

THE PAPERS OF
THOMAS JEFFERSON



Jefferson and the Publication
of Destutt de Tracy's
Commentary on Montesquieu

- I. TO WILLIAM DUANE, 12 AUG. 1810
II. DESTUTT DE TRACY'S COMMENTARY ON BOOK 2 OF
MONTESQUIEU'S *ESPRIT DES LOIS*
III. EXTRACTS FROM DESTUTT DE TRACY'S REFLECTIONS ON
MONTESQUIEU'S FIRST TWELVE BOOKS

E D I T O R I A L N O T E

Using the French manuscript that he received from the author in 1809, Jefferson undertook to see into print an English edition of Destutt de Tracy's commentary on Montesquieu's *Esprit des Lois*. He recruited Philadelphia printer and journalist William Duane for the task with the letter and sample translations printed below. Duane engaged his own translator, even for the portions Jefferson had already translated, and made further revisions himself before sending the work in batches to Jefferson for his review. Jefferson spent part of the last months of 1810 composing a preface and reviewing the draft translation. He expressed some concern about the quality of the translation and his inability to check it thoroughly without the French original, which remained in Duane's hands until 1813. Progress was temporarily suspended by labor and financial troubles, but Duane published the work anonymously in the summer of 1811 as *A Commentary and Review of Montesquieu's Spirit of Laws. prepared for press from the Original Manuscript, in the Hands of the Publisher. To which are annexed, Observations on the Thirty-First Book, by the late M. Condorcet: and Two Letters of Helvetius, on the merits of the same work* (Philadelphia, 1811; Sowerby, no. 2327; Poor, *Jefferson's Library*, 10 [no. 623]; title page reproduced elsewhere in this volume). Despite Jefferson's enthusiastic approval, the first edition did not sell out. It was not reprinted in English in his or Destutt de Tracy's lifetime, although French, German, Italian, and Spanish versions did eventually appear (Destutt de Tracy to TJ, 12 June 1809, 11 Apr. 1818, 10 Mar. 1819, 24 Nov. 1820; Duane to TJ, 17 Aug., 29 Oct. 1810, 25 Jan., 15 Mar., 5 July

DESTUTT DE TRACY ON MONTESQUIEU

1811, 14 Feb. 1813; TJ to Duane, 16 Sept., 25 Oct., 13 Nov. 1810, 18, 26 Jan. 1811, 4 Apr. 1813; Destutt de Tracy, *Commentaire sur l'Esprit des Lois de Montesquieu* [Paris, 1819; Poor, *Jefferson's Library*, 10 (no. 622)], *Charakterzeichnung der politik aller staaten der erde. Kritischer commentar über Montesquieu's Geist der gesetze*, 2 vols. [Heidelberg, 1820–21], *Comentario sopra lo spirito delle leggi di Montesquieu* [Naples, 1820], and *Comentario sobre el Espíritu de las leyes de Montesquieu* [Valencia, 1821; trans. Ramón Salas]).

I. To William Duane

SIR

Monticello Aug. 12. 10.

Your letter of July 16. has been duly recieved, with the paper it inclosed, for which accept my thanks, and especially for the kind sentiments expressed towards myself. these testimonies of approbation, and friendly remembrance, are the highest gratifications I can recieve from any, and especially from those in whose principles & zeal for the public good I have confidence. of that confidence in yourself the military appointment to which you allude was sufficient proof, as it was made, not on the recommendations of others, but on our own knolege of your principles & qualifications. while I cherish with feeling the recollections of my friends, I banish from my mind all political animosities which might disturb it's tranquility, or the happiness I derive from my present pursuits. I have thought it among the most fortunate circumstances of my late administration that during it's eight years continuance, it was conducted with a cordiality and harmony among all the members which never were ruffled on any, the greatest or smallest occasion. I left my brethren with sentiments of sincere affection & friendship, so rooted in the uniform tenor of a long & intimate intercourse, that the evidence of my own senses alone ought to be permitted to shake them. anxious, in my retirement, to enjoy undisturbed repose, my knolege of my successor & late co-adjutors, and my entire confidence in their wisdom and integrity, were assurances to me, that I might sleep in security with such watchmen at the helm; and that whatever difficulties & dangers should assail our course, they would do what could be done to avoid or surmount them. in this confidence I envelope myself, & hope to slumber on to my last sleep. and should difficulties occur, which they cannot avert, if we follow them in phalanx, we shall surmount them without danger.

I have been long intending to write to you as one of the associated company for printing useful works.

