted the English Parliament to issue the Alien Act of 1705 which would treat Scottish people and their property in England as alien as well as threatening for intercepting the trade of Scotland to the countries at war with England, especially France. He

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<sup>208</sup> Ibid., 12.

<sup>209</sup> Delolme, *Constitution*, 49.

<sup>210</sup> Delolme, *A Few Strictures*, 11.

<sup>211</sup> Ibid., 13.

<sup>212</sup> Delolme, *Constitution*, 18.

<sup>213</sup> Ibid., 16.

<sup>214</sup> Ibid.

<sup>215</sup> Ibid., 18.

emphasised how “the complaints of the Scots...were not without some foundation” as the move of the seat of power to London after the unification of the Crown had damaging effects especially on the Scottish nobility’s political power.<sup>216</sup>

The political tension also coincided with England’s victory on the continent with the military success led by Duke of Marlborough over Louis XIV. England’s position of dominance rendered Scotland, now without the hope of the French support, with “no prospect of military exertions.”<sup>217</sup> It led to the Union Act of 1707 which had powerful political implications, especially to the Scots. In this narrative, the legislative union resulted in the decline and the eventual demise of the Scottish nobility due to new restrictions concerning their seat in the House of Lords. The Scottish peers “found themselves in a more disadvantageous situation in regard to receiving honours from the Crown than Scottish commoners.”<sup>218</sup> The legislative union had the effect of destroying feudal orders in the Scottish society which the Scottish people benefited from. Delolme gave a highly positive account of the Union. He asserted that “Most of the People of Scotland might be said, in fact; to have acquired no individual freedom, nor even advantage by the Treaty of Union, until the passing of the Act we mention...The feudal Tenures of land by wardholding and Knight-service, together with their incidents and casualties, which were another source of, oppression upon a numerous class of individuals, were also abolished at that time.”<sup>219</sup> More importantly, the legislative union also rendered Westminster to be the sole financial source of the Crown and therefore had it sole control over the executive.<sup>220</sup>

Resonating with his analysis of the English constitutional history, Delolme championed the decrease in the nobility of power and related it to the rise of modern liberty. This improvement of the Scottish liberty of the subject is portrayed as directly linked to the political union of the subjects of the two nations “at the expense of the Royal Authority” as well as the decline of the traditional nobility’s power. The “perpetual peace” gained by the Union also crucially certified “that new model of Government which was introduced by it.”<sup>221</sup> His analysis of the Anglo-Scottish Union ends with a recognition of the transformative effect of the union to the English system that had incorporated Scotland as a part of the empire with the success of the legislative union. Delolme’s examination of Anglo-Scottish union puts to the fore the unity of interest among all subjects against that of the Crown and the historical circumstances that allowed it to take form.

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<sup>216</sup> Ibid., 15

<sup>217</sup> Ibid.

<sup>218</sup> Ibid., 22.

<sup>219</sup> Ibid., 23.

<sup>220</sup> As Delolme argued in *Constitution* concerning the House of Commons’ relation to the monarch that “in these days, when everything is rated by pecuniary estimation, when gold is become the great moving spring of affairs, it may be safely affirmed, that he who depends on the will of other men, with regard to so important an article, is, whatever his power may be in other respects, in a state of real dependence.” 64.

<sup>221</sup> Ibid., 25.



Only then foreign dominions would not harm the dependence of the executive power on the legislative. The process of the formation of the unity of public interest among all subjects was portrayed as gradual and often depends on factors beyond the control of political actors, reflecting the characteristic of his science of politics.

These historical contingencies are put forward in his analysis of the Anglo-Irish history to call attention to the fact that such projects of legislative union might take time before liberty can benefit from it. He first examined the different conditions of Ireland and its relationship to England. First, Ireland was not as homogenous as Scotland and consisted of waves of colonial settlers, the most important one being the 1169 Norman invasion. During the lengthy course of time, these colonists became a part of the native and diverse population. In this period, Delolme proposed that the treatment of Ireland should be understood similarly to the British parliament's relation to the American colonists.<sup>222</sup> The natives of Ireland did not profess a united discontent against the ambition of the English kings due to the diversity of interests among different social groups. A serious attempt to conquer Ireland was only initiated after the Spanish threat of invasion due to its strategic location.<sup>223</sup> However, the Protestant Reformation under Edward VI saw the beginning of the discontent which was exacerbated by the monarch's meddling with the Irish parliament by setting up new counties resulting in the Protestant "artificial strength" as they had most seats in the Irish parliament despite their significantly smaller population in comparison to the Catholic counterpart. Instead of representing the Irish interest, the origin of the Irish parliament was to preserve the English interest.<sup>224</sup>

Since then, the Irish Protestant-dominated Parliament under the control of English influence resulted in Ireland's *de facto* submission. The Irish Parliament became the symbol of the English dominance on the island. It was a "Colonial Assembly" rather than a parliament.<sup>225</sup> In Delolme's narrative, the emphasis is on how the injustice done in the name of the Protestant cause was the source of the beginning of the political tension between the two nations which was never portrayed in the historiography. Sir John Davies, a legal architect under James I and a pioneer of the legal settlement in Ireland, produced the famous treaty *Discovery of the True Cause why Ireland was never entirely Subdued till the beginning of His Majesty's Reign* in 1612. The work was also re-published in 1747 amidst the growing interest in Anglo-Irish relations.<sup>226</sup> In this essay, the treatise was exposed for its contradictions and English bias. Delolme deemed the work to be not only incompetent but also malicious in its political intention. It "contains continual

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<sup>222</sup> Ibid., 39.

<sup>223</sup> Ibid., 43.

<sup>224</sup> Ibid., 47, 49.

<sup>225</sup> Delolme, *A Few Strictures*, 92.

<sup>226</sup> More on the topic see Hans S. Pawlisch, *Sir John Davies and the Conquest of Ireland: A Study in Legal Imperialism*, (Cambridge: Cambridge University Press, 1985).

contradictions from the beginning to the end. He [Davies] calls the Kings of England from the reign of Henry the Second, Absolute Monarchs of Ireland, having in right all Royal and Imperial Jurisdiction there he brands the native Irish with the names of perfidious Rebels, wicked and ungrateful traitors, throughout his Book, and all for what? Because the Kings of England had conquered their Country: and yet the Book is purposefully written to point out the causes why they had not conquered it.”<sup>227</sup> This imperial origin of the Irish parliament nonetheless was not opposed by the Irish natives because of the absence of a united interest due to the diversity of the population including the severe Protestant-Catholic division.

The turning point in Anglo-Irish relations commenced with the formation of the Irish public as well as the Irish interest against that of the English. In this regard, it differed from the formation of the Anglo-Scottish interest which was partly made possible with the historic union of the subjects against monarchical power during the English Civil War. The formation of the Irish public was made possible against the backdrop of the increasing English influence exemplified with Pitt’s commercial propositions in 1785. This discontent which was part and parcel of the formation of the Irish public interest against the English was captured as early as the publication of William Molyneux’s *The Case with Ireland* in 1698: “This Pamphlet, together with the high degree of notice that was taken of it by the English House of Commons, may be considered as having been the public opening of the controversy and the political contention between England and Ireland, at the beginning of this century.”<sup>228</sup> The response of the English House of Commons was to declare the work to be “of dangerous consequence to the crown and people of England by denying the authority of the king and parliament of England to bind the kingdom and people of Ireland”.<sup>229</sup> In doing so, the House of Commons helped to shape the Irish interest against not only the English people but also the Crown itself. The seventeenth century ended with the beginning of the Irish public’s increasing discontent with both the British parliament and the Crown. Unlike the Scottish and the English subjects’ experience during the English Civil War, the very origin of the Irish united interest was exclusively in opposition to the English nation as a whole.

Another important difference from the Scottish case is that the Scottish nobility lost its traditional power after the 1707 Union while the Scottish people saw an increase in individual liberty at the expense of the nobility’s political power. The formation of the Irish interest, in contrast, saw the co-operation of the Irish “men of influence” with the Irish people. Delolme gave an account of Charles Lucas and his examination of the unlawfulness of several branches of power exercised by the Lord Mayor and the Alderman of Dublin. “His endeavours were acceptable to

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<sup>227</sup> Delolme, *A Few Strictures*, 36.

<sup>228</sup> Delolme, *British Empire in Europe*, 85.

<sup>229</sup> *The Parliamentary History of England from the Earliest Period to the Year 1803*, Volume V, (London, 1809), 1181-2.

the generality of the People, that, on the death of Sir James Somerville, in the year 1746, he received public invitations to declare himself a Candidate for the City of Dublin to which seat he was accordingly elected.”<sup>230</sup> While he did not rule out Lucas’ political interest in this narrative, the focus was on how the English oppression encouraged the merging of personal ambition with the Irish public interest. In short, “there was a degree of similarity between his career and that of Mr. Wilkes.”<sup>231</sup> Interestingly, he is portrayed in Delolme’s narrative as a result of the deep-rooted English influence in Irish politics rather than a political agent who simply exploited popular support for his personal ambition. The incorporation of Lucas into the parliamentary politics also epitomised the unity of interest between the political leaders and the people against the English interest. This solidification of Irish interest also further developed after the American Crisis and the British subsequent military defeat. “Men of influence in Ireland thought it advisable to seize as a proper opportunity for increasing both their own private consequence, and the particular advantages of that part of the Empire to which they belonged.”<sup>232</sup> Taking further advantage with the 1778 establishment of the Volunteer Association, a local militia which originally was established during the war with the American colonies, the Irish took this opportunity in light of Britain’s recent defeat to demand legislative independence which became successful in 1782.<sup>233</sup> For Delolme, the Association effectively “had infused a new spirit into the Politics of Ireland” by combining the military strength, public support, and newly obtained political power by the Irish parliament.<sup>234</sup> For Delolme, “The British Parliament, in their dealings with Ireland, had evidently availed themselves of the right of the strongest.”<sup>235</sup>

While Delolme was generally supportive of the legislative union between Britain and Ireland, his caution is revealing. It comes from the perspective of someone who valued the recent experience of the loss of American settler colonies as well as the “success” of the Anglo-Scottish union in 1707, especially to the control of the executive power. He warned against the financial independence of the Crown due to its direct subsidy from foreign dominions like the American colonies. Similarly, Irish legislative independence might have meant a direct income to George III that came from another political body beyond the English House of Commons. The constitutional implication of the Crown’s financial independence, he argued, was overlooked:

there would have been no necessity that the aids granted by Ireland and America should have risen to an equality with those granted by the British Parliament: it would have been sufficient, to produce the

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<sup>230</sup> Delolme, *British Empire in Europe*, 123.

<sup>231</sup> Ibid. Lucas was also dubbed by the then lord lieutenant of Ireland, Viscount Townshend “Ireland’s Wilkes”

<sup>232</sup> Delolme, *A Few Strictures*, 65.

<sup>233</sup> On the English propaganda and how “the legislative autonomy gained in 1782 hardly modified the socio-political structures” see, for example, Olivier Coquelin, *Grattan's Parliament (1782-1800): Myth and Reality*, 2009, 48.

<sup>234</sup> Delolme, *A Few Strictures*, 67.

<sup>235</sup> Ibid., 128.

effects we mention, that they had only borne a certain proportion with these latter, so far as to have conferred on the Crown a certain degree of independence, and at the same time have raised in the English Commons a correspondent sense of self-diffidence in the exercise of their undoubted privilege of granting, or rather refusing, subsidies to the Crown.<sup>236</sup>

## **Conclusion.**

Delolme's argument for strong and unitary executive power did not emerge from a historical vacuum. As this chapter reveals, he was deeply engaged with the historiographical controversies on the origin of English liberty. The resistance against the Norman Conquest is the beginning of English liberty in this narrative, as it was a union of interest between the people and the nobility against the Crown's infringement upon liberty. This union of interest culminated in the legal protection of all subjects and the institutionalisation of the people's control of monarchical executive power after 1688 as the House of Commons gradually rose to power. On the contrary, the Swedish Age of Liberty, in contrast to England, saw the nobility's victory over both the monarch and the people despite the constitutional form of limited monarchy. The divided executive power and the ambiguity of the limitation of the power benefited the nobility as they gained control over both civil and military power at the expense of political liberty. The comparative study between Scotland and Ireland tells a similar story. Scotland's formation of the public interest was at the expense of the Scottish nobility who lost their traditional political power as the centre of politics moved to Westminster and feudal ties were cut by the political transformation of the 1707 Union. In Ireland, by contrast, the formation of the Irish interest was between the Irish "powerful leaders" and the people against the whole of the English national interest. Delolme's serious engagement with "real powers" and history of the struggle of powers beyond the legal texts, and understanding of politics narrowly as limited to the parliament, should be understood in tandem with his scepticism of rival analyses of the English constitution, which will be examined in the next chapter.

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<sup>236</sup> Delolme, *Constitution*, 333.

## CHAPTER THREE

### Critiques of Rousseau, Hume, and Montesquieu

#### Introduction.

Delolme engaged closely with other critics of the English system and regarded his contribution to the long-standing debate on the nature of the constitution to have great political implications beyond English national politics. With the re-evaluation of rival accounts of the English system, his programme presents the English model as a paradigm for the possibility of liberty in the modern world. The first part of his critique of Rousseau explores the continuity of the Genevan question concerning the expression of popular sovereignty in representative politics. For both of them, the issue directly links to the problem of constitutional “usurpation,” one of the key terms in Rousseau’s *Social Contract*.<sup>237</sup> While both agreed on its topicality, Delolme’s analysis differs on its precise definition, which led to Delolme’s criticism of Rousseau’s account of the English system in *Social Contract*. In his critique of Hume, Delolme examines the representative mechanism and institutional arrangements that make the English constitution compatible with the ideal of popular sovereignty without compromising political stability. Unlike Hume who focused on “calculating their [the representatives] number and exterior functions” in his scheme of federalism, Delolme argued that Hume failed to grasp how the notion of interest was key to the success of the English representative mechanism.<sup>238</sup> The issue about the stability and duration of the English system is also further elaborated in Delolme’s criticism of Montesquieu’s famous prophecy of the downfall of the British Empire, which reflects his scepticism of the moralist connotation, in terms like luxury and corruption, that Montesquieu employed.

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<sup>237</sup> see *Social Contract*, Book III, chapter 10–14.

<sup>238</sup> Delolme, *Parallel*, 61. The accusation, however, is highly contestable considering Hume’s in-depth engagement with the idea of interest. For an analysis of the relation between passion and interest and how it underpins Hume’s moral and political philosophy see, for example, Albert O. Hirschman, *The Passions and the Interests: Political Arguments for Capitalism before Its Triumph*, (Princeton U.P., [1977], 2013), 53–54, 56.

## Delolme's Critique of Rousseau.

### The Genevan Question: Popular Sovereignty and Rule of the Few

This section frames Delolme's critique of Rousseau around the issue of constitutional usurpation, understood as the tendency for a person or a group of people to seize popular sovereignty, often in the name of the public good and stability. Back in Geneva during the turbulent years of the 1760s, the young Delolme witnessed the ruling Council of the Twenty-Five's gradual encroachment on the power of the General Council through their total control of the business of the state. Rousseau's call for the supremacy of the legislative power as an expression of the people's will in *The Social Contract* was received as a direct attack on the ruling power.<sup>239</sup> Jean-Robert Tronchin's critique of the work was responded to by Rousseau in his *Lettres écrites de la montagne* (1764).<sup>240</sup> Addressing the same problem of the aristocratic tendency of republicanism, Delolme penned the 1767 *Purification des trois points de droit souillés par un anonyme* in support of Rousseau's argument. In the pamphlet, he criticised the ruling magistrates and their exercise of executive power and full control of the legislature. What happened in Geneva was a perversion of its popular constitutional principle and although it still employed the name of a republic, the lack of the separation of powers rendered it under the total influence of the rule of the few. Delolme in 1767 proposed a democratic solution to this problem, insisting that the General Council was constitutionally "sovereign, nation, and law".<sup>241</sup>

Some scholars believe that Delolme, as the author of the 1767 work who "upheld there the Sovereignty of the People against the theory of Orders within the state", went through "a significant change in a 'conservative' direction, from ideas resembling those of Rousseau to ideas resembling those of Montesquieu", after three years of living in England."<sup>242</sup> To say that he adopted a more "conservative" and "Montesquieuian" perspective, deviating from Rousseau, is however problematic and leads to misunderstandings of his programme. First and foremost, the label of conservatism serves no purpose in the context of eighteenth-century Geneva and later, in

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<sup>239</sup> On Rousseau's critical stance on both the democratic *représentants* and the ruling magistrates' constitutional programmes see Richard Whatmore, "Rousseau and the Representatives: The Politics of the Lettres Ecrites de la Montagne." *Modern Intellectual History* 3, no. 3 (2006): 385.

<sup>240</sup> Rousseau was asked for help by the democratic *représentants* to respond to Trochin's attack and the publication of *Lettres écrites de la montagne* was "carefully orchestrated" by the group *ibid.*, 388.

<sup>241</sup> Cited and translated by Richard Whatmore, *Against War and Empire: Geneva, Britain, and France in the Eighteenth Century*, Yale University Press, 2012, pp. 96.

<sup>242</sup> Palmer, R. R. *The Age of Democratic Revolution: A Political History of Europe and America, 1760-1800*. (New Jersey: Princeton University Press, 1964) 108.

England, as the issue of concern was not authority versus liberty but rather, what liberty means in the modern political conditions of representative politics. Additionally, as the last part of the chapter will reveal, Delolme was highly critical of Montesquieu and his analysis of the English system and proposed his own alternative account as the result. This chapter argues that Delolme's concern remained constantly about subtle constitutional usurpations by people who wield the governmental powers. What had changed after his exile to England was that he became convinced that he found more effective solutions to this problem than Rousseau's proposition for collective legislation in his study of English constitutional history.

As Palmer pointed out in his *The Age of Democratic Revolution* (1964), what remained constant about Delolme's political standpoint despite the apparent change towards a Montesquieuan direction is his distrust of aristocracy.<sup>243</sup> This chapter agrees with this line of argument that the main objective of Delolme's project is to, broadly speaking, minimize the risk of the rule of the few in all forms. Rousseau's programme, as sketched out in *The Social Contract*, he argued, fails to be adequately perceptive of this subtle threat in modern conditions. Even in the English system which he lauded, Delolme warned against constitutional usurpation by the few:

If through the unforeseen operation of some new regulation made to restrain the royal prerogative, or through some sudden public revolution, any particular bodies or classes of individuals were ever to acquire a personal independent share in the exercise of the governing authority, we should behold the public virtue and patriotism of the Legislators and Great Men immediately cease with its cause, and Aristocracy, as it were watchful of the opportunity, burst out at once, and spread itself over the Kingdom.<sup>244</sup>

In his critique of Rousseau in *Constitution*, Delolme found Rousseau's proposed solution in *Social Contract* to be inadequate in both perceiving and preventing subtle forms of usurpations which he associated with the legislative encroachment upon liberty.

His critique, however, comes from a position of someone who agrees with Rousseau on the separation between government and sovereignty. The people own the highest political power in the state but "the body of the People cannot act without either subjecting themselves to some Power, or effecting a general destruction, the only share they can have in a Government with advantage to themselves, is not to interfere, but to influence,—to be able to act, and not to act."<sup>245</sup> For this reason, it is for the benefit of themselves that they do not exercise the power directly. The

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<sup>243</sup> This caution against the threat of oligarchy also attracted John Adams. Palmer argues that "Delolme did not become wholly a Whig, nor did he wholly give up what he had believed at Geneva. There is a unifying thought in all his political writings, one incidentally which was to appeal strongly to John Adams. It was an intense dislike of government by oligarchy, coterie, or self-perpetuating aristocracy" *ibid*, 109.

<sup>244</sup> Delolme, 324.

<sup>245</sup> *Ibid.*, 219.

distinction between the sovereign and the government has a long intellectual tradition in Geneva. Helena Rosenblatt uncovers the debate which centres the legacy and intellectual dominance of Hugo Grotius, Jean Barbeyrac, and Samuel Pufendorf in the eighteenth-century Geneva. During the 1730s civil strife, in replying to Jacques-Barthélemy Micheli du Crest's claim that the nature of the Genevan constitution was a democratic republic, Barbeyrac argued that "the people of Geneva can be as sovereign as you please; it still does not exercise the acts of sovereignty itself."<sup>246</sup> In this regard, Rousseau's *Social Contract* revived the distinction between the sovereign and the government in the lost cause of Micheli of the first half of the eighteenth-century.<sup>247</sup> This disagreement between Delolme and Rousseau therefore, is best understood as a part of the Genevan debate on popular sovereignty. Unlike Rousseau (and Micheli) who found the city-state of Geneva's constitution and its distinction between sovereignty and government to be "an example to the rest of Europe", Delolme found that the sleeping sovereignty was best preserved in the English system although it had not been recognised by his contemporaries and his *Constitution* aims to demonstrate this.<sup>248</sup>

Jean Barbeyrac criticised Rousseau's *Social Contract* for "believing with Hobbes that men are born the enemies of one another, and that our worst enemies are our superiors, like him he remedies this by Despotism, though locating it in a different place. Whereas Hobbes gives arbitrary power to a Prince, Mr Rousseau (who knows no middle ground) instead gives a similar power to the multitude."<sup>249</sup> In a way, Delolme's project attempts to provide this "middle ground" in combining a strong and unitary executive power, with the republican doctrine of the rule of law and its focus on the limitation of the governing powers by the constitution. In this regard, Delolme shared the democratic sovereignty assumption with his compatriot but his concern about legislative despotism is a mirror-image of Rousseau's concern with a unitary executive power as "the particular will has greater sway and more easily dominates the other wills."<sup>250</sup> Although Delolme had the opposite opinion concerning the division of the executive power, he engaged with Rousseau's analysis as it can be seen from his reference, as well as his adoption of Rousseau's terminology.

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<sup>246</sup> Helena Rosenblatt, *Rousseau and Geneva*, (Cambridge University Press), 1997, 143.

<sup>247</sup> Richard Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy*, 2016, 124.

<sup>248</sup> Rousseau, *Lettres écrites de la montagne*, uvres complètes, 5 vols. (Paris, 1959–95) 3: 806–8. The translation is from *Letters Written from the Mountain, The Miscellaneous Works of Mr. J. J. Rousseau*, 10 vols. (London, 1767). Cited in Richard Whatmore, "Rousseau and the Representatives: The Politics of the *Lettres Ecrites de la Montagne*", *Modern Intellectual History* 3, no. 3 (2006): 386.

<sup>249</sup> From Rousseau, *Lettre d'un citoyen Genève à un autre citoyen*, Geneva, 1768, 72–3. Translation from Helena Rosenblatt and Paul Schwigert, *Thinking with Rousseau*, (Cambridge University Press), 2017, 61.

<sup>250</sup> Rousseau, *The Social Contract*, 95, III: 409, 86.



## Liberty

Although Rousseau's opinions on liberty vary across his works, here I selectively focus on his opinion on the topic in *The Social Contract's* Book 3 Chapter 15, because it is this famous passage concerning English liberty that Delolme referred to and commented on extensively in *The Constitution*.<sup>251</sup> Rousseau criticised English liberty under the topic of "Of Deputies or Representatives" that "The English people think it is free; it is greatly mistaken, it is free only during the election of Members of Parliament; as soon as they are elected, it is enslaved, it is nothing. The use it makes of its freedom during the brief moments [of selecting the representatives] it has it fully warrants its losing it."<sup>252</sup> For him, the idea of the representative of the people exemplified in the celebrated English constitution is precisely the cause of its degeneration. This opinion can only be understood in tandem with his depicted ideal constitution described in *Social Contract*.

In the work, Rousseau argued that the establishment of this ideal constitution requires all to enter into a contract with all, creating the sovereign or the body of the people which simultaneously signifies the transition from the natural order based on self-interest to a moral order based on general will.<sup>253</sup> The sovereign is the creature of the people, transforming "the multitudes" into one unified body politic whose will is the general will and the expression of it is the only definition of law. In this portrayal, liberty is no longer contradictory with the existence of the state and its enforcement of law. This is because the general will of the body politic is expressed through laws and when obeyed, the people only comply with the will of their own as a constitutive part of the sovereign. The law is no longer just an expression of an arbitrary power. To be in this kind of state is no longer detrimental to one's liberty: a perfect fusion of liberty and authority, complying with the ultimate purpose of the state for Rousseau which is to preserve liberty.

Rousseau's critique of English liberty is based on the understanding of this ideal constitution delineated in *The Social Contract*. In the English system, the people only directly exercise their legislative power when they elect the representatives. In doing so, they have sealed their fate into

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<sup>251</sup> For example, in *A Discourse on Political Economy*, Rousseau argued "Must the whole nation be assembled together at any unforeseen event? Certainly not. It ought the less to be assembled, because it is by no means certain that its decision would be the expression of the general will; besides, the method would be impracticable in a great people, and it is hardly ever necessary where the government is well intentioned." For a different reading of Rousseau's on direct democracy see, for example, Nadia Urbinati. *Representative Democracy: Principles and Genealogy*, 2008. Hampson, "Review. Rousseau's Political Imagination. Rule and Representation in the 'Lettre a D'Alembert'." *French Studies* 39, no. 3 (1985): 348.

<sup>252</sup> Jean-Jacques Rousseau, *The Social Contract and other later political writings*, ed. Gourevitch, Victor, Cambridge University Press, 1997, 114.

<sup>253</sup> Helena Rosenblatt, *Rousseau and Geneva: From the First Discourse to the Social Contract, 1749-1762*, (Cambridge: Cambridge University Press), 1997, 244.

the condition of slavery defined as the lack of self-determination in politics. In the civil condition, freedom no longer is defined in terms of independence as it used to in the state of nature; in a civil society, it has to be understood in terms of one's relation to others, hence direct participation in the law-making process as the definition of political liberty. Therefore, it follows that, for Rousseau, the existence of the representatives of the people exemplified in the English system hinders this essence of political liberty. It amounts to usurpation in Rousseau's terms as described in book III of *Social Contract*. On the origin of the representative mechanism, Rousseau argued that "The idea of Representative is modern: it comes to us from feudal Government," which is "iniquitous and absurd." It is the kind of government "in which the human species is degraded, and the name of man dishonoured."<sup>254</sup> This negative perception of political representation as the legacy of feudalism is portrayed in contrast with the glorified Roman model "where right and freedom are everything, inconveniences are nothing. Among this wise people, everything was given its just due."<sup>255</sup> The Roman model in *Social Contract* represents a form of government in which the sovereignty lies indivisibly in the people's hands while the government and its magisterial divisions serve to administer the will of the sovereign.<sup>256</sup>

Delolme argued that to participate in the legislation process is to have a share in the exercise of the government power which is a means of preserving political liberty but not political liberty in itself. Delolme summarised Rousseau's definition of political liberty according to *Social Contract* as "Man who contributes by his vote to the passing of a law, has himself made the law; in obeying it, he obeys himself,—he therefore is free" and quickly commented on it as "a play on words and nothing more."<sup>257</sup> Commenting on the republican definition of political liberty as self-determination, he argued that political liberty cannot possibly be equated with the act of legislation because, he explained, "When a law is passed agreeably to his vote, it is not as a consequence of his vote that his will happens to take place; it is because a number of other Men have accidentally thrown themselves on the same side with him:---when a law contrary to his intention is enacted, he must nevertheless submit to it."<sup>258</sup> Delolme here argued that if the idea of determination is the heart of Rousseau's definition of liberty, the contingency of the voting result is an unsatisfactory basis for the notion of the general will which is the legislative determination of the body politic as well as Rousseau's definition of the freedom of the constitution.

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<sup>254</sup> Rousseau, 1997, 114.

<sup>255</sup> Ibid.

<sup>256</sup> see Valentina Arena, "The Roman Republic of Jean-Jacques Rousseau," *History of Political Thought* 37, 2016, 8.

<sup>257</sup> Delolme, 169.

<sup>258</sup> Ibid.

## Usurpation

To further explain the inadequacy of Rousseau's definition of political liberty as self-legislation, Delolme provided examples of disadvantages that might be the consequence of this aspect of Rousseau's political philosophy in *Social Contract*. Delolme argued that, to equate political liberty with the act of participating in the law-making process itself is dangerous as it does not provide enough critical stance on the work of the legislative branch of the government. This opinion is not uncommon since by the late-eighteenth century, the legislative tyranny of the 1640s was already agreed upon by all sides on the political spectrum.<sup>259</sup> For Delolme, Rousseau's theory is dangerous because, in equating the notion of political liberty itself with the act of legislation, it neglects the possibility of unjust pre-conditions of the voting process as well as the possibility of the poor execution of those laws and their detrimental effect upon political liberty. This disadvantage manifests itself in the defects of the Roman Republic's political system. Delolme argued that Rousseau's admired ancient Romans "were satisfied when they saw the few who really governed everything in the State, at times perform the illusory ceremony of assembling the body of the People, that they might appear to consult them: and the mere giving votes, under any disadvantages in the manner of giving them, and how much soever [sic] the law might afterwards be neglected was thus pretended to have been made in common, has appeared to them to be Liberty."<sup>260</sup> To support these arguments Delolme also referred to Livy's *Ab Urbe Condita*. In the book, it is described how the Roman Senate assumed the power of laying taxes in the disguise of the proposal to pay for the expense incurred during the war by setting up a tribute. "By presenting to it [the plebeian assembly] many propositions at once, and which are to be voted upon in lump, they [those who share either the actual exercise of the public power or its advantages] hide what is destined to promote their own private views, or give a colour of it, by joining it with things which they know will take hold of the mind of the People."<sup>261</sup> In other words, for Delolme, Rousseau's equating political liberty with voting is an unsatisfactory definition. The historical example was given to both undermine Rousseau's account of the Roman model as the perfect form of government in securing political liberty, as well as to demonstrate the inadequacy of Rousseau's philosophical definition of political liberty defined as self-legislation.

Rousseau's definition of liberty as self-legislation also allows for those with the share of the legislative power to exploit it for their private interest. This is because, Delolme argued, in Rousseau's theory, there is no room for the legislative power, as an expression of the sovereign, to err and therefore, to be criticised. "Those laws which are intended to be equal for all, are soon

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<sup>259</sup> Lee Ward, *The Politics of Liberty in England and Revolutionary America*, (Cambridge: Cambridge University Press, 2004) 230.

<sup>260</sup> Delolme, *Constitution*, 168-9.

<sup>261</sup> Delolme, 173.

warped into the private convenience of those who have been made the administrators of them---instituted at first for the protection of all, they soon are made only to defend the usurpations of a few.”<sup>262</sup> If Rousseau’s *Social Contract* aims to be a sketch of an ideal constitution which shows how one might establish a legitimate government among the people who already agree that there is a shared interest in forming a civil society, then “there might be no inconvenience in allowing every individual to have a share in the government of the community of which he is a member” which also follows that “in such a Society, and among such Beings, there would be no occasion for any Government.”<sup>263</sup> And if it, rather, intends to propose an institutional solution to “Men as they are” then, it fails to address the possibility of the problem of legislative despotism.

