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Montesquieu and Locke on Democratic Power and the Justification of the 'War on Terror'

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Abstract: This paper focuses on a comparative analysis of the legitimate exercise of democratic power in the philosophies of Montesquieu and Locke. This analysis not only highlights a strong bifurcation in liberal thought, it also sheds light on the contemporary practice of liberalism through the example of the United States' 'War on Terror.' I argue that although it is Locke who at first blush gives an account of the exercise of democratic power that is more opposed to tyranny, it is Montesquieu's broader conception that is in many ways more effective at tracking and combating tyranny.

Preferred Abbreviated Running Head: Democratic Power and Terror

Key words: Bush, Democracy, Liberalism, Locke, Montesquieu, Power, Terror, Tyranny, War

Montesquieu and Locke on Democratic Power and the Justification of the ‘War on Terror’

Charles Louis de Secondat, Baron de La Brède et de Montesquieu, occupies a unique place in western thought as a result of the diverse terrains his work crosses. Durkheim, Aron, and Althusser all credit Montesquieu with the invention of modern sociology because his work sought to make “history intelligible” through grasping “the underlying causes which account for them” (Aron 1968, 15). While it is certainly correct that Montesquieu shares many things in common with the discipline of sociology, he is also philosophical in that he moves beyond the analysis of law to offer arguments in favor of several ideals including liberty. Moreover, his historical approach to sociology and philosophy has also sometimes earned him credit as a historian as well. Due to his unique and rich sociological, philosophical, and historical conceptualization of political power, Montesquieu puts forward a robust idea of the proper exercise of power by democratic states that differs strongly from many of his fellow liberals, most notably Locke.

The elaboration of Montesquieu and Locke’s analysis of democratic political power in this essay aims to advance our understanding of liberalism and to provide insight into the practice of this influential set of political ideals today. In regards to the first aim, I will show that liberalism is bifurcated in its understanding of how political power should legitimately operate in a democracy. The distinction between Montesquieu and Locke’s analysis of the proper place of power in a democracy is important because it leads to their considerably different conceptions of democracy and tyranny.

Second, to exemplify and flesh out how their differing accounts of power are reflected in the practice of liberalism today, I will examine the role of the Bush administration’s rhetoric on democratic power in the United States’ ‘War on Terror.’ I will argue that the Bush

administration has moved with virtual impunity between two quite different understandings of legitimate exercise of power to promote its policies. The Bush administration has envisioned democratic power as not culturally, legally or economically imposing while also, at other times, employing a notion of democracy that demands certain positively defined cultural contexts in order to function.

I begin this project by developing a conception of democracy that conceives of the legitimate exercise of democratic power negatively via Locke's *Second Treatise on Government*. The second section works through Montesquieu to develop a conception of democracy based on positive power. Finally, in the third section, I use these two conceptions of democratic power to examine closely the rhetoric of Bush administration in arguing for various measures in the 'War on Terror.'

1. Locke on Power, Democracy, and Liberty

In the second book of *Two Treatises of Government*, Locke offers an understanding of the legitimate exercise of democratic power that is negative and whose primary function is to interdict, to say 'no.' This is not to say that Locke does not understand or is not concerned about the functioning of power that exceeds this nay-saying exercise; in fact, tyrannical abuses of power are a constant concern of his. Rather, Locke seeks to provide an understanding of democracy in which the exercise of power is limited to negative, forbidding exercises of power because he is aware of these other positive exercises of power and their possibility for tyrannical abuse.