[4]

12 AUGUST 1810

Our laws, language, religion, politics, & manners are so deeply laid in English foundations, that we shall never cease to consider their history as a part of ours, and to study ours in that as it's origin. every one knows that judicious matter & charms of stile have rendered Hume's history the Manual of every student. I remember well the enthusiasm with which I devoured it when young, and the length of time, the research & reflection which were necessary to eradicate the poison it had instilled into my mind. it was unfortunate that he first took up the history of the Stuarts, became their Apologist, and advocated all their enormities. to support his work, when done, he went back to the Tudors, and so selected and arranged the materials of their history as to present their arbitrary acts only, as the genuine samples of the constitutional power of the crown; and, still writing backwards, he then reverted to the early history, and wrote the Saxon & Norman periods with the same perverted view. altho' all this is known, he still continues to be put into the hands of all our young people, and to infect them with the poison of his own principles of government. it is this book which has undermined the free principles of the English government, has persuaded readers of all classes that these were usurpations on the legitimate and salutary rights of the crown, and has spread universal toryism over the land, and the book will still continue to be read here as well as there. Baxter, one of Horne Tooke's associates in persecution, has hit on the only remedy the evil admits. he has taken Hume's work, corrected in the text his misrepresentations, supplied the truths which he suppressed, and yet has given the mass of the work in Hume's¹ own words. and it is wonderful how little interpolation has been necessary to make it a sound history, and to justify what should have been it's title, to wit, 'Hume's history of England abridged and rendered faithful to fact and principle.' I cannot say that his amendments are either in matter or manner, in the fine style of Hume. yet they are often unpercieved and occupy so little of the whole work as not to depreciate it. unfortunately he has abridged Hume, by leaving out all the less important details. it is thus reduced to about one half it's original size. he has also continued the history, but very summarily, to 1801. the whole work is of 834. quarto pages, printed close, of which the Continuation occupies 283. I have read but little of this part. as far as I can judge from that little, it is a mere Chronicle, offering nothing profound. this work is so unpopular, so distasteful to the present Tory palates & principles of England that I believe it has never reached a 2^d edition. I have often enquired for it in our book shops, but never could find a copy in them, and I think it possible the one I imported

[5]

DESTUTT DE TRACY ON MONTESQUIEU

may be the only one in America. can we not have it reprinted here? it would be about 4. vols 8^{vo}.

I have another enterprize to propose for some good printer. I have in my possession a MS. work in French, confided to me by a friend, whose name alone would give it celebrity were it permitted to be mentioned. but considerations insuperable forbid that. it is a Commentary and Review² of Montesquieu's³ Spirit of laws. the history of that work is well known. he had been a great reader, and had commonplac'd every thing he read. at length he wished to undertake some work into which he could bring his whole Commonplace book in a digested form. he fix'd on the subject of his Spirit of laws, & wrote the book. he consulted his friend Helvetius about publishing it, who strongly dissuaded it. he published it however, and the world did not confirm⁴ Helvetius's opinion. still every man, who reflects as he reads, has considered it as a book of paradoxes, having indeed much of truth & sound principle, but abounding also with inconsistencies, apocryphal facts, & false inferences. it is a correction of these which has been executed in the work I mention, by way of Commentary and Review; not by criticising words or sentences, but by taking a book at a time, considering⁵ it's general scope, & proceeding to confirm or confute it. and much of confutation there is, & of substitution of true for false principle: and the true principle is ever that of republicanism. I will not venture to say that every sentiment in the book will be approved: because, being in MS. and the French character, I have not read the whole but so much only as might enable me to estimate the soundness of the author's way of viewing his subject; and judging from that which I have read, I infer with confidence that we shall find the work generally worthy of our high approbation, and that it every where maintains the preeminence of Representative government, by shewing that it's foundations are laid in reason, in right, and in general good. I had expected this from my knolege of the other writings of the author, which have always a precision rarely to be met with. but to give you an idea of the manner of it's execution, I translate and inclose⁶ his commentary on Montesquieu's II^d book, which contains the division of the work. I wish I could have added his review at the close of the 12. first books, as this would give a more compleat idea of the extraordinary merit of the work. but it is too long to be copied. I add from it however,⁷ a few extracts of his reviews of some of the books as specimens of his plan and principles. if printed in French it would be of about 180. pages 8^{vo} or 23. sheets. if any one will undertake to have it translated and printed on their own account, I will send on the MS. by post, and they can take the copyright as of

12 AUGUST 1810

an original work, which it ought to be understood to be. I am anxious it should be ably translated, by some one who possesses style, as well as capacity to do justice to abstruse conceptions. I would even undertake to revise the translation if required. the original sheets must be returned to me, and I should wish the work to be executed with as little delay as possible.

I close this long letter with assurances of my great esteem & respect

TH: JEFFERSON

PoC (DLC); at foot of first page: “M^r Duane.” Tr (MHi); posthumous copy; last page only. Enclosures: TJ’s translations of Documents II and III.