Delolme found Rousseau’s definition of political liberty to be a thin one because it mistakes political power for liberty. This line of argument was made, most famously, by Hobbes and later, Montesquieu in *The Spirit of the Laws* but Delolme’s version of it aims to address Rousseau’s approach to the study of Roman history, which led to his erroneous philosophical conclusion that liberty is self-legislation. To sum up this critique, Delolme contended that what Rousseau deemed to be political liberty “are functions, are acts of Government, but not constituent parts of Liberty” and that “To concur by one’s suffrage in enacting laws, is to enjoy a share...of Power.”<sup>264</sup> Rousseau’s misunderstanding of power as political liberty partly stems from his anachronism in the study of ancient history. Delolme commented that “for a Man to decide that a State whose government and interior administration he is unacquainted, is a State in which the People *are slaves, are nothing*, merely because the *Comitia* of ancient Rome are no longer to be met within it, is a somewhat precipitate decision.”<sup>265</sup> Delolme contended that the ancient political liberty is not desirable for the moderns. For the ancients, “the only proper employment of a free Citizen is, to be either incessantly assembled in the forum, or preparing for war, ---Being valiant, inured to hardship, inflamed with an ardent love of one’s Country. Which is, after all, nothing more than an ardent desire of injuring all Mankind for the sake of that Society of which we are Members.”<sup>266</sup> Rousseau failed to take into account the militaristic disposition of those active citizens of the ancient free states which he deemed as a model perfect for the preservation of liberty.

### The Impossibility of Deliberation in Large Assemblies

Delolme’s second critique argues generally that any large-bodied popular assembly cannot produce a mature decision. This is directed particularly at the possibility of Rousseau’s idea of general will. It is unclear whether Delolme referred to Rousseau’s notion of general will or he

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<sup>262</sup> Delolme, 171.

<sup>263</sup> Ibid. Here Delolme also strikingly resonates with Hume in his essay “Of the Origin of Government” despite the lack of references.

<sup>264</sup> Ibid., 170.

<sup>265</sup> Ibid.

<sup>266</sup> Ibid., 168.

merely meant the will of all. However, here I proceed with the latter interpretation but it is useful to be aware of this ambiguity in his employment of the term. For Delolme, the body of the people cannot unitarily act in any meaningful sense. This is because in all “numerous assemblies”, the problem of demagoguery is inevitable. He then proceeded to sketch out the scene. Although the law-making process does “materially concern them”, as law directly affects their quality of life, “the multitudes” are “incapable of coming to any mature resolution” by their definition of being the multitude. This is because “Those who compose a popular Assembly...lost as it were in the crowd of those who are called upon to exercise the same function with themselves,---as they know how their individual votes will make no change in the public resolution, and that, to whatever side they might incline, the general result will nevertheless be the same, they do not undertake to enquire how far things proposed to them agree with the whole of the laws already in being.” Delolme’s insight here is interesting because he did not argue that this is because the multitudes lack reason required in the process of political deliberation, but it is precisely because they can reason that their individual vote will not change the direction of the public opinion that makes them lack the enthusiasm in participating in the process. He summarised this argument based on his general observation on the nature of humans that “Men will not enter upon a laborious task, when they know that it can scarcely answer any purpose.”<sup>267</sup>

This lack of enthusiasm gives rise to another more dangerous threat to political liberty because the popular assembly will take any hint of direction that might lead to a resolution. This includes “an unusual sight, a change of the ordinary place of the Assembly, a sudden disturbance, a rumour.” From this Rousseau’s “general will results, which is also void of reflection.”<sup>268</sup> However, the worst scenario is sketched out when “those who share either the actual exercise of the public Power, or in its advantages” exploit their knowledge in “the management of public business” for their own personal ambition by giving rise “to every incident that may influence the minds of the multitude who are not on their guard, and who wait for some event or other that may finally determine them.” It is these demagogues who, in practice, “convene the Assembly, and dissolve it; it is they who offer propositions, and make speeches to it.”<sup>269</sup> For this reason, Delolme concluded that “the general will of all...is at bottom nothing more than the effect of the artifices of a few designing Men, who are exulting among themselves.”<sup>270</sup> It is also worth pointing out here that this critique does not aim at rejecting voting rights but argues against its equation with political liberty itself.

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<sup>267</sup> Delolme, *Constitution*, 172.

<sup>268</sup> Ibid.

<sup>269</sup> Ibid., 173.

<sup>270</sup> Ibid., 174.

Delolme's critique of political deliberation in large assemblies resonates with David Hume's point made in *The Idea of Perfect Commonwealth* (1752), in which Hume approached the problem of large political bodies as an institutional question which paves the way to his analysis of federalism as a possible solution to the problem of scale. Delolme, however, disagreed with Hume concerning his underlying assumption about political representation in his examination of the British Empire.

### **Delolme's Critique of Hume.**

Hume's *Of Civil Liberty* (1741,1777) and *The Idea of Perfect Commonwealth* (1752) shared with Delolme the concern about the discrepancy between the ancient knowledge in politics and the modern political challenges. In *Of Civil Liberty*, Hume pointed out how earlier work on monarchy, such as Machiavelli's writings, as a form of government, was extremely limited. Even as someone who was writing in the eighteenth century, Hume confessed that "Having, therefore, intended in this essay to make a full comparison of civil liberty and absolute government, and to show the great advantages of the former above the latter; I began to entertain a suspicion, that no man in this age was sufficiently qualified for such an undertaking; and that whatever any one should advance on that head would, in all probability, be refuted by further experience, and be rejected by posterity."<sup>271</sup> Here Hume highlighted the increasingly blurred line between the forms of government and their capacity to foster liberty. In other words, that liberty thrives better in a republic than under a monarchy becomes increasingly contestable in the light of the modern changes to both monarchy and republicanism.<sup>272</sup> Nonetheless, despite "the greatest advances towards perfection" of the monarchical form of government in comparison to other forms, he still emphasized how although modern monarchies "have approached near popular ones, in gentleness and stability; they are still inferior. Our modern education and customs instil more humanity and moderation than that ancient; but have not yet as been able overcome entirely the disadvantages of that form of government"<sup>273</sup> For Hume, qualities like gentleness and stability seem to be more commonly associated with popular government and the reason that some modern monarchies are able to gain some of these qualities is accredited to modern education and customs. Agreeing with Hume, Delolme also pointed out how the English constitution, as a modern limited monarchy, is notable in its political stability as well as its mildness, especially when it comes to the area of

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<sup>271</sup> David Hume, *Political Essays*, (Cambridge University Press), 1994, 51.

<sup>272</sup> This particular topic of interest is also shared by Montesquieu under the title of an unfree republic which is explored in details in the next part of this chapter concerning Delolme's critique of Montesquieu's account of the English system

<sup>273</sup> *Ibid.*, 56.

the criminal justice.<sup>274</sup> However, despite their initial agreement on the superiority of the English representative system to ancient popular constitutions in maintaining political stability, both authors differed concerning the details of what constitutes successful political representation.

Despite one interpretation of *An Idea for a Perfect Commonwealth* as a satire piece subtly criticizing pure theories, for Delolme, this contemporary work seriously tackles the important question about constitutional reform.<sup>275</sup> In the essay, Hume proposed an ideal form of government to be “adjusted to the ancient fabric, and preserve the entire chief pillars and supports of the constitution.”<sup>276</sup> Using James Harrington’s *Oceana* which is “the only valuable model of a commonwealth, that has as yet been offered to the public” as his point of departure, he identified both its advantages and defects before proposing his own model focusing on how to preserve the advantages of the small republics in modern large-scale states, including a federal one. The outline of this proposed commonwealth is, in sum, a large state with a bicameral legislative parliament in which both houses are democratically elected through a two-stage process. The bicameral feature, he argued, would result in better political deliberation.<sup>277</sup>

One important criticism that Hume offered is that Harrington’s model gives exorbitant power to the senate by allowing it to have a negative on the proposed bills. Due to this defect “*The Oceana* provides not a sufficient security for liberty, or the redress of grievances”, because it cuts short parliamentary debates on controversial bills.<sup>278</sup> His alternative model proposes a bicameral and decentralised modern republic with numerous counties and parishes each with their own representative.<sup>279</sup> What is central to Hume’s scheme is the idea that those diverse interests of each constituent be represented adequately. In other words, the success of political representation lies in its capacity to approximate the diversity of the interests of the represented. The underlying principle in Hume’s theory of political representation is also congruent with Hume’s opinion concerning the idea of private interests represented by political parties.<sup>280</sup>

Regarding the relationship between private interests and the establishment of government, Hume argued, in stark contrast with Rousseau’s idea of general will, that it is the lack of one

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<sup>274</sup> Delolme, *Constitution*, 252.

<sup>275</sup> More on the subject see James Conniff, “Hume’s Political Methodology: A Reconsideration of ‘That Politics May Be Reduced to a Science’,” *Review of Politics*, 38/1 (1976), 88–108 and Shirley Letwin Robin, *The Pursuit of Certainty: David Hume, Jeremy Bentham, John Stuart Mill, and Beatrice Webb*, Indianapolis, 1998, 89.

<sup>276</sup> David Hume, *Political Essay*, 221.

<sup>277</sup> Ryu Susato. “Hume as an Ami De La Liberté: The Reception of His ‘Idea of a Perfect Commonwealth.’” *Modern Intellectual History* 13, no. 3 (2016): 569–96., 572-3.

<sup>278</sup> Hume, *Political Essay*, 222.

<sup>279</sup> *Ibid.*, 222.

<sup>280</sup> As Skjönsberg points out, one of the innovative approaches of Hume was to reject a distinction between parties and factions with the former traditionally associated with public good while the latter is condemned as a vehicle for private interests. Max Skjönsberg. “Adam Ferguson On Partisanship, Party Conflict, And Popular Participation.” *Modern Intellectual History* 16, no. 1 (2019): 1-28, 28.

unified public interest as well as the complex nature of it that makes representative government desirable. Foreshadowing and possibly also influencing Delolme's critique of Rousseau, Hume argued that "Had everyman sufficient *sagacity* to perceive at all times the strong interest which binds him to the observance of justice and equity, and the strength of mind sufficient to preserve a steady adherence to a general and distant interest, in opposition to the allurements of present pleasure and advantage; there had never, in that case, been any such thing as government or political society."<sup>281</sup> Another important proposition in *An Idea for A Perfect Commonwealth* is that the executive power be lodged in the senates (there are a hundred of them being chosen from among the ten thousand representatives of each county). "Let the senators meet in the capital, and be endowed with the whole executive power of the commonwealth" and have "all the prerogatives of the British king, except his negative."<sup>282</sup>

Echoing Hume regarding the inevitability of opposing private interests in modern politics, which makes it distinct from the ancient republics, Delolme made a similar remark on the nature of liberty:

What then is Liberty? Liberty, I would answer, so far as it is possible for it to exist in a Society of Beings whose interests are almost perpetually opposed to each other, consists in this, that, every Man, while he respects the persons of others, and allows them quietly to enjoy the produce of their industry, be certain himself likewise to enjoy the produce of his own industry, and that his person be also secure.<sup>283</sup>

Nonetheless, despite their similar opinion concerning the problematic idea of the general will as the basis of political authority, they differed in details on how this diversity of public interests should be alleviated through the mechanism of political representation. By highlighting what Hume failed to address, namely the unity of interest between the representative and the represented, Delolme further explained how Hume's plan overlooks the advantages derived from having a unitary executive power. This backstory is crucial to our understanding of Delolme's own account of the perfect commonwealth for the modern world, which was the English constitution.

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<sup>281</sup> David Hume, *An Enquiry Concerning the Principles of Morals*, in *Hume's Moral and Political Philosophy*, ed. Henry Aiken, (New York: Hafner Publishing Co.), 1948, 202.

<sup>282</sup> Hume, 1994, 223.

<sup>283</sup> Delolme, 2007, 169.



## Delolme's Response to An Idea for A Perfect Commonwealth.

Delolme made a rare direct reference to *An Idea of a Perfect Commonwealth* in his *A Parallel Between the English Constitution and the Former Government of Sweden*. For Delolme, this failure to understand the nature of political representation led ancient republics with popular constitutions to their loss of liberty and eventual ruin. By granting too much trust in their representatives, investing them with both legislative and the executive power, the people of the ancient republics were “necessarily betrayed.”<sup>284</sup> Hume's proposal, while it recognises the importance of the representative mechanism in modern politics over popular constitutions, also fails to appreciate the key to the success of the political representation in the English system, namely the unitary executive power of the crown, which renders the unity of interest between the people and their representatives possible.

In Delolme's account, the history of power struggle between the people and the Crown shaped the interest of the representatives of the people against that of the royal executive power. Crucially, this unity of interest of the people is reflected in Delolme's account of England as a unitary state in contrast with other European monarchies.<sup>285</sup> Regardless of the historical dispute over the meaning of 1066, the argument significantly reveals Delolme's stance on the formation of the unity of the English subject's interest which was formed in opposition to the magnitude of the royal executive power. This historical condition behind the success of the English representative politics, he argued, is overlooked in Hume's analysis:

Mr. Hume, in his disquisitions on the Republican form...though so judicious an Observer, he took it for granted that it was enough, in order to constitute Representatives of the People, that the People, after electing them, should call them so; and only thought of calculating their number and exterior functions. But a little more attention would have informed him that the People never are represented, till the interest of their Representatives is identified with theirs; and if he had reflected that our Constitution has effected this, and made the safety of our Lawmakers depending on the goodness of their laws, he would have looked no farther for the model of a perfect Commonwealth, and seen that what he was seeking on the footsteps of Plato, was already at home.<sup>286</sup>

It also should be highlighted how Delolme's analysis of the English successful representative mechanism, based on the people's antagonism to the strong and unitary royal executive power, informs his vision for a federal republic, which is distinct from what Hume sketched out in his *Idea for a Perfect Commonwealth*. Hume's scheme, on the other hand, proposes to reconcile a possible opposition of interests by adopting the republican form of government both at the local

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<sup>284</sup> Delolme, 186.

<sup>285</sup> See Chapter Two for Delolme's re-working of the history of English liberty.

<sup>286</sup> Delolme, *Parallel*, 61.

and the national level. This results in his calculation for a hundred counties, each as “a kind of republic within itself” and each containing a hundred parishes, ensuring the bottom-up channel through which diverse opinions can be gradually shaped before entering the national political arena. Hume’s scheme of a modern federal republic, in other words, relies on the thorough dissemination of republican principles to all the political layers of the republic.

For this, Delolme accused Hume of falsely seeking a model for a perfect commonwealth on the footsteps of Plato. Instead, he highlighted the importance of distrust in securing liberty in modern representative politics. Drawing on the history of English constitution, he reminded the importance of unitary royal executive power and how its tyranny had shaped the unity of the English subjects in opposition to it. Hume’s proposal for the multiplicity of the executive power (in the hands of the senates) undermines the function of the executive power as the target of jealousy of the subjects which the formation of the English interest historically relied on.

Nonetheless, Delolme also did not endorse the idea that the success of political representation depends by and large on the quality of the representatives as, for example, his contemporary Adam Ferguson believed.<sup>287</sup> A successful political representation relies on the conditions that create unity of interest between the representative and the represented. The English constitutional history, he argued, achieved this goal as a result of the constructive tension between the people and the unitary monarchical power. Hume’s vision for a modern republic which proposes to split the executive power and vest it in the hands of senates fails to grasp this.

### **Delolme’s Critique of Montesquieu.**

#### Montesquieu’s Prophecy and Its Legacy

The question about the durability of the English model was popularised in Montesquieu’s celebrated *The Spirit of the Laws* and its famous prophecy on the fall Empire. It has been a subject of scholarly attention, recently in relation to the Skinnerian discovery of the notion of neo-roman or civic republican as the third missing concept of liberty beyond Isaiah Berlin’s dichotomy of positive and negative liberty.<sup>288</sup> It is beyond the scope of this chapter to enter into the debate

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<sup>287</sup> “Ferguson believed that the “people” were in principle represented under the British constitution, and while exclusions from voting based on sex, age or fortune were indeed arbitrary, liberty was more dependent on the quality of the representatives than on the number of voters.” Skjönsberg, 2019, pp. 28 referring Adam Ferguson, *Principles of Moral and Political Science: being chiefly a Retrospect of Lectures delivered in the College of Edinburgh* 2 vols., Edinburgh, 1792.

<sup>288</sup> On this debate see Gerald C. Maccallum, “Negative and Positive Freedom.” *The Philosophical Review* 76, no. 3 (1967): 312-34., Isaiah Berlin and Henry Hardy. *Liberty: Incorporating Four Essays on Liberty*. Oxford: Oxford University Press, 2002. Skinner, Quentin. *Liberty before Liberalism*. Cambridge; New

concerning the locus of Montesquieu's political thought within the liberalism versus republicanism dichotomy.<sup>289</sup> However, to be able to perceive Delolme's originality in his examination of the English system, it is requisite to first examine his critique of Montesquieu's account of the English constitution, as well as his concern about "the extreme liberty" which might undermine the constitutional separation of powers.

It is best to first remind the reader of Montesquieu's typology of forms of government to avoid possible confusion when the chapter proceeds to discuss the debate on Montesquieu's opinion on the nature of the English government. For him, there are three types of government: despotic, monarchical, and republican. For the republican form of government, it is either ruled by all, in this case, a democracy, or by the few, which makes it an aristocracy. His verdict on the nature of the English system, however, remains a contestable subject. This chapter does not engage directly with this debate, but rather focuses only on his perception of the English system, in the same way that Delolme did in his *Constitution*, as a modern free state with a moderate government as well as his concern about its future loss of liberty.

In the chapter "On the Constitution of England", Montesquieu set out to explain "the laws that form political liberty in its relation with the constitution" (in contrast with the content of book 12 on the laws that form political liberty in relation to the citizen.) Book 11 begins with Montesquieu's warning about the misunderstanding of the word liberty. In republics, he argued, "one does not always have visible and so present the instruments of the ills of which one complains" therefore "one ordinarily places liberty in republics and excludes it from monarchies."<sup>290</sup> The role of the idea of rule of law in disguising "the ills" of the republic is interestingly pointed out. The second mistake commonly made in the study of liberty lies in the common assumption about democracy, "the people seem very nearly to do what they want... liberty has been placed in this sort of government and the power of the people has been confused with liberty."<sup>291</sup> He contended that political liberty is found only in "moderate government" defined as a political system in which "power is not abused". After warning about limits of virtue in preventing the abuse of power, he concluded that "power must check power by the arrangement of things."<sup>292</sup> He here implied that the selected English system is an object of study because its

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York: Cambridge University Press, 1998, Philip Pettit, *Republicanism: A Theory of Freedom and Government*, 1997, Oxford: Clarendon Press and Philip Pettit, 'Keeping Republican Freedom Simple: On a Difference with Quentin Skinner', *Political Theory*, 2002, 30 (3), pp. 339–56.

<sup>289</sup> For an exceptional contribution to the debate on Montesquieu's contribution to the tradition of modern republican liberty see Robin Douglas. "Montesquieu and Modern Republicanism." *Political Studies* 60, no. 3 (2012): 703-19. For further opposition to such distinction between liberalism and republicanism see Andreas Kalyvas and Ira Katznelson. *Liberal Beginnings: Making a Republic for the Moderns*, (Cambridge University Press), 2008.

<sup>290</sup> Montesquieu, *The Spirit of the Laws*, ed. Choler, A., Miller, B., and Stone, H., (Cambridge University Press), 1989, 154-5.

<sup>291</sup> *Ibid*, 155.

<sup>292</sup> *Ibid*.

constitutional arrangement or “principles” manages to achieve this regardless of its form of government and for this reason, the English system is “one nation in the world whose constitution has political liberty for its direct purpose.”<sup>293</sup> He then proceeded to delineate the separation of powers as well as the mechanism of checks and balances between the legislative, the executive, and the judicial, which is the aspect of this chapter that has been impressively well-documented.<sup>294</sup>

The last part of the chapter is largely dedicated to Montesquieu’s speculation on how to best keep legislative power in the English system from usurping the constitution and avoid his ominous prediction of its loss of liberty. He first discussed the origin of English bicameral legislative power; his analysis is based on the different interests of the nobility and that of the people. “In a state, there are always some people who are distinguished by birth, wealth, and honour; but if they were mixed among the people and if they only have one voice like the others, the common liberty would be their enslavement and they would have no interest in defending it.”<sup>295</sup> For this reason, he supported the idea that the House of Lords also possess the veto power to the House of Commons. For the executive power, he argued that it needs to have a check on the legislative on the basis that “execution has the limits of its own nature, it is useless to restrict it.”<sup>296</sup> For this reason, the chapter dedicates relatively less attention to the schemes to limit the power of the executive power. The final passages concern his prophecy that “This state will perish when the legislative power is more corrupt than executive” as well as his interesting observation on the “extreme liberty” of the English people which is perceived with a high degree of scepticism. The reader is reminded of Montesquieu’s remark at the beginning of the chapter when he warned about the false association between democracy and liberty. One interpretation argues that Montesquieu distinguished between his examination of the “principles” of the English constitution and the direction it takes. This chapter agrees with this reading that for Montesquieu, although by nature, the English system is monarchy, it begins to depart from that original principle. This reading is supported by his argument that during the English Civil War, the English “have removed all the intermediary powers that formed their monarchy. They have good reason to preserve this liberty; if they should come to lose it, they would be one of the most enslaved peoples on earth.”<sup>297</sup> There is an unmistakable concern with English extreme liberty and how it transforms the constitution away from its original principles in a republican direction. This also explains the emphasis on the prospect of legislative despotism that Montesquieu ended the chapter with.

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<sup>293</sup> Ibid, 156.

<sup>294</sup> See, for example, Sharon Krause, "The Spirit of Separate Powers in Montesquieu." *The Review of Politics* 62, no. 2 (2000): 231-65. and Maurice John Crawley Vile. *Constitutionalism and the Separation of Powers*. (Oxford: Clarendon P.), 1967.

<sup>295</sup> Ibid, 160.

<sup>296</sup> Ibid, 162.

<sup>297</sup> Montesquieu, *The Spirit of the Laws*, Book II, Chapter 4.

### Delolme and *The Spirit of the Laws*

There are several reasons why Delolme's *The Constitution* is often described as a work of a disciple of Montesquieu, such as their positive reception of the English monarchy, as well as their general *anglophile* outlook. I contend that, while there are such similarities, by reading Delolme as an unoriginal thinker who only re-wrote *The Spirit of the Laws* with more historical details, one loses sight of Delolme's remarkable critique of Montesquieu especially concerning his flawed understanding of the nature of the English separation of powers and his concern about the English "extreme liberty" which also informs his prophecy of the fall of the Empire due to legislative despotism. Recent scholarship has also stressed that whatever Montesquieu thought about the English system, he certainly did not want France to simply emulate it, taking into account the historical particularities of all nations.<sup>298</sup>

Secondary literature on Delolme mostly perceives him as variation of the Montesquieuan theme of separation of powers, and often a less elaborate version of it. For example, Vile, in his celebrated *Constitutionalism and the Separation of Powers* (1977), categorises Delolme, among William Blackstone and William Paley, as a follower of Montesquieu, and argues that Delolme "failed almost entirely to give an impression of the interrelationships between the parts of the machinery of English government." The argument is based on the claim Delolme relied on, in seventeenth century outdated fashion, that the separation of powers was based on a division of functions without taking into account the subtle checks and mechanisms at work by the time of late eighteenth century.<sup>299</sup> However, recent scholarship is more perceptive of Delolme's contribution in spelling out the characteristics of the English constitution, especially its critical aspect of Montesquieu.<sup>300</sup> McDaniel in particular demonstrates how the previous reception of Delolme as a disciple of Montesquieu is problematic focusing on his critique of Montesquieu's Rome-Britain analogy, which underlies the famous prophecy as well as Delolme's objective in correcting "what he took to be the aristocratic bias in Montesquieu's own science of politics, with its strong emphasis on a neo-German system of intermediary noble ranks."<sup>301</sup> In a similar spirit, this chapter examines Delolme's critique of Montesquieu's in the light of their disagreement over the nature and the future of the English system. However, instead of focusing on their different

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<sup>298</sup> See, for example, Sylvana Tomaselli, "The Spirit of Nations" in *The Cambridge History of Eighteenth-Century Political Thought*, (Cambridge: Cambridge University Press, 2006), 32.

<sup>299</sup> Maurice John Crawley Vile, *Constitutionalism and the Separation of Powers*. 2nd ed., (Indianapolis: Liberty Fund, 1998), 115. Vile's passing comments on Delolme, although neglect entirely his positive account of the Humean king-in-parliament scheme as a useful check mechanism, sheds light on his influential American reception

<sup>300</sup> Recent scholarship on Delolme that concerns his notion of science of politics is discussed in detail in the first chapter

<sup>301</sup> Iain McDaniel, "Jean-Louis Delolme and the Political Science of the English Empire" *The Historical Journal* 55, no. 1 (2012): 21-44. Delolme's disagreement with Montesquieu's account of the Gothic origin of English liberty belongs to chapter two on Delolme's rewriting of the history of English liberty.

opinions concerning the historical origin of English liberty, I opt instead for Delolme's concern over Montesquieu's methodological inadequacy.

This chapter argues that Delolme's critique of Montesquieu should be understood in tandem with Delolme's attempt to portray the English model as a model for a modern free state. This theme puts Delolme's criticism of Montesquieu in perspective in the way that it weaves together his comments on "speculative doctrines", the metaphor of body politic, the concern about the English extreme liberty, and lastly, Montesquieu's reliance on the analogy between the Roman and the English model for his prediction of the downfall of the empire.

For Montesquieu, the ancients "lived in governments that had virtue for their principle, and when that virtue was in full force, things were done in those governments that we no longer see and that astonish our small souls." Virtue, nonetheless, is but a weak safeguard for political liberty and Montesquieu made it abundantly clear that he by no means sought to revive it in modern politics. This stance is also reflected in his parting remark in book 11 on the failure of Harrington's *Oceana*, that Harrington "sought this liberty only after misunderstanding it. And that he built Chalcedon with the coast of Byzantium before his eyes."<sup>302</sup> Montesquieu here pointed out Harrington's fascination with ancient republicanism and how it prevented him from appreciating the marvel of the English constitution in preserving liberty, which the ancient states failed to preserve. Delolme's criticism of Montesquieu, ironically, aims to point out the ancient elements in his examination of the English constitution which the author himself might not have been aware of, and in doing so, further supports his own argument that the English model "differs by its structure and resources from all those History makes us acquainted."<sup>303</sup>

Montesquieu himself was aware of the "speculative" aspect of his account of the English system in the sense that his work only focuses on the foundational principles of that constitution. In part 2 book 12 on the laws that form political liberty in relation to the citizen he contended that "it is not for me to examine whether at present the English enjoy this liberty or not. It suffices for me to say that it is established by their laws, and I search no further." Here it is made clear that Montesquieu distinguished between the principles of the English constitution and its present state. As a response to this, Delolme began his critique of Montesquieu in that chapter "How far the examples of Nations who have lost their liberty, are applicable to England" that Montesquieu as a "systematic" writer wrote too generally:

When he speaks of England...his observations are much too general: and though he had frequent opportunities of conversing with Men who had been personally concerned in the public affairs of this Country...when he attempts to describe it, he rather tells us what he conjectured than what he saw."<sup>304</sup>

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<sup>302</sup> Montesquieu, 1989, 166.

<sup>303</sup> Delolme, 304.

<sup>304</sup> Ibid., 305.

In other words, the basis of this criticism lies in the defect of Montesquieu's version of science of politics, which aims to understand politics and history in relation to certain sets of general laws in the way that it prevents him from perceiving the particularity of the English system.<sup>305</sup>

Secondly, Delolme is critical of Montesquieu's use of some terms which carry assumptions about virtues. The most important one is the term "luxury", found in Montesquieu's examination of the English monarchy as well as its central role in the English commercial venture. For Montesquieu, commercial republics suit economic commerce while for monarchies, commerce founded on luxury is congruent with the principle of honour associated with this form of government. While luxury is central in monarchies, it is corrosive in republics. For Montesquieu, as the English system gradually departed from its monarchical principles into a republican direction, its commercial spirit also prevented the cultivation of political virtues associated with the maintenance of republics. Put simply, while luxury used to be beneficial to the English system as a commercial monarchy, it becomes dangerous as the manners of the English people and their extreme liberty resembled more and more the characteristics of republics.

Delolme was highly critical of Montesquieu's assigning such a central role to luxury in his examination of the English system. Although he only referred to the famous book 11 on the English constitution in *Constitution*, his criticism of Montesquieu reveals his in-depth knowledge of *The Spirit of the Laws*.<sup>306</sup> For Delolme, luxury is a part of what he called "coefficients" in the study of modern politics or "such other quantities as only perplex without properly constituting [the balance of the constitution]". It falls in the same category of "those brilliant circumstances which so greatly affect the external appearance of a powerful Society, but have no essential connection with the real principles of it."<sup>307</sup> In other words, luxury is not a part of the equation of what constitutes causes that produce "the equilibrium of a government".<sup>308</sup> For this reason, Montesquieu's account of what constitutes the English constitutional balance is doomed to fail from the beginning. Although the cause of such confusion is not fully explored in *Constitution*, Delolme briefly discussed how such terms stem from "abundance of comparisons drawn from the human Body" which lead Montesquieu to "resource to *Luxury* in order to explain certain events;

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<sup>305</sup> Montesquieu argued that there are certain sets of general principles which govern the entirety of human history and that "The histories of all nations are only the consequences of them; and each particular law is linked to another law, or depends on another more general law".

<sup>306</sup> Moreover, Delolme relied on an abundance of Montesquieu's coined terms such as the communicability of power, his critique of the republican confusion of liberty with power (with is also associated with Hobbes's critique of republicanism) as well as general positive attitude towards the English monarchy and its role in preserving political liberty. These shared characteristics between the two authors unsurprisingly leads to a relatively simplistic reception of Delolme as a mere disciple or "an English Montesquieu" as Isaac Disraeli described him in his amusing 1841 *Literary Miscellanies: Calamities of Authors*

<sup>307</sup> *Ibid.*, 20.

<sup>308</sup> *Ibid.*

and at others, to a still more occult cause, which they have called Corruption.”<sup>309</sup> Delolme’s critique of Montesquieu’s language of corruption and luxury aims at exposing the implication of virtue which such terms sometimes carry, despite Montesquieu’s own intention to comprehend politics beyond the ancient worldview and vocabulary.<sup>310</sup>

The next critique focuses on Montesquieu’s anxiety over the English “extreme liberty” which resembles the characteristics of citizens in democracy he warned against in the beginning of book 11 on England. Delolme, on the other hand, was much more optimistic in the English system’s capacity to preserve liberty, as he ended *Constitution* with the way in which the personified goddess of liberty “has at last been able to set herself a Temple” on English soil.<sup>311</sup> This relatively sanguine account of the English constitution in comparison to that of Montesquieu stems partly from Delolme’s different understanding of the separation of powers at work in the system.

Montesquieu’s source of concern about the excess of liberty that the English enjoyed is derived partly from his background understanding of the theory of separation of powers: that they represent the different interest of the three orders, namely the commoners, the nobility, and the king. This concern, therefore, has to be understood in relation to Montesquieu’s broader understanding of the legal system and the interests and motivations which the institution is sustained with. Focusing on his understanding of the English bicameral legislative power, Montesquieu believed that what underpins this institution are the distinguished interests between the people and the hereditary nobles. These two kinds of interests, however, are undermined by both the effect of the English Civil War as well as the nobility increasing engagement in commercial enterprise. The English parliament undermines its own principle by abolishing the prerogative of the nobles and the clergy, leaving itself vulnerable to the prospect of “despotism of all” like how he described the last days of the Roman republics.