Before moving to a close examination of Locke's text, I would like to distinguish this negative form of political power from a positive form that does not seek to forbid but instead specifies a singular and acceptable form of conduct. I borrow from Isaiah Berlin's nomenclature

in dubbing these two different conceptions of political power ‘negative’ and ‘positive’ power as they in some ways mimic the distinctions he makes between negative and positive freedom (Berlin 1970, 118-172). A contrasting example of negative and positive political power can be found in looking at the different ways of regulating trespassing. Most of us are familiar with the negative exercise of power that is advertised in a ‘No Trespassing’ sign. This sign carries the message that one may walk anywhere one likes as long as it is not on the property that the sign marks. In contradistinction, a positive exercise of power that regulates the usage of property can be found in a typical schoolroom. In a school, students have only one acceptable place that they can sit and only one way to sit—at their desks quietly. The difference between the two forms of power is that the negative exercise merely restricts some actions leaving a large set of acceptable options for the individual to choose between (i.e. one can be wherever one wants as long as it is not on the property in question) while the positive exercise of power specifies a singular course of action that makes any other action unacceptable (one must sit at one’s desk quietly). Negative power is a forbidding power that forbids certain options leaving the preferable option to be determined by the individual while positive power is a normative form of power that attempts to constrain all actions to those positively and specifically elaborated as normal and acceptable.

Locke’s sentiments about the legitimacy and the effects of negative and positive power in a democracy can best be seen in his analysis of the foundation of the state. Locke sees political society originating out of the universal consensus of a group of individuals to join together and form a society. These consenting individuals band together for “comfortable, safe, peaceable living amongst one another, in a secure enjoyment of their properties” (Locke 1980, 95, ref. paragraph number). These individuals desire comfort and safety and so they all agree to enter a binding deliberation to decide by majority rule the laws and type of government that they will

live under, figuring that almost any government is more likely to achieve their aims than none at all (Locke 1980, 96-97). This first pact to enter deliberation is a binding agreement that gives a set of temporary democratic procedures whereby a more permanent and robust government can be created. In this sense, democracy is only the means through which the laws of a longer-term government, but not necessarily a democratic government, can be created. However, democracy has a possible second moment in Locke in that the proto-nation may choose to use their democratic deliberations on the nature of their future state to decide on a permanent democratic government.

Locke argues that there are inherent limitations on the legitimate exercise of power in this first democratic political body and all following societies. He argues that the contracts that individuals make with one another are only valid if they freely consent to them: “Every man being, as has been shewed, naturally free, and nothing [is] able to put him in subjection to any earthly power, but his own consent...”(1980, 119). If a strongman or positive power coerces consent from the individual that is an act of war and the constrained individual has no responsibility to abide by the contract (Locke 1980, 21-24). In other words, if someone would “get me into his power without my consent” that is equivalent to a declaration of war upon me and whatever decisions produced under such duress would not be binding (Locke 1980, 17, 19).

Exactly what kinds of coercion are an act of war? For Locke, war consists in one agent trying to get another under their power which is equivalent to someone seeking to usurp the other’s “executive power [over] the law of nature” (1980, 13). The executive power over the law of nature is the power to conduct one’s own life, health, liberty, and possessions according to one’s own discretion. The end result is that, for Locke, unacceptable coercion exists when one

individual takes the power from another to decide how they conduct their own “life, health, liberty, or possessions” (1980, 6).

As a result of Locke’s understanding of impermissible constraint, the positive exercise of power that seeks to precisely determine how individuals conduct themselves would render a contract null and void. A government that exercised positive power over an individual would be taking over the power to determine how that individual conducted their life. If the threshold for a state of war is that some agent attempts to conduct another’s life for them, then the exercise of positive power over another must almost certainly be read as a declaration of war; the very point of positive power is to conduct another’s life in a singular and specific direction. As a result, we can conclude that for Locke the only power the proto-democratic society should exert is the negative and limiting power of the law that forbids; all of the positive determinations that an individual must make in order to give their life a particular shape are reserved for the individual.