TJ purchased David Hume, *The History of England, from the Invasion of Julius Caesar to the Revolution in 1688* (London, 1754–62) in 1764 while YOUNG (Douglas L. Wilson, “Jefferson vs. Hume,” *WMQ*, 3d ser., 46 [1989]: 49–70; for a London reprint of 1790–91 subsequently acquired by TJ, see Sowerby, no. 370). Radical British politician John Horne Tooke and some of his ASSOCIATES were imprisoned in the Tower of London for their involvement with the parliamentary reform movement in 1793–94 (ODNB). TJ IMPORTED a copy of John Baxter, *A new and Impartial History of England, from the most Early Period of Genuine Historical Evidence to the Present Important and Alarming Crisis* (London, 1796–1801; Sowerby, no. 405) in 1805 (W. & S. Jones to TJ, 23 July 1805

[MoSHi: TJC-BC]). He admired Baxter’s work and frequently recommended it as superior to Hume’s original. TJ endorsed Baxter’s history for use by students at the University of Virginia, but he failed in several efforts to get it reprinted in America (TJ to Mathew Carey, 22 Nov. 1818; TJ to Thomas W. White, 5 Feb. 1820; TJ to George W. Lewis, 25 Oct. 1825).

The posthumously published works of the French philosopher Claude Adrien HELVETIUS included his letter advising Montesquieu against printing his *Esprit des Lois* (*Oeuvres complètes de M. Helvétius* [London, 1781; Sowerby, no. 1242]).

¹ Word interlined in place of “his.”

² Word interlined in place of “Criticism.”

³ Manuscript: “Montesqueieu’s.”

⁴ Reworked from “conform to.”

⁵ Tr begins in the middle of this word.

⁶ Asterisks, possibly by TJ, appear here and at the head of first enclosure.

⁷ Word interlined.

II. Destutt de Tracy’s Commentary on Book 2 of Montesquieu’s *Esprit des Lois*

[ca. 12 June 1809]

Livre Second:

Des Loix qui derivent directement de la Nature du Gouvernement.

Esprit des lois Copies liv. 2^e Il ny a que deux especes de Gouvernemens, Ceux qui Sont fondés Sur les droits généraux des hommes, et ceux qui Se pretendent fondés Sur Des droits particuliers.¹

La division ordinaire des gouvernemens en republicains, monarchiques, et despotiques, me parait essentiellement mauvaise.

[7]

DESTUTT DE TRACY ON MONTESQUIEU

Le mot republicain est un terme très vague Sous lequel on comprend une multitude de gouvernemens prodigieusement differends les uns des autres, depuis la démocratie paisible de Schwitz et la démocratie turbulente d'athènes jusqua l'aristocratie concentrée de Berne, et a la Sombre oligarchie de Venise: De plus cette qualification de republicain nest pas propre à figurer en opposition avec celle de monarchique. Car les provinces unies de la hollande, les etats unis de lamerique ont un chef unique, et Sont regardés comme des republics: et lon a toujours été incertain Si lon devait dire le royaume ou la republique de Pologne.

Le mot monarchique designe proprement un gouvernement dans lequel le pouvoir executif reside dans les mains dun Seul. mais ce n'est là qu'une Circonstance qui peut Se trouver reunie avec beaucoup d'autres très diverse^s: et qui ne caracterise pas lessence de l'organisation Sociale. La preuve en est ce que nous venons de dire de la Pologne, de la hollande, et des etats unis. on peut y ajouter la Suede et la grande bretagne qui à beaucoup degard^s Sont des aristocraties royales, on pourrait citer encore le corps germanique qui avec beaucoup de raison, a Souvent été appellé une republique de princes souverains: et même l'ancien gouvernement de France. Car ceux qui le connoissaient à fond Savent bien que C'était proprement une aristocratie religieuse, et feodale tant de Robe que d'Epée.

Quant au mot despotique, il designe un abus, un vice qui Se trouve plus ou moins dans tous les gouvernemens, parce que toutes les institutions humaines Sont imparfaites comme leurs auteurs; mais ce n'est point là le nom d'une forme particuliere de Societé, d'une espèce particuliere de gouvernement, il y a despotisme, oppression, abus d'autorité, partout où la loi etablie est Sans force, et cede à la volonté illegale d'un homme ou de plusieurs: Cela Se voit partout de tems en tems. Dans beaucoup de païs les hommes imprudens ou ignorans n'ont pris aucune precaution pour empecher ce malheur, dans d'autres ils n'en ont pris que d'insuffisantes, mais il n'a été etabli nulle part en principe, (pas même dans l'orient) que cela doive être ainsi. Il n'y a donc point de gouvernement qui par Sa nature mérite d'etre appellé Despotique

S'il y avait un tel gouvernement dans le monde ce Serait celui du dannemarck, où la nation après avoir Secoué le joug des pretres et des nobles et craignant leur influence dans Ses assemblées Si elle Se réunissait de nouveau a prié le Roi de gouverner Seul et par lui même, S'en rapportant à lui du Soins de Faire les lois qu'il jugerait necessaires au bien de l'etat: et depuis elle ne lui à jamais demandé compte de ce pouvoir discretinaire. Cependant ce gouvernement Si illimité par la Loi, a toujours été Si moderé (et c'est même pour cela

12 AUGUST 1810

qu'on ne S'est jamais occupé de restreindre Son autorité), il est, dis-je, Si modéré que personne n'oserait dire que le dannemarck est un etat despotique.