Delolme provided an alternative account. In his narrative, the English nobility and the commoners had a unity of interest in standing up against the power of the crown, which resulted in the equal legal protection of the subjects “in order to oppose the tyranny of the Crown”. Later, this equal legal projection “become a bulwark which was, in time, to restrain their [the nobility’s] own.”<sup>312</sup> In this regard, Delolme’s understanding of the English separation of powers, from the beginning, prepares to take into account the decreasing political power of the traditional, feudal understanding of the nobility. This explains why, unlike Montesquieu’s account, Delolme’s version of the English constitution lauds the relatively powerless English nobility as one of its

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<sup>309</sup>Delolme, 317.

<sup>310</sup> Delolme’s version of science of politics is more fully explored in the first chapter concerning his methodology.

<sup>311</sup> Ibid., 341.

<sup>312</sup> Ibid., 33.



key characteristics which makes it distinct from the experience of other European monarchies. Agreeing with McDaniel as well as Palmer in their opinion about Delolme's constant concern about aristocratic despotism, I contend that Delolme accredited the English prevention of aristocratic despotism for the success of English liberty. Simply put, in contrast with Montesquieu's prophecy which predicts the downfall of the British Empire due to the weakness of the nobility, which undermines the underlying motive of its bicameral institution, Delolme's account from the beginning celebrates the English success in curbing the political power of the nobility.

Lastly, Delolme rejected Montesquieu's reliance on the Roman empire in his conjecture about the end of English liberty. This chapter is intended not as much as a critique of Montesquieu as an account of Delolme's own elaboration on the calamity which the Roman citizens had to endure under its empire. Montesquieu's error lies in his making an analogy between the ancient empires and the English system when "there is no analogy to be found" more than anything else. Delolme contended that unlike the Roman Republic's expansion, which brings a concentration of both wealth and liberty in the centre, making Rome "the head of the state" and leaving the periphery in slavish condition, in England, "from the one end of the island to the other, the same laws take pace and the same interests prevail."<sup>313</sup> The absence of extreme inequality between the centre and the periphery makes it unnecessary for the English to endorse "those ferocious kinds of virtue" that the Romans who were constantly exposed to danger had to resort to.<sup>314</sup> And although Delolme did not reject the notion that the English system, as other human artifices, has to end, according to Montesquieu's prediction, his principal rejection lies in Montesquieu's methodological error to draw his conclusion based on the this Britain-Rome analogy. To end this chapter, Delolme, nonetheless, provided an alternative examination of the English system in parallel with Montesquieu's: "The English Government will be no more, either when the Crown shall become independent on the Nation for its supplies, or when the Representatives of the People shall begin to share in the Executive authority."<sup>315</sup>

## **Conclusion.**

The chapter reveals Delolme's serious engagement with other prominent accounts of the English system and paves the way to his own delineation which allegedly best captures the

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<sup>313</sup> Delolme, 306.

<sup>314</sup> He summarised Roman civic virtues as "after having invaded everything, must abstain from everything".

<sup>315</sup> Delolme, 318.

characteristics of the English constitution which his contemporary failed to recognise. It remains for us to decipher Delolme's alternative analysis to that of Montesquieu which predicts the downfall of the British Empire. What is distinct about Delolme's account is that it recognises the new, although relatively less well formulated, power of the people in "influencing the motion of the government" in the realm of civil society.<sup>316</sup> It does so in the form of "the Censorial Power of the Public" as well as through the prospect of popular resistance which is institutionalised after the culmination of the English Civil War. For this reason, the executive power needs to retain its rigour in counterbalancing the power of the people in all forms including their power exercised through the representatives as well as their power in influence the motions of the government through "public censorial power". The next chapter delineates Delolme's account of the English system with an emphasis on the constructive tension between the people's power and the modern executive power of the English monarch.

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<sup>316</sup> Ibid., 39.

## CHAPTER FOUR

### Delolme's Delineation of the English System

#### Introduction.

This chapter's argument benefits from the contextualisation of Delolme in the previous chapters both as a part of the "selfish system" literature and as a historian of English liberty and constitution. It reveals how his constitutional thinking was shaped by his understanding of people as driven by passions such as pride and jealousy. In particular, it seeks to shed light on his account of the executive power and how it contributes to the preservation of liberty in modern representative politics. In his observation of the English representative system as "the most democratical [sic]," I approach his delineation as one of the nascent forms of representative democracy. This approach, along with previous intellectual contextualisation of his programme, sheds light on overlooked aspects of his constitutional thinking, namely the jealously-driven public whose vigilance over the executive power prevents the government's encroachment on public liberty. Such an emphasis on the importance of forces in the realms of civil society and their constructive tension with the executive power distinguishes his work from other supporters of executive power, such as a Hobbesian argument which emphasises the necessity of total obedience, or the moderating effect associated with the office in the work of later authors such as Benjamin Constant's *pouvoir modérateur*.<sup>317</sup> Delolme's unusual mix of executive power and public opinion in his equation of modern liberty reveals the richer and more nuanced position he occupies in the long and convoluted history of representative democracy.

#### Delolme's Idea of Liberty.

Delolme's prioritisation of personal liberty over political liberty was, of course, not new. Other proto-liberal authors agreed on this premise that modern representative politics rightly distinguishes the realms of the private and the public, with the intention of protecting the former. This clarification of his understanding of personal liberty as the ultimate purpose of civil society

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<sup>317</sup> More on *pouvoir modérateur* see Aurelian Craiutu, *A Virtue for Courageous Minds: Moderation in French Political Thought, 1748-1830* (New Jersey: Princeton University Press, 2012), 305-315.

with which this chapter begins, however, paves the way to a consideration of his constitutional thinking. In respect of this, one sees that, despite his “Hobbesian” point of departure, personal liberty leads to a kind of political optimism based on the belief in institutional solutions to human deprivation.

In *Constitution*, resonating with Hobbes, Delolme defined liberty as a state of being in a society in which “every Man, while he respects the persons of others, and allows them quietly to enjoy the produce of their industry, [can] be certain himself likewise to enjoy the produce of his own industry, and that his person be also secure.”<sup>318</sup> While natural liberty only exists in a hypothetical and pre-political state, it is described as the coarsest form of liberty, which it is preferable to exchange with political liberty when one enters a civil society. Possibly following the Pufendorffian understanding of the essence of law as “a command of a superior directed to an interior” regardless of the source of the sovereignty, Delolme put the face of the English monarch to this contention.<sup>319</sup> Being in the civil society always entails partial relinquishment of one’s natural liberty, but in return one receives the legal guarantee of individual liberty, namely the right of property, personal security, and locomotive liberty.<sup>320</sup>

Beginning with natural liberty, Delolme made it clear that civil liberty is superior to natural liberty and requires one’s relinquishing a part of it to enter into the society. He comments briefly on the idea of natural liberty under the topic of judicial power:

since we must absolutely pay a price for the advantage of living in society, not only by relinquishing some share of our natural liberty (a surrender which, in a wisely framed Government, a wise Man will make without reluctance) but even also by resigning part of even our personal security, in a word, since all judicial power is an evil, though a necessary one, no care should be omitted to reduce as far as possible the dangers of it.<sup>321</sup>

Once one enters civil society, one enjoys two forms of liberty, individual and political liberty. Delolme pointed out how these two forms of liberty are intertwined: without individual liberty, “general liberty [or political liberty], being absolutely frustrated in its object, would be only a

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<sup>318</sup> Delolme, 169. On Hobbes’ understanding of liberty as the absence of impediments to motion and how, according to Quentin Skinner, it marks “an epoch-making moment” see Quentin Skinner, *Hobbes and Republican Liberty*, (Cambridge: Cambridge University Press, 2008).

<sup>319</sup> Lee Ward, *The Politics of Liberty in England and Revolutionary America*, (Cambridge University Press, 2004), 322. Delolme had a legal education in the eighteenth-century Geneva in which Samuel Pufendorf remained one of the most important scholars in natural laws. Delolme’s definition of law as the expression of the sovereign is found in his Genevan pamphlet *La purification des trois points de droit souillés par un anonyme* (1767). The argument was also cited in John Lind’s *Three Letters to Dr. Price*, (1776), 22. to counter what Lind deemed to be Richard Price’s endorsement of natural law as the philosophical foundation of his political argument.

<sup>320</sup> Here Delolme followed William Blackstone’s categorises of liberty in his seminal *The Commentaries on the Laws of England* (1765)

<sup>321</sup> *Ibid.*, 122.

matter of ostentation, and even could no longer subsist.”<sup>322</sup> The task of a science of politics is to find the best way to minimise the threat to liberty posed by the necessary evil of the government. While Rousseau aimed at the philosophical reconciliation of this tension between liberty and authority, Delolme saw in it a constructive and creative aspect that can be manoeuvred for the benefit of personal liberty. It is this difference in their respective attitudes to the relationship between liberty and authority that underpins their differing opinions on the objective of a constitution.

Delolme explicitly stated that the existence of the royal executive power is a natural threat to liberty, and discussed this relationship under the topic of the right of resistance.<sup>323</sup> Citing Lord Lyttelton, Alexander Pope’s patron and John Hervey’s political opponent, Delolme discussed how the author summarised that, “If the privileges of the People of England be concessions from the Crown, is not the power of the Crown itself, a concession from the People?” He then expanded on this by arguing, “If the privileges of the People be an encroachment on the power of Kings, the power itself of Kings was at first an encroachment (no matter whether effected by surprize) on the natural liberty of the people.”<sup>324</sup> For Delolme, the idea of natural liberty functions as a reminder of both why people choose to belong to a civil society, and why they should remain vigilant to all exercises of governmental powers, especially the royal executive power, as it is a natural enemy of the people. This constructive tension between the existence of the Crown and the people lies in the formation of the idea of personal property in England. In stark contrast with Rousseau, Delolme highlighted how it was this material aspect of political infringement on individuals that leads to organised resistance.<sup>325</sup> Following William Blackstone, Delolme demonstrated how individual liberty consisted of the right of property, personal security, and locomotive faculty. The monarch “cannot attempt to deprive his Subjects of their political privileges, without declaring war against the whole Nation at the same time, and attacking every individual at once in his most permanent and best understood interest.”<sup>326</sup>

This understanding of personal liberty and its relationship to the government informs Delolme’s understanding of the second kind of liberty, namely political or general liberty. It is understood as “the rights of the Nation as a Nation, and of its share in the Government.”<sup>327</sup> As a secondary kind of liberty, political liberty defined as the people’s share in the government aims at making the rulers fulfil their duty of protecting personal liberty. The representative mechanism of the parliament, in this view, aims not at approximating the sum of the individual wills or

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<sup>322</sup> Delolme, 80.

<sup>323</sup> This topic is discussed in detail in the last part of this chapter

<sup>324</sup> *Ibid.*, 214-5.

<sup>325</sup> *Ibid.*, 309.

<sup>326</sup> *Ibid.*

<sup>327</sup> *Ibid.*, 80.

mirroring the nation, but instead at minimising the threat of the government's encroachment on personal liberty. This understanding of the government's relationship to liberty is informed by Delolme's understanding of human nature as esteem-seeking, which is translated into politics in the form of the perpetual quest for power. However, the secret behind English constitutional history lies in its understanding of different kinds of powers, as he argued that "all the political passions of Mankind, if we attend to it, are satisfied and provided for in the English Government."<sup>328</sup> To unpack this political optimism in institutional design despite his Hobbesian understanding of liberty, the chapter begins with the first branch of the constitutional power, namely the legislative power.

### **The Restraint of Legislative Power and the Problem of Legislative Usurpation.**

Delolme believed that the establishment of popular sovereignty as the political ideal of modern constitutions begets a new problem namely the usurping of the people's sovereignty by their representatives. However, it was not adequately acknowledged by his contemporaries despite its grave threat to liberty. This oblivion, he argued, was partly caused by failure of republican authors to critically engage with legislative power.<sup>329</sup> One of the key components of the English system that allows it to preserve liberty lies in the way in which its institutional arrangement prevents this form of usurpation.

The ideal of popular sovereignty was established after the victory of the parliamentarians after 1688. This supremacy of the legislature is admired, but also with an unmistakeably cautious tone:

It is, without doubt, necessary, for securing the Constitution of a State, to restrain the Executive power; but it is still more necessary to restrain the Legislative. What the former can only do by successive steps (I mean subvert the laws) and through a longer or shorter train of enterprises, the latter does in a moment. As its bare will can give being to the laws; so its bare will can also annihilate them: and, if I may be permitted the expression, —the Legislative power can change the Constitution, as God created the light.<sup>330</sup>

Delolme's analysis of the legislative power and how it might undermine liberty is remarkably distinct from his contemporaries especially notable commentators on possible threat on modern liberty such as Rousseau and Richard Price. The constitution, for him, is far broader than mere

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<sup>328</sup> Ibid., 313.

<sup>329</sup> For this particular issue of the republican authors failure to understand legislative despotism as a modern threat see his critique of Rousseau's *Social Contract* in Chapter Three.

<sup>330</sup> Ibid., 153.

legislative decree. Rather, it is a culmination of political struggles between different interest throughout the long history of England.<sup>331</sup>

To preserve this precious ideal of popular sovereignty and maintain the distance between it and the organs of the government, the English legislative power is divided into several parts to maximise the control of its constitution-changing power. Delolme pointed out the difficulties of the limitation of the legislative power: since it possesses the power to make laws, to rely on it to limit its own power is analogous to having a simple faith in the strength of one's own resolution: "For, whatever laws it may make to restrain itself, they never can be, relatively to it, anything more than simple resolutions: as those bars which it might erect to stop its own motions, must then be within it, and rest upon it, they can be no bars."<sup>332</sup> He rejected Montesquieu's account of the English legislative power in *The Spirit of the Laws* which contends that it is consisted of two components, namely the House of Commons and the House of Lords. Rather, Delolme argued that the English legislative branch was uniquely consisted of three parts – namely the House of Commons, the House of Lords, and the king-in-Parliament – which therefore poses even greater difficulties for powerful members of parliament to conspire to change the constitution for private interests. "If it has been divided into only two parts, it is probable that they will not in all cases unite, either for doing, or undoing:—if it has been divided into three parts, the chance that no changes will be made, is thereby greatly increased."<sup>333</sup>

The House of Commons is the most powerful political body in Delolme's delineation because it derives its power from the body of the people. This is materially confirmed in their sole control of tax. "If any other persons besides the Representatives of the People, had had a right to make an offer of the produce of the labour of the people, the executive Power would soon have forgot, that it only exists for the advantage of the public."<sup>334</sup> The aim of the legislature, therefore, is to strike the balance between two extremes: the House of Commons' claim to be the only representative of popular sovereignty, and therefore to usurp the constitution; and other parts of the legislature becoming more powerful than the House of Commons via the interference of the executive power.

To prevent powerful representatives of the people from usurping the constitution, the House of Lords serves a special purpose in incorporating this excessive power: "the success of the favourite of the People was brilliant, and even formidable; but the Constitution, in the very reward it prepares for him, makes him find a kind of Ostracism."<sup>335</sup> Delolme's account of the legislative

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<sup>331</sup> See Chapter Two.

<sup>332</sup> Ibid., 153.

<sup>333</sup> Ibid., 154.

<sup>334</sup> Ibid., 71.

<sup>335</sup> Ibid., 147.

power acknowledges the social mobility of such “favourites of the people,” whose political paths in the English system are markedly different from the ancient understanding of demagogues. In the ancient popular constitution, demagogues stand on the shoulder of the mob to seize the executive power and usurp the constitution. The English system, Delolme argued, by permanently attaching executive power to the institution of the Crown and moving successful representatives of the people into the House of Lords, prevented the kind of political usurpation that caused the ruin of ancient free states. This opinion echoes Hobbes’ *De Cive*, in which he argued that in monarchy, the path to winning praise and rank is blocked, and this therefore renders political usurpation more difficult than in republics.<sup>336</sup> Most importantly, however, the existence of the House of Lords is an internal mechanism in the legislative branch which helps prevent one political body, regardless of its origins, from having a monopoly of the most powerful branch of the constitution.

The second component in the legislative branch is the king-in-Parliament, distinct from the monarchical executive power. The most important aspect of the king’s legislative power is the power to convoke the parliament. While this power is not nearly as significant as the power to initiate laws, it crucially prevents the House of Commons from effectively exercising the totality of the sovereign power. A parallel mechanism of restraint is also found in the form of the Royal Assent. Assented bills “become the expression of the will of the highest power acknowledged in England...in a word, they are LAWS. And though each of the constituent parts of the Parliament might, at first, have prevented the existence of those laws, the united will of all the Three is now necessary to repeal them.”<sup>337</sup> The multiplicity of the components of the legislative power functions to prevent the monopoly of this most formidable branch of the constitution by any one political body, especially the House of Commons, which derives its power directly from the people.

Beyond having multiple components to prevent the House of Commons from claiming popular sovereignty, the idea of political representation in the English system also allows for a critical distance between the people and their representatives. Members of parliament act as a trustee, rather than a delegate of the people. In virtue of this conception of the role of the representatives, Delolme made a similar argument to Edmund Burke’s in his famous *Speech to the Electors of Bristol*, that only in functioning as trustees do representatives become responsible for their own political judgements and render themselves accountable.<sup>338</sup> Delolme also drew a further conclusion that, in structuring the relation thus, the people then also have the legitimacy

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<sup>336</sup> For more on this topic see, for example, Daniel J. Kapust “The Problem of Flattery and Hobbes’s Institutional Defence of Monarchy.” *The Journal of Politics* 73, no. 3 (2011): 680-91.

<sup>337</sup> Delolme, *Constitution*, 61.

<sup>338</sup> Edmund Burke, *Select Works of Edmund Burke*. A New Imprint of the Payne Edition. Foreword and Biographical Note by Francis Canavan (Indianapolis: Liberty Fund, 1999). Vol. 4.



to criticise the work of their representatives, since the people themselves are not responsible for the political decisions made by those representatives. In granting the active aspect of their power to the discretion of the representative, “we will, above all, reserve to ourselves the right of watching and censuring that administration which will have been established by our own consent.” The representative mechanism allows the people to “correct them [the legislative process] the better, because we shall not have personally concurred in its operations.”<sup>339</sup> This critical distance is crucial to Delolme’s programme, because the people also reserve a part of this political power to themselves, which is expressed extra-parliamentarily in the form of public opinion.

Modern representative politics as discussed via Delolme’s examination of the English constitution is portrayed as a superior form of politics to direct democracy or popular constitutions, because popular sovereignty is effectively separated from the function of the government. The people “by expressly divesting ourselves of a power of which we should, at best, have only an apparent enjoyment, we shall be intitled to make conditions for ourselves.”<sup>340</sup> Paradoxically, by delegating their political power to the representatives, the people regain a form of determination. This is also deliberately a sharp contrast with the Rousseauian republican account of liberty as self-determination through self-legislation of the people examined in Chapter Three. In delegating their political power, the people “insist that our liberty be augmented.”<sup>341</sup>

### **The Executive Power.**

Delolme’s analysis of the usefulness of modern executive power is proposed as an alternative to the argument that the office’s sole function is to carry out the legislative will. For Delolme, this kind of constitutional arrangement fails to achieve the separation of powers between the executive and the legislative and consequently, cannot prevent constitutional usurpations in the form of legislative despotism. More importantly, this interpretation does not capture other functions of the modern executive power which he highlighted in his analysis of the English system. These functions include its activation of the sense of “jealousy” in the people, which enables a feedback mechanism between the realm of civil society and the parliament, and which addresses the problem of political apathy associated with representative politics. In this regard, the English system exploits an insightful understanding of human nature as driven by pride and jealousy for the purposes of securing constitutional stability. In other words, English liberty subsisted because it did not attempt to eradicate the pride of the executive power office, but channels this through

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<sup>339</sup> Delolme, *Constitution*, 316.

<sup>340</sup> Ibid.

<sup>341</sup> Ibid.

political institutions and makes it the fuel that propels the engine of the government. In doing so, it enjoys the “inestimable advantage of knowing with certainty the general seat of the evils they had to defend themselves against.”<sup>342</sup> Delolme’s initial assumption is different from that of the near-contemporary but slightly later work on the topic of executive power such as *Du Pouvoir exécutif dans les grands états* (1792) by Jacques Necker.<sup>343</sup> The 1792 text argues from a critical position towards the 1791 French constitution and its hostility to the executive power of Louis XVI. It focuses on the “harmony” between different functions of the constitution. Delolme, by contrast, did not seek “to establish a constitutional alliance between the legislative and the executive” in lieu of “a system based on mistrust and jealousy,” as Necker does in his essay on the executive power.<sup>344</sup>

The first point I would like to put forward is that Delolme’s positive account of the role of a strong executive power in preserving liberty in modern representative politics is independent of the institution of the monarchy. This argument should be made upfront, because some secondary literature overlooks this intricate proposition due to the assumption that he simply did it in favour of monarchism. Delolme, however, explicitly warned against this line of interpretation:

I have been several times under apprehensions, in the course of this Work [*Constitution*], lest the generality of Readers, misled by the similarity of names, should put too extensive a construction upon what I said with regard to the usefulness of the power of the Crown in England...that I attributed the superior advantages of the English mode of Government over the Republican form, merely to its approaching nearer to the nature of the Monarchies established in the other parts of Europe, and that I looked upon every kind of Monarchy, as being in itself preferable to a Republican Government: an opinion, which I do not by any means or in any degree entertain; I have too much affection, or if you please, prepossession, in favour of that form of Government under which I was born; and as I am sensible of its defects, so do I know how to set a value upon the advantages by which it compensates for them.<sup>345</sup>

This statement about the constructive nature of his critique of republicanism is overlooked by his contemporary critics as well as today’s secondary literature. With this insight, the present thesis elucidates his positive account of modern executive power as an integral part of his vision of a modern representative free state, separated from its monarchical origin.

Moreover, Delolme also employed Rousseau’s language in the examination of the executive power by calling it “the Prince,” implicating the arbitrariness of the exercise of this branch of

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<sup>342</sup> Ibid., 152.

<sup>343</sup> Jacques Necker, *Du pouvoir exécutif dans les grands états*, (Paris, 1792).

<sup>344</sup> Craiutu, (2012), 19 referring to “On doit chercher à établir une liaison constitutionnelle entre le pouvoir exécutif et le pouvoir législatif; on doit songer que leur prudente association, leur ingénieux entrelacement seront toujours la meilleure caution d’une circonspection mutuelle et d’une surveillance efficace” (*Oeuvres Complètes de M. Necker*, Vol. X, 133).

<sup>345</sup> Ibid., 260.

governmental power. He explained, “By the word Prince, I mean those who, under whatever appellation and in whatever Government it may be, are at the head of public affairs.”<sup>346</sup> Elsewhere in the book, he remarked on the rise of executive power as a natural component of any civil society, arguing that “in all States, there naturally arises around the person, *or persons*, who are invested with the public power.”<sup>347</sup> In both cases, Delolme highlighted how his examination of the English executive power is not strictly attached to the monarchical framework. This reading is congruent with his perception of the English system as a modern free state, with little regard to the debate on the form of its government.<sup>348</sup> This understanding of the nature of the executive power as an inevitable kind of governing power in any civil society, with or without the monarchy, is a prerequisite in our examination of Delolme’s exegesis of the relationship between the executive power and the preservation of modern liberty.

Beginning with the executive power’s first function as a Rousseauian “Magistrate”, Delolme explained how the English monarch functions as “the first Magistrate in the Nation,” serving as the superintendence of commerce as well as the representative of the nation in respect of international affairs, including making war and peace.<sup>349</sup> The magisterial executive power operates only with the objective of executing the laws enacted by the parliament, and is “supplied necessary power for that purpose.”<sup>350</sup> The monarch is also a part of the legislative as the king-in-parliament. How, one might ask, can the separation of powers between the executive and the legislative be achieved if the king possesses the legislative veto and is the sovereign in the legislative branch, while simultaneously also serving as the first magistrate in the executive office? Delolme operated within the tradition of checks and balances which contended that, in order for the weaker governing power (in this case the executive) to keep in check the more powerful one (the legislative), the former needs a channel to “interfere” in the function of the latter.<sup>351</sup> Thus far, Delolme’s opinion concerning the executive power is in line with the dominant ideology of the moderate Whigs after the Hanoverian succession in 1714, which was followed by a period of relative calm until the outbreak of the American War of Independence in 1760s. Public opinion concerning the nature of the constitution increasingly converged with the “Moderate Whig” interpretation of the English constitution as champion of parliamentary sovereignty and the king as the supreme legal authority of the nation.<sup>352</sup>

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<sup>346</sup> Ibid., 117.

<sup>347</sup> Ibid., 314.

<sup>348</sup> Such as that found in the reception of Montesquieu’s *The Spirit of the Laws*.

<sup>349</sup> Ibid., 67.

<sup>350</sup> Ibid., 62.

<sup>351</sup> Vile, (1997), 19. on the distinction and diffusion between the doctrine of separation of powers and theory of mixed constitution, see 58-82.

<sup>352</sup> Lee Ward, *The Politics of Liberty in England and Revolutionary America*, (Cambridge University Press), 2004, 306.

Beyond this relatively commonplace understanding of the English executive power in the eighteenth century, Delolme also argued that the construction of the executive power in England produced an unintended effect of uniting the interests of all subjects in keeping this formidable power always within its constitutional limits.<sup>353</sup> This second effect is a result of the executive power being the object of jealousy of all subjects. The English constitution harnesses this form of jealousy, prevalent in monarchical history, for the benefit of individual liberty by keeping the people politically active and vigilant of the government. Delolme argued that “[i]f we cast our eyes on all the States that ever were free, we shall see that the People ever turn their jealousy, as it was natural, against the Executive Power.”<sup>354</sup> Delolme saw political indifference as an important threat to political liberty, and one characteristic of modern representative politics. The English system overcomes this obstacle due to its preservation of the pride of the executive office. He concluded that: “Let therefore the less informed part of the People, whose zeal requires to be kept by visible objects, look if they choose upon the Crown as the only seat of evils they are exposed to; mistaken notion on their part are less dangerous than political indifference.”<sup>355</sup> Since in modern representative politics, the people only indirectly participate in the law-making process via their representatives, it is crucial to keep them politically active post-election. Putting the face on the powerful and unitary executive power, be it the monarch or otherwise, triggers natural jealousy which propels the engine of modern representative government that requires constant feedback from the body of the people.

Lastly, the English system, by understanding that the executive power naturally arises in any civil society regardless of the form of government, finds that the best way to keep it within bounds was by making it unitary and financially dependent on the representative of the people.<sup>356</sup> By making the executive power “for ever fixed” in the single hand of the monarch, who is a natural object of jealousy of the subjects, the English system makes it possible for it to be limited. Secondly, the English constitution granted to the House of Commons the exclusive right to subsidise the Crown.<sup>357</sup> “The right to grant subsidies to the Crown, possessed by the People of England [through their representatives], is the safe-guard of all their other liberties, religious and civil.”<sup>358</sup> The people have this indirect influence on the motion of the government through their representatives, who have the sole control over money bills. Due to this arrangement, “the Royal Prerogative, destitute as it is of the power of imposing taxes, is like a vast body, which cannot of

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<sup>353</sup> Paradoxically, “It was the excessive power of the King which made England free, because it was this very excess that gave rise to the spirit of union, and of concerted resistance.” See Chapter 2 for Delolme’s re-working of the history of English liberty

<sup>354</sup> Delolme, (2007), 140.

<sup>355</sup> Ibid., 326.

<sup>356</sup> “The Executive Power is more easily confined when it is one.” Ibid., 150.

<sup>357</sup> The historical development of this measure is fully discussed in Chapter Two.

<sup>358</sup> Delolme, 327.

itself accomplish its motions; or, if you please, it is like a ship completely equipped, but from which the Parliament can at pleasure draw off the water, and leave it aground,—and also set it afloat again, by granting subsidies.”<sup>359</sup> Another effect this second scheme in keeping the executive power in check is that it gives a sense of pride to the House of Commons. Unlike the House of Lords, “who enjoy a dignity which is hereditary, as well as inherent to their persons, and form a permanent Body in the State...the Commons completely vanish, whenever a dissolution takes place” and therefore “their very being depends on their power of granting subsidies to the Crown.”<sup>360</sup> To conclude his examination of the second scheme of limiting the executive power, by making it financially dependent on the Commons, Delolme remarks that, in seeking to keep all governing powers in check, it is useless to try to make laws and hoping that they will comply. “Laws made to bind such Powers in a State, as have no superior power by which they may be legally compelled to the execution of them (for instance, the Crown, as circumstanced in England) are nothing more than general conventions, or treaties, made with the Body of the People.”<sup>361</sup> Instead of relying on the imaginary political being of the body of the people and their authority, Delolme argued that the English system’s success in limiting all governmental powers, including the executive power, is due to its making them dependent, and therefore mutually accountable to one another.

With this understanding of the positive effect of the tension between the executive and the legislature, I proceed to delineate Delolme’s idea of separation of powers. This is in contrast with a radical form of separation of powers found in, for example, the short-lived French constitution of 1791, that had a unicameral parliament. Delolme made it explicit that the freedom of the constitution arises from the way “the Government [powers] constantly balance each other.”<sup>362</sup> This dynamism is key, and it is made possible by the king’s power to appoint ministers, because it provides a channel of influence between the two branches. Delolme’s account also resonates with Hume’s essay *Of the Independency of the Parliament*, which argues, “We may...give to this influence [the king’s power to appoint ministers] what name we please; we may call it by the invidious appellations of corruption and dependence; but some degree and some kind of it are inseparable from the very nature of the constitution, and necessary to the preservation of our mixed government.”<sup>363</sup> This soft version of separation of powers is informed by Delolme and

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<sup>359</sup> Ibid., 65.

<sup>360</sup> Ibid., 71.

<sup>361</sup> Ibid., 72.

<sup>362</sup> Delolme, (2007), 115. Although Delolme sometimes employed the word “equilibrium” to describe a balanced constitution, he only used it in metaphorical term, not connoting that any active changes in the system is automatically a disturb to that order (this is in contrast with Vile’s opinion in his *Constitutionalism and the Separation of Powers* which argued that Delolme “pushed the mechanistic analogy to the point where deadlock—he uses the term equilibrium becomes a virtue.” Vile, (1998), 116.

<sup>363</sup> David Hume, “Of the Independency of the Parliament”.

Hume's understanding of the English system after the establishment of popular sovereignty post-1688 that made the legislature the most powerful branch of the government.