If we now look back at the democratic moment in the foundation of states, we can see why Locke chooses democracy for the initial assembly of a nation in light of this analysis of the acceptable exercise of power. Democracy is the primordial form of government because it does not necessarily coerce through positive forms of power and is thus able to create valid contracts. Democracy does not impute its own nature or desire to the political process in an act of positive political power, it is merely the conduit through which the will of the majority is allowed to translate itself into law: “the body should move that way whither the greater force carries it, which is *the consent of the majority*” (Locke 1980, 96). For Locke, the democratic state is a neutral conduit for the exercise of the power of the majority; it is a non-coercive means through which individuals can come to agreement on the laws that they are to impose on themselves. In

this sense, democracy adds nothing positively to the political process, it is a transparent mechanism that individuals actuate in order to transcribe their will into law.

In sum, Locke puts forward a notion of the mechanics of democratic power that argues for it as a boundary setting and limiting institution. Free and democratic political institutions, government, and its initiatives can be completely divested of positive power. It is as a result of democracy's potential to exert a wholly negative mechanics of power that it is deployed by Locke as the legitimate form of proto-government from which all more permanent forms of government and positive exercises of power can come.

It is important to note that Locke puts forward a conception of democracy that could act only on negative exercises of power to forbid, serving as a tool to maximize freedom while remaining transparent to the whims of the majority. As a result, his notion of democracy does not require a particular kind of culture to host it, it does not necessarily impose a particular kind of culture in its establishment of laws, and it does not need to exercise the power of laws positively or normatively to shape subjects; democracy can operate on a wholly negative mechanics of power to register and record the political landscape as it lies. Locke positions democracy as the legitimate starting point of politics for any group of humans regardless of language, culture, or locale. Montesquieu's notion, as we will see, is in significant opposition to this viewpoint.

2. Montesquieu on Positive Power and Negative Power in Democracies

Montesquieu's analysis of politics and democracy begins with a theorization of power via his idea of the law. The law works for Montesquieu to establish the precise positive and normative directions that society and all of nature follows:

Laws, taken in the broadest meaning, are the necessary relations deriving from the nature of things; and in this sense, all beings have their laws: the divinity has its laws, the material world its

laws, the intelligences superior to man have their laws, the beasts have their laws, man has his laws (1989, 1.1).

As Montesquieu defines it, the law is not something that primarily prevents or limits the expression of things; all laws extend from the nature of things and positively define their relationships to the rest of existence. The law describes how two things, given their structures and propensities, will necessarily interact and form relationships with one another in a definite way. Montesquieu's notion of the power expressed by laws is not primarily negative or limiting, it is constructive and formative (Courtney 2001, 49).

As law gains its particular form from "the nature of things," the law is deeply tied to Montesquieu's notion of nature and principle. He defines nature as "that which makes [something] what it is...its particular structure" (1989, 3.1). Nature describes the essence or form of things that explains what something is, while principle "is that which makes it act" (Montesquieu 1989, 3.1). The two concepts of nature and principle work together in the sense that nature is the structure or form of a thing while principle is that which animates or articulates the structure:

These principles or laws form the basis of Montesquieu's radically new (for the eighteenth century) way of understanding how governments are constituted. Each is defined by the nature of its ruling process, which in turn depends on a mind-set that is shared by its citizens (Conroy 1992, 75).

This conception of nature and principle together form the theoretical apparatus that makes the universe regular and lawful. As the bodies that make up the universe have a determinate nature that expresses itself in a regular and principled way, Montesquieu argues that laws can describe the regularities that underlie the apparently random events of the world, both politically and otherwise. Nature, principle, and law work together to describe in exacting specificity what principles of order can be found in the generative wellsprings of nature and in the diverse environments of the political universe.

A political analysis based on this scientific conception of the law will be able to tell one which human natures together will form which kind of laws, or, in other words, which natures will form which kinds of political regimes. More specifically, Montesquieu considers how human beings will interact with a wide variety of environments including those of different populations, temperatures, wealth, fertility, size, religion, etc. to produce different laws, and hence, different kinds of governments (Rahe 2001, 69). For Montesquieu human law is always, at root, an artifact of natural law; human law is formed according to the natural laws that govern the production of all things, including human action. Political sociology is thus possible for Montesquieu because he recognizes the positive and constitutive power of the law as the natural basis of all political regimes and is thus able to spell out why things are the way they are. Thus, even apparently negative laws ('thou shall not steal') are, for Montesquieu, created out of a set of normative and coercive power relations that give even apparently negative laws a distinctively positive function in working towards a particular norm (salvation).