On pourrait en dire autant de l'ancien gouvernement de france, Si l'on y regarde comme généralement avouées dans le sens que beaucoup de publicistes leur ont donné, les fameuses maximes Le roi ne tiens à Nully fors de Dieux et dely, et Si veut le Roi Si veut la loi. Ce Sont ces maximes qui ont Souvent fait dire à plusieurs rois de ce país Dieu et mon épée, Sans reclamer d'autres droits. Je Sais qu'elles n'ont jamais été admises universellement Sans restriction. mais quand on les aurait Supposées reconnues en théorie, on n'aurait jamais dit de la france, malgré les enormes abus qui y existaient, qu'elle fut un etat despotique. on l'a même toujours citée comme une monarchie temperée. Ce n'est donc pas la ce qu'on entend par un gouvernement despotique; et cette dénomination est mauvaise comme nom de classe: ou le plus ordinairement elle Signifie une monarchie où les moeurs Sont brutales.

Je conclus que la division des gouvernemens en republicains, monarchiques, et despotiques, est vicieuse de tous points: et que chacune de ces classes renfermant des genres très divers et tres opposés, on ne Saurait dire Sur chacune d'elles que des choses tres Vagues ou qui ne peuvent convenir a tous les etats qui y Sont compris. je n'adopterai pas Cependant la décision tranchante d'helvetius qui dans Sa Lettre à Montesquieu (a) dit nettement: Je ne connais que deux especes de gouvernemens: les bons et les mauvais: Les bons qui Sont encore à faire: les mauvais dont tout l'art &ca.

Premierement Si l'on n'a egard qu'à la pratique, dans ce genre comme dans tous² les autres, il y a du bien et du mal partout: et il n'y a point de gouvernement que l'on ne puisse classer alternativement parmi les bons et parmi les mauvais.

Secondement Si au contraire on ne Songe qu'à la théorie; et Si l'on ne considere dans les gouvernemens que les principes Sur les quels ils Sont fondés, Sans S'embarasser S'ils y conforment ou non leur conduite, il faudrait pour ranger un gouvernement dans la classe des bons ou des mauvais, prononcer Sur le merite et la justesse des principes, et décider quels Sont ceux qui Sont vrais ou faux, or c'est-ce que je ne me charge point de faire. Je ne veux, à l'exemple de Montesquieu, que

(a) Cette Lettre au reste me parait pleine de choses excellentes, ainsi que celle à Saurin, et que les notes du meme auteur Sur l'esprit des lois: et l'on doit Savoir gré a l'abbé Delaroche de nous avoir conservé les idées d'un homme Si recommandable Sur des objets Si importants, et de les avoir publiées dans l'edition qu'il a donné des oeuvres de Montesquieu chez Pierre Didot en l'an 3. elles rendent suivant moi cette edition très précieuse.

DESTUTT DE TRACY ON MONTESQUIEU

dire ce qui est, montrer les diverses consequences qu'entraînent les différentes organisations Sociales, et laisser le lecteur entirer les conclusions qu'il Voudra en faveur des unes ou des autres.

M'attachant donc uniquement au principe fondamental de la Société politique, oubliant Ses formes diverses, et n'en blamant aucunes, je partagerai tous les gouvernemens en deux classes. J'appellerai les uns nationaux ou de droit commun; et les autres Spéciaux ou de droit particulier et d'exceptions (a.).

De quelque maniere qu'ils Soient organisés, je rangerai dans la premiere classe, tous ceux où l'ontient pour principe, que tous les droits et tous les pouvoirs appartiennent au corps entier de la nation, resident en lui, Sont emanés de lui, et qu'aucuns n'existent que par lui et pour lui:—Ceux enfin qui professent hautement et Sans restriction la maxime avancée dans l'assemblée des chambres du parlement de Paris au mois d'octobre 1788. par un de Ses membres, Savoir: Les magistrats comme Magistrats n'ont que des devoirs; les citoyens Seuls ont des droits: et entendez par Magistrat, quiconque est chargé d'une fonction publique quelconque.

On voit que ces gouvernemens que j'appelle nationaux, peuvent prendre toutes Sortes de formes. Car la Nation peut à toute rigueur exercer elle même tous les pouvoirs; alors le gouvernement est une democratie absolue. Elle peut au contraire les deleguer tous à des fonctionnaires élus par elle pour un tems et renouvelés Sans cesse: alors c'est le gouvernement representatif pur. Elle peut aussi les abandonner en totalité ou en partie à des collections d'hommes ou a des corps, Soit à vie, Soit avec Succession héréditaire, Soit avec la faculté de nommer leurs collegues en cas de vacances. De la resultent différentes aristocraties. Elle peut de même confier tous ces pouvoirs ou le pouvoir exécutif Seulement à un Seul homme, Soit à vie Soit hereditairement; et cela produit une monarchie plus ou moins limitée, ou même tout à fait illimitée.