Delolme further explained the king's power to appoint ministers as an in-built mechanism of "periodical reformation" which ensures that all constitutional powers remain within their limits without the risk of causing political antagonisms.<sup>364</sup> It is an "admirable expedient!" which, "by removing and punishing corrupt Ministers, affords an immediate remedy for the evils of the State," caused by the naturally arbitrary nature of the executive. Further, by getting rid of the king's ministers after the dissolution of each parliament instead of directly tackling the corrupt holder of the executive power, it "takes away the scandal of guilt" and "authority" remains "united." This gives people confidence that justice has been meted out in respect of the violation of the constitutional limit of the executive. This is done without causing the kind of stir to which "Machiavel attributes the ruin of his Republic" – by which latter Delolme refers to *The History of Florence*, which discusses how the city-state failed to deal with the influence of its powerful citizens.<sup>365</sup> More importantly, "the mildness of the operation," insofar as "it is only to be applied to the usurpations themselves, and passes by, what would be far more formidable to encounter, the obstinacy and pride of the usurpers," alleviates what might otherwise be a tipping point and possible constitutional crisis. By acknowledging the importance of the pride associated with the executive office, the English system avoids direct confrontation with it and punishes it indirectly through its ministers.<sup>366</sup>

For Delolme, the English system effectively strikes the balance between a dangerously powerful executive and an extremely feeble one. For this reason, he concluded that "[t]he power of the Crown is supported by deeper, and more numerous, roots, than the generality of people are aware of, as has been observed...and there is no cause anxiously to fear that the wresting any capital branch of its prerogative, may be effected, in common peaceable times, by the mere theoretical speculations of Politicians".<sup>367</sup> Delolme warned that any reformers of the constitution should be reminded that the executive "[p]ower, under any form of Government, must exist, and be trusted somewhere"; and whether it be "in the hands of Magistrates" in a republic or in a limited monarchy, or transferred to "a Senate, or Assembly of Great Men," in neither case will the executive power become easier to limit.<sup>368</sup> This caution against the constitutional implications of republican reform was added in the 1781 edition of *Constitution*, a year after the Rockingham Whig called for the Economical Reform which aimed at reducing the Crown's political

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<sup>364</sup> Delolme, *Constitution*, 68.

<sup>365</sup> Ibid., 78.

<sup>366</sup> Ibid.

<sup>367</sup> Ibid., 319.

<sup>368</sup> Ibid., 320.

influence.<sup>369</sup> Delolme cautioned against the over-correcting of the constitution by dividing the executive power and vest it in the hands of those who already possess the legislative power: “those who think [executive] Power, when parcelled and diffused, is never so well repressed and regulated as when it is confined to a sole indivisible seat...those persons who know that, names by no means altering the intrinsic nature of things, the Representatives of the People, as soon as they are vested with independent authority, become *ipso facto* its Masters.”<sup>370</sup> The fusion of the executive power with the legislative power even at the expense of the monarch’s political influence still poses grave threat to public liberty. He explicitly criticised republican reformers for failing to recognise that in modern politics, the constitutional usurpations became more subtle and no longer was limited to the executive violation of its constitutional limits. To conclude his point, he argued that the reformers who thought “that the prerogatives of a King cannot be too much abridged, and that Power loses all its influences and dispositions and views of those who possess it, according to the kind of name used to express those office by which it is conferred” would cause more harm than good with their constitutional reform programmes.<sup>371</sup>

Delolme’s relatively positive account of the executive power therefore is best understood as a constructive critique of the language of civic republicanism. As it does not distinguish the idea of popular sovereignty from the government, civic republicanism’s legislative supremacy makes it blind to modern threats of legislative despotism. Delolme’s analysis of the English system, in contrast, relies on the idea of sleeping sovereign. While the principle of popular sovereignty is accepted and established, the English government operates to preserve the ideal by assuming that all forms of governing powers are to be limited especially the legislative power which is the most powerful branch in a modern free constitution. The executive power’s rigour is crucial to both the pride of the office and its role in activating the sense of jealousy on the side of the people to keep them politically active and vigilant of the government. This extra-parliamentary role of the executive power is central to the nurturing of political forces in the realm of civil society.

### **Liberty of the Press as “Public Censorial Power” and the Right to Resistance**

Beyond the parliamentary level of the balance of powers, the executive power also has its role as the “counterpoise” of the people’s power, which is recognised in Delolme’s account of the English system in the form of “Public Censorial Power” or the expression of public opinion with

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<sup>369</sup> Delolme’s reception in British politics is discussed in detail in Chapter Five.

<sup>370</sup> *Ibid.*, 322.

<sup>371</sup> *Ibid.*

the benefit of press freedom.<sup>372</sup> This novel kind of political power alongside the traditional tripartite conception of legislative, executive, and judicial powers, is central to his analysis of England's success in balancing authority and liberty. Although it was acknowledged by his contemporaries such as Jeremy Bentham, secondary literature has paid insufficient attention to this innovative aspect of his argument for representative democracy.<sup>373</sup> By recognising the status of public opinion as a form of political power in its own right, Delolme crucially links the realm of civil society to parliamentary politics and simultaneously supports his argument for the benefit of a strong executive power. This is because the executive pride activates the “public censorial power” by exploiting the sense of jealousy inherent in human nature. Moreover, with the notion of public censorial power, Delolme's vision of a modern free constitution also gives more weight to political deliberation in and beyond the parliament than what he deemed to be an incomplete understanding of a modern free constitution outlined by Rousseau and Price which only focus on the act of law-making in relation to political liberty.

In order to highlight Delolme's contribution to the important debate on the role of liberty of the press in the English constitutional history, I first begin with the historical background of this important topic. English history has always been accused of being written with a party bias of one form or another, and the topic of the liberty of the press is a good example of this allegation. In the first half of the eighteenth century, the liberty of the press became topical under the powerful Whig government of Robert Walpole and their censorship of the press. Viscount Bolingbroke's *The Craftsman* was also one of the main targets of this oppressive policy.<sup>374</sup> The authors of *The Craftsman* tactfully drew from the Whig tradition to argue that the liberty of the press has a special place in the constitution as a cornerstone of other kinds of liberty. To achieve that objective, they relied on the old Whig publication on the liberty of the press from the seventeenth century. Eckhart Hellmuth examines various texts on liberty of the press that was re-published by *The Craftsman*.

*The Craftsman* no. 117 reveals an important aspect of the liberty of the press in English constitutional history, namely its role in securing England's status as a free state regardless of the form of government. It is only via the limitation of all governing powers that a monarchy can remain adequately restrained, and that the freedom of the state can therefore be assured. It is written that “[t]he Liberty of Writing...is...necessary to the Being of a free Government.”<sup>375</sup> This association is remarkable because it shows how the definition of a free state is not limited to merely a republican form of government, an opinion which is also later shared by David Hume

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<sup>372</sup> Delolme, *Constitution*, 199.

<sup>373</sup> Chapter five discusses Bentham's reception of Delolme's “public censorial power” in detail.

<sup>374</sup> Eckhart Hellmuth, “Towards Hume – the discourse on the liberty of the press in the age of Walpole,” *History of European Ideas*, 44:2, (2018): 159-181, 161.

<sup>375</sup> Hellmuth, 164 referring to *The Craftsman*, no. 117, Tuesday, September 28, 1728.



as well as Delolme. Similar to them, Bolingbroke and other *Craftsman* writers also aimed to distinguish the “ancient Whig principles,” such as liberty of the press, parliamentary supremacy, and trial by jury, from the distorted Whig principles under Walpole. In other words, Bolingbroke’s aim was to discredit Walpole as a betrayer of both the ancient constitution and true Whig principles.

Delolme argued that no European monarchies or republican states, regardless how powerful, granted their subjects as much liberty in criticising the monarch as did England. Referring to the Law of the Twelve Tables, he contended that “[i]n the Roman Commonwealth...the liberty of writing was curbed by the severest laws,” while “with regard to the freedom of speech, things were but little better.”<sup>376</sup> In contrast, in England, liberty of the press allowed the English people to influence the law-making process beyond their power to appoint representatives:

to every Subject a right to give his opinion on all public matters, and by thus influencing the sentiments of the Nation, to influence those of the Legislature itself (which is sooner or later obliged to pay a deference to them), procures to him a sort of Legislative authority of a much more efficacious and beneficial nature than any formal right he might enjoy of voting by a mere yea or nay, upon general propositions suddenly offered to him, and which he could have neither a share in framing, nor any opportunity of objecting to, and modifying.<sup>377</sup>

David Hume, in his *Essay on Liberty of the Press*, as Eckhart Hellmuth suggests, took the status of the liberty of the press to another level by going beyond its role as an indicator of general liberty to its function as an anti-governmental force. Delolme, in this regard, systematically incorporated it into the constitutional balance of power by clarifying its relation to the legislative power.<sup>378</sup> Despite the extremely limited suffrage of eighteenth-century England, the liberty of the press, in Delolme’s narrative, allows all subjects to influence the motions of the government by addressing their grievances and concerns to the broader public. Although, on closer appraisal, the proposal does not solve the problem of the loss of the individual voice within the crowd which Delolme identified as the problem of the civic republican definition of liberty, the emphasis is on the possibility of political deliberation instead of “a mere nay or yea” that suffrage provides.<sup>379</sup> He deliberately juxtaposed the benefit of public censorial power in encouraging the process of deliberation with a republican understanding of liberty equates liberty with the people’s participation in the law-making process. In this regard, Delolme’s programme also aims to alleviate the problem of limited participation inherent in modern representative politics. He argued that, in a free constitution such as England’s, there will always be differences among classes of people in their access to information concerning public affairs. Putting such information

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<sup>376</sup> Delolme, *Constitution*, 278.

<sup>377</sup> *Ibid.*, 280.

<sup>378</sup> Hellmuth, 180.

<sup>379</sup> Delolme, *Constitution*, 280.

in print, and making it widely available, is the pre-condition for the people's political deliberation. "Time, and a more favourable situation (to repeat it once more) are therefore the only things wanting to the People; and the freedom of the press affords the remedy to these disadvantages. Through its assistance every individual may, at his leisure and in retirement, inform himself of everything that relates to the questions on which he is to take a resolution."<sup>380</sup> In this regard, liberty of the press is also necessary for the formation of the public itself, strictly speaking, because it makes possible communication among subjects in various parts of the country.

The English liberty of the press is also crucially a guarantor of republican liberty, defined as freedom from political domination. It is the characteristic that distinguishes one's status as a slave of a good master from that of a genuinely free person. The freedom of the press is

[a] privilege which, by raising in the People a continual sense of their security, and affording them undoubted proofs that the Government, whatever may be its form, is ultimately destined to insure the happiness of those who live under it, is both one of the greatest advantages of Freedom, and its surest characteristic. The kind of security as to their persons and possessions which Subjects who are totally deprived of that privilege, enjoy at particular times, under other Governments, perhaps may intitle them to look upon themselves as the well administered property of Masters who rightly understand their own interests; but it is the right of canvassing without fear the conduct of those who are placed at their head, which constitutes a free Nation.<sup>381</sup>

This comment on the republican understanding of liberty as freedom from domination reveals the extent to which Delolme was familiar with republican writing, despite the lack of explicit reference to it. Moreover, this important quote reveals how, for Delolme, liberty of the press as a guarantee of general liberty is crucial to his argument that a free constitution does not have to be a republic. In fact, his examples of Rome and Venice also provide further proof of this claim. In the footnote on the same page, Delolme makes further remarks concerning the increasingly less important distinction between monarchy and democracy, arguing that "[i]f we consider the great advantages to public liberty which result from the institution of the Trial by Jury, and from the Liberty of the Press, we shall find England to be in reality a more Democratical [sic] State than any other we are acquainted with. The Judicial power, and the Censorial power, are vested in the People."<sup>382</sup> Here he uses the term "democratical state" in a modern sense, which is not tied to the form of government but can be used to describe democratic processes within the different branches of the constitution itself. Being democratic therefore can also mean the provision for direct participation by the people in judicial decision via the trial by jury, as well as to directly participate in exercising the "Public Censorial Power" of the government. To uncover this notion

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<sup>380</sup> Ibid., 209.

<sup>381</sup> Ibid., 280.

<sup>382</sup> Ibid.

of “censorial power” and place it in his account of the English system also serves as an entry point into early attempts to understand the constructive aspect of the tension between the people and the government, especially the executive power, which renders the idea of sleeping sovereignty an attractive philosophical foundation for modern constitutionalism.

Delolme first discussed the origin of the liberty of the press in England when he examined the aftermath of the English civil war, describing it as the formal establishment of “the key-stone” in the “arch” of the English constitution.<sup>383</sup> The term “censorial power” appears in the chapter “On Liberty of the Press,” which is a continuation of his examination under the topic “the powers which the people exercise themselves.” Highlighting the inadequacy of representative politics in absorbing individual concerns into the parliamentary discussion, he observes how “[m]en, in several States, have been led to seek for an expedient that might supply the unavoidable deficiency of the legislative provisions, and being to operate, as it were, from the point at which the latter begin to fail: I mean here to speak of the Censorial power; a power which may produce excellent effect, but the exercise of which (contrary to that of the legislative power) must be left to the People themselves.”<sup>384</sup> Emphasising the complimentary role of the Censorial Power to the legislation process, Delolme here also warns that this form of power must be exercised by the people directly themselves, unlike the legislative power, which he contended should be exercised via representatives. This parallel function with the legislative power is further explained. The legislation’s “proposed end” is not to have all individual intentions acknowledged, but to issue laws that are most conducive to the public good. The former ideal is simply impossible in a large-scale modern state, and “when carried into practice, to the greatest inconveniences, we must not hesitate to lay it aside entirely.”<sup>385</sup> The “censorial power” is the remedy for this neglect of the voice of individuals during legislation.<sup>386</sup>

Beyond its complimentary role to the legislative power, this power, as Chapter Two argues, has also been obtained through history “by the English Nation, with the greatest difficulty, and latest in point of time, at the Expense of the Executive power.”<sup>387</sup> This argument has to be understood in relation to the role of the public “censorial power” as a pre-condition for popular uprisings. Resonating with Rousseau, Delolme believed that the people’s power is sovereign. Unlike Rousseau, however, he held this not due to the underlying natural rights of mankind, but because of the sheer magnitude of this raw political power. The “censorial power” plays an important role in making the prospect of popular resistance feasible, and in so doing, functions as a warning to the government against encroachments on liberty. Delolme explained that “it is with

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<sup>383</sup> Ibid., 54.

<sup>384</sup> Ibid., 199.

<sup>385</sup> Ibid.

<sup>386</sup> Ibid.

<sup>387</sup> Ibid., 201.

respect to this right of ultimate resistance, that the advantage of a free press appears in a most conspicuous light. As the most important rights of the People, without the prospect of a resistance that overawes those who should attempt to violate them, are little more than mere shadows.”<sup>388</sup>

The latent power of popular resistance keeps all the governing powers in check. Nonetheless, it must be noted that Delolme valued the prospect of popular resistance, but not the unleashing of it. In this regard, Delolme also underlined the importance of the modern mechanism of representative politics in maximising channels through which the people’s power can be expressed, and how it is superior to popular constitution in securing liberty. Liberty of the press, which is the “key-stone in the arch of the history of the constitution of England,” goes hand in hand with “the Doctrine of Resistance, that ultimate resource of the oppressed,” and both play important roles in replacing the doctrine of the divine right of the king with “the more solid and durable foundations of the love of order.”<sup>389</sup> Nonetheless, the importance of resistance by the subjects to English liberty, as well as other kinds of political powers, when it becomes incontestable, it inevitably destroys the fragile equilibrium of the constitution and becomes destructive to liberty of the subject itself. Aligning with Rousseau in his separation between sovereignty and government, Delolme argued that “the only share they [the people] can have in a Government with the advantages to themselves, is not to interfere, but to influence – to be able to act, and not to act.”<sup>390</sup> In this regard, the notion of “public censorial power” and its role as a pre-condition of popular resistance can be perceived as Delolme’s attempt to demonstrate how the principles of the English system already was successful in balancing authority with liberty. In other words, the English constitutional history shows how the constructive tension between the strong but effectively limited executive power with the people’s power is the “solid and durable foundations of the love of order, and a sense of the necessity of civil government among Mankind.”<sup>391</sup>

## **Conclusion.**

Approaching Delolme’s analysis of the English system as a pre-history of representative democracy in the same spirit as Tuck’s *Sleeping Sovereign* (2016) shows that the former opens up several issues in the history of eighteenth-century political thought. It belongs to the strand of an argument for representative democracy, which seeks to replace the loss of the monarchical

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<sup>388</sup> Ibid., 216.

<sup>389</sup> Ibid., 54.

<sup>390</sup> Ibid., 219.

<sup>391</sup> Ibid., 54.

authority in European politics with a legally limited executive power regardless of the title. This strand of liberal constitutionalism is mostly associated with figures like Germaine de Stael, Benjamin Constant, and Jacques Necker.<sup>392</sup> However, what is distinct about Delolme's analysis is that he employed the English experience to advance his argument for utilising the distrust between the people and the executive power for the benefit of constitutional stability, as well as to provide channels of influence between the realm of civil society and the government. His support of a strong and unitary executive power and his argument for liberty of the press are two sides of the same coin. However, the latter almost disappears completely due to limited and anachronistic framework of conservatism employed to study his work. By uncovering his intricate analysis of English constitutional history, the chapter also reveals how it is also put forward as a precursor of the modern representative constitution. This is made explicit in his criticism of Hume that "the model of a perfect Commonwealth...was already at home."<sup>393</sup> His overlooked position in the long history of modern representative democracy, with his unique account of the constructive tension between the executive and the people, is therefore a fruitful investigation. Moreover, by uncovering Delolme's forgotten and distorted legacy, one also obtains an insight into early formations of representative democracy and its struggle to preserve popular sovereignty as the political ideal, as well as its difficult relationship with executive power. The thesis proceeds to investigate Delolme's reception in next chapters.

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<sup>392</sup> Richard Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy*, (Cambridge University Press), 2016.

<sup>393</sup> Delolme, *Parallel*, 61.

## CHAPTER FIVE

### Delolme in the Eighteenth-Century British Politics

#### Introduction.

Delolme's position in the eighteenth-century British politics is marked by a divided legacy between his positive account of strong executive power and his support for liberty of the press. While both are deeply intertwined with Delolme's analysis of the English free constitution, each aspect of his programme was exploited for various and opposing political agendas during the era's constitutional crises. In this regard, the examination of different readings Delolme's work in the British context serves as a prism for wider debates about the stability of the British constitution and whether it was amenable to reform. Moreover, his position within the debate on constitutional reform reflects the ongoing difficulty which modern representative democracy has with the notion of executive power and its relationship to liberty.

Prior to this thesis, scholarship on Delolme's influence in the British politics often focuses on his role as a staunch critic of civic republicanism. This line of investigation includes David Lieberman's "the mixed constitution and the common law" which juxtaposes his account of the English constitutional balance of power with Richard Price's to highlight their contrasting visions on the nature of political liberty which underpinned their different stances on the inalienable and natural right to resistance and the American controversy.<sup>394</sup> This approach overlooks Price's positive account of Delolme despite their different accounts of liberty. Price in his *Additional Observations on the Nature and Value of Civil Liberty* (1777) admired Delolme's positive account of the separation of functions as well as the combination of deliberation and execution in the English constitution.<sup>395</sup> Delolme was also known to some of his contemporaries as being a supporter of strong monarchical executive power and a self-consciously anti-republican author. Catherine Macaulay, for example, perceived his *Constitution* as a rival account to her own *The History of England from the Accession of James I to that of the Brunswick Line* (1763). She

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<sup>394</sup> This line of investigation is also found in Philip Pettit's various work which portrays authors of negative liberty and supporters of the British Empire such as Jeremy Bentham and John Lind against civic republican writers and advocates of the American cause like Richard Price see, for example, Philip Petit, *Republicanism: A Theory of Freedom and Government*, (Clarendon: Oxford University Press), ed., 2002, 42-49. Apart from secondary literature, Richard Price himself in fact cited Delolme's *Constitution* approvingly in his

<sup>395</sup> Richard Price, *Additional Observations on the Nature and Value of Civil Liberty and the War with America*, (London, 1777), 9-10.

mentioned Delolme in her letter to Ralph Griffiths concerning a controversial review of her work. In an unmistakably sarcastic tone, she wrote:

Do you not know that the principles and notions with which that history is replete are now exploded as antiquated absurdities? Do you not know that Mr de Lolme has, since that history was published, condescended to enlighten this country on the grand object of politics and shewn them the true excellencies inherent in the British Constitution? Do you not know that the advantage of a strong government, an implicit confidence in our rulers and an influence in the crown superior to all opposition by the legal power it has over parliaments, by the prerogative of extending the peerage, and the advantage it has of dispensing irresistible favours among the commons are now held out as excellencies which set our constitution on a pinnacle of perfection.<sup>396</sup>

This strand of reception might have been supported by Delolme's reputation among Pitt's ministry and their supporters. For example, the *Monthly Review* in 1775 reported on how Delolme was cited by Pitt the younger himself as well as the Earl of Camden who sat in the House of Lords.<sup>397</sup> Gilbert Stuart who translated Delolme's *Constitution* also portrayed him as an anti-republican "advocate for power". Stuart lamented how Delolme's erroneous account of the Norman Conquest as the origin of English liberty was the cause of his misunderstanding of the English constitution.<sup>398</sup> This strand of reception, while not incorrect, often overlooks the wider programme on the modern free constitution, of which his account of executive power is only one component among others. Consequently, it risks downplaying the constructive nature of Delolme's critique of republicanism.

In contrast with this contemporary caricature of Delolme as a simple "advocate for power", this chapter shows that late eighteenth-century readings of Delolme were more nuanced. Delolme's readers in the 1780s already recognised the distinction and relationship between his notion of "public censorial power" and the legislative power and how the former prevents the usurpation of the latter. This second strand of reception is adopted by critics of the British government, found in the work of "Junius" and John Cartwright, among others. This chapter thus shows how Delolme's role in British politics was more complex than previously portrayed once considering his idea of press freedom and its reception among English dissenters and constitutional reformers. The chapter also elucidates previously overlooked aspect of his political thought, such as his *Observation on the Late National Embarrassment* (1789) concerning the

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<sup>396</sup> Karen Green ed. *The Correspondence of Catharine Macaulay*. (New York: Oxford University Press), 2019, 222. Macaulay wrote the letter to response to *Monthly Review* criticism of her *Letters on Education* (1790). Delolme's *Constitution* was sarcastically mentioned as the review ended with the comment on how "her pretensions to philosophy have yet a less foundation than her pretensions to the character of being a good Historian" *ibid*.

<sup>397</sup> *The Monthly Review*, October, (1775), 281.

<sup>398</sup> *Edinburgh Magazine and Review* 4 (1775), 594-5.

Regency Crisis of the same year. The essay prompted an intriguing exchange between him and William Godwin which reveals their clashing narratives of 1688 that underlines their different understandings of a modern free constitution which underpin their responses to the regent question. This exchange between him and Godwin ends the chapter by portraying Godwin's republican approach in contrast with Delolme's modern narrative of the history of English liberty. In this regard, it also foreshadows the tension between what later becomes a broadly liberal view of a balanced constitution which aims to prevent concentration of powers, and the republican-democratic vision which demands that all modern political institutions should reflect the ideal of popular sovereignty. Nowhere was this clash clearer than the debate on modern executive power which is reflected in the Regency Crisis.

### **Delolme and the Critics of Constitutional Reform.**

Delolme's work was seized upon especially firmly by contemporaries in the 1780s who were concerned about the constitutional implications of weakened executive power and the related dangers of demagoguery. For many constitutional reform enthusiasts, the decline of the British Empire marked by its loss of the American colonies, as well as the scandal of the East India Company, called for a serious re-evaluation of the power arrangement which gave rise to the crisis. There was a concern about the Crown's political power became too dominant due to George III's increased patronage due to the military demand of the war with the colonies. In 1780, the Rockingham Whig launched a call for "Economical Reform" which included a range of policies such as the abolition of offices and sinecures with a concerted aim to reduce the Crown's influence. As Thomas Townshend explicitly stated: "the first great consideration [of the Economical Reform] was the lessening of the influence of the Crown, which in the opinion of the people".<sup>399</sup> Calls for parliamentary reform in the 1780s also occurred amidst popular discontent against the government's unwavering commitment to the war with the American colonies, despite decreasing public support. Beyond parliament, discussions on constitutional reform also became increasingly topical with the looming threat of popular uprisings.<sup>400</sup> London saw days of utter mayhem caused by the Gordon Riots which gained their own momentum beyond the anti-Catholic label of its origin.<sup>401</sup> For many, it was either reform or revolution, and extra-parliamentary measures were

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<sup>399</sup> John Almon, *The Parliamentary Register*, xvII, (London, 1780), 257.

<sup>400</sup> Richard Bourke, *Empire and Revolution: The Political Life of Edmund Burke*. (Princeton, N.J.: Princeton University Press), 2015, 402. citing French Laurence, "Notes on Parliament", 1794.

<sup>401</sup> For in-depth investigation into the political and economic causes of the riot which only the first of the numerous throughout 1790s see John E. Archer, "Political Protest." Chapter. In *Social Unrest and Popular Protest in England, 1780–1840*, 57–74. New Studies in Economic and Social History. Cambridge: Cambridge University Press, 2000.



adopted to achieve parliamentary changes, exemplified by the Friends of Liberty's programme.<sup>402</sup> The question about constitutional reforms, including the call for more frequent elections, therefore, often had a deeper meaning as a demand to move parliamentary politics towards the popular direction, and the institution of the Crown was an obvious target. Critics of republican constitutional reforms were concerned with the problem of the constitutional balance of power caused by weakened executive power as well as the rise of demagoguery associated with republican politics. Delolme's work presented them with conceptual tools to highlight these problems amidst the discussion about reforms and their implications for the constitutional stability.

An anonymous *Essay on Constitutional Liberty* (1780) was among the work that criticises the compatibility of republicanism as a baseline for constitutional reform programmes. Its argument for a strong and unitary executive power resonates so much with Delolme's work that some assign the authorship to Delolme himself although the authorship of the work remains contested. For Whatmore, the essay reiterates the same point made in *Constitution* that "republicanism was a doctrine for backward states; in the modern world it would lead to domestic disorder and ultimately the collapse of a state. In Britain's case it would cause reiteration of the scenes of Charles the First's time".<sup>403</sup> This chapter, however, treats the work as a part of Delolme's British reception. The main reason for doing so concerns the argument about property relations in the work. In this pamphlet, it is argued that a republican government must be supported by a system of equal property relation that can only be found in an agrarian society. Delolme never drew this conclusion, not even in his later work after *Constitution*.<sup>404</sup> His approach to the study of politics remains coherent. He examined relations between different kinds of political powers through their historical development and excluded modes of subsistence from the scope of his science of politics. Despite the Scottish Enlightenment's influence on his work, he never adhered to the conjectural theory approach. It seems peculiar that property relations should suddenly become the central argument of this 1780 work. Moreover, unlike all the work written by Delolme, the essay does not shy away from citing Thomas Hobbes.<sup>405</sup> The author of *Leviathan* is referred to in the criticism of the doctrine of natural right.

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<sup>402</sup> Albert Goodwin, *The Friends of Liberty: The English Democratic Movement in the Age of the French Revolution*. London: Hutchinson, 1979, pp. 13.

<sup>403</sup> Ibid.

<sup>404</sup> Namely *Parallel* (1772), *Flagellants* (1777), *his Advertisement to the American Declaration of Independence* (1782), *The British Empire in Europe* (1787) including his later pamphlets on window tax (1788), the Regency Crisis (1789) and the last known work on the power of the individuals to prescribe by testamentary dispositions (1798).

<sup>405</sup> For example, the author explained how "The rights," says Mr. Hobbes, "which Aristotle and Cicero attribute to human nature, are not derived from the principles of nature, but transcribed from the practice of their own commonwealth." *An Essay on Constitutional Liberty*, 1780, 3. As the previous chapter reveals, Delolme paraphrased Hobbes in his *Constitution* especially concerning human nature but he deliberately never cited Hobbes in any of his work.

The essay introduces the antagonism between modern “constitutional liberty” and civic republican liberty as the main theme which holds the work together. The first part of the essay is dedicated to arguing why republicanism is incompatible with the English system. For the author, republicanism cannot fully function without changing property relations back to the former, less advanced stage of agrarian society, as opposed to the current commercial one. It cannot be established because societies with advancement in the arts and sciences are always accompanied by inequalities of property ownership. Republican liberty was therefore incompatible with the material reality of Britain. The author claimed that at least “The demagogues of the old were so far honest and consistent. They knew and confessed their plan of liberty could never be reduced to practice without agrarian laws, and that anything short of these was downright mockery”.<sup>406</sup> For this author, eighteenth-century demagogues preached legislative supremacy without admitting the necessity of the agriculture-based economy which the commercial English society was not. To further emphasise this point, the author also exploited the examples of ancient republics and the Levellers to provide a contrast between limited monarchy and the mixed constitution of England and other republics. From the property relation argument, the author claimed that the republican reform in question would ultimately lead to legislative unicameralism since “to say that the power of the House of Commons ought to be proportional to the property of the whole commons, is saying, that the other branches of the legislature ought to be annihilated”.<sup>407</sup> In contrast, with a republican or popular constitution, the English mixed constitution reflected the diversity of opinions and interests of a commercial society and relied on a different, and allegedly more effective, scheme to secure liberty than a republic.

The essay moves on to Delolme’s account of the English constitution which provides an alternative view on an appropriate constitutional arrangement for the English commercial society. England consisted of several occupations and consequently, diverse interests of different groups unlike the agriculture-based republic. The author concluded that contrary to republican principles, which rely on perfect economic equality to achieve political liberty, in England “It is a coincidence of interests produced among all the different ranks throughout the kingdom in consequence of the political arrangements established at the [Norman] Conquest, to which Mr. De Lomé [sic] ascribes the origin of our liberty, and the extensive provisions laid down in favour thereof in Magna Charta”.<sup>408</sup> Agreeing with Delolme, the author contended that in the English narrative, it was the unintended consequence of the strong executive power of the Crown which rendered the union of resistance by all subjects a viable unifying interest to keep the governmental powers in check.

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<sup>406</sup> *An Essay on Constitutional Liberty*, 1780, 9.

<sup>407</sup> *Ibid.*, 23.

<sup>408</sup> *Ibid.*, 23-4.

The commercial nature of English society and the consequent diversity of interests also called for a modern understanding of legislative power. The author of the essay found Delolme's account of "public censorial power" and its complimentary role to the people's legislative power illuminating. In an agriculture-based republic, the legislative will reflects the homogeneity of the population and therefore, "when the laws are imposed by a society, among whose members great uniformity of character prevails; every one perceives them to be what he thinks they ought to be. This is what the institutes of every real republic supposes to be the condition of mankind. The legislative and censorial powers differ in no respect. The conducts of him to adhere to the laws, meet with the approbation of everyone".<sup>409</sup> In an advanced society, with the rise of arts and commerce, as well as the consequent diversity of interests, the author pointed out, "when his country imposes its laws upon him, the feelings of his heart do not in every respect coincide with their decisions".<sup>410</sup> In an advanced society like the English one, the legislative power therefore had to be separated from the public censorial power. The legislative branch in this mixed constitution did not aim at reflecting the interest of the people, but rather, to partly represent them in parliament while the people reserved a part of their power in the form of public opinion. The public censorial power was another contestant and was the power which the individuals reserve to exercise themselves. "The censorial and legislative powers of a mixed state are thus distinguished by Mr. Delolme".<sup>411</sup> The essay recognises how Delolme's dual notion of public censorial power and the legislative power supports Delolme's broader argument for the superiority of representative politics in modern conditions and simultaneously calls for a re-evaluation of using republican principles as the guideline for British constitutional reform.