As a sociologist with a positive understanding of the mechanics of power and an interest in defining the laws that govern the motions of human politics, Montesquieu provides an account of democracy in which positive power is central to maintaining the specific nature of democratic politics:

Since the supreme law of every society is the welfare of its members, and since a society cannot preserve itself without safeguarding its specific nature, it suffices to describe that nature in order to determine what the society in question should strive for and what it should avoid. For example: after having demonstrated that democracy is only in small states, Montesquieu had no difficulty in prescribing that a democracy should refrain from overextending its frontiers (Durkheim 1960, 17).

For Montesquieu, a political regime can only maintain its nature if it continues to act according to principles that are commensurate with the maintenance of that nature. In other words, all political regimes, including democracy, must exercise positive power properly to shape their citizenry, institutions, and political apparatus to maintain their specific nature.

The nature of democracy, for Montesquieu, is most generally expressed in that “the people as a body have sovereign power” (1989, 2.2). In other words, the nature of democracy is that it is structured so the people are able to equally share in the exercise of power. Given that equality is the nature of democracy, Montesquieu argues that democracy must act according to the two principles of equality and frugality in order to prevent the corruption of its nature: “This relation between the laws and the principle tightens all the springs of government, and the principle in turn receives new force from the laws” (1989, 5.1).

Equality is the first principle according to which democracy needs to exercise power in order for power to remain shared and democracy to retain its form and not fall into aristocracy, monarchy, or despotism. Given a principle for the positive exercise of power other than equality, a different structure or form would gradually come to be constituted through the action of the state, destroying the democracy. A democracy, like any other political regime, is continually exercising positive and formative power so a democracy must continually aim to express its power according to the principle of equality if it is to persevere as what it is—a regime in which political power is equally shared.

The second principle, frugality, also aims to guide the economic exercise of power to reinforce the egalitarian nature of democracy. The principle of frugality aims to curb economic ambition and the power unbalances that result from economic inequality: “Wealth gives a power that a citizen cannot use for himself, for he would not be equal” (Montesquieu 1989, 5.3). Wealth is a source of power that must be kept in equality otherwise wealthy citizens will be able to use their economic power to exercise unequal differential power over others. To see the wisdom of Montesquieu’s insight, one only needs to look at the power of the lobbyists and corporations in liberal democracies today—they are certainly an impediment to the equal

exercise of political power. The principle of frugality shows that a democracy must be based in a state of material as well as political equality; any extra wealth should end up in the hands of the state for equal public use in order to prevent the abuse of wealth just as political measures should aim to preserve a careful balance of political influence.

It is clear that Montesquieu argues in *The Spirit of the Laws* that democracy has a particular nature and set of principles that need to be upheld through the expression of an appropriate constitutive political power. To ensure its nature, a democracy needs to exercise its power to positively shape both the state and the citizenry to create equality in their interactions and labor. Montesquieu, as a result, does not find democracy to have the exceptional ability to work solely negatively; democracy is just another kind of political regime with its own culture, rules, and effects—in other words, its own necessary positive exercises of power.

Unlike Locke who conceives of the democratic state as an instrument or a tool that citizens can pick up and use without being shaped or coerced by it, Montesquieu holds that democratic power comes from an equal group of individuals who constitute a state that will actively work to maintain that equality. This exercise of positive power Locke would likely only see as an impingement on the liberty of the people to constitute their own character but for Montesquieu it is an integral and necessary part of the maintenance and being of democracy as a state of equality. For Montesquieu, without that positive exercise of power continually aiming at equality, the result would not be an absence of positive power and a democracy operating on a wholly negative mechanics of power but just some other exercise of positive power like a despotic, monarchic, or aristocratic exercise of power.