Mais tant que le principe fondamental demeure intact et n'est point revoqué en doute, toutes ces formes Si diverses ont cela de commun qu'elles peuvent toujours être modifiées ou même cesser tout à fait dès que la nation le veut; et que nul n'a aucun droit à opposer à la volonté générale manifestée Suivant les formes convenues or cette circonstance essentielle Suffit Suivant moi, pour que toutes ces organisations différentes Soient regardées comme une Seule espèce de gouvernement.

(a) on pourrait dire aussi publics ou privés, non Seulement parce que les uns Sont fondés Sur l'interêt général, et les autres Sur quelqu'interêt privé, mais encore parce que dans toutes leurs delibérations Les uns affectent la publicité et les autres le Mistère.

12 AUGUST 1810

J'appelle au contraire gouvernemens Spéciaux ou d'exceptions, tous ceux quels qu'ils Soient, où l'on reconnoit d'autres Sources legitimes de droits et de pouvoir que le Volonté générale, comme l'autorité divine, la conquête, la naissance dans tel lieu ou dans telle caste, des capitulations respectives, un pacte Social exprés ou tacite, où les parties Stipulent comme puissances estrangées l'une à l'autre & &a. Il est manifeste que ces diverses Sources de droits particuliers peuvent comme la volonté générale produire toutes Sortes de democraties, d'aristocraties, ou de monarchies. mais elles Sont bien differentes de celles qui portent les mêmes noms dans les gouvernemens que j'appelle nationaux. Il y a ici differens droits reconnus et avoués. Il y a pour ainsi dire differentes puissances dans la même Societé. Son organisation ne peut être regardée que comme un resultat de Conventions et de transactions formelles ou tacites: et elle ne doit pouvoir être changée que du libre consentement de toutes les parties contractantes. Celà me Suffit pour appeller tous ces gouvernemens Spéciaux ou d'exceptions.

Je ne pretends pas, je le repète, decider ni même discuter actuellement Si tous ces droits particuliers Sont également respectables, S'ils peuvent prescrire à perpetuité contre le droit Commun, Si l'on peut legitimement les opposer à la volonté générale bien prononcée. Toutes ces questions Sont toujours résolues par la force: et d'ailleurs elles ne font rien à l'objet que je me propose. Tous ces gouvernemens Sont existans ou peuvent l'être. tout corps existant a droit a Sa conservation. Voila le point d'ou je pars avec Montesquieu; et je veux examiner avec lui quelles Sont les lois qui tendent à la conservation de chacun d'eux. j'espere que l'on S'apercevra dans le cours de cette recherche que la division que j'ai adoptéé me donne bien plus de facilité pour penetrer dans le fonds du Sujet, que celle qu'il a employée.

MS (ViU: TJP); in a clerk's hand; undated; numbered pp. 5–10 of enclosure described at TJ to William Duane, 16 Sept. 1810.

¹ Paragraph written in left margin.

² Manuscript: "tous tous."

J E F F E R S O N ' S T R A N S L A T I O N

[ca. 12 Aug. 1810]

Book II. 'of laws flowing directly from the nature of the government.'
that there are but two kinds of government, those founded
[on]¹ the general rights of man, & those pretending to be founded
on particular rights.

The common division of governments into republican, monarchical & despotic, appears to me essentially bad.

{ 11 }

DESTUTT DE TRACY ON MONTESQUIEU

The word republican is a very vague term, under which is comprehended a multitude of governments, very different from one another, from the peaceable democracy of Schwitz & the turbulent one of Athens, to the concentrated aristocracy of Berne, & the gloomy oligarchy of Venice. this characteristic of republican moreover is not proper to be placed in opposition with that of monarchical. for the United Netherlands, and the United States of America have a single head, and are considered as republics, and we have been always doubtful whether we should say, the kingdom, or the republic of Poland.

The word Monarchy designates properly a government in which the executive power is in a single hand. but that is only a circumstance which may be united with many others, very different, and which does not characterize the essence of the social organisation. this is proved by what we have said of Poland, of Holland & the United States; to which we may add Sweden & Great Britain, which, in many respects are Regal aristocracies. we may quote also the Germanic body which with much reason has been often called a Republic of sovereign princes; & even the antient government of France. for those who understand it profoundly know well that it was properly a Religious & Feudal aristocracy; a government of the gown & sword.

As to the word despotic, it designates an abuse, a vice which is found more or less in all governments; because all human institutions, are, like their authors, imperfect. but that is not the name of any particular form of society. there is despotism, oppression, abuse of authority, wherever the established laws are without force, & bend to the illegal will of one, or of several men. in many countries, their inhabitants, either imprudent or ignorant have taken no precaution against this misfortune. in others they have taken such only as were inadequate. but it has been no[where pub]lished as a principle (not even in the East) that it ought [to be so.] there is therefore no government, which, in it's nature deserves to be called despotic.