The essay's argument was made amidst the background of contemporary complaints about the increase in tax and the influence of the Crown in parliament.<sup>412</sup> The position of the author was to address the danger of over-correcting the constitution by making the legislative power the only dominant power with the proposition to abolish the king's power to appoint ministers and to grant pensions. The author argued that the current form of the constitution was "the plan that was finally established at the Revolution", referring to the political and legal settlements after the English civil war with the parliamentarians' victory.<sup>413</sup> To reduce the executive power to the point of irrelevance in comparison with the legislative was to pervert the principles of the mixed constitution at the expense of constitutional liberty which was the true legacy of the Revolution. After the post-Civil War settlement, the people, "Being cured of republican whimsies, it has fixed the constitution at the true poise of a mixed government, or; in other words, has brought about a

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<sup>409</sup> *Essay on Constitutional Liberty*, 46.

<sup>410</sup> *Ibid.*

<sup>411</sup> *Ibid.*, 47.

<sup>412</sup> *Essay on Constitutional Liberty*, 74.

<sup>413</sup> *Ibid.*, 74.

coincidence of the principal interests of all the different orders within the kingdom”.<sup>414</sup> In the English constitution, the constitutional arrangement prevented the executive from abusing its power with various mechanisms, including the House of Common’s monopoly of its purse.<sup>415</sup> They ended the essay with Delolme’s analysis: “Our present reformers are all chargeable in this respect; they go to work as if our government was a republic, and not a monarchy... Mr. De Lolme justly considers as ruinous to our constitution: We have seen the temporary prepossessions of the people made use of to make them concur in doing what would prove the ruin of their liberty. We have seen plans of apparent improvement proposed, and forwarded by men who proceed without a due knowledge of the true principles and foundations of government...”<sup>416</sup> The essay crucially distinguished the English free representative constitution from the republican ones. The legacy of 1688 lies in the way in which it paved the way for the English constitution to cope with the increasingly diverse interests of modern society which the author argued, was overlooked by the republican reformers.

Delolme’s work was also employed to criticise constitutional reforms in the imperial context of the scandal of the East India Company in 1780s. Aided with the popular discontent against the government, Fox proposed the 1783 India Bill to reform the company. The Bill proposed a “legislative remedy” to the corruption and maltreatment committed by the Company. For the Opposition, however, it was an attempt by the ministry to gain political power through the monopoly of the Company in the name of constitutional balance.<sup>417</sup> Such criticism against Fox’s India Bill was found in the work of William Pulteney, *The Effects to Be Expected from the East India Bills Upon the Constitution of Great Britain If Passed into a Law* (1784) which used Delolme’s *Constitution* as an authoritative text to argue against the potential patronage gained by the Fox-North coalition through the control of the Company. For the coalition government, they foresaw parliamentary deadlock and political instability as their slim majority could not outweigh Pitt and more importantly, his royal support and patronage.

William Pulteney (1729-1805) was an independent member of the House of Commons from the 1760s, representing Cromartyshire in the Highlands. Formerly William Johnstone, he was Adam Smith’s student. His, as well as his siblings’ careers were part and parcel with the project of the British Empire. They were officials of the East India Company, governor of West Florida, and proprietors of sugar plantations in Grenada.<sup>418</sup> The pamphlet published was his speech in

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<sup>414</sup> Ibid., 77.

<sup>415</sup> See Chapter Four.

<sup>416</sup> Ibid., 90.

<sup>417</sup> Bourke, 2015, 561. Citing *Parliamentary History*, XXIV, e.g. cols. 10, 11, 15, London, 1809, 135– 38.

<sup>418</sup> Pulteney defended slavery and also personally owned slaves see Emma Rothschild, “Adam Smith in the British Empire.” Chapter in Sankar Muthu, ed. *Empire and Modern Political Thought*, (Cambridge: Cambridge University Press, 2012), 191-2.

parliament, made in 1783, during the debate on the corruption scandal of the East India Company, although it was published later in 1784 after the Bill was already defeated. Pulteney criticised the East India Bill of 1783, which was co-drafted by Edmund Burke, and proposed in parliament by Charles James Fox, then a part of the Fox-North coalition in power. Fox contended that the Bill intended to eradicate the system of patronage created by the economic and political power of the East India Company, which had become a vehicle for the private interests of the “nabobs”, employers of the Company who brought conspicuous wealth from along with the corrupting effect of “Asiatic despotism and luxury”.<sup>419</sup> The Company was on the verge of bankruptcy despite its commercial monopoly on the subcontinent.

Pulteney disagreed that the main threat to the English constitution was the way in which “Ministries had serviced the expansion of court power by exploiting the passivity of Parliament”.<sup>420</sup> He admitted that the corruption and misconduct of the East India Company was true. His objective in writing the piece, however, was to shed light on the constitutional implication of the Whigs’ proposition to take control of the Company. The scandal came to light through the dubious economic and political influence of the returning nabobs which stirred public discontent with the Company. In other words, Pulteney warned against overcorrecting the constitution that would affect the mechanism of the English system to keep “the Favourite of the People”, using Delolme’s terminology, in control.

With the help of Delolme’s arguments, Pulteney drew the attention of the public from the arguments concerning the effects of the proposed bill on the corruption committed by the East India Company to the principles of the English system. He argued that “we all know that its outward form, consists of King, Lords, and Commons: But many are not apprised of the particular cause, that our Government has not been hitherto subject to those fatal disasters, which have attended all former systems, where the People have enjoyed a great share in the Government of their Country. I will shortly state my idea of it, but I do not claim the merit of the discovery; I take it from a most ingenious Author, to whom the Republic of Letters and Mankind in general are greatly indebted”.<sup>421</sup> This passage is Pulteney’s introduction to Delolme’s argument and his examination of the English system’s “particular cause” that diverted from the traditional

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<sup>419</sup> See, for example, Tillman W. Nechtman, "Nabobs Revisited: A Cultural History of British Imperialism and the Indian Question in Late-Eighteenth-Century Britain." *History Compass* 4, no. 4 (2006): 645-667.

<sup>420</sup> Richard Bourke, “Popular Sovereignty and Political Representation.” Chapter in *Popular Sovereignty in Historical Perspective*, ed., Richard Bourke and Quentin Skinner, 212–35. (Cambridge: Cambridge University Press), 2016, 212.

<sup>421</sup> William Pulteney’s *The Effects to Be Expected from the East India Bills Upon the Constitution of Great Britain If Passed into a Law* (1784), 28.

understanding of the mixed constitution, namely the strong executive power which keeps the legislative branch under effective control.

This “particular cause” rendered the English system unsusceptible to the problem of the rule of the few which caused the downfall of the ancient republics. Pulteney here drew the parallel between Delolme’s warning against the problem of demagoguery and the rise of Fox, “the man of the people”, as described by Horace Walpole in his journal of 1780.<sup>422</sup> Similar to the 1780 *Essay on Constitutional Liberty* as well as in Delolme’s own account of the English system, executive power was perceived as a counterforce to powerful politicians with popular support. The initiation of the economic and political influence through the parliament’s sole control of the East India Company would change the constitutional balance to the side of “the Popular Leaders” and allow them to “master the Crown”. The effect of Fox’s India Bill, Pulteney argued, would make the legislative branch overpowering and “the ambition of every man would take a new directions; the Leaders [the people’s representatives] would from that moment come to have a separate personal interest distinct, from that of the People”.<sup>423</sup> Pulteney warned against “aristocracy”, or the rule of the few which he deemed to be a result of a weak executive power. His caution refers to the rise of Fox if the Company was to be transferred to the Parliament. Pulteney directly cited Delolme’s analysis about the problem of the rule of the few to support his criticism of Fox’s India Bill.<sup>424</sup> Delolme’s argument against legislative despotism and for a strong executive power here served a political purpose to undermine Fox’s power supported by this popularity. For Pulteney, Delolme’s prophecy about the constitutional usurpations by the few accurately predicted the rise of the Foxite Whig. However, the Bill was passed in the House of Commons but was eventually defeated in the House of Lords, with the help of George III and led to the dismissal of the Fox-North coalition.

Another intriguing reception of Delolme’s work as a warning against republican reform projects is Christopher Keld’s 1785 *An Essay on the Polity of England*. Keld was a relatively obscure contributor to the constitutional reform debate from Yorkshire, and his work is often cited to compare his position against Edmund Burke’s on the king’s power to appoint ministers.<sup>425</sup> The 516-page long work, however, addressed a much larger issue of the public discontent which began with the government’s unscrupulous treatment of the American colonies that led to the loss of

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<sup>422</sup> *Last Journals of Horace Walpole*, ed. A. F. Steuart (2 vols., 1910), vol. II, 268.

<sup>423</sup> Pulteney, 34-5.

<sup>424</sup> Pulteney cited Delolme: “If through the unforeseen operation of some new regulation, made to restrain the Royal Prerogative, or through some sudden public revolution, any particular bodies, or classes of individuals, were ever to acquire a personal independent share in the exercise of the governing authority, we should behold the virtue and patriotism of the Legislators, and great men, immediately cease with its cause, and Aristocracy, as it were watchful of the opportunity burst out at once, and spread itself over the kingdom” *ibid.*, 39-40.

<sup>425</sup> Caroline Robbins, “Edmund Burke’s Rationale of Cabinet Government” in Ian Hampsher-Monk ed., *Edmund Burke*, Routledge, 2016.

that part of the Empire. It tackled Delolme's interpretation of the constitutional outcome of the English Civil War and its implications for contemporary debates on electoral reform, including demands for universal male suffrage. Keld argued that the present framework of most discussions on constitutional reform blamed the Crown's influence and the lack of the people's representation for corruption and inefficiency. This distorted understanding of the nature of the constitution clouded the real issue of legislative despotism. Despite the richness of the historical analysis of the work and for the focus to this chapter, I limit the scope of the study to his account of the English legislative sovereignty and its implication for the constitutional crisis.

Keld argued that there had been a grave misunderstanding on the nature of the English constitution. Erroneously, "a notion prevails that the Crown enjoys the sole power of the government. In general, the Crown and the government means the same thing...He [the king] alone was blamed by some for the latest contest with the colonies, at present the states of America".<sup>426</sup> After 1688, he contended that "the king is called *sovereign*, yet, in truth, the real, supreme, irresistible, absolute, uncontrollable authority, in which the *jura summi imperii*, or the rights of sovereignty reside, is vested not in the monarch only, but in the kings, lords, and commons united; in other words, in the legislature".<sup>427</sup> What, then, has become of the institution of the Crown within this framework of legislative sovereignty? Keld argued that the monarch became "little more than the great Administrator of the government" with the pomp and the status of the fountain of glory which facilitates the fulfilling of its duty.<sup>428</sup> The king-in-parliament and legislative sovereignty, not a popular constitution, was the true legacy of 1688. The constitutional framework, he argued, allowed for the discussion about the House of Commons that became exceedingly overpowering over other elements of the constitution.

Keld criticised propositions to reduce the power of the Crown, exemplified by the 1780s Economical Reform, as well as discussions on the constitutionality of the king's prerogatives on the ground that they fail to understand "the true principles of the constitution" which made it superior to republican or popular ones. Should the executive power be reduced to "no more than grants from the people," the House of Commons then became "the people's representatives...holding a place greatly superior to any they had ever yet pretended to."<sup>429</sup> Keld here crucially alluded to the legacy of 1688 in distinguishing popular sovereignty from the representative government, resonating with Delolme's analysis of the English sleeping popular sovereignty. Describing the scene in the reign of Charles I, Keld diagnosed the split of the executive power as the source of the subsequent burst out of civil war. "From that moment the

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<sup>426</sup> Christopher Keld, *An Essay on the Polity of England*, 1785, 13.

<sup>427</sup> Keld, 15.

<sup>428</sup> Ibid.

<sup>429</sup> Ibid., 83.

constitution was dissolved...the executive power, as Mons. De Lolme expresses it, becoming double, and a perpetual co-ordinate authority being erected, an authority controulable [sic] by no one, accountable to no one ; a contention for power as naturally arose, and became inflamed into a civil war, ' as the sparks fly upward.'"<sup>430</sup> The division of the executive power during the Commonwealth period led to tyranny, but the change of the tyrant in power “was only a change of tyrants, but never of tyranny” as problem is inherent in popular constitutions. Keld also similarly reminded the public of the nature of the English constitution post-1688 and how its celebrated English liberty depended upon the unitary executive power as well as the well-controlled legislative power. These critics of republican constitutional reforms, examined in the first strand of Delolme’s British reception, intriguingly addressed the threat of the rule of the few gained by the mixture of popular support and novel sources of financial and political power from the extensive Empire. These critiques of the overpowering legislative power especially owned and exercised by popular politicians like Fox can be understood independently from their support of the monarchical executive power.

Delolme himself acknowledged how his argument for a strong but well-limited monarchical executive power might be perceived as a simple endorsement of royal power when the true subject matter of his programme was liberty and how it can be preserved in modern conditions. He amusingly remarked on such misunderstandings of his work that, “I feel a kind of pleasure, I must confess, to observe on this occasion, that though I have been called by some an advocate for Power, I have carried my ideas of Liberty farther than many Writers who have mentioned that word with much enthusiasm”.<sup>431</sup> With this remark by Delolme, the chapter proceeds to the second line of his British reception which focuses on his role as a supporter of liberty of the press which was still a hotly debated issue especially in the last decades of the eighteenth-century.

### **Delolme and Liberty of the Press.**

By the late-eighteenth century, the British intellectual milieu already was conversant with the topic of liberty of the press, as it was widely discussed under Walpole’s press restriction policies. The issue was one of the most important subjects concerning the exchange between Bolingbroke and the *Craftsman* writers and Walpole’s supporters such as the Court Whig John Hervey.<sup>432</sup> In 1760s, the Wilkes movement questioned the legitimacy of the parliament in claiming popular

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<sup>430</sup> Ibid., 84.

<sup>431</sup> Delolme, *Constitution*, 280.

<sup>432</sup> For an in-depth study of the topic of liberty of the press in the Walpolean era see Eckhart Hellmuth, "Towards Hume - the Discourse on the Liberty of the Press in the Age of Walpole." *History of European Ideas* 44, no. 2 (2018): 159-81.



sovereignty. They proposed, for example, how the English celebrated trial by jury was a more respectable representative body than parliament.<sup>433</sup> The decreasing trust in the parliament was also accompanied by anti-government pamphlets with vitriolic language. The 1777 edition of Hume's *Essay on Liberty of the Press* contains an important additional observation which, as Hellmuth points out, reveals Hume's attempt to disassociate the essay with the Wilkes campaign which he detested. He added how: "It must however be allowed, that the unbounded liberty of the press, though it be difficult to propose a suitable, perhaps impossible remedy for it, is one of the evils, attending those mixt forms of government".<sup>434</sup> Delolme coined his notion of "public censorial power" in this context. In building his argument, and possibly with the help of Hume's essay, he also endorsed the special status of the liberty of the press as an important part of the English constitution to keep the government in check by the public.<sup>435</sup>

The best known and most widely circulated use of Delolme's work to support arguments for press freedom was the Letters of Junius, a prominent criticism of George III and his government. Junius published a letter in November 1768 which addressed the question being vehemently debated by the public, namely whether "the Justice of our Laws, and the Liberty of the Constitution have been essentially violated in the Person of Mr. Wilkes."<sup>436</sup> By 1769, Junius' letters were already popular enough to effectively set the agenda for the British public's discussions concerning the American crisis. For one contemporary observer, the letters "become the principle Theatre...where the Grand battles are decided."<sup>437</sup> Junius was one of the factors which contributed to the wide readership of Delolme's *Constitution* especially among the republic of letters. For example, the *Monthly Review* for October 1775 made a remark that "The reputation of this book [*Constitution*], the French original of which is known to many Readers, hath not been a little increased by the great character given of it by the celebrated *Junius*. He speaks of it more than once with high encomium and has recommended it to the Public as a performance, *deep, solid, and ingenious*."<sup>438</sup>

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<sup>433</sup> John Brewer, "The Wilkites and the law, 1763-74", in John Brewer and John Styles (eds.), *An Ungovernable People: The English and their law in the seventeenth and eighteenth centuries*, London, 1980, pp. 153-7.

<sup>434</sup> David Hume, *Essays Moral, Political, and Literary*, ed. Eugene F. Miller (Indianapolis, 1985), 9-13 cited in Eckhart Hellmuth. "Towards Hume - the Discourse on the Liberty of the Press in the Age of Walpole." *History of European Ideas* 44, no. 2 (2018), pp. 180.

<sup>435</sup> But unlike Hume who referred to it as 'common right of Mankind', Delolme hoped he found a philosophical solution to the problem of liberty and power by correcting liberty of the press as "public censorial power", a kind of power which the people retain to themselves beyond their power to select representatives. David Hume, 'Essay of the Liberty of the Press', in *Essays, Moral and Political*, ed. id., vol. 1, Edinburgh, 1741, pp. 15. For a detailed discussion on public censorial power and its locus within Delolme's account of the English system see Chapter 4.

<sup>436</sup> *The Letters of Junius*. Clarendon P., 1978, pp. xiv. Citing letter of Junius 21 November 1768.

<sup>437</sup> Junius, ed. John Cannon. *The Letters of Junius*. (Oxford: Clarendon Press), 1978, xvi citing *A Bystander*, 2 December 1769.

<sup>438</sup> *The Monthly Review; or, Literary Journal: for October 1775*. By Several Hands, London, 1776, 281.

Junius' preface to the collection of his letters begins with the eerie ambience during the reign of Charles I with the heightened censorship before the outbreak of the civil war. "This glorious privilege [of liberty of the press] may be security to the King, as well as a resource to his people. Had there been no star chamber, there would have been no rebellion against Charles the First, the constant censure and admonition of the press would have corrected his conduct, prevented a civil war, and saved him from an ignominious death."<sup>439</sup> Following Delolme, he argued that in modern politics, the liberty of the press and public opinion indirectly shapes the government's actions. He wrote highly of Delolme's analysis as "ingenious, deep and solid" and went on to quote *Constitution* on the importance of liberty of the press in maintaining the wider liberty of the state:

In short, whoever considers what it is that constitute the moving principle of-what we call great affairs, and the invincible sensibility of man to the opinion of his fellow creatures, will not hesitate to affirm, that if it were possible for the liberty of the press to exist in a despotic government, and (what is not less difficult) for it to exist without changing the constitution, this liberty of the press would alone form a counterpoise to the power of the prince. If, for example, in an empire of the east, a sanctuary could be found, which, rendered respectable by the ancient religion the people, might insure safety to those who should bring thither their observations of any kind; and that, from thence, printed paper should issue, which, under a certain seal, might be equally respected; and which, in their daily appearance, should examine and freely discuss the conduct of the cadis, the bashaws, the vigir, the divan, and the sultan himself; that would introduce immediately some degree of liberty.<sup>440</sup>

Junius' reception of Delolme resonates with the development of the notion of liberty of the press that was already acknowledged as a "counterpoise to the power of the prince". He also referred to the underlying esteem-seeking human nature or the "invincible sensibility of man to the opinion of his fellow creatures" which makes the counterpoise mechanism possible. Even though he did not further engage with Delolme's delineation of the English system, the reception is historically crucial as it popularised *Constitution* among critics of George III's government. Junius' reception of Delolme is more politically important than philosophically significant due to his relatively limited engagement with Delolme's work. His reception by Jeremy Bentham, by contrast, is marked by both personal relations as well as a more philosophically inclined reception.

Bentham and his intellectual companion, John Lind, were among the few who we know were in personal contact with Delolme, which makes their reception of his notion of "public censorial power" particularly intriguing. Between 1770s-1780s, both of them were involved in systematic responses to Richard Price's *Observations on the Nature of Civil Liberty* (1776). Philosophically, they found Price's notion of liberty erroneous. The incorrect understanding of liberty, they argued, led to an equally grave political consequence. The confusion of liberty with self-determination

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<sup>439</sup> The preface of *Letters of Junius*.

<sup>440</sup> Ibid.

was, for Bentham, at the heart of the American controversy. Confident of the importance of his programme, he wrote that: "If I explain these matters clearly I may be a means of giving perpetuity to the constitution of my country, I may stifle in embryo or rather intercept the conception of all manner of political disputes, prevent civil wars, fix the peace of empires, and save the lives of millions".<sup>441</sup> Bentham's reception of Delolme's proposal, that liberty of the press should be understood as constitutive of "public censorial power", is best understood in this context.

There is evidence that Bentham occasionally met Delolme from his personal letters to his close friends John Lind as well as Samuel Romilly, a lawyer and a legal reformer who came from a Swiss Huguenot background like Delolme. His name was mentioned occasionally, for example, in Samuel Romilly's letter dated January 1782 to Reverend John Roget, who also came from Geneva. In the letter, Romilly amusingly asked for the whereabouts of Delolme. He wrote: "Has Mr. Berenger heard anything of Delolme? His bookseller here has had no news from him since he left Ostend, from which, I believe some other circumstances, it is supposed that he is in Bastille; and it is likewise supposed that the crime he is accused of being the author of the invectives against M. de Vergennes which appeared in the *Courier de Londres*. It is true that he is not the author, but no matter for that. It is the policy of the arbitrary court to make sure of all those whom they suspect [are brought in]".<sup>442</sup> Delolme's connection to Bentham appeared most explicit through Bentham and Lind's contribution to the American dispute between 1775-1776. In Bentham's letter of 22–23 January 1777, Delolme is mentioned as a preliminary French translator for John Lind's *An Answer to the Declaration of the American Congress* (1776), although the job was not finished and was later transferred to A. J. P. Fréville.<sup>443</sup> Moreover, Bentham also made a passing comment about Delolme's financial struggles in his personal letter which seems to suggest that he was a part of Bentham's circle.<sup>444</sup>

Lind's *Three Letters to Dr. Price* (1776) criticised Price's notion of civil liberty as well as the doctrine of natural right as the basis for the study of politics. Price endorsed a popular constitution as a result of his understanding of liberty as the people's participation in the law-making process. Lind refuted Price, invoking Delolme's authority: "the disadvantages of entrusting the work of legislation to the people at large, do not depend on local or transitory circumstances, but on causes universal and permanent; causes which acquire new energy in proportion as the nation increases

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<sup>441</sup> Bentham Papers at University College London, *The Correspondence of Jeremy Bentham* (London: Athlone Press and Oxford University Press), 1968-, LXIX, 156. Cited in Yiftah Elazar, "Liberty as a Caricature: Bentham's Antidote to Republicanism." *Journal of the History of Ideas* 76, no. 3 (2015): 417-39.

<sup>442</sup> Samuel Romilly, *Memoirs of the Life of Sir Samuel Romilly*, Volume 1, 1840, 197.

<sup>443</sup> Jeremy Bentham, *The Correspondence of Jeremy Bentham*, Volume 2 1777 to 1780, ed. Timothy L. S. Sprigge, and series edited by J.H. Burns, 13.

<sup>444</sup> *Ibid.*, 494.

in numbers and in wealth.”<sup>445</sup> The legislative supremacy of one political body without a check by adequately strong political powers inevitably leads to aristocracy in disguise. “In no time or country have the people at large had discernment to perceive, or leisure to learn, or steadiness to pursue, the best, or indeed any effectual means of guarding against the power and artifices of the few. The open outrages of a Coriolanus or an Appius they may perhaps repel; but they will be over-awed by the authority of a Scipio, and dupes to the artful blandishments of a Marius or a Cæsar. He who flatters with skill, will surely make them stilts to his ambition”.<sup>446</sup> Here Lind also resonates with Delolme’s point about the advantage of representative politics which allows people to deliberate, unlike a direct or popular constitution in which the political advantage of alacrity outweighs well-formulated arguments.<sup>447</sup> In the footnote, Lind accredited Delolme for this analysis: “This subject has been fully illustrated by Mr. De Lolme in his excellent treatise on the English Constitution; which offers the best defence perhaps that was ever written of a limited monarchy against the madness of republican principles”.<sup>448</sup>

Bentham’s early reference to Delolme already reveals his interest in Delolme’s analysis of the English system which goes beyond the checks and balances between the executive and the legislative, the approach which Bentham found to be inadequate and misleading. In his 1776 *A Fragment on Government*, he criticised William Blackstone’s *Commentaries on the Laws of England* (1765-9) and its negative view on political reform, citing the role of tradition in English common law. In Bentham’s portrayal of the work, Blackstone’s support of the status quo is based on the linguistic ambiguity especially concerning the executive power and the legislative power which he found to be inadequately distinguished from each other. Bentham ended this chapter on the British constitution by denying Blackstone’s originality, pointing, instead to Delolme’s superior counterpart:

Thus much for the British Constitution; and for the grounds of that pre-eminence which it boasts, I trust, indeed, not without reason above all others that are known: Such is the idea our Author [William Blackstone] gives us of those grounds.—‘You are not satisfied with it then’, says someone.—Not perfectly.—‘What is then your own?’—In truth this is more than I have yet quite settled. I may have settled it with myself, and not think it worth the giving: but if ever I do think it worth the giving, it will hardly be in the form of a comment on a digression stuffed into the belly of a definition. At any rate it is not likely to be much wished for, by those, who have read what has been given us on this subject by an ingenious foreigner [Delolme]: since it is to a foreigner we were destined to owe the best idea that

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<sup>445</sup> John Lind, *Three Letters to Dr. Price*, London, 1776, 84.

<sup>446</sup> John Lind, *Three Letters to Dr. Price*, 1776, 84.

<sup>447</sup> Delolme, 2007, 209.

<sup>448</sup> John Lind, *Three Letters to Dr. Price*, 1776, 84.

has yet been given of a subject so much our own. Our Author [Blackstone] has copied: but Mr. DE L'OLME has thought.<sup>449</sup>

From this citation as early as 1776, a year after Delolme's English edition was published, Bentham was already familiar with the work's arguments. Nonetheless, it is also possible that he had access to the original French version which was published in 1771. Either way, the quote confirms that Bentham in his first printed work was assisted by Delolme's account of the English constitution in his criticism of the idea of a balanced constitution which he later abandoned entirely.<sup>450</sup> Bentham's admiration of Delolme stems from his difference from Blackstone's analysis of the English system which credits the harmony between the executive, the legislative, and the judicial. Delolme's account, in contrast, focuses on how the English system's success stems from its ability to correct problems faced by a popular constitution, such as the inadequacy of legislation in maintaining order. In the English system, by contrast, the institution of public opinion "begin[s] to operate, as it were, from the point at which the latter [the legislative power] begins to fail".<sup>451</sup> Bentham picked up on this analysis on the complimentary role which public opinion plays in the English system to parliamentary politics. While this aspect of Bentham's reception has been examined, it has not yet been linked to Delolme's stance on popular sovereignty and its survival in modern politics in which the task of the constitution is to provide, in Bentham's words, "security against misrules", which both authors deemed the language of natural right and virtue fail to expound.<sup>452</sup>

Delolme's influence upon Bentham's reform programme is most illuminating in one of his French manuscripts. The work concerns the issue of public opinion and its special role in preventing "misrules", by influencing and limiting the legislative power. De Champs, in her *Enlightenment and Utility*, argues that, for Bentham, public opinion as a tribunal is presented as an effective limit on office holders, despite the fact that the legislative power cannot be submitted to positive laws.<sup>453</sup> Moreover, it functions complementarily to legislation in the realm of moral conduct. Delolme expounded the relationship between "the public censorial power" and "the

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<sup>449</sup> Jeremy Bentham, *A Fragment on the Government* (1776), "British Constitution", 86.

<sup>450</sup> Fred Rosen explores Delolme's influence on Bentham in Bentham, Byron, and Greece (1992) focusing on Delolme's comparatively fuller account of the nature of the executive power than that of Blackstone. However, the comparison does not rely on further evidence of Bentham's own writing beyond this single citation from *Fragment*. See Rosen, Fred, *Bentham, Byron, and Greece*, Clarendon Press, Oxford, 1992, 45-57.

<sup>451</sup> Delolme, 199.

<sup>452</sup> Bentham's rejection of the language of natural right is well-documented. He wrote, for example, that "I have not, I never had, nor ever shall have any horror, sentimental or anarchical of the hand of government. I leave it to Adam Smith, and the champions of the rights of man, (for confusion of ideas will jumble the best subjects and the worst citizens upon the same ground) to talk of invasions of natural liberty, and to give as a special argument against this or that law, an argument the effect of which would be to put a negative upon all laws." Jeremy Bentham, *Defence of A Maxim*

<sup>453</sup> De Champs, 88

proposed end of Legislation” which “is not...to have the particular intentions of individuals, upon every case, known and complied with, but solely to have what is most conducive to the public good on the occasions that arise.” Individual opinions that are not incorporated into the law-making process, however, become an invaluable check upon the law in the form of the Public Censorial Power. It “determine[s] upon those cases which lie out of the reach of the laws, it cannot be tied down to any precise regulations.”<sup>454</sup> Delolme was given credit by Bentham as the pioneer who “accurately assessed the immense weight of that invaluable means, the immense prize of such an invaluable piece in the political clockwork of government.”<sup>455</sup> It was Delolme’s work in which Bentham found the new status of the public opinion and the liberty of the press in modern politics as a “censorial power” of political authority. This new kind of political power, exercised by the public, presents a new way to think about constitutional liberty beyond the old framework of the balance of powers. Bentham already began to examine the limitations of this approach in his *Fragment*.

Delolme’s “public censorial power” also has a wider implication as a form of expression of the people’s power. Like Delolme, Bentham shunned the idea that sovereignty is a unitary supreme political force. His constitutional code focuses on the distribution of power among institutions, rather than on the unitary and supreme notion of the sovereign.<sup>456</sup> In this regard, both Delolme and Bentham began their political enquiry with the question of security and their projects aim at defining security with the rise of new political institutions of which power cannot be understood as executive, legislative, or judicial. Bentham’s reception of Delolme resonates with the thesis’ approach to Delolme’s programme which expounds a new conception of modern democracy based on multiple novel institutions that provide various modes of expression of the popular will. This new conception is also in contrast with the more unified notions of popular sovereignty which characterised the political thought of Rousseau.

Apart from the new institution of public opinion, another parallel channel of the people’s power is through the institution of the trial by jury. In trial by jury, one’s innocence is only determined by their peers. Similarly, the “fictitious tribunal” of the court of public opinion exercise “moral sanction” to those who are found guilty such as the representatives of the people that fail to protect the public interest. Bentham, like Delolme, accepted that sovereignty lies in the people, but argued that the challenge for constitutional reformers was to delineate the best institutional arrangement that can preserve this ideal.<sup>457</sup> Junius and Bentham’s admiration for

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<sup>454</sup> Ibid, 200.

<sup>455</sup> Translation from French by Emmanuelle de Champs from Bentham papers in the Library of University College London, 33, f. 126.

<sup>456</sup> For this line of enquiry, see Fred Rosen, *Jeremy Bentham and Representative Democracy*, Ch. 3.

<sup>457</sup> Jeremy Bentham, *Constitutional Code: Volume I*, eds. F. Rosen and J.H. Burns (Oxford: Clarendon Press, 1983) 25.

Delolme's account of English freedom of the press and the notion of the public censorial power were well-established among constitutional reform enthusiasts.