An interesting effect of Montesquieu's conception of democracy is that it is actually much more variable in application than Locke's understanding. Although Montesquieu does

hold that a democracy must instill frugality and equality, the particular measures and institutions required to achieve those virtues may vary widely. For Montesquieu, democracy is not to be found in a single model that operates everywhere similarly because it is odorless, tasteless, and neutral; rather, democracy is based on a nature and set of principles that have to respond and adapt to specific circumstances to achieve their positive instantiation. Just as hydrangeas bloom in different colors in different soils while retaining the same nature and principle, so too does democracy take on diverse forms in its specific environments as it responds to its situation and exercises its positive power to correct contextually specific imbalances and establish equality.

3. The Import of this Analysis of Democratic Power on the Practice of Liberalism Today

In this third section, I will draw out some of the implications of this division in the liberal understanding of the function of power in a democracy through an examination of how these notions play out in the ‘War on Terror.’ Besides drawing attention to the Bush administration’s manipulation of the public understanding of the constitution and the effects of democratic power, I show that it is not necessarily Locke and his insistence on a notion of democracy based on a negative mechanics of power who provides us with the strongest ability to diagnose the tyrannical elements of the war. If Montesquieu is right, then Locke has not provided us with a theory of democracy more resistant to tyranny but rather one that is just blind to the necessary operation of positive power and less able to account for and resist positive power in its tyrannical modes.

I would like to begin with an examination of the ambiguities in the Bush administration’s rhetoric about democratic power in the ‘War on Terror.’ The initial analysis of democratic power that supported the creation of the ‘Department of Homeland Security,’ ‘The Patriot Act,’ and the wars in Iraq and Afghanistan began with a Lockean understanding of democratic power

that only operates negatively and neither determines an individual's conduct nor leads to tyranny:

I believe freedom is not America's gift to the world; I believe freedom is the almighty God's gift to each man and woman in this world. And therefore, as we work to not only make the homeland more secure, we work to spread freedom, which will make the world more peaceful. The enemy can't stand the thought of free societies. That's why they attacked us, see. And we're not going to change. That's what they don't understand. There's nothing they can do to intimidate, to make us change our deepest belief (Bush 2004a).

On this line of thought, democracy can be brought to other nations and “secured” in the United States without causing us to change, compromise, or alter our freedoms. Using this logic, the White House has tried to argue to the world that democracy is not an imposition of a narrow set of culturally specific positive power relations but a tool with which to remove terroristic positive exercises of power and leave individuals truly free:

It's hard work to go from a system where there was torture and rape rooms and mass graves to freedom. That's hard work. But it is necessary work. That's why I want to herald the work and sacrifice of your husband. It's important work for our future. Free societies are peaceful societies. The way to defeat terror in the long run is to provide hope, to provide hope for families, to provide hope for children, to say that there's a bright future for you. That won't happen, so long as there's tyranny in a part of the world that tends to breed hatred. It will happen when societies become democratic and free (Bush 2004a).

Here Bush links democracy to freedom, security, and a lack of tyranny as if these effects were solely due to the presence of democratic power.

However, and in a contradictory vein, other elements of the ‘War on Terror’ have embraced an open commitment to democracy as a particular set of positive relations that need to be established, protected, and enforced (at gun point if necessary). More specifically, The White House has demanded that a whole series of cultural, economic, and religious values will have to be changed in order to “secure [Iraqi] democracy” (Bush 2004b). For the Middle East, Bush mentions these specific impositions to secure democracy there: the privatization of the economy, the extension of the rights of women, the establishment of a privately owned media, and the recognition of religious pluralism (Bush 2008). At moments like these, the rhetoric seems to

shift and democracy seems predicated on a particular cultural milieu that will require nation building and cultural reconstruction to achieve the necessary environment.