If there were such a government in the world, it would be that of Denmark, where the nation, after shaking off the yoke of the priests [and no]bles and fearing their influence in their assemblies if they should be convened again, requested their king to govern alone, & by himself, relying on him alone to make the laws which he should judge necessary for the good of the state: and they have never since demanded any account to be rendered of this discretionary power. yet this government, so unlimited by law, has always been so moderate (& therefore it is that they have never thought of restraining it's authority) it is, I say so moderate that no one would undertake to call Denmark a despotic state.

12 AUGUST 1810

The same may be said of the antient government of France, if you consider as generally avowed, in the sense which many publicists have given them, the famous maxims ‘the king depends on none but God & himself’ and ‘what the king wills, the law wills.’ these are the maxims which have induced several of the kings of France to refer for their rights to ‘God & their sword’ alone. I know they were never admitted universally & without restriction. but if even acknowledged in theory, it [could] never be said of France, notwithstanding the enormous abuses which existed there, that it was a despotic state. it has even been always quoted as a temperate monarchy. that then is not what is understood by a despotic² government; and this denomination is bad as the name of a class: for most generally it signifies a monarchy where the manners are brutal.

I conclude that the division of governments into republican, monarchical, & despotic is vicious in all its points; and that each of these classes including very different & opposite genera, what should be said of any one of them must be very vague and inapplicable to all the states it comprehends. yet I will not adopt the Categorical decision of Helvetius who in his letter to Montesquieu(a) says plainly ‘I know but two kinds of governments, the good & the bad. the good are those yet to be established; the bad, the whole art of which E^tc.’³

First, if we regard practice only, in this, as in every other case, there is good & evil every where; and there is no government which may not be classed sometimes among the good & sometimes the bad.

Secondly, if on the contrary we regard theory only, and if we consider in governments only the principles on which they are founded, without enquiring whether they conform their conduct to them, it would be necessary in order to class a government with the good or the bad, that we should determine on the merit and justice of its principles, and decide which of them are true or false. now this is what I do not undertake to do. after the example of Montesquieu, I will only state what exists, shew the different consequences which flow from the different social organisations, and leave the reader to draw the conclusions he chuses in favor of one or another.

Confining myself then only to the fundamental principles of political society, disregarding its different forms & blaming none, I will divide all governments into two classes. I will call some National, or of common right, and others Special or of⁴ individual right.

³[. . .] is replete with excellent things, as well as that to Saurin and the Notes of the same author on the Spirit of laws E^tc

DESTUTT DE TRACY ON MONTESQUIEU

In whatever way they are organised, I will arrange in the first class all those which profess as a principle, that all rights & powers belong to the whole body of the nation, remain in it, flow from it, & that none exist but from it, & for it: those in short which openly profess, & without restriction, the maxim advanced in the assembly of the chambers of the parliament of Paris in October 1788. by one of it's members, to wit, 'Magistrates, as Magistrates have duties only; the citizens alone have rights.' meaning by magistrates whosoever is charged with any public function whatsoever.

The governments which I call National then, may assume all sorts of forms. for, rigorously speaking the nation may exercise all the powers itself. the government is then an absolute⁵ democracy. or it may delegate the whole to functionaries chosen by itself for a given time, and renewed from time to time; it is then a pure representative government. it may abandon them in whole or in part, to collections or bodies of men for life, by hereditary succession, or with the authority to name their colleagues in cases of vacancy. thence result different aristocracies. it may in like manner confide all these powers, or the executive power only to a single person either for life or hereditarily; and this constitutes a monarchy more or less limited, or without limits.

But while the fundamental principle remains inviolate, and unquestioned, all these forms contain this principle in common, that they may always be modified or entirely cease when the nation wills it; and that no one has any right which can be opposed to the general will, manifested in the forms agreed on. now this essential⁶ circumstance, suffices according to my ideas to reduce all these different organisations to a single species of government.

On the other hand I call Special governments all those which acknowledge as legitimate any other sources of rights & powers but the general will; as, for instance, divine authority, conquest, birth in such a place or cast, particular capitulations, a social compact express or tacit, where the parties stipulate as foreign powers the one with the other E^tc. E^tc. it is evident that these different sources of individual rights may, like the general will, produce all sorts of democracies, aristocracies, or monarchies. but they are very different from those which bear the same name in the governments which I call National. they acknowledge & avow different rights. there are, as it were, different sovereignties or Powers in the same society. it's organisation can be considered only as the result of Conventions, or Stipulations, formal or tacit, and it is not to be changed but with the free consent of all the contracting parties. this suffices to authorise me to call all these governments Special, or Capitulatory.