After Junius and Bentham, Delolme's reputation as a champion of press freedom became more prevalent, especially at the peak of the debate on the topic in the 1790s. For example, critics of the British government often fused this argument with the language of natural right and self-determination. *An Address to the Freeman of Liverpool* (1790) is a prime example. The anonymous pamphlet depends on Fox's India Bill which was defeated in the House of Lords due to George III's interference. It also criticises the lack of independence of some MPs including "Mr. G", a "vox et praeterea nihil---the avowed and *dependant* friend of Mr. Pitt; the Shadow echo and *instrument* of his father".<sup>458</sup> The author appealed to "the immutable laws of nature, the unalienable [sic] rights of reasonable beings, and the genuine principles of liberty, every one would give his vote in electing those delegates" alongside Delolme's account of the "public censorial power" which was cited on the front cover of the pamphlet.

Despite Fox's 1792 Libel Act, a royal proclamation was issued to launch a full-scale prosecution of authors of seditious writings. The government's open attack on press freedom prompted the establishment of the Society of Friends to the Liberty of the Press in December 1792. The society interestingly consisted of members who were both parliamentary and extra-parliamentary opposition.<sup>459</sup> Delolme's work was well received by some members of the society, including John Cartwright, for his support of the liberty of the press as the cornerstone of the English constitution. In this regard, his programme offers a conceptual tool, as well as a historical perspective, which shed light on the close relationship between the liberty of the press or "public censorial power" and their legislative power.

Cartwright's *A Letter to a Friend at Boston* was published in 1793. The author was a peculiar figure in the British politics in the late eighteenth-century. His royal navy career path ended when he became interested in politics and argued for the right of the American colonists to govern themselves. He was also one of the founding members of the Society for Constitutional Information along with other notable members including John Thelwall and John Horne Tooke. The objective of the Society was stated to be: "To procure short parliaments and a more equal representation of the people" as well as to nurture "The communication of sound political knowledge to the people at large".<sup>460</sup> The year that this letter was published was the year before the *Habeas Corpus* was suspended under William Pitt amidst the fear that several seditious groups

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<sup>458</sup> *An Address to the Freeman of Liverpool*, 1790, 9.

<sup>459</sup> Eckhart Hellmuth, "Criticising the Constitution; or, How to Talk about the Liberty of the Press in 1790s", in *Sites of Discourse- Public and Private Spheres- Legal Culture*, (Rodopi, Amsterdam, New York) 2002, 109-110.

<sup>460</sup> Humphreys, A. L. "The Society for Constitutional Information." *Notes and Queries* S12-I, no. 1 (1916): 11-12.

would emulate the French Revolution's sentiment against the established constitution. Cartwright's reference to Delolme reveals how the rational dissenter employed arguments in *Constitution* to protest against Pitt's alleged perversions of the constitution, liberty of the press among others, in the name of order and security. This *A Letter to A Friend at Boston, Lincolnshire* was written in 1793 and was also addressed to "Commoners who have associated in support of the constitution". By that time, Cartwright was already a well-known reformer and was working with his allies to advance the cause in Lincolnshire.<sup>461</sup> In the letter, Cartwright asked his friends to understand his motives behind the attempt to gain countryside support for parliamentary reform. Like Junius, Cartwright identified liberty of the press as an integral part of the English constitution.

If, while that constitution very rightly restrained the licentiousness, it did not at the same time expressly cherish, protect, and encourage the liberty of the press, as an invaluable blessing; and authorise the free discussion of all political questions, particularly respecting the national government; as means of permanency of the state; and happiness of the people; it would not, I confess, in my opinion, be entitled to much of that admiration bestowed upon it by De Lolme and other writers; or which I have been accustomed to entertain of it myself.<sup>462</sup>

Interestingly, Cartwright here echoed Delolme as well as Hume in his last edition of the essay on liberty of the press as he pointed out its role as a "means of permanency of the state". This enlightened outlook on liberty of the press as an extra-parliamentary stabilising factor is insinuated in Delolme's discussion on the "public censorial power" as a form of political power beyond the people's power to appoint their representatives. This scheme is informed by their shared belief that a modern free constitution while endorsing popular sovereignty, should aim at preventing any one political entity to monopolise it. The public censorial power, in this regard, prevents the House of Commons from claiming such a right, resonating with Christopher Keld's argument about the legacy of 1688 discussed in the first half of this chapter.

### **Republican and Constitutionalist Visions for England in the Regency Crisis.**

The chapter ends with Delolme and William Godwin's contribution to the debate on the 1789 Regency Crisis as it best elucidates their contrasting understandings of the nature of the English constitution which informs their accounts of the executive power. William Godwin, best known for his *Enquiry Concerning Political Justice* (1793), also worked closely with the Foxite Whig

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<sup>461</sup> Ibid, 709.

<sup>462</sup> John Cartwright, *A Letter to a Friend in Boston*, 1793.



during the 1789 crisis concerning the means of achieving the government office.<sup>463</sup> Godwin's engagement with Delolme epitomises the clashing visions of a modern, free constitution which was most explicit in their disagreement on the locus of the executive power in the English system. On the one hand, Delolme endorsed the idea of sleeping sovereignty which separates popular sovereignty from government. His approach focuses on the institutional arrangements to prevent concentration of power and the monopoly of the claim to represent the people, an integral part of this arrangement is a strong and unitary executive power. Godwin, on the other hand, established popular principles at the heart of the English constitution and consequently, saw George III's illness as an opportunity to re-arrange the power relation between the parliament and the Crown to empower the former. This disagreement on the constitutional principle also cannot be separately understood from the historical and political context of the Crisis as Godwin was an active supporter of Fox.

The Regency Crisis of 1789 was triggered by George III's final episode of mental illness. The Fox Opposition saw the opportunity to strengthen their power by exploiting Fox's personal link to the Heir Apparent by proposing the full transferring of the executive power to Prince of Wales. William Pitt the Younger the then prime minister, on the other hand, initially counted on George III's full recovery as he saw the political defeat of his party should the Prince of Wales assume the total executive power. This underlying issue of party interest further complicated the debate on how to proceed with the question of the Regent. Delolme was aware of the opportunity to present his research to the public, regarding the topic of executive power and its relationship to modern liberty to be his area of expertise. He produced an 81-page work titled *Observations Upon the Late National Embarrassment, and the Proceedings in Parliament Relative to the Same* (1789). This essay has been neglected by scholars as somewhat lesser in quality in comparison with his other works.<sup>464</sup> The chapter hopes to rectify this and bring to the fore the work as a continuity of his interest in the English system as a model of modern free, representative constitution. Delolme exposed what he deemed to be contradictions in both Pitt and Fox's arguments concerning the transferring of Georg III's royal power.

Delolme contended that the right of the regent is by nature a future right, the exercise of which depends on the death of the monarch. The difficulty of the discussion arose because the king was

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<sup>463</sup> Pamela Clemit and David Woolls. "Two New Pamphlets by William Godwin: A Case of Computer-Assisted Authorship Attribution." *Studies in Bibliography* 54 (2001), 267.

<sup>464</sup> David Lieberman makes a remark on his work after *Constitution* that "the majority of De Lolme's literary productions, however, comprised more ephemeral and less ambitious writings in which he exploited his established reputation as a scholar of English government and history to comment on issues of the moment." While it is true that none of his late work can compare in terms of comprehensiveness with *Constitution*, this chapter aims to demonstrate how there is a continuity of the theme of executive power and modern liberty that is fruitful to the examination of his programme of modern republicanism. David Lieberman, Introduction, *Constitution*, xvii.

still alive despite the incapacity to express his will and therefore to provide political directions as the executive power. The conversation about the regent's power, therefore, was redundant. More importantly, it was a threat to the constitutional principles which the politicians either failed to comprehend or purposefully ignored to preserve their political interest. For him, the legislative power belongs to three constitutive parts namely the House of Commons, the House of Lords, and the king-in-parliament. The power to convoke the parliament is exercised by the monarch to prevent the monopoly of the legislative power by the House of Commons, the most powerful constitutive part of the parliament.

Pitt, despite his claim to protect the authority of George III, proceeded to assemble at Westminster despite the absence of the royal assent. Delolme pointed out the contradiction in his action: He "now affirmed that those rights which the Prince [regent] did not possess, were possessed by the Parliament, and that the Parliament were empowered to assume that royal authority which was denied the Prince".<sup>465</sup> These "rights" of the monarch prevents the concentration of power in the legislative branch and consequently should not be exercised by the legislative houses themselves. Pitt erroneously compared the political crisis of George III with the situation during the English civil war. Pitt portrayed "the situation of the present Parliament...as being similar to that in which the *Convention* Parliament stood; who, in fact:, assumed the royal authority to themselves and disposed of the same in what manner they thought expedient".<sup>466</sup> Delolme accused Pitt of purposefully assumed the royal authority to solidify his own political power, exploiting the national crisis. The legacy of 1688 was central to the constitutional crisis in 1789.

In Delolme's understanding, the constitutional settlement after the Civil War did not only aim at preventing royal absolutism but also legislative despotism. With the reduction of the royal executive power to the point of insignificance, the English constitution risks being exposed to a "shifting without end from one kind of subjection to another", repeating the chaotic scene of the Interregnum.<sup>467</sup> Pitt's comparison between the Regency Crisis of 1789 with the Convention Parliament of 1689 reflected his erroneous understanding of the nature of the English constitution. Delolme argued that "the existence of the Parliament now met at Westminster, is depending both upon the life and the will of the King" while the Convention Parliament in 1689 first and foremost declared that the throne was vacant to connote how that parliament was "self-assembled".<sup>468</sup> The Convention Parliament, in this regard, is portrayed as directly honouring popular sovereignty and did not distinguish the constitution-making power from the operative power which the

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<sup>465</sup> Delolme, *Observations*, 20.

<sup>466</sup> Ibid.

<sup>467</sup> Delolme, *Constitution*, 50.

<sup>468</sup> Ibid.

government exercises. In other words, the Convention Parliament was a popular constitution without a Rousseauian government-sovereignty distinction unlike the eighteenth-century English constitution. The latter succeeded in preserving modern liberty precisely because of its representative mechanism which preserved the people's power by preventing its usurpation with its constitutional arrangements which included the unitary executive power of the monarch.<sup>469</sup> The decision of Pitt's government to assemble without George III connoted the fact that the present parliament "professed an intention to procure the royal assent" through the Parliament's Declaration which states that it was "their [Parliament's] Right and Duty" to be "assembled and lawfully, fully and freely representing all the Estates of the People of this Realm", violating the usurpation-prevention scheme of the a constitution based on the distrust of all powers.<sup>470</sup> The implication of this criticism is severe. Pitt either acted intentionally like the anti-monarchy of the Glorious Revolution or he proclaimed that the executive power now belonged to him, an *ipso facto* monarch.<sup>471</sup> When the parliament resumed on the ground that they "freely representing all the Estates of the Realm", they exercised "more power, greatly more, than the King himself would enjoy, if he was present...If the King was personally governing, he would not be allowed to declare his opinion about Bills presented to him, without the power of framing [them]: and the Parliament would only be allowed to frame Bills, without the power afterwards of asserting them".<sup>472</sup> Pitt, in this regard, assumed the sovereign power which neither the King nor the legislative branch owned.

Delolme's position concerning the nature of the English system post-1688 is best understood when juxtaposed with William Godwin's assessment of the Regency Crisis, as well as his critique of Delolme. Their different understanding of the English system also anticipates two visions of what constitute a modern, free constitution. Delolme believed that the distinction between government and sovereignty which is the key to a representative constitution has to be preserved with the institutional arrangement that prevents any one political body to claim its right as the sole representative of the sovereign power. Godwin, on the other hand, adhered to the democratic principle which he believed, has to be applied to all political institution at every level of the constitutional structure. This disagreement between them is most explicit in their different account of the English monarchical executive power.

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<sup>469</sup> See Chapter Four.

<sup>470</sup> Ibid.

<sup>471</sup> Delolme, *Observations*, 27.

<sup>472</sup> Ibid., 67.

In 1788 Godwin penned a pamphlet concerning the right of the parliament to resume without the royal assent from George III.<sup>473</sup> In *The Law of Parliament in the Present Situation of Great Britain Considered* (1788), he argued that English personal freedom, and its celebrated liberty of the press, “are secured to us by the *popular* nature of our constitution. The monarch of a despotic state might grant them, but it would be always in the power of himself, his successors, and their ministers to take them away again. In England they are in the hands of the nation at large. We can never lose them, but by our own fault; they will last, as long as our constitution continues undebased and unaltered”.<sup>474</sup> Godwin’s position is that in the case of emergency such as the illness of George III, the English constitution as a popular constitution could legitimately self-assemble as well as appoint a regent. In other words, for Godwin, English monarchy was a kind of delegation of popular power to exercise the executive power of the constitution.

In this line of argument, the absence of the king as a magistrate of the executive power, should not put the political deliberation process of the parliament to a halt since the person of the king was merely the vehicle of that power. He disagreed with Delolme’s contention that “the presence of the king, either real or represented, was absolutely requisite at the first meeting,” or that it was that presence, “which gave life to the legislative bodies”.<sup>475</sup> In Godwin’s account, the king did not “give life” to the legislative since the sovereign power belongs primarily to the body of the people. The monarch served an operative purpose to carry into action the legislative will and did not own any of the sovereign power in a popular constitution. To this citation, Godwin commented that “Upon this passage it is obvious to remark, that the authority of Mr. De Lolme is more decisive than that of judge Blackstone, but that, as might be expected from a writer, who is neither an English lawyer, nor a native of this country, it is neither so scientific [sic], nor so conclusive”.<sup>476</sup> Similar to Bentham, Godwin noticed that Delolme was more elaborate than Blackstone in his account of the executive power.<sup>477</sup> He argued how “the constitution of our government must be extremely imperfect, if it does not include in it provisions for an extraordinary emergency. This inclusion may be derived, either from precedent, if the case has occurred before; or from the spirit of the constitution candidly applied, in a new case; or from considerations, partly of one kind, and partly of the other”.<sup>478</sup> Godwin insinuated that since the sovereign power after 1688 had already been settled to belong to the people at large, in the case of emergency the Parliament should be able to cope with the difficulty on the basis of “the spirit of the constitution candidly applied”

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<sup>473</sup> On the discovery of Godwin’s political pamphlets as well as Godwin’s connection to the Foxite Whig see P. A. Clemit, “Two pamphlets on the Regency crisis by William Godwin.”, *Enlightenment and Dissent*, No. 20, 2001.

<sup>474</sup> *Ibid.*, 198.

<sup>475</sup> *Ibid.*, 208 referring to Delolme, *Constitution*, 58.

<sup>476</sup> Godwin, 1788, 200.

<sup>477</sup> Delolme, *Constitution*, Chapter V on Executive Power.

<sup>478</sup> *Ibid.*, 201.

namely to allow the representatives of the people, directly representing popular sovereignty, to proceed with the parliamentary deliberation to set up a regent.

For Godwin, the monarch's only duty in the constitution is to exercise the executive power while for Delolme's the existence of the office prevents the usurpation of the constitution by those who possess legislative power as well as the popular leaders who have popular support. Godwin's proposal of returning the power to appoint a regent to the representatives of the people in the parliament therefore is incompatible with Delolme's vision of a free constitution in which popular sovereignty is separated from the function of the government.

## **Conclusion.**

Delolme's contribution to the British politics of the eighteenth century reveals the multiple ways by which his vision a modern, free constitution is employed by various actors of opposing political agendas. By exploring his divided legacy as an advocate of a unitary executive power and a champion of liberty of the press, his British reception foreshadows the decline of this strand of representative democracy which values the constructive tension between the executive power and the people as well as the executive power and the legislative power. His proposal for strong executive power was used to argue against "republican" reforms such as the Rockingham Economical Reform programme. Pulteney's employment of Delolme touches upon what he took to be the threat of aristocracy, as Fox, "the Favourite of the People" attempted to gain patronage through the possession of the East India Company. This concern about foreign dominations and its effect in disturbing the checks and balance mechanisms via financial controls resonates with Delolme's concern about Ireland examined in chapter two. The extra-parliamentary dynamics of commerce and economic powers highlighted by Delolme as important aspects of a modern constitution rendered his work especially useful during the controversy concerning the Company and its dubious position within the British Empire. Delolme's analysis of liberty of the press as a crucial extra-parliamentary force of the English system also played an important part in his contribution to British politics. Read by prominent critics of the government including Junius and John Cartwright, the notion of "public censorial power" also occupies an interesting role in Jeremy Bentham and John Lind's response to Richard Price. Bentham lauded Delolme as a pioneer who acknowledged the institution of public opinion as a form of power.

Lastly, by examining his contribution to the debate on the Regency Crisis of 1789 as well as his criticism by Godwin, the chapter ends with a comparison between their clashing visions of a modern representative constitution. Godwin, resonating with Rousseau, perceived the monarch

as, an “errand boy” of the legislative power which only serves the purpose of delivering the legislative will. Delolme, on the other hand, gave more weight to the threat of legislative despotism inherent in a representative constitution and highlighted the usefulness of the English executive power in preventing this modern threat by making use of the jealousy between the executive power and the legislative power, as well as between the executive power and the people in the form of public censorial power. Their disagreement on the nature of the English executive power and its relation to popular sovereignty also anticipates clash between liberal constitutionalism, with its aims to prevent concentration of power, and popular democracy which seeks to apply democratic principles to all political institutions as well as in the arrangement of their relations to one another.

## CHAPTER SIX

### The American Reception of Delolme

#### Introduction.

The chapter explores the historical importance of Delolme's political thought through his reception in America. In so doing, it also goes beyond the framework of balance of powers which regards him as a "conservative" supporter of a strong executive power. By seriously contextualising his arguments in the American constitutional debates, it elucidates the explicit tensions between executive power and the people's representation, and between different visions of sovereignty and government during the formation of modern republicanism.

While Delolme's historical impact on the founding generation has long been recognised, most scholars who refer to his work often do so merely in the form of lip service. In *The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought* (1984), he is the third-most-cited author in 1780s American political writing.<sup>479</sup> For example, his legacy is noted in Fatovic's "Constitutionalism and Presidential Prerogative: Jeffersonian and Hamiltonian Perspectives", with little in-depth engagement with *Constitution* as a historical writing.<sup>480</sup> Recently, Nelson in his *The Royalist Revolution* (2014) successfully unveils a forgotten aspect of American Revolution which nuances the shibboleth of the tyrannical George III versus the republican American colonists. He presents the political importance of the Stuart theory of the English constitution to the colonists' resistance against the British parliament. In doing so, he also begins to explore Delolme's position in the debate on the English royal executive power's complex relationship with the American colonies. He highlights the significance of Delolme's argument that, to grant the American colonists the right to send a direct subsidy to George III would have been to give the Stuarts a posthumous victory.<sup>481</sup> In other words, despite Delolme's positive account of the monarchical executive power, he disagreed with Benjamin Franklin's argument that the subsidy was simply a means of the colonists to introduce themselves to the monarch with little constitutional implications. Nelson rightly calls attention to the distinction

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<sup>479</sup> Donald S. Lutz, *The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought*, 78 *American Political Science Review*. 189, 193 (1984). This legacy is passed on in, for example, Clement Fatovic. "Constitutionalism and Presidential Prerogative: Jeffersonian and Hamiltonian Perspectives." *American Journal of Political Science* 48, no. 3 (2004): pp. 431

<sup>480</sup> Clement Fatovic, "Constitutionalism and presidential prerogative: Jeffersonian and Hamiltonian perspectives." *American Journal of Political Science* 48, no. 3 (2004): 3-4.

<sup>481</sup> Eric Nelson, *The Royalist Revolution*, 59, 265. citing Delolme, *Constitution*, 2<sup>nd</sup> edition, 2 vols, London, 1778, I:32n.

between Delolme and the “patriots”, exemplified by Rufus King, who sought to “turn back the clock on the English constitution”.<sup>482</sup> Delolme, on the other hand, was not a part of the Stuart theorist group despite his argument for a unitary and strong executive power.

Nelson already raises an interesting question namely on what ground did Delolme make his argument for a strong executive power, and who else in the American constitutional debates share this view with him? Prior to this study, Delolme is often regarded as a conservative intellectual influence on John Adams concerning the natural tendency for society of orders that underpins the idea of balance of powers. This “conservative” interpretation stems from Adams’ misreading and popularisation of Delolme’s work. This line of interpretation crystallised his legacy as a supporter of social and political hierarchy after his reception by the Anti-federalist authors in contrast with the egalitarian principles of Jeffersonian agrarian republicanism through the reception of his work by John Stevens.<sup>483</sup>

This chapter, by examining the American reception of Delolme in its historical context and armed with the framework of a modern representative constitution, sheds light on the richness and complexity of Delolme’s contribution to the formation of American modern republicanism beyond the anachronistic label of conservatism. It traces the reception and transformation of Delolme’s legacy by Alexander Hamilton, John Adams, John Stevens, and Melancton Smith. Hamilton’s reception reveals his recognition of Delolme’s wider programme of a modern representative free state which has a strong executive power as an integral part of it. Focusing on the constructive aspect of “jealousy” between the ruler and the ruled, Hamilton used Delolme’s argument to support the creation of “energetic republicanism” as a response to the political and fiscal challenge after the failure of the Continental Congress. This approach is congruent with recent studies on Hamilton’s political thought which seeks to defend active but restrained executive power, hinting at the desirable extent of executive authority in a successful American constitutional separation of powers.<sup>484</sup> This objective in preserving liberty in the conditions of a large-scale modern state which guided Hamilton’s reception of Delolme is later obscured after the publication of John Adams’ *Defence*. Adams’ emphasis on the role of history as the object of study of science of politics to support his own argument for legislative bicameralism and a

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<sup>482</sup> Nelson, *The Royalist Revolution*, 2.

<sup>483</sup> See, for example, Joyce Appleby. "The New Republican Synthesis and the Changing Political Ideas of John Adams." *American Quarterly* 25, no. 5 (1973): 590. Jefferson’s vision of agriculture-based republicanism and its benefit in preserving civic virtues is exemplified in, for examples, his *Notes on Virginia*, 1781-5, 678. “Those who labor in the earth are the chosen people of God, if ever He had a chosen people, whose breasts He has made His peculiar deposit for substantial and genuine virtue. It is the focus in which he keeps alive that sacred fire, which otherwise might escape from the face of the earth. Corruption of morals in the mass of cultivators is a phenomenon of which no age nor nation has furnished an example.”

<sup>484</sup> Rogan Kersh, “Federalist No. 67: Can the Executive Sustain Both Republican and Energetic Government?” *Public Administration Review* 71, (2011): 90-97.



hierarchical social structure. John Stevens criticised Adams and Delolme's vision of science of politics as limited by the authority of history while his approach regards politics as an experiment with endless possibilities including a unicameral legislative parliament and plural the plurality of executive power.

Stevens' caricatured account of Delolme as a monarchist also crucially became a perfect target for criticism by the Jefferson circle who sought to expose the myth of English liberty and portray the American model as the way forward for a modern free state. The French translation of John Stevens' critique of Adams and Delolme was employed to revoke the legacy of the English model on the eve of the French Revolution in 1780. The translation and reception also solidified Delolme's reputation as an advocate for power at the expense of political liberty. However, Delolme was also read by an important anti-federalist namely Melancton Smith who raised an issue about the limit of political representation in a large-scale modern state which requires the political innovation of multi-layered sovereignty to preserve the hard-won republican principles.

The re-examination and contextualisation of Delolme's arguments in America reveals the formation of his legacy as a balanced constitution theorist. More importantly, while his reception in the previous chapter is deeply intertwined with the historical debate on the origin of English liberty, Delolme's influence on the American founding generation, in contrast, saw the historical dimension of his science of politics in decline. The challenge to form theoretical explanations of the new federal republic resulted in a divorce between Delolme's constitutional thinking and the historical analysis that gave rise to it.<sup>485</sup> Delolme's influence in debates on the American constitution, in this regard, exemplifies the manner in which critiques of civic republicanism contribute to the formation of liberalism. As Kalyvas and Katznelson emphasise regarding the convergence between the two traditions, the present study brings to the fore aspects that were omitted in the process and their implications for today's modern representative democracy.<sup>486</sup>

### **Delolme's Executive Power in America.**

Alexander Hamilton has enjoyed attention recently with the re-evaluation of his legacy which includes his role in pioneering what became the field of public administration as well as his

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<sup>485</sup> With the exception of John Adams.

<sup>486</sup> Andreas Kalyvas and Ira Katznelson, *Liberal Beginnings: Making a Republic for the Moderns*, (Cambridge: CUP, 2008).

economic initiations that led to the establishment of the American National Bank.<sup>487</sup> However, Hamilton is possibly best known for his archetypal federalist vision of strong central government and presidential power. Hamilton's vision of American modern republicanism is best understood as a response to the failure of the Confederation Congress and the financial crisis which stemmed from the founding generation's inability to manage the burden of the revolutionary debt. While Hamilton's historic role in the crisis is well-documented, by examining Delolme's influence on Hamilton's understanding of executive power, this chapter highlights Hamilton's account of "jealousy" as a creative force in politics and its role in creating stability by exploiting the constructive tension between the executive power and the people. By tracing Hamilton's reception of Delolme, light will be shed on their shared vision of modern representative free constitution that benefits from the scale of modern states to manoeuvre jealousy through the institutional design for the purpose of political stability. The chapter reveals how Hamilton's reception of Delolme's positive account of jealousy in guaranteeing accountability is an integral part of his vision of American energetic republicanism.

Hamilton was an avid reader and was familiar with the work of Hume, Smith, Machiavelli, Hobbes and Montesquieu. Thus, it was not surprising that the notion of "jealousy" became a crucial part of his political vocabulary.<sup>488</sup> In his historic speech at the 1788 New York Ratifying Convention, Hamilton called for a strong central government to tame "an extreme spirit of jealousy" which gave birth to American independence:

In the commencement of a revolution, which received its birth from the usurpations of tyranny, nothing was more natural, than that the public mind should be influenced by an extreme spirit of jealousy. To resist these encroachments, and to nourish this spirit, was the great object of all our public and private institutions. The zeal for liberty became predominant and excessive. In forming our confederation, this passion alone seemed to actuate us, and we appear to have had no other view than to secure ourselves from despotism. The object certainly was a valuable one, and deserved our utmost attention: But, Sir, there is another object, equally important, and which our enthusiasm rendered us little capable of regarding. I mean a principle of strength and stability in the organization of our government, and vigor in its operations...Without this establishment, we may make experiments without end, but shall never have an efficient government.<sup>489</sup>

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<sup>487</sup> See, for example, Max M. Edling, "So Immense a Power in the Affairs of War": Alexander Hamilton and the Restoration of Public Credit", *The William and Mary Quarterly*, Third Series, 64, no. 2 (2007): 287-326. and Richard T. Green "Alexander Hamilton: Founder of the American Public Administration." *Administration & Society* 34, no. 5 (November 2002): 541-62.

<sup>488</sup> Michael P. Federici, *The Political Philosophy of Alexander Hamilton*, (John Hopkins University Press, 2012), 44.

<sup>489</sup> "New York Ratifying Convention. Remarks (Francis Childs's Version), 24 June 1788," *Founders Online*, National Archives, <https://founders.archives.gov/documents/Hamilton/01-05-02-0012-0023>. Original source: *The Papers of Alexander Hamilton*, vol. 5, *June 1788–November 1789*, ed. Harold C. Syrett. (New York: Columbia University Press, 1962,) 67-74.

Resonating with the eighteenth-century idea of the selfish-system, Hamilton described “an extreme spirit of jealousy” as a positive political force which overthrew British tyranny. However, while it was useful for a revolutionary purpose, jealousy became an obstacle in forming lasting political organisations. This was explicit in the failure of the Confederation Congress. Hamilton lamented how “the particular states show a jealousy of all power not in their own hands; and this jealousy has led them to exercise a right of judging in the last resort of the measures recommended by Congress, and of acting according to their own opinions of their propriety or necessity.”<sup>490</sup> His proposal for a strong federal government and the presidential office, with the help of Delolme’s argument, is best understood as an institutional solution to this problem.

Before beginning the examination of Hamilton’s analysis of the benefit of a strong executive power and the notion of jealousy, I first address the criticism that prompted him to pen the justification. The accusation of “monarchy” emerged after the War of Independence and is most explicit in Edmund Randolph’s response to James Wilson’s proposal of a unitary executive power. Randolph warned that such an extensive scope of power of the president would result in “the foetus of monarchy.”<sup>491</sup> Hamilton in the Federalist Paper No. 67 titled “Concerning the constitution of the president: a gross attempt to misrepresent this plan of the plan detected”, responded to this kind of criticism. He argued that his opponents, by “Calculating upon the aversion of the people to monarch [...] have endeavoured to enlist all their jealousies and apprehensions in opposition to the intended president of the United States; not merely as the embryo, but as the full grown progeny of that detested parent.”<sup>492</sup> For Hamilton, this pessimism regarding the monarchy was conflated with the executive power. Federalist Papers No. 68-69 are devoted to expose this claim as a political ploy. “It is impossible not to bestow the imputation of deliberate imposture and deception upon the gross pretence of a similitude between a king of Great Britain, and a magistrate of the character marked out for that of the president of the United States. It is still more impossible to withhold that imputation, from the rash and barefaced expedients which have been employed to give success to the attempted imposition.”<sup>493</sup> Hamilton opposed the kind of weak central government as initiated by the Article of Confederation (1781) which had proved to be inadequate in uniting the fledgling nation amidst the post-war political and financial difficulties. The challenge for Hamilton in advancing his argument to the American public was twofold. Firstly, he had to convince them that a strong executive power was not a

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<sup>490</sup> “From Alexander Hamilton to James Duane, [3 September 1780],” Founders Online, National Archives, <https://founders.archives.gov/documents/Hamilton/01-02-02-0838>. Original source: The Papers of Alexander Hamilton, vol. 2, 1779–1781, ed. Harold C. Syrett. (New York: Columbia University Press, 1961), pp. 400–418.

<sup>491</sup> Max Ferrand, ed., *The Records of the Federal Convention of 1787*, 3 vols (New Haven, 1911), I:65

<sup>492</sup> Alexander Hamilton, The Federalist Paper No. 67, from *The Federalist: the Gideon Edition*, (Liberty Fund, Indianapolis, 2001), 348.

<sup>493</sup> Ibid.

remnant of British monarchical power and, secondly, that it was not contradictory, but rather beneficial, to the kind of republicanism that was suitable for America.

The Federalist Paper No. 70 begins with a comment on republicanism and its opposition to a strong and singular executive power. “There is an idea, which is not without its advocates, that a vigorous executive is inconsistent with the genius of republican government. The enlightened well-wishers to this species of government must at least hope, that the supposition is destitute of foundation since they can never admit its truth, without, at the same time, admitting the condemnation of their own principles.”<sup>494</sup> The very existence of the United States of America after the 1787 Philadelphia Constitutional Convention and the creation of the federal republic proved the claim about the incompatibility between a strong executive power and republicanism to be mistaken.<sup>495</sup>

Hamilton rejected the parallel made between his proposition and the British monarchical executive power as misleading. His own position, he argued, was based on the insight that a plural executive could not be held accountable. “The experience of other nations will afford little instruction on this head. As far, however, as it teaches anything, it teaches us not to be enamoured of plurality in the executive.”<sup>496</sup> Hamilton contended that the plurality of executive power renders accountability difficult and gives rise to the contestation of power between political groups. Repeating Delolme’s argument in *Constitution*, Hamilton categorically rejected the proposition of a presidential council with binding advice, a scheme which some of the American states had already adopted.<sup>497</sup> To further demonstrate that Hamilton’s proposition did not aim at emulating the British monarchical executive power, he delineated the difference between Britain as a kingdom and America as a republic and the implication this has to their different management of the executive power. As the king can do no wrong, “Nothing, therefore, can be wiser in that kingdom, than to annex to the king a constitutional council, who may be responsible to the nation for the advice they give. Without this, there would be no responsibility whatever in the executive department.”<sup>498</sup> Hamilton tactfully reaffirmed his position that America and England are two different kinds of states especially concerning the nature of their executive power before he

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<sup>494</sup> Hamilton, A., Madison, J., & Jay, J. (2003). The Federalist. In T. Ball (Ed.), *The Federalist: With Letters of Brutus*, (Cambridge: Cambridge University Press,) 341.