These two positions on democracy have largely worked in a mutually reinforcing manner to validate this administration's policy instead of as a self-contradiction and invitation to discuss the nature of democracy, the United States' occupation of Iraq and Afghanistan, and restrictive 'security' legislation. Often when it is becoming most clear that democracy is a particular positive state of power relations that involves a whole series of commitments—commitments that might make the United States seem culturally and economically imperialistic—the government rhetoric will switch from the Montesquieuan necessity of imposing particular social relations to the opposing Lockean idea that democracy is a transparent tool of freedom and not an imposition of positive power relations:

And the man [Gordon Brown] I listened to shares that same sense of morality, and that same sense of obligation – not to free others, but to create the conditions so others can realize the blessings of freedom. We can't impose freedom, but we can eliminate roadblocks to freedom, and to allow free societies to develop. And it's really hard work, you know? There's a lot of cynics saying, how dare they; how dare they impose U.S. or Great British values. And what I found was a man who understands that these aren't Great British and U.S. values, these are universal values (Bush 2007).

In this quote, Bush attempts to sever democracy from the positive exercises of power required to sustain it by claiming that he aims to eliminate the “roadblocks to freedom” but not to “impose U.S. or Great British values.” He frames his efforts to transform or even remove certain aspects of Iraqi culture, religion, and government as the elimination of “roadblocks” so that the “universal values” of freedom that all Iraqis desire can be realized. In this paragraph, Bush attempts to merge a Lockean view of democracy that sees it as possible that a democracy might only exercise negative power with a Montesquieuan perspective that sees positive exercises of power as necessary and constitutive of democracy by masking those positive exercises as ‘roadblock removal.’

This rhetorical manipulation of democratic politics is not only a disservice to the members of the coalition nations who need to be having a much more explicit discussion about what a democracy is and the effects it has, but also to the people of Iraq whose voice on this matter is being little heard in the United States and in their own country. In the ‘War on Terror,’ we have a whole series of positive exercises of power that do reflect “U.S. and Great British values” and at the same time a refusal to recognize them under the cover of democracy as a neutral measure of the people’s will. The Iraqis are silenced on these issues because it is supposed that democracy represents the will of the majority and therefore the Iraqi voices must be being heard. However, a bleak counter-example to this logic is found in the polling that reveals that the majority of Iraqis do not want democracy at all and democracy itself is a limitation on their liberty (USA Today 2007). It is ironic that the Iraqis are being silenced by democracy, the very ‘universally desired’ system that Bush promised was to make them heard. These and other fundamental questions are not being asked because the usage of a Montesquieu notion of democracy and democratic power is being masked by a Lockean presentation of democracy as the transparent and unproblematic handmaiden of freedom.

This confusion over the role and effects of democracy in the contemporary political landscape reflects poorly back on a Lockean notion of democracy that holds that a democracy can operate in a purely negative fashion. In the case of the ‘War on Terror,’ we might wonder if such an understanding of democracy has worked in this case to mask tyranny by providing cover to a whole series of positive exercises of power by denying their reality. Even more to the point, we might question whether such a wholly negative democracy is even possible. If, as Montesquieu argues, democracy is a particular positive disposition of power relations, then that

fact calls us to determine what those power relations are and to what extent they can be fairly transposed beyond a particular political context.

Montesquieu's own response to the positive exercise of power by democracies is an inquiry into the specificity of democratic power relations, their ties to particular locales and generative cultures, and an acknowledgement that no one form of government and especially no one set of laws can be the guide or universal standard for all. Certainly, Montesquieu was a thinker of great sympathy who argued passionately for greater liberty for many people but he was also wise enough to recognize that the solutions and compromises of his home country could not be those of the rest of the world. Moreover, Montesquieu also recognized that the pursuit of liberty did not always mean imposing democracy or any other single kind of government. In other words, his position does not result in a single easy prescription for the exercise of political power but in an ethical and political accounting for the sources, context, and effects of political action. This is an accounting that is largely lacking in the practice of liberal politics today and it is an accounting that may well have spared many lives, resources, and futures if it had been thoroughly engaged before the 'War on Terror' commenced.

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