12 AUGUST 1810

I repeat that I do not pretend to decide, nor even to discuss actually whether all these individual rights are equally respectable, whether a perpetual prescription lies in their favor against the Common right; or whether they may be legitimately opposed to the general will, unequivocally pronounced. these questions are always solved by force: and moreover do not affect the object I propose to myself. all these governments either do, or may exist. every existing body has a right to its preservation. this is the point from whence I set out with Montesquieu; and I will examine with him what are the laws which tend to their respective preservations. I am in hopes it will be seen, in the course of this research, that the division which I have adopted will enable me much more easily to go to the bottom of the subject, than that which has been employed.

[Note. these 4. pages of translation contain 6. of the 315. pages of the original MS. and therefore furnish data for estimating the size of the work.]⁷

MS (DLC: TJ Papers, 191:33920-1); in TJ's hand; undated; faint; bracketed notation at head of text in an unidentified hand: "The translation enclosed." Tr (MHi); posthumous copy.

³ Omitted closing quotation mark editorially supplied.

⁴ TJ here canceled "parti."

⁵ Preceding two words interlined in place of "a pur."

⁶ Word interlined in place of "single."

⁷ Opening bracket in original; omitted closing bracket editorially supplied.

¹ Omitted word editorially supplied.

² TJ here canceled "state."

C O N T E M P O R A R Y T R A N S L A T I O N

[after 16 Sept. 1810]

BOOK II.

OF LAWS ORIGINATING DIRECTLY FROM THE NATURE
OF THE GOVERNMENT.

There are only two kinds of government: those founded on the general rights of man, and those founded on particular rights.

SPIRIT OF LAWS. BOOK II.

THE ordinary division of governments into republican, monarchical, and despotic, appears to me essentially erroneous.

The word *republican* is itself a very vague term, comprehending in it a multitude of forms of government very different from each other: from the peaceable *democracy* of Schwitz, the turbulent *mixed government* of Athens, to the concentrated *aristocracy* of Berne, and the gloomy *oligarchy* of Venice. Moreover the term republic cannot be

DESTUTT DE TRACY ON MONTESQUIEU

contrasted with that of monarchy, for the United Provinces of Holland, and the United States of America, have each a single chief magistrate, and are yet considered republics; beside, that it has always been uncertain whether we should say the *kingdom* or *republic* of Poland.

The word monarchy properly designates a government in which the executive power is vested in a single person: though this is only a circumstance which may be connected with others of a very different nature, and which is not essentially characteristic of the social organization. What we have said of Poland, Holland, and the *American government*, confirms this; to these Sweden and Great Britain may be added, which in many respects are regal aristocracies. The Germanic body might also be cited, which with much reason has been often called a republic of sovereign princes: and even the ancient government of France; for those perfectly acquainted with it, know that it was properly an ecclesiastical and feudal aristocracy . . . a government of the gown and sword.

The word despotic implies an abuse; a vice more or less to be met with in all governments, for all human institutions are, like their authors, imperfect: but it is not the name of any particular form of society or government. Despotism, oppression, or abuse of power, takes place whenever the established laws are without force, or when they give way to the illegal authority of one or several men. This may be every where perceived from time to time. In many countries men have been either not sufficiently prudent or too ignorant to take precautions against this evil; in others the means adopted have proved insufficient; but in no place has it been established as a principle, that it should be so, not even in the East: there is then no government which in its actual nature can be called *despotic*.

If there were such a government in the world, it would be that of Denmark; where the nation, after having shaken off the yoke of the priests and nobles, and fearing their influence in the assembly, if again convened, requested the king to govern alone and of himself, confiding to him the care of making such laws as he might judge necessary for the good of the state: since which period he has never been called upon to give an account of this discretionary power. Nevertheless this government, so unlimited in its legislation, has been so moderately conducted, that it cannot with propriety be said to be despotic, for it has never been contemplated even to restrain its authority. Yet notwithstanding this moderation, many persons have continued to consider Denmark as a despotic state.

The same may be said of the French government, if we view it in the sense given by many writers to the celebrated maxims: "The king

12 AUGUST 1810

depends on himself and God alone,” and “As the king wills so does the law.”

These are the maxims to which the kings of that country have frequently referred in using the expression “God and my sword,” inferring that they acknowledged no other superior right. These pretensions have not indeed been always admitted, but if we suppose them to be acknowledged in theory, yet France, notwithstanding the enormous abuses which existed, could not be called a despotic state; on the contrary it has always been cited as a tempered monarchy. This is not then what is to be understood by a despotic government, and the denomination is not correct as a specific term, for generally it signifies a monarchy where the manners are savage or brutal.

Hence it is inferred that the division of governments, into republican, monarchical, and despotic, is every way defective, and that all of these classes, containing very opposite and very different forms, the explanation of each of them must be very vague, or not applicable to all the states comprised in the class; nor shall I adopt the positive decision of Helvetius in his letter to Montesquieu:^a “I know only two kinds of government, the good and the bad; the good, which are yet to be formed; and the bad, the grand secret of which is to draw by a variety of means, the money of the governed into the pockets of the rulers,” &c.