<sup>495</sup> The Federalist Paper No. 70 was originally published on 15 March 1788.

<sup>496</sup> Ibid., 342.

<sup>497</sup> “one of the weightiest objections to a plurality in the executive, and which lies as much against the last as the first plan, is, that it tends to conceal faults, and destroy responsibility.” Alexander Hamilton, The Federalist Paper No. 70, from *The Federalist: the Gideon Edition*, (Indianapolis: Liberty Fund, 2001), 366.

<sup>498</sup> Alexander Hamilton, The Federalist Paper No. 70, from *The Federalist: the Gideon Edition*, (Liberty Fund: Indianapolis, 2001), 367.

proceeded to make his most important point namely that the scepticism towards the idea of a unitary executive power was a misplaced and obsolete republican perspective.

Hamilton's point is interesting because he turned the argument about the redundancy of European and especially English history against his critics. "The idea of a council to the executive, which has so generally obtained in the state constitutions, has been derived from that maxim of republican jealousy which considers power as safer in the hands of a number of men, than of a single man. If the maxim should be admitted to be applicable to the case, I should contend, that the advantage on that side would not counterbalance the numerous disadvantages on the opposite side. But I do not think the rule at all applicable to the executive power." The division of the executive power would give rise to contestation for power among the council members. The scheme was originally designed to hold the monarchical executive power accountable since the monarch could not be directly accused. The executive council therefore was not necessary to the republic of America. Referring to the authority of Delolme, Hamilton explained how the unity of the executive power is instrumental in channelling jealousy to effectively limit that office. "I clearly concur in opinion in this particular with a writer whom the celebrated Junius pronounces to be 'deep, solid, and ingenious,' that 'the executive power is more easily confined when it is one:' that it is far more safe there should be a single object for the jealousy and watchfulness of the people; in a word, that all multiplication of the executive, is rather dangerous than friendly to liberty."<sup>499</sup> As a remedy for individual state jealousy, the unity of the presidential power renders the office "a single object for the jealousy and the watchfulness of the people", echoing Delolme's account of the constructive tension between the English monarchical power and the people. Moreover, as the experience of the weakness and the lack of unity of the Confederation Congress proved to be detrimental to public good, Hamilton concluded his essay with a warning against the grave effect of repeating the same mistake by dividing the executive office and making it subordinate to the legislative power. Concluding his argument, Hamilton insisted that "[a] feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution: and a government ill executed, whatever it may be in theory, must be, in practice, a bad government."<sup>500</sup>

Similar to Delolme's emphasis on the political implications of the rise of commercial society, Hamilton carefully observed the institutional innovations required to cope with the modern challenges of a large-scale free state, having served various offices during the revolutionary years and post-independence challenges. Like the creation of a strong and unitary executive power, the government management of public debt while at first glance might seem like a potential threat to individual liberty, at a closer look at the challenges of the modern conditions of the

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<sup>499</sup> Ibid., 368.

<sup>500</sup> Ibid., 362-3.

unprecedentedly large-scale republic. He argued how public debt could help “strengthen our infant Government by increasing the number of ligaments between the Government and the interests of the individuals.”<sup>501</sup> His vision of an American modern representative constitution is part and parcel with his economic ambition for the republic. In Hamilton’s reception of Delolme, one begins to see the adaptation of Delolme’s argument to fit the political agenda of American politics. In Hamilton’s case, one sees the transformation of Delolme’s monarch-subjects jealousy in the English monarchical executive power into the American presidential office.

Another crucial federalist reception of Delolme is by John Adams as it was through his interpretation that Delolme’s reputation as a conservative royalist emerged. Adams’s *Defence* was written as a response to Turgot and Price’s criticism of the idea of checks and balances. Turgot wrote his 1778 private letter to Price addressing this issue, which was later translated into English to be included in Price’s 1784 *Observations on the Importance of the American Revolution*. In the letter, Turgot criticised the obsolete idea of “equilibrium” which was the product of European monarchical violence and inequality. The doctrine, he argued, “in England may be a necessary check to the enormous influence of royalty” but in America, it could not be of any use in the republic “founded upon the equality of all citizens.”<sup>502</sup> American independence not only suggested a new model of government in the form of a federal republic but also it importantly signified a new direction in the course of history, breaking away from the European experience especially that of Britain. The American states “are the hope of the world. They might become a model to it” on the condition that America must “take care to avoid what your [British] ministerial writers are frequently saying She will be---an image of our Europe.”<sup>503</sup> Interestingly, Turgot’s verdict was based on his assumption that the balance of powers in the English system was a mechanism to limit the royal power therefore it follows that such schemes would become redundant America.

Adams found Turgot and Price’s understanding of human nature to be inaccurate as it is purely theoretical and lacks historical grounding. Consequently, their republican programme becomes a questionable political project. In his letter XXVI to Price published in *Defence*, Adams refers to Delolme’s understanding of human nature and power to support his argument for bicameral legislature and a unitary and strong executive power. Adams begins by addressing the similarity between his understanding of man and Price’s. “You [Price] and I admire the fable of Tristram Shandy more than the Fable of the Bees, and agree with Butler rather than Hobbes. It is

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<sup>501</sup> “The Defence of the Funding System,” in Syrett et al., *The Papers of Alexander Hamilton*, (New York: Columbia University Press, 1961-1979), 19: 40-42.

<sup>502</sup> Turgot, “letter to Dr. Richard Price”, 1778, English translation from Richard Price, *Observations on the Importance of the American Revolution*, (Dublin, 1785), 114.

<sup>503</sup> *Ibid.*, 124.

weakness rather than wickedness which renders men unfit to be trusted with unlimited power.”<sup>504</sup> However, he criticized Price for failing to recognize the political implications of it. He cited Delolme’s appeal to experience in the understanding of power: “Experience evinces, that the happiest dispositions are not proof against the allurements of powers which has no charms but as it leads on for new advances. Authority endures not very idea of restraints, nor does it cease to struggle until it has beaten down every boundary.”<sup>505</sup> Adams and Delolme derived their understanding of human nature and politics through the history of republics and their downfall.

For this reason, the best hope for a free representative constitution is to pitch the powers against each other. A unicameral legislative power which Price and Turgot endorsed, Adams argued, is doomed to failure: “upon the first day of its existence, [a single assembly will] be an aristocracy; in a few days, or years at least, an oligarchy; and then it will soon divide into two or three parties, who will soon have as many armies; and, when the battle is decided, the victorious general will govern without or with the advice of any council or assembly, as he pleases: or, if the assembly continues united, they will in time exclude the people from all share even in elections, and make the government hereditary in a few families.”<sup>506</sup> Adams shared with Delolme the opinion that the rule of the few is the existential threat to modern representative constitution especially after the establishment of popular sovereignty if there is inadequate institutional design to prevent concentration of power. He therefore regarded Delolme’s analysis of the English system as “the best defence of the political balance of three powers ever written”.<sup>507</sup>

Appleby argues that “De Lolme proved to be a compelling influence not because of the uniqueness of his analysis on history and politics, but because he had developed a comprehensive rationale for conservative reformism which gave coherence and precision to Adams’ own strongly felt convictions.”<sup>508</sup> This “conservative” reading of Delolme keeps recurring and obscures the complexity of his overall argument for a free representative constitution based on the distinction between popular sovereignty and government. Disagreeing with Appleby’s analysis of Adams’s reception of Delolme, this chapter argues that, in order to appreciate the connection between Delolme and Adams, one needs to look at the bigger picture, namely at Adams’s numerous writings on the relation between politics and history. It was through the authority of history that Adams hoped to convince the American public of the compatibility between republicanism and the theory of balance of powers, resonating with Delolme’s examination of the English constitution. The question did not relate to the monarchy or republicanism as Appleby suggests

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<sup>504</sup> John Adams, *A Defence on the Constitutions of Government of the United States of America*, vol. 1, (London, 1787), 129.

<sup>505</sup> *Ibid.*, 132.

<sup>506</sup> *Ibid.*, 129.

<sup>507</sup> *Ibid.*, 70.

<sup>508</sup> Joyce Appleby, “The New Republican Synthesis and the Changing Political Ideas of John Adams.” *American Quarterly* 25, no. 5 (1973): 590.

but rather, what kind of republican principles should be preserved and modified to fit the challenges of the new republic. Adams therefore was responsible for the popularization of his erroneous interpretation of Delolme's theory of a balanced constitution as underpinned by the notion of society of orders, an opinion which Delolme did not hold. Adams' misreading of Delolme also includes the nature of the relationship between the executive power and the people. Mayville's *John Adams and the Fear of American Oligarchy* (2014) recognises Delolme's influence on Adams' concern about the rule of the few in disguise of a republic but also follows Adams' misreading of Delolme that "the chief magistrate" is "the natural ally of the people."<sup>509</sup> Adams erroneously assumed that Delolme, like him, understood the executive office as a seat of neutral power which moderates party distinctions to maintain the stability of the parliamentary politics. In other words, the important notion of "jealousy" between the people and the executive got lost through Adams' interpretation of *Constitution*.

Moreover, it was Adams' reading of Delolme's idea of balance of powers, and not Hamilton, which prompted a crucial response from the Jeffersonian circle in and beyond America. "A Farmer of New Jersey" or John Stevens in his *Observations on Government* (1787) extensively criticised what he deemed to be the Adams-Delolme's idea of balance of powers. Stevens' pamphlet also has historic importance as it was selected by Thomas Jefferson and his French connections to translate into French as a response to arguments made by Adams. Stevens's pamphlet, alternatively, proposes that the science of politics for the new Republic of America should be understood as an experiment, breaking away from the shackles of European history and philosophy which was nothing but a history of chance and violence under monarchical despotism.

### **Critics of Delolme's Executive Power.**

By tracing the criticism of Adams's account of Delolme, one also gains an entry point into the early disputes on American federal republicanism at the centre of which was the relationship between history and politics. For the Jeffersonian circle, America epitomised the materialization of the doctrine of natural rights as the foundation of a truly modern republic, free from the history of European monarchical despotisms and the feudal legacy of society of orders. I first examine here John Stevens's *Observations on Government* (1787), then look at the editorial annotation of the French translation, focusing on its political importance as an antifederalist response to Adams' dubbed "Anglomania". In light of American independence, the horizon of republicanism was

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<sup>509</sup> Luke Mayville, *John Adams and the Fear of American Oligarchy*, (Cambridge University Press, 2014) 40.



significantly expanded and became a source of inspiration for Europe and especially in France. The French *Américanistes* saw this as an opportunity to promote the republican cause and undermine the English parliamentary model which had been influential among French reformers. James Madison sent John Stevens's pamphlet to Filippo Mazzei in 1787 and the French translation was accompanied with extensive annotations.<sup>510</sup> Crucially, Delolme's account of the English constitution, and its wider underpinnings, appeared as the major target of the French editors of Stevens' book.

John Stevens is best known as a pioneer of steam engines in America, but he was also deeply engaged with the debates on the constitutional design. The pamphlet's full title is "Observations on Government, including some Animadversions on Mr. Adams Defence of the Constitutions of Government of the United States of America and Mr. De Lolme's Constitution of England by a Farmer of New Jersey" and according to Joyce Appleby, was "ignored at home" but "became a smashing hit in France"<sup>511</sup>. Alongside Adams's *Defence*, another equally important target of Stevens's pamphlet is Delolme's *Constitution*. In fact, despite several differences between Adams's arguments in *Defence* and Delolme's *Constitution*, Stevens always criticised the works together, arguing that that they both favour the aristocracy and monarchy. The objective of the pamphlet was to demonstrate how the English model was a misfit for America. Stevens employed Delolme's *Constitution* as a straw man to attack the disadvantages he found that the system was prone to and to support his own proposals. The idea of the balance of powers is central to Stevens's critique of Adams.

At the beginning of the pamphlet, Stevens denounced Adams's *Defence*. He dubbed the author "a state empiric, who prescribes one single remedy for all disorders" and how the idea of orders and balances was a boastful "political nostrum".<sup>512</sup> This is because, in America, there was no balance of orders. According to Stevens, "in America the balance is nine-tenths on the side of the people: indeed there is but one order... Thus, then we have neither 'Balances' nor 'Orders'"<sup>513</sup>. Despite Stevens finding the idea of balances and orders inconsistent, he argues that because of its prominence among men of letters in Europe, Americans should "bestow utmost care and attention towards investigating this subject, so particularly important to us at this time"<sup>514</sup>. Here Stevens referred to the upcoming Constitutional Convention in September of the same year of 1787. Stevens perceived the issue of constitutional design as down to those who have a pessimistic view of human nature hence their penchant for the idea of balance of powers against those who seek to

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<sup>510</sup> Filippo Mazzei to James Madison, 4 February 1788, in Richard Garlick, *Philip Mazzei, Friend of Jefferson: His Life in Letters*, (John Hopkins University Press, 1933), 117.

<sup>511</sup> Joyce Appleby, "The Jefferson-Adams Rupture and the First French Translation of John Adams' *Defence*," *American historical review* 73, no. 4 (1968), 1084, 1089.

<sup>512</sup> *Ibid.*

<sup>513</sup> Stevens, 5, citing Adams from *A Defence*.

<sup>514</sup> *Ibid.*, 6.

“make one more generous effort in favour of human nature” and “risque [sic] her from the opprobrium which these writers have cast upon her.”<sup>515</sup> Stevens was fighting against those who do not believe that “man is capable of governing himself.”<sup>516</sup> To clarify his view on human nature, Stevens also briefly gave his own account as follows:

Man is by nature a gregarious animal. Interest urges him, with an impulse almost irresistible, to associate with his kind; and reason and experience convinces him how necessary society is to his welfare. In a solitary state his corporeal powers are exceeded, and his mental faculties are nearly equalled by many other animals. It is astonishing indeed to reflect to what a degree the powers of his body and faculties of his mind are increased and enlarged by means of society. But tho’ the influenced of passion, and not always comprehending that “true self-love, and social, are the same,” he is often inducted to violate the natural rights of his companions: Hence the necessity of civil government<sup>517</sup>.

Stevens’s positive account of human nature and the idea of natural sociability offers a sharp contrast with the understanding of Delolme and Adams of humans as basically self-interested and passion-driven. More importantly, contrary to Adams and Delolme who treated history as an object of study of science of politics to find underlying principles that govern all human interactions, Stevens perceived the study of politics as an experiment. He argued that “to this day, no fair experiments have been made of the effects which the various forms of which government is capable, would produce.”<sup>518</sup> Delolme and Adams, on the contrary, emphasised how the political world is always the product of history and therefore, the best way to make sense of the present is to see it in light of the past. For Stevens, not all forms of government had been tried adequately, especially in the history of the Old World. To jump to the conclusion that an extremely democratic system would not last was a mistake. Making a comparison between the study of politics and natural philosophy, Stevens argued that “it has been discovered that it is only from a great variety of well conducted experiments that a system of true philosophy can be established.”<sup>519</sup> The main reason that Stevens rejected history as the only source for the study of politics was because “all that history furnishes us any account of, were the effect either of chance or violence.”<sup>520</sup> America’s political thought, on the contrary, would be based not on the study of the accidentality of history but on the intentionality of America’s realisation of “an original compact entered into by every individual of society, wherein a certain form of government is chalked out and established.”<sup>521</sup> In Stevens’s version of the science of politics, the formation of government in Europe only happened by chance, as opposed to self-determination, and therefore the account of

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<sup>515</sup> Ibid.

<sup>516</sup> Ibid.

<sup>517</sup> Ibid., 7.

<sup>518</sup> Ibid., 7-8.

<sup>519</sup> Ibid., 8.

<sup>520</sup> Ibid.

<sup>521</sup> Ibid.

human nature that had been drawn from those historical catalogues was not only inaccurate but also implicitly justified the status quo and denied the possibility of progress. In this regard, although Stevens, Delolme and Adams appealed to “experience”, Delolme and Adams emphasised on the self-interested human nature that can be distilled from history as a catalogue of experience. Moreover, since the human nature is unchangeable, institutional designs become the only hope to channel passions for the public good. Stevens, on the other hand, approaches politics as an open-ended progress and insisted on the inadequacy of history for the understanding future forms of republicanism.

Stevens continued to reject the very term “English constitution”, arguing that “I cannot find that the people of that country have anything like what a subject of these States would denominate a constitution.”<sup>522</sup> He equated a state’s constitution with the aforementioned definition of the original compact. Stevens pointed out how “the written Constitution as we now know it was the offspring of the Revolution of 1776, which rapidly resulted in royal charters being rewritten as the constitutions for independent states. These new constitutions (Pennsylvania’s is the most striking example) tended to transfer the powers of the royal governor to representative assemblies whose power was virtually unlimited. Within a few years, however, the pendulum had begun to swing the other way.”<sup>523</sup> Here Stevens refers to the 1784 Pennsylvania State Constitution which became unicameral with its elimination of the office of governor (to the horror of Adams who describes it as “so democratical [sic] that it must produce confusion and every evil work.”)<sup>524</sup>

At the heart of Stevens’s pamphlet lies an attempt not just to criticize the Old World theorists of checks and balances along with their pessimistic account of human nature but also to offer an alternative. Stevens’s argument is founded on the idea of original compact that is no longer just abstract but, according to Stevens, came into being among the American states. Unlike those who favour the balance of powers theory and argue for “the impossibility of effecting a change”<sup>525</sup>, Stevens maintains that the American model is the way forward for humanity. American states should not look for political guidance from the wisdom of the Old World where “orders” were deemed necessary for the stability of a regime and equality perceived by the people as destabilising. On the contrary, America has its own unique beginning where the social compact made available in real terms combined with “the perfect equality which exists amongst us. We have no such thing as orders, ranks, or nobility; and notwithstanding [sic] all that Mr. Adams and Mr. De Lolme have said in this subject”.<sup>526</sup> Delolme and Adams in this pamphlet are presented as

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<sup>522</sup> Ibid.

<sup>523</sup> David Wootton, *The Essential Federalist and Antifederalist Papers*, (2003), 16

<sup>524</sup> John Adams. *John Adams autobiography*, part 1, “John Adams,” through 1776. Original manuscript from the *Adams Family Papers*, Massachusetts Historical Society.

<sup>525</sup> Ibid., 10.

<sup>526</sup> Ibid., 46.

the epitome of Anglophiles with all their misunderstanding of politics due to their erroneous approach to the study of politics that relies solely on history without taking into account the open-ended nature of human progress in every field of knowledge and especially politics which, for Stevens, is “an art, which of all others is of the greatest consequence to happiness in this life”<sup>527</sup>.

Stevens’s critique of Delolme and Adams cannot be separated from his advocating of the new political model of the American states. For example, his criticism of Delolme’s arguments for the strong and unitary executive power of the Crown paves the way to his own proposal for the multiplicity of the executive power. Despite the discrepancy between what Delolme proposes in *Constitution* and how Stevens reads it, this pamphlet still interestingly summarises the political argument between the federalists and the antifederalists who had different visions for America as the first modern republic. For Stevens, English history demonstrates that the Crown is “the cause of all intestine wars and civil broils, not the opposite. Security of the subject does not stem from the Crown’s unitary executive power but “depends wholly on a proper delegation of power.”<sup>528</sup> For Stevens, “there is scarce a page of the history of England but contains ample testimonials to the contrary” of the argument that the English system’s virtue is its stability.<sup>529</sup> Stevens’s account of English history proposes that it is not the design of the constitution per se that is the key to the English success, if indeed any. For him, rather, the celebrated English liberty is the product of the extra-constitutional and illegal schemes of taking up arms against their monarchs. To support this argument, Stevens offered an account of the events before the Glorious Revolution, and at the same time criticized Delolme’s argument that the English system is durable and stable.

The last part of the pamphlet is dedicated to Stevens’s suggestions of what the constitutions of American states should be like. He began by referring to an argument against “extremely democratic states [...] The governments in these states [American states] are in fact nothing more than social compacts entered, into for the mutual advantage of the individuals of, whom the society is composed. But say these gentlemen, Mr. De Lolme, Mr. Adams, etc. governments so extremely democratic, can never last long: be its construction whatever it may, without Orders and Balances, it is impossible to prevent a government from degenerating into a tyranny: the legislature will finally engross all power to themselves, and for prevention of this no other remedy can be devised that will prove effectual”<sup>530</sup>

Stevens then expressed his opinions concerning the design of a constitution that reflects his more optimistic account of human nature in contrast with that of Delolme and Adams. Stevens firstly addressed the issue of legislative tyranny, a topic that is also a main concern not only for

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<sup>527</sup> Ibid, 7.

<sup>528</sup> Ibid, 14.

<sup>529</sup> Ibid, 13.

<sup>530</sup> Ibid, 50.

Delolme and Adams but also for a number of Americans having witnessed the overpowering British colony and peripheral towns that were under-represented by the legislative branch. “I will readily admit that where the legislative power is confined to one assembly of representatives, without any check or controul [sic] placed in the hands of the executive or judicial, the apprehensions of his evil may not be altogether without foundation.”<sup>531</sup> However, Stevens did not find the English bicameral legislature as an adequate solution to legislative tyranny.

Unlike Palmer, I disagree with his argument that Steven meant “it is of course wise to have a second chamber of legislation and to give the executive and the judiciary a power of restraining the legislature.”<sup>532</sup> The focus rather is on a negative that is “lodged in the hands of the executive and judicial powers...in order that they may be able to defend themselves from the encroachments of the legislature.”<sup>533</sup> The institutional arrangements of the American constitution “are experiments in government entirely new; they are founded upon principles peculiar to themselves”.<sup>534</sup> Addressing the uniqueness of the American challenge, Stevens did not conclusively rule out unicameral legislature. For Stevens, American state constitutions, “whether consisting of an assembly only, or of an assembly and senate, are chosen by the people[...]circumstance renders our governments most democratic that ever have existed anywhere.”<sup>535</sup> Unlike the English system with extremely limited suffrage, the American state constitutions already showed how “extremely democratic states” can last. Stevens equated democracy with the principle of election in contrast with Delolme’s vision of modern representative politics that champions the distinction between popular sovereignty and the balanced governmental powers. Stevens’ idea of democratic government, on the other hand, foreshadows the establishment of electoral process as the most important indicator of modern democracy.

Stevens concludes the pamphlet with his recommendation for “an effectual Foederal [sic] Government” despite his high praise of the Constitutional Convention. He suggested that the executive power should be divided into three departments: the president, the chief justice and the superintendent of finance. “There three great executive officers, to constitute a council to revise all bills which have passed the house of representatives and the senate, in the same manner as by the constitution it is directed to be done by the President.”<sup>536</sup> Stevens also insisted on an election for the president every three or four years, in contrast with Hamilton’s plan that advocates presidency for life. This presents a clear break from what Delolme proposes in *Constitution* that

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<sup>531</sup> Ibid, 51.

<sup>532</sup> R. R. Palmer, *The Age of the Democratic Revolution: A Political History of Europe and America, 1760-1800*, (2014), 211.

<sup>533</sup> Stevens, 1787, 51.

<sup>534</sup> Ibid., 52.

<sup>535</sup> Ibid.

<sup>536</sup> Ibid, 54.

a unitary executive is a requisite to balance out the immense legislative power. For Stevens, “The powers must necessarily be trusted in the hands of the President are amply sufficient to preserve his respectability and independence, were they greater, he might become dangerous”.<sup>537</sup> The division of executive power into three branches gives the power of appointing judges to the chief of justice and that of managing federal revenues to the superintendence of finance. The three branches combined form a council to revise all bills passed by the House of Representatives; a responsibility previously held solely by the president. Stevens’s suggestion to amend the 1788 Constitution is a clear attempt to divide the executive power on the grounds that an executive too strong will be detrimental to liberty. Unlike in Delolme’s account which believes that the executive power has a role to play in securing the constructive tension between the people and the government as well as to counterforce the immense legislative power, Stevens followed Rousseau in his account that the executive power’s sole and prime responsibility is to deliver the will of the legislative or what Mansfield deems an errand boy interpretation of the office.<sup>538</sup> To divide power for managerial purposes therefore is an understandable proposition.

The political importance of Stevens’s response to Adams’s account of Delolme is best captured in the editorial annotation of the French translation, Stevens’s *Examen du gouvernement d’Angleterre, compare aux constitutions de états unis*.<sup>539</sup> The editorial annotation written by Condorcet, Dupont de Nemours and J.A. Gallois, explicitly juxtaposes the English model with America, the latter of which was deemed the true model of modern republicanism. Note II, in particular, offers an extensive critique of Delolme’s *Constitution* as the epitome of what they deemed “Anglomane”. Not only did Delolme deliberately cloak his eulogy of the English constitution with an impartial tone of science of politics, he also disguised historical facts in order to maintain his theory.<sup>540</sup> The editors criticised Delolme of wrongly assigning the origin of English liberty to the Norman Conquest as “the principle of equality was unknown during that time!”<sup>541</sup> England rested its liberty on parliament but the institution failed to be “the actual representation of the nation” because of the arbitrary and extremely limited suffrage that allowed the Crown to corrupt the majority of the electors of the largest part of the House of Commons.<sup>542</sup> Concerning the reputation of English legal protection of the subjects, the editors acknowledged the benefit of the Habeas Corpus but also criticised Delolme’s failure to recognise the centrality of laws related to landed property which prevents land owners from being exploited by the

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<sup>537</sup> Ibid.

<sup>538</sup> Mansfield, 1993, 2-3.

<sup>539</sup> John Stevens, *Examen du gouvernement d’Angleterre, compare aux constitutions de états unis. Où l’on refute quelques assertions continues dans l’ouvrage de M. Adams, intitulé : Apologies des Constitutions des États-Unis d’Amérique, & dans celui de M. Delolme, intitulé : de la Constitution d’Angleterre*, (London, 1789). Editorial notes by Condorcet, Dupont de Nemours and J.A. Gallois.

<sup>540</sup> Stevens, *Observations*, 108.

<sup>541</sup> Ibid., 113.

<sup>542</sup> Ibid., 94, 93.

government. The editors observed how it was Delolme's Genevan background which made him insensitive to the importance of agriculture in a large state.<sup>543</sup> Most erroneously, they argued, Delolme viewed the king's power to dissolve the parliament which is in fact "an act of despotism" as a "guarantee of liberty."<sup>544</sup> Stevens's French translation presents America as the epitome of a modern free constitution founded upon an "original pact" prior to the establishment of the government. "The people of the United States are the first to have perceived that it is not necessary to begin legislation with a "contract" (as if among enemies), but rather by the exposition of the principle of all contracts" referring to the Declaration of Rights.<sup>545</sup> In contrast, the English Constitution as described by Delolme rests its inadequate understanding of liberty on the competition between political powers and biased historical accounts.

Stevens's French translation perfectly summarises the vision of American republicanism based on the civic republican understanding of a free state as agriculture-based, democratic and one that champions basic rights. Delolme's historical approach, by contrast, values the rise of commerce and the constructive force of political competition through institutional arrangements which prevent a concentration of power rather than honouring the elective principle. Underlying their differences was the absence of the sovereignty-government distinction in Stevens and his translators' understanding of modern democracy. Delolme, on the other hand, relied on the distinction which also underpins his positive account of the modern executive power.

### **Delolme and American Multi-Layered Sovereignty.**

Beyond the first strand of Delolme's reception which focuses on his advocacy of a strong and unitary executive power, he was also read by the anti-federalists in much more nuanced ways than previously assumed. The term anti-federalist has long been recognized as a simplification of often contrasting arguments for a strong state government. It was the label that was used in order to group together the critics of the ratification of the 1787 Constitution. They largely shared a concern about the threat to liberty posed by the creation of a powerful central government and the presidential executive power.<sup>546</sup> Prior to the present study, Delolme's work has been associated with the federalist cause with his support of a unitary and strong executive power and his positive reception by Hamilton and Adams. With the examination of his reception by the anti-federalist "Federal Farmer", the chapter shows how Delolme's arguments were also employed to show the

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<sup>543</sup> Ibid., 78.

<sup>544</sup> Ibid., 118.

<sup>545</sup> Ibid., 199-200.

<sup>546</sup> Akhil Reed Amar, "Anti-Federalists, the Federalist Papers, and the Big Argument for Union," *Harvard Journal of Law & Public Policy* 16, no. 1 (Winter 1993): 1.

limit of political representation in a large-scale modern state which calls for the creation of the multi-layered sovereignty.

“Letters from a Federal Farmer” enjoy remarkable popularity as shown by their extensive distribution and widespread readership.<sup>547</sup> Although the authorship of these pamphlets is still disputed, the two most accepted nominations are Richard Henry Lee, Virginia's delegate to the Confederation Congress, and Melancton Smith, a prominent New York anti-federalist<sup>548</sup> with later secondary literature supporting a stronger case for Melancton Smith.<sup>549</sup> The chapter agrees with this argument. Historically, Smith was crucial as the person who led other antifederalists to eventually change their stance and vote to accept the constitution in New York despite the federalists being outnumbered in the first place. Although enough other states had already ratified the constitution that it theoretically did not matter whether New York approved the draft or not, the New York Ratifying Convention was still politically significant due to the state's enormous economic power. Therefore, the debate itself was also designed to be communicative and informative to the American public regardless of the result from the Convention. Smith's arguments in his numerous public letters reveal how political representation was one of the most crucial topics of the constitutional debate.<sup>550</sup> For him, the proposed 1787 Constitution inadequately represent the diverse interest of the population. However, the size of America made it impossible to adhere to the ideal that the representative's interest should mirror that of the constituents'.

The idea that naturally suggests itself to our minds, when we speak of representatives is, that they resemble those they represent...but it should also comprehend that kind of acquaintance with the common concerns and occupations of the people, which men of the middling class of life are in general much better competent to, than those of a superior class. To understand the true commercial interests of a country, not only requires just ideas of the general commerce of the world, but also, and principally, a knowledge of the productions of your own country and their value, what your soil is capable of producing, the nature of your manufactures, and the capacity of the country to increase both.<sup>551</sup>

To support his argument for the creation of a multi-layered sovereignty due to the limit of political representation in a large-scale modern state like America, Smith revoked Delolme's authority. First, he begins with his high praise for Delolme's analysis in *Constitution*. Americans

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<sup>547</sup> Joseph Kent Mcgaughy, “The Authorship of ‘The Letters from the Federal Farmer’, Revisited.” *New York History* 70, no. 2 (1989): 153. and Robert H. Webking, “Melancton Smith and the Letters from the Federal Farmer.” *The William and Mary Quarterly* 44, no. 3 (1987): 510.

<sup>548</sup> Ibid., 162.

<sup>549</sup> See Jonathan L. Silver, “The Anti-Federalist Writings of the Melancton Smith Circle”, (2011): 554-557.