FIRST. If we only look to the practical effects, in this, as in all other circumstances, we find good and evil every where, and that there is no form of government which may not at some time be classed among the good or the bad.

SECONDLY. If, on the contrary, the theory only be regarded, and the principles alone on which governments are founded, be taken into our consideration, without enquiring whether they operate conformable to their theory or not, it would be necessary then to arrange each government under a good or a bad class, that we may examine the merit or justice of its principles, and thereby determine which are true, and which are false; now this is what I do not undertake to do, I will only, like Montesquieu, exhibit what exists, and point out the different consequences arising from the various modes of social organization, leaving it to the reader to form such conclusions as he may think fit, in favor of the one or the other.

^a This letter, however, in my opinion, appears to contain many excellent things, as well as that to Saurin, and the notes of the same author on the Spirit of Laws To the abbé de la Roche, we are indebted for having preserved the ideas of so worthy a man, on subjects so important, and for having published them in the edition which he has given the world of Montesquieu's works, printed by P. Didot, Paris [These letters are translated for, and inserted at the end of this work]¹

DESTUTT DE TRACY ON MONTESQUIEU

Confining myself, then, wholly to the fundamental principles of political society, disregarding the difference of forms, neither censuring nor approving any, I will divide all governments into two classes, one of these I denominate *national*, in which social rights are common to all; the other *special*, establishing or recognizing particular or unequal rights.^b

In whatever manner governments may be organized, I shall place in the first class, all those which recognize the principle, that all rights and power originate in, reside in, and belong to, the entire body of the people or nation; and that none exists, but what is derived from, and exercised for the nation; those, in short, which explicitly and without reserve, maintain the maxim expressed in the parliament of Paris, in the month of October, 1788, by one of its members, namely . . . *Magistrates as magistrates, have only duties to perform, citizens alone have rights*; understanding by the term magistrate, any person whatever who is invested with a public function.

The governments which I call *national*, may therefore take any form, for a nation may itself exercise all the necessary powers, and then it would be a simple democracy; it may on the contrary delegate the whole effective power to functionaries elected by the people for a limited period, subject to a renewal from time to time; then it would be a representative democracy; the nation may also abandon its power, wholly or partially, to numerous, or select bodies of men, either for life, with hereditary succession, or with the power of nominating their colleagues in cases of vacancy; and these would be different kinds of aristocracies: the nation may in like manner intrust all its power, or only the executive power, to one man, either for life, or in hereditary succession, and this would produce a monarchy more or less limited, or even without limits.

But so long as the fundamental principle of sovereignty remains in the people, and is not called into question, all these forms so different have this common characteristic, that they can be at any time modified, or even cease altogether, as soon as it shall be the will of the nation; and that there is no one who can have any right to oppose the general will when manifested according to the established form: now this essential circumstance, is in my opinion, sufficient to discriminate between the various organizations of society, and to designate a single class of the species of government.

^b We might also say *public* and *private*, not only because some are founded in the general interest, and others in particular interests, but because some in all their deliberations affect publicity . . . others mystery.

12 AUGUST 1810

On the other hand, I call all those *special* governments, whatever may be their forms, where any other sources of power or right, than the general will of the nation, are admitted as legitimate; such as divine authority, conquest, birth in a particular place or tribe, mutual articles of agreement, a social compact manifest or tacit, where the parties enter into stipulations like powers foreign to each other, &c. It is evident that these different sources of particular rights, may, like the general will, produce all forms, the democratic, aristocratic, and the monarchical; but they are very different from those of the same name, which are classed under the denomination of national. In this practical class there are different rights known and avowed, and as it were different powers or sovereignties exercised in the same society. Its organization can only be considered as the result of convention, and formal or tacit stipulations, which cannot be changed without the mutual consent of all the contracting parties. These properties of governments are sufficient to authorise the denomination of *special*.

I again repeat, that it is not my purpose to determine, nor even to enquire, at present, whether all these particular and general rights are equally respectable, whether the special can prescribe in perpetuity against the common rights; or whether they can be legitimately opposed to the general will, properly expressed. These questions are too frequently resolved by force, and besides do not come within the scope of my views. All these modes of government exist or may exist. Every existing body has the right of self-preservation. This, with Montesquieu, is the point I set out from; and with him, I will examine which are the laws that tend to the conservation of each of them. I persuade myself that in the course of this enquiry it will be perceived, that the classification which I have made is better adapted for penetrating the depths of the subject than that which he has employed.

Printed in Destutt de Tracy, *Commentary and Review of Montesquieu's Spirit of Laws*, pt. 1, pp. 9–14; undated; ellipses in original; superscripted “1” and “2” keyed to author’s footnotes in original changed

editorially to superscripted “a” and “b” to avoid conflict with textual note numbering.

¹ Opening bracket in original; omitted closing bracket editorially supplied.