<sup>550</sup> Webking, 1987, 512.

<sup>551</sup> Herbert Storing ed. *The Complete Anti-Federalist*. 7 vols. (Chicago: University of Chicago Press, 1981), 16.



found “a valuable idea respecting representation, to be collected from De Lo[l]me, and other able writers, which essentially tends to confirm my positions: They very justly impute the establishment of general and equal liberty in England to a balance of interests and powers among the different orders of men.”<sup>552</sup> This passage reveals how Smith followed Adams’ interpretation of Delolme’s idea of balance of powers to be underpinned by the different social orders. Citing Delolme, he traced the origin of English liberty to the resistance against the Norman Conquest. After the foreign invasion, “The barons and people, who recollected their former liberties, were induced, by those oppressions, to unite their efforts in their common defence: Here it became necessary for the great men, instead of deceiving and depressing the people, to enlighten and court them: the royal power was too strongly fixed to be annihilated, and rational means were therefore directed to limiting it within proper bounds.”<sup>553</sup> This “fortunate” circumstance which united the interest of all subjects against the foreign kings gradually gave birth to the English king-in-Parliament and the bicameral legislative assembly. This unique form of representation was the secret behind the celebrated English liberty. Smith asked: “Why in England have the revolutions always ended in stipulations in favour of general liberty, equal laws, and the common rights of the people, and in most other countries in favour only of a few influential men?” For him, “The reasons...are obvious: In England the people have been substantially represented in many respects; in the other countries it has not been so.”<sup>554</sup> The people’s representatives in the House of Commons rendered the “government of England so mild and favourable to the body of the people”.<sup>555</sup> The English “genuine balance founded in the actual state of things”. The political representation mirrored the interests of the people, the nobility and the king.

However, Smith’s was quick to point out how Delolme’s analysis of English liberty must be approached carefully. This is due to the difference between the sizes of England and America. The English were “one people compactly settled on a small island, with a great city filled with frugal merchants, serving as a common centre of liberty and union”. The Americans, on the other hand, “are dispersed” in several states which consist the extensive republic.<sup>556</sup> It is therefore impossible for America to follow the English model of a unitary and small state with one homogenous body of the people and one commercial centre. The English sleeping sovereignty model of mixed constitution entered the American constitutional debate partly via Adams’ *Defense*. Smith did not reject the model per se as he wrote: “I have often lately heard it observed,

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<sup>552</sup> Melancton Smith, January 3, 1788 speech on “Representation” in Herbert Storing ed. *The Complete Anti-Federalist*. 7 vols. (Chicago: University of Chicago Press, 1981).

<sup>553</sup> Ibid, 16.

<sup>554</sup> Melancton Smith, Letter VIII January 3, (1788 in *An Addition Number of Letters from the Federal Farmer to the Republican Leading to a Fair Examination of the System of Government, Proposed by the Late Convention*, (1788), 67.

<sup>555</sup> Ibid.

<sup>556</sup> Melancton Smith, Letter VIII January 3, 1788, 71.

that it will do very well for a people to make a constitution, and ordain, that at stated periods they will choose, in a certain manner, a first magistrate, a given number of senators and representatives, and let them have all power to do as they please". However, "this doctrine...may [only] do for a small republic."<sup>557</sup> On the small island the representatives can be hoped to share "the interests, the view, feelings, and genuine sentiments of the people themselves." This scheme, however, "can never be admitted in an extensive country...in a numerous representation the abuse of power is a common injury."<sup>558</sup> Smith, like Adams erroneously assumed that Delolme's checks and balances reflects the three orders of the people, the nobility, and the monarch. Therefore, Smith deemed this "doctrine" to be incompatible with America with its extensive republic with diverse interests.

The difference between England and America leads to Smith's own proposal of the multi-layered sovereignty:

The body of the people must have this true representative security placed somewhere in the Nation; and in the United States, or in any extended empire, I am fully persuaded can be placed nowhere, but in the forms of a federal republic, where we can divide and place it in several state or district legislatures, giving the people in these the means of opposing heavy internal taxes and oppressive measures in the proper stages.<sup>559</sup>

By dividing sovereignty between the state and the central government, Smith hoped that the former is adequately empowered to counterforce the immense power of the federal government. Beyond the political innovation of the multi-layered sovereignty, Smith as well as other anti-federalists also called for a legal bulwark against the newly-created strong central government as they felt the legislative reach would fall short in the vast political arena of the new federal republic. The Bill of Rights (1791) aimed to amend this flaw especially with the 4<sup>th</sup> and the 5<sup>th</sup> Amendment which prohibit the unreasonable search and seizure, cruel and unusual punishment, compelled self-incrimination and deprivation of life, liberty, or property, without due process of law. In Letter XVI dated 20 January 1788, the Federal Farmer discussed the necessity of a bill of rights for the new constitution giving weight to the liberty of the subject and legal protection, using Delolme's *Constitution* as an authoritative text to support his claim. Smith wrote: "Gentlemen who oppose a federal bill of rights, or further declaratory articles, seem to view the subject in a very narrow imperfect manner. These have for their objects, not only the enumeration of the rights reserved, but principally explain the general powers delegated in certain material points, and to refrain those who exercise them by fixed known boundaries."<sup>560</sup> For Smith, the limitation of power is at the heart of this kind of bill including not only the American Bill of Rights but also

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<sup>557</sup> Ibid.

<sup>558</sup> Ibid.

<sup>559</sup> Ibid, 70.

<sup>560</sup> Ibid.,146.

the previous example of Habeas Corpus who suggests that “Perhaps it would be better to enumerate particular rights the people entitled to in these proceedings, as has been done in many of the [American] states, and as has been done in England.”<sup>561</sup> Stressing the importance of the enumeration of these legal protections as rights, Smith cited Delolme to make his argument. He wrote how “A celebrated writer observes upon this last article<sup>562</sup>, that in itself it may be said to comprehend the whole end of a political society.”<sup>563</sup> Here Smith referred to Delolme’s definition of liberty as the legal protection of a person and equality before the law which Delolme argued to be the ultimate purpose of a civil society. For Smith, the creation of a federal state according to the new constitution, although as a response to the challenges that the confederation encountered, was like going from one extreme to another without examining a middle ground. By focusing merely on the lack of central power which costed the collapse of the Confederation, the new constitution overcorrected the republic by depriving the people of their hard-won political power in its inherently anti-popular politics institutional design.

At the end of this significant pamphlet, Smith referred to Delolme as an authoritative figure whose wisdom was acknowledged among the American patriots but could not be taken at face value due to the differences between America and England as states. Appealing to patriotism, Smith concluded the text: “I feel an aversion to the disunion of the states, and to separate confederacies; the states have fought and bled in a common cause, and great dangers too may attend these confederacies. I think the system proposed capable of very considerable degrees of perfection if we pursue first principles. I do not think that De Lolme, or any writer I have seen, has sufficiently pursued the proper inquiries and efficient means for making representation and balances in government more perfect. It is our task to do this in America.”<sup>564</sup>

## **Conclusion.**

Delolme’s American reception during the constitutional debates saw a gradual divorce between his constitutional thought and the historical analysis. It also crucially informs us about the formation of his legacy as a “conservative” and a monarchist. Hamilton’s Federalist Paper No. 70 adopts Delolme’s account of the jealousy-driven constructive tension between the people and the executive power to support his argument for a powerful but restrained presidential power.

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<sup>561</sup> Ibid., 149.

<sup>562</sup> “that no person shall be exiled or molested in his person or effects or otherwise than by the judgement of his peers, or according to the law of the land”, *ibid.*

<sup>563</sup> *Ibid.*

<sup>564</sup> *Ibid.*

This scheme, Hamilton argued, is the way forward for modern liberty because it effectively guarantees the accountability of the executive power by keeping the people politically active. John Adams, on the other hand, erroneously interpreted Delolme's idea of checks and balances to be underpinned by the society of orders. John Stevens and the Jeffersonian circle caricatured this line of interpretation into a conservative and a monarchist defence of the society of orders à la ancient regime. His reception by Melancton Smith, however, reveals how his work was also used by an anti-federalist to support their argument for Bills of Right as well as the multi-layered sovereignty of the federal republic due to American exceptionally large territory. However, it is Adams and the Jeffersonian narrative of Delolme which becomes the mainstream reception of Delolme as a theorist of balance of powers and an advocate for a monarch-like executive power, divorce from his wider programme to preserve liberty in a modern, representative constitution.

## CONCLUSION.

Delolme's argument for modern representative democracy through his examination of the English system was gradually eclipsed by his legacy as a supporter of a strong executive power. The persistence of this caricatured account is also explicit in the nineteenth-century reception. The period was a crucial one in the history of the convergence of republicanism and liberalism in the debate on modern representative constitution. After 1789, popular sovereignty became, for many, an uncontested ideal of politics and the ground on which contesting accounts of political legitimacy were fought. On the other side of the same coin, the unprecedented violence of the French Revolution also haunted Europe's political imaginations and the question of political stability prompted nineteenth-century liberals to question inherent defects in popular politics as well as to turn their eyes back to the British parliamentary model for constitutional ideas. The locus of the executive power within a modern free constitution was among the most contested issues in the discussion about the post-revolution institutional arrangements.

The conclusion covers snapshots of Delolme's reception in France, Germany, and America by exploring modern representative democracy's difficult relationship with the executive power via Delolme's nineteenth-century reception. It also challenges the argument that advocating for strong executive power simply indicates traces of conservatism.<sup>565</sup> Rather, I propose that the topic of executive power is a particularly fruitful research topic for historians of liberal representative democracy once it is examined in tandem with the notion of public opinion as both a guarantor and a limit on governmental powers in various arguments for modern representative constitution. This conclusion does not aim to be a comprehensive account of Delolme's nineteenth century reception per se. It merely addresses potential future research on the long and convoluted history of representative democracy and the locus of the executive power within it.

Executive power was the target of public anger in France before the breakout of the revolution of 1789.<sup>566</sup> Most felt that the very idea of unitary executive power and its necessity was simply a part of the grand myth which had protected the ancient regime until then. Jean-Joseph Mounier, one of the French *Monarchiens*, found himself among the minority who believed in the advantage of a unitary executive power and legislative bicameralism in preventing constitutional usurpations and securing political stability much needed in the post-revolutionary context. Similar to Delolme,

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<sup>565</sup> For example, William Selinger and Gregory Conti. "The Lost History of Political Liberalism." *History of European Ideas* 46, no. 3 (2020): 341-54, 348. It is remarked that "Guizot is a very useful figure for illustrating the ideological contours of nineteenth-century liberalism. As his commitment to stronger (critics might say 'heavy-handed') executive-led government became increasingly undeniable during the 1840s, he would come to self-consciously identify as a conservative.

<sup>566</sup> This issue has been well-documented see, for example, Rosanvallon, *Good Government*, 29-30.

Mounier's cause was not the protection of royal absolutism which he later was accused of because of his advocate for the royal veto power. Instead, agreeing with Delolme, Mounier was concerned about the creation of unitary legislative power as it might create another form of extremism after the abolishment of royal absolutism. "In a state where all sovereign power rested without restriction with the people there would be neither political liberty nor personal liberty."<sup>567</sup> Referring to Delolme in his *Considerations sur les gouvernements, et principalement sur celui qui convient à la France* (1789), Mounier wrote: "Delolme has very judiciously observed that the division of the executive power entirely enervates it, and that is a misfortune for the state, whereas the division of the legislative power on the contrary produces great advantages, in slowing down the pace of legislation, and rendering it wise and reflective. It is necessary in effect to ensure a lot of slowness and prudence in the establishment of laws, and a lot of promptitude and activity in their execution."<sup>568</sup> Resonating with Delolme's position, Mounier argued that the establishment of popular sovereignty and its manifestation through the legislative power would give rise to a constitutional usurpation in the name of the people. It is erroneous to simply assume that the executive power is the only enemy of liberty in the modern representative politics. Civic republicanism was inadequate in addressing this novel issue in modern politics. Similar to Delolme, it was only recently that Mounier's position has been seriously examined as an attempt to save modern liberty during the turbulent years after the fall of Robespierre.<sup>569</sup> Delolme was an important source of the French liberals in forming constitutional alternatives to what they thought of as republican radicalism and its inherent tendency towards legislative despotism. The key to the preservation of modern liberty, agreeing with Delolme, is the distinction between popular sovereignty and the government achieved through the multiplication of the representatives of popular sovereignty.

The rise of the neutral monarchical executive as a stabilising element in a liberal constitution is also exemplified in Delolme's reception by the German Vormärz liberal such as Friedrich Christof Dahlmann. Dahlmann not only translated *Constitution* to German in 1819 but also wrote an extensive preface to the edition. Here I emphasise the absence of Delolme's original notion of the constructive tension between the monarchical executive and the people which is replaced by the rise of liberal ideal of neutrality that eclipsed Delolme's strand of constitutional thinking.

Early studies on his intellectual influence often engage with his work offhandedly as an inaccurate account of the English constitution influenced by Montesquieu's idea of the separation

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<sup>567</sup> Jean-Joseph Mounier cited in Aurelian Craiutu, *A Virtue for Courageous Minds: Moderation in French Political Thought, 1748-1830*, (New Jersey: Princeton University Press, 2012),

<sup>568</sup> Jean-Joseph Mounier, *Considerations sur les gouvernements, et principalement sur celui qui convient à la France* (Versailles, 1789), 35.

<sup>569</sup> For a concerted effort in uncovering strands of French moderate, liberal political thought of this period see Aurelian Craiutu, *A Virtue for Courageous Minds: Moderation in French Political Thought, 1748-1830*, (New Jersey: Princeton University Press, 2012).

of powers.<sup>570</sup> Contrary to this strand of reading which undermines Delolme's account of executive power due to his alleged penchant for monarchy, this chapter takes seriously Dahlmann's commitment to liberalism as the ideological framework of his political programme and aims to survey how he did not find the strong executive power of the monarch to be incompatible and even complimentary to his constitutional vision for the modern Hanover in the light of the failure of radical republicanism of 1789.

I begin with Dahlmann's political position, which illuminates his preference for the English system. It is best expressed in his statement against Ernst August, Duke of Cumberland's attempt to annul the deceased King William IV's 1833 limited monarchical constitution. Dahlmann led the Göttingen Seven's protest against August's annulment of the limited monarchy constitution, arguing that "I fight for the immortal king, the legal will of the government, when—with legal weapons—I resist what the mortal king does in violation of existing laws."<sup>571</sup> His vision of the liberal constitutional monarchy aimed to strike a balance. It allegedly proposed a third alternative between the contesting French-style radical republicanism and absolute monarchy. By doing so, he successfully appealed to the thriving bourgeois of the nineteenth-century Hanover. This protest became the *cause célèbre* which unleashed a four-year constitutional crisis and simultaneously solidified the rise of the public as a crucial counterforce to the government and simultaneously shaped moderate constitutional liberalism as an oppositional front in German politics of the nineteenth century.<sup>572</sup>

Agreeing with Delolme, Dahlmann perceived the issue of political stability as central to the protection of individual liberty and property, the aim of a modern free state. In the preface (*Vorrede*) of the 1819 German edition, Dahlmann expressed his hope that the translation of Delolme's *Constitution* would render "the politicisation of the German public and the realization that state order and bourgeois freedom are to be combined."<sup>573</sup> The English system, he argued, achieved this goal with its intricate institutional arrangement which was formed organically

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<sup>570</sup> For example, Hammel argues that "throughout the Vormärz, German constitutional thought only refers to the English model through the classic interpretation of Montesquieu and De Lolme, and thus collects the image of an English monarchy characterized by the separation of powers and by the solidity and political importance of the monarch" In this reading, German liberals had "a very weak inclination... for a critical examination of English institutions" beyond the immediate political purpose of renouncing radical republicanism. Jacky Hammel, *Le constitutionnalisme allemand (1815-1918): Le modèle allemand de la monarchie constitutionnelle*, (Paris: PUF, 2002), 151-152.

<sup>571</sup> cited in James Sheehan, *German History, 1770-1866*, Clarendon Press, Oxford, 1993, pp. 616.

<sup>572</sup> Hanover and Göttingen, 1837 James M. Brophy, *Victorian Review*, Volume 36, Number 1, Spring 2010, 9.

<sup>573</sup> "[Dahlmann] erhoffte [sich] von der Veröffentlichung der Neuübersetzung eine Politisierung der deutschen Öffentlichkeit und die Erkenntnis, dass Staatliche Ordnung mit bürgerlicher Freiheit zu verbinden sei" Vorrede, *Die Verfassung von England*, Jean-Louis Delolme, transl., Friedrich Christoph Dahlman, 1819, 223.

throughout its long history.<sup>574</sup> This account of an organic development of the constitution was portrayed in contrast with the American constitution with its written social contract that was praised by the liberal rationalist vision exemplified by Karl von Rotteck, a *Vernunftrechtler*, who was highly critical of the English constitution.<sup>575</sup> By contrast, the institution of the Crown in Dahlmann's organic vision of the constitution was part and parcel within the constitutional fabric in English constitutionalism.

The English monarchical executive power, and its power to intervene in the legislative process via the king's ministers, for Dahlmann, was an effective preventative mechanism in counterbalancing the formidable legislative power. This successful preventative measure of the Crown manifested through the absence of the employment of the monarchical legislative veto power since the reign of Queen Anne. He observed how "the fact that in England, the royal veto has hardly been used for a century and a half" was not proof of the impotence of the King, but "rather illustrates the richness of the English Constitution in preventive means (*Vorbeugungsmittel*)."<sup>576</sup> In other words, strong but limited executive power is a part of the constitutional fabric of the English mixed constitution as opposed to a republican one. In such constitutions, following Delolme, the legislative power exploited its supremacy in representing the people's power to establish a form of the rule of the few in disguise.

Intriguingly, Dahlmann did not think that the 1832 Electoral Reform was a perversion of the mixed constitution principles. In fact, for him, "the constitutional organs have never been so purified as at present" and that "the British Parliament has found its internal balance" and that the chambers "carry in themselves their own centre of gravity."<sup>577</sup> The analysis reveals Dahlmann's vision of the English system as honouring the idea of popular sovereignty through the powerful House of Commons working closely with the monarchical executive. Despite some scholars' opinion that Dahlmann's sympathy with monarchy marks his "moderate" position among the Vormärz liberals, his reception of Delolme points to his penchant for a strong executive power due to its position and function within his vision of liberal parliamentarism rather than its monarchical features. In this regard, the conclusion agrees with the reading of Jellinek's seminal *Regierung und Parlament in Deutschland* that Dahlmann, in his *Politik*, "is very energetically

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<sup>574</sup> Another important aspect of Dahlmann's translation of *Constitution* was the supposed shared Saxon root of the English and the German, resonating with Montesquieu's account in *The Spirit of the Laws*. On this particular issue, Dahlmann criticised Delolme of misunderstanding of the root of English liberty as stemming from the resistance against the Norman Conquest in 1066.

<sup>575</sup> See Karl von Rotteck, *Allgemeine Geschichte von Anfang der historischen Kenntnis bis auf unseren Zeiten*, Brunswick, 1844. For secondary literature on the topic see, for example, Charles E. McClelland, *The German Historians and England: A Study in Nineteenth Century Views*, Cambridge University Press, Cambridge, 1971, 51-55, 69-70.

<sup>576</sup> Friedrich Christoph Dahlmann, *Politik, auf den Grund und das Mass der gegebenen Zustände zurückgeführt*, 2<sup>nd</sup> edition, (Berlin, 1847) 120, note 14.

<sup>577</sup> *Ibid.*, 83 and 84.



committed in favour of parliamentary government.”<sup>578</sup> Like Delolme, Dahlmann embraced the parliamentarisation of the executive power as an integral part of a liberal constitution which enhances political stability.

Delolme and Dahlmann’s complex understanding of the importance of a rigorous executive power within a liberal constitution was later obscured by another strand of reception of the English monarchical power by conservatives like Johann Gotthelf Beschorner. This line of reading highlights political neutrality as the most valuable characteristic of the institution. Beschorner formulated the idea that the English monarch is only a “nominal king”, the *Realkönig* being the ministers. The Parliament, and not the monarch, “is the authentic and true governor of England”.<sup>579</sup>

Delolme’s complex influence among the German liberals later was overshadowed by the caricature of his work as an inept disciple of Montesquieu who misunderstood the nature of the English constitution. Moreover, the positive account of a strong executive power became equated with one’s support of monarchism and a kind of a badge of conservative tendency. By the closing of the nineteenth century and Bismarck’s project of German unification, Delolme and Dahlmann’s argument for an English-style parliamentary system, as well as the importance of the executive counterforce to the legislative power, completely vanished due to Bismarck’s hostility towards Britain. In this regard, the German reception of Delolme also resonates with the triumph of Constant’s analysis of the Crown’s political neutrality and its moderating function within a liberal constitution.

In the nineteenth-century America, Frederick Grimké’s *Considerations Upon the Nature and Tendency of Free Institutions* (1848) epitomizes the completion of Delolme’s transformation into a conservation theorist via his American reception. In Grimké’s reading, Delolme’s programme is presented as pro-monarchy and oblivious to the force of the civil society in modern politics. In forming a strand of American liberalism, Grimké employed *Constitution* to juxtapose the politics of the Old World with American exceptionalism, and in so doing, also disregarded Delolme’s strand of representative democracy along with its complex account of the locus and function of executive power in a modern free constitution.

*Considerations Upon the Nature and Tendency of Free Institutions* is considered by some historians as “the most thorough analysis of the philosophical meaning of the American experiment” despite the author’s obscure position in American constitutional history.<sup>580</sup> Frederick

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<sup>578</sup> George Jellinek, *Regierung und Parlament in Deutschland*, (Leipzig and Dresden, 1909) 16.

<sup>579</sup> *Grundzüge eines Gemeinwesens oder Beleuchtung der englischen Staatsverfassung und allgemeine Bemerkungen über England und die Engländer*, (Leipzig, Göschen) 2 vol., 1820-21, vol I, 35.

<sup>580</sup> Adrienne Koch, “Two Charlestonians in Pursuit of Truth: The Grimké Brothers,” *The South Carolina Historical Magazine* 69, no. 3, 1968, 159-70.

Grimké was the brother of Sarah and Angelina Grimké, well known for their contribution to the abolitionist movement. The *Considerations* also featured in the required reading in the class titled "Progress of Society" at the University of Virginia after it was first published and a second edition also appeared in 1856.<sup>581</sup> The work covers a wide range of topics under the aspiration of "political science" which seeks to find general principles for modern free states with an emphasis in freeing American political scientists from the political bias of the Old World. Resonating with John Stevens' *Observations* discussed in the previous chapter, Grimké, in the nineteenth century, similarly juxtaposed Delolme's account of executive power with his, in order to reveal both the analytical errors, and the context-specific nature, of Delolme's arguments in *Constitution*. In this regard, Grimké also reflected upon the 1848 presidential election and the proper locus of presidential power in American federal republicanism.

At the heart of his critique of Delolme is the failure to acknowledge the rise of the public as a limiting force of the executive power. The stability of the English system, he argued, was a result of the powerful public which gradually rose to prominence in the last decades of the eighteenth century. "The power out of the government more nearly balances the power within, and produces the two opposite effects of confining and yet giving stability to the regal authority. This is evidently attributed to the altered structure of the society, and not the unity of the executive power."<sup>582</sup> In other words, Delolme mistook correlation for causation by leaving out powers in the realm of the civil society. While this reveals how Grimké missed Delolme's crucial analysis of the "public censorial power" and the rise of commercial society in *Constitution*, Grimké's reception of Delolme crucially epitomises and foreshadows his subsequent reputation as an advocate for power with a flawed approach. Grimké made a remark on this "error" in Delolme's programme. "When De Lalme [sic] wrote, the English house of commons was just beginning to acquire a due weight in the constitution: the people were making slow but steady advances in the acquisition of knowledge and property; public opinion, for the first time in the history of society, showed signs of becoming a power of commanding influence of the state...[and] begin to press with an enormous weight upon the executive authority."<sup>583</sup> Grimké also probably aimed to revoke Delolme's famous argument for a unitary and strong executive power praised by Alexander Hamilton and John Adams as well as other sympathisers with the Federalist vision of American republicanism, in contrast with his own Jeffersonian position.

To invigorate his critique, Grimké provided a brief history of the executive power. The initial purpose of the office, he argued, is "to give a character of unity to the authority of the state".<sup>584</sup>

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<sup>581</sup> Arthur A. Ekrich Jr., "Frederick Grimké: Advocate of Free Institutions," *Journal of the History of Ideas* (1950): 75-92, 76.

<sup>582</sup> Grimké, 413.

<sup>583</sup> Grimké, 412.

<sup>584</sup> Grimké, 414.

The increasingly complex structure of modern politics, however, compelled “the prince” to divest the executive power in other political bodies and in doing so, unintentionally created “a counterpoise to his authority”.<sup>585</sup> This modern necessity, which limited and reduced the regal executive authority, also proved to be remarkably beneficial to the society. The complete separation of executive power from hereditary monarchs was further proved to be useful for the people as the American case demonstrated. He explained how while “The prince consulted materially the interest of the society when he laid down some of his prerogatives, although it was only for the sake of his convenience. But the people [who are assigned to cover the duty of the monarchical executive] go straight forward to the same end, as soon as they possess the electoral franchise in its fullest extent” and thereby hold the executive power directly accountable to the people.<sup>586</sup> The American model proved itself to be the way forward for modern free constitutions and the history of the Old World was nothing more than a myth that only waited to be exposed. In this regard, Grimké also firmly rejected the authority of history in his notion of political science.

Grimké then moved on to address the relationship between popular mandate and the presidential office and its implication for political stability via his examination of Delolme’s work. For Delolme, direct presidential elections would give the executive power the perfect scheme to claim popular sovereignty and consequently, risking constitutional usurpations. This is because there would not be enough distrust in the office on the side of the people to keep their watchful eyes on its motions. In other words, the people would see the office as their direct and sole legitimate representative with inadequate critical distance for the check mechanisms to function. Grimké targeted this aspect of Delolme’s programme because it had implications for the question about the popular mandate of “the chief magistrate” triggered by the 1848 presidential election. He pointed out how Delolme failed to acknowledge the redemptive value of the democratic principle in taming political discord. Grimké contended that “the popular election of chief magistrate in the United States has never led to any political disturbance. The elective principle cures the mischiefs which have been apprehended from the contests of parties”.<sup>587</sup> The popular mandate that supports the presidential office will “not be left to stand upon the debatable ground of opinion. The office will be less dazzling, but it will on that very account be less open to attack”.<sup>588</sup> By this, he referred specifically to America as a modern republic with “a constitution ordinance” which settles once and for all the contest for executive power which directly tied with popular support. For Grimké, instead of relying on the tradition and the pomp of the monarch, a popular executive certified by electoral processes would be even more effective in the prevention

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<sup>585</sup> Grimké, 415.

<sup>586</sup> Grimké, 401.

<sup>587</sup> Grimké, 408.

<sup>588</sup> Grimké, 411.

of contestation of power than the institution of the crown, which relies on the airy notion of tradition and superstition.

Grimké was not concerned about the executive power's monopoly of popular sovereignty, because in modern America, he argued, a new power rose to prominence as a representative of a popular will. America's political success in making executive power serve public interest:

can only be ascribed to the growth of a new power in the state, to wit, that which is represented by the popular will. And that this new power will acquire still more influence, and ultimately succeed in modifying the whole constitution of the executive, is as certain as any event which is the subject of human speculation. It was formerly sufficient to study the mere mechanism of government in order to explain the phenomena of government, but it is now necessary to look a great deal further in the structure of the society as the most important element in the character and working of the political institutions.<sup>589</sup>

Despite his extensive criticism of Delolme, Grimké's programme, in fact, is strikingly similar to Delolme's account regarding the function of public opinion in counterbalancing the executive's sole claim to popular sovereignty. In Delolme's account, the English "public censorial power" influence the motion of the government by indirectly shaping the agenda of the parliamentary discussions and in so doing, also prevents the government and especially the executive from claiming the full authority of the people. Strikingly, Grimké failed to acknowledge Delolme's notion of public censorial power and juxtaposed his own account of American executive power with Delolme's English counterpart. Similar to most of Delolme's American reception, Grimké relied on the caricatured account of Delolme as an advocate for strong monarchical executive power, a remnant of ancient politics, without genuinely engaged with his wider programme of a modern representative free state. The nineteenth-century reception foreshadows the reduction of Delolme's complex ideas concerning modern representative constitution to a caricatured account of a "conservative" thinker.

## **Conclusion.**

While democratic sovereignty is relatively well-established, its institutional manifestation through the arrangement of governmental powers is being scrutinised more than ever amidst today's rise of plebiscitary executive power as well as the decline of faith in parliamentary politics. With the examination of Delolme's ideas for modern representative democracy in his analysis of

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<sup>589</sup> Grimké, 412.

the English system, the thesis provides the twenty-first century readers new perspectives on the meaning of modern representative democracy.

Delolme's work presents an account of modern executive power as an integral part of a successful modern representative democracy. This forgotten strand is uncovered in this thesis, first, through a re-examination of his locus within the eighteenth-century debate on modern liberty. His approach of science of politics takes the passion-driven human nature and the Genevan question on how to preserve the distinction between government and sovereignty as its point of departure. He contended that the institutional arrangement of powers was behind the English success in preserving liberty. This history of English negative liberty had the formation of the executive power and its extra-parliamentary relation to the people at the centre of the narrative. Disagreeing with Montesquieu, he argued that the fall of the nobility as an intermediary power did not put the English system in a vulnerable position. On the contrary, the English system had the unique constructive tension between the body of the people, its representatives, and the monarchical executive power, which exploited distrust to prevent any political body from claiming the authority of the sole representative of sovereignty. It was the defining moment in the long-standing attempt to distinct sovereignty from government. His contemporaries such as Jeremy Bentham recognised Delolme's originality in linking the realm of civil society with modern representative constitution through his notion of public censorial power, paving the way to deeper understandings of modern liberty beyond one's participation in the law-making process and the checks as well as the balances between the executive and the legislative power. The exportation of his account of a strong and unitary executive power in the modern representative constitution to America in Alexander Hamilton's Federalist Paper No. 70 saw the divorce of his idea from its historical analysis. At the same time, the reading of his work by the Jeffersonian circle also set the main tenet for later receptions of his political thought under the label of conservatism. The establishment of political neutrality exemplified in Delolme's nineteenth-century German reception, replaced the idea of distrust which was the centre of Delolme's vision for a functioning representative democracy as it kept the people active and vigilant on the executive power as well as their representatives in the parliament.

Delolme's forgotten ideas on the English system offers a glimpse of how liberty might be preserved in modern representative democracy and presents the readers with fresh looks on the role of executive power in modern politics. In the age of "the presidentialization of democracies" with the rise of popular vote of the head of the executive power, Delolme's ideas are useful in our reflections on the meaning of democracy in modern representative politics.<sup>590</sup> At the heart of his analysis, he warned against the fusion of popular sovereignty with the actuality of political power,

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<sup>590</sup> Rosanvallon, *Good Government*, 3.

whether it is in the form of the executive or the legislative claim as the representative of the people, including the raw power of popular uprisings. His caution is illuminating in today's politics as the executive branch becomes synonymous with the government while referendum (which claims the authority of a popular mandate) as a constitutional solution to controversial issues becomes increasingly common.

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