

The London School of Economics and Political Science

The Constitutional Thought of Joseph de Maistre

John Dominic Upton

A thesis submitted to the Department of Law of the
London School of Economics for the degree of Doctor of
Philosophy, London, November 2008

UMI Number: U615681

All rights reserved

INFORMATION TO ALL USERS

The quality of this reproduction is dependent upon the quality of the copy submitted.

In the unlikely event that the author did not send a complete manuscript and there are missing pages, these will be noted. Also, if material had to be removed, a note will indicate the deletion.



UMI U615681

Published by ProQuest LLC 2014. Copyright in the Dissertation held by the Author.
Microform Edition © ProQuest LLC.

All rights reserved. This work is protected against
unauthorized copying under Title 17, United States Code.



ProQuest LLC
789 East Eisenhower Parkway
P.O. Box 1346
Ann Arbor, MI 48106-1346

THESES

F

9019



1195053

Declaration

I certify that the thesis I have presented for examination for the MPhil/PhD degree of the London School of Economics and Political Science is solely my own work other than where I have clearly indicated that it is the work of others (in which case the extent of any work carried out jointly by me and any other person is clearly identified in it).

The copyright of this thesis rests with the author. Quotation from it is permitted, provided that full acknowledgement is made. This thesis may not be reproduced without the prior written consent of the author.

I warrant that this authorization does not, to the best of my belief, infringe the rights of any third party.

Abstract

This thesis, the first in English on this topic, is an examination of central aspects of Joseph de Maistre's constitutional thought: namely the concepts of constituent power, constitutions, sovereignty and forms of government. Research for the thesis has been conducted with the use of archival sources and French texts and it describes and analyses the above concepts in some detail. The thesis also takes into account both historical and modern scholarship written in French and English.

It argues that Maistre's constitutional thought is a useful tool with which to investigate some contemporary constitutional problems in liberal constitutional theory, e.g. those of constitutional self – binding, the circularity of the notion of the sovereignty of the people and the nature of sovereignty in the modern state. Maistre's thought provides a view of constitutional matters which opposes certain enlightenment - inspired perspectives that now dominate constitutional discourse and which treat the constitution as a purely normative phenomenon, rather than as a relational concept which cannot be separated entirely from political considerations.

The thesis carries out these tasks with reference to other constitutional and public law thinkers in order historically and intellectually to contextualise Maistre's constitutional thought. It seeks to place Maistre within an intellectual tradition stretching from Bodin, Hobbes and Pufendorf, through Rousseau and Montesquieu, to Carl Schmitt and Michael Oakeshott. In doing this, the thesis argues that Maistre is a modern thinker, whose work although cast in the language of reaction, actually belongs to a mainstream constitutional tradition.

Acknowledgements

I would like to thank my doctoral supervisors, Professor Martin Loughlin and Doctor Tim Hochstrasser and my wife, Helen.

CONTENTS

Chapter One :	Situating Maistre	6
Chapter Two:	Maistre and Constituent Power	56
Chapter Three:	Maistre and Constitutions	114
Chapter Four:	Maistre and Sovereignty	173
Chapter Five:	Maistre and Forms of Government	234
Chapter Six:	Conclusions	300
Appendix:	The French Text of Maistre's Quotations	322
Bibliography:		417

CHAPTER ONE: SITUATING MAISTRE

Introduction

Despite the apparently unexpected upheaval of the Revolution, a retreat from constitutional traditionalism in France had begun some time before 1789. A far more convoluted affair than in many other emerging modern European states, where religious dissenters allied themselves with ‘enlightened’ monarchs against ecclesiastical establishments, in France religious dissent found secular support against a monarchy that was allied to the ecclesiastical establishment. This dissent was expressed within the constitutional and legal structure of the country – in the Courts and *Parlements*. The religious history of France in the lead-up to the Revolution was thus inseparable from constitutional considerations,¹ and once the *ancien Regime* had fractured irreparably this rich marrow of theology, law and politics oozed from the broken bone.

Joseph de Maistre’s constitutional thought, which is permeated with these vital ingredients of religion, law and politics, gives an insight into the moment after the French Revolution, that dramatic period of transformation in the nature of the State that was inspired by the Enlightenment.² This thesis examines central aspects of

¹ Dale K. Van Kley, *The Religious Origins of the French Revolution*, (Yale: Yale University Press, 1996) p. 7: “...the religious history of eighteenth-century France is entwined in that of constitutional contestation between the parlements and Bourbon absolutism – entwined in political history, that is, even more than elsewhere on the European continent”.

² See Joseph de Maistre, *Oeuvres Complètes* (Hildesheim, Zurich: Georg Olms Verlag, 1984) Volume 1, Tome 1, p. 2 “But the French Revolution and all that took place in Europe at that moment is as marvelous of its kind as the instantaneous fructification of a tree in the month of January”. Hereafter

Maistre's constitutional thought in its historical context and uses it as a tool with which to probe some of the most widespread assumptions of modern liberal constitutional theory.

With the publication in 1797 of *Considerations sur la France*, those opposed to the French Revolution discovered a voice.³ In its pages, conservative thought met the radicalism of the French Revolution head on. Maistre's work – a masterpiece of counter-revolutionary invective – did not simply criticise parts of the revolution or bemoan its excesses, it excoriated it in its entirety.⁴ And the *Considerations* was to be only the first of a series of works, many published posthumously, in which Maistre fiercely opposed the Enlightenment inspirations of the revolution, and challenged the onset of post-revolutionary modernity on religious, philosophical and political grounds. As a result, Maistre⁵ has become not only a symbol of reactionary thought and authoritarianism, a patron saint of dark and irrational right wing forces, but also an illiberal critic of the overwhelming political and cultural dominance of liberal discourse.

all quotations from Maistre's complete works will be cited in the form OC V [JT [], p. [] All translations from the French are my own unless otherwise stated. The original French text of Maistre's writing is set out in an Appendix to this thesis.

³ *Dictionnaire des Oeuvres Politiques* (Paris: PUF, 1986), p. 501.

⁴ See, for example, OC V 1, T 1, p. 13: "Each drop of Louis XVI's blood will cost France torrents; perhaps four million Frenchmen will perhaps pay with their heads for the great national crime of an antireligious and antisocial insurrection, crowned by a regicide".

⁵ When only his surname is cited, this thesis does not use the prefix 'de'. This is in accordance with Maistre's own preference, as stated in a letter to M. de Syon dated 11 November 1820: "Would you permit me to make a little grammatical diversion? The participle 'de' in French may not be joined to a proper noun commencing by a consonant, at least when it does not follow a title: thus you may very correctly say 'le Viscomte de Bonald said' but not 'de Bonald said' : one must say 'Bonald said' even though one would say 'D'Alembert said' : thus grammar commands. You are therefore obliged, Monsieur, to say, 'Finally Maistre appeared etc...'"

Yet for a thinker renowned for his extreme intransigence, a “praetorian of the Vatican”,⁶ Maistre has proved to be a surprisingly mutable object in the eyes of his many commentators. A debate has continued for two centuries as to what exactly constitutes his thought, and what is its significance. He has been presented as a thinker whose ideas belong more properly in the medieval era; conversely, his work has also been portrayed almost as a *vade mecum* for the critical theorist of a postmodern bent.

The common feature of both of these positions is their failure appropriately to contextualise Maistre’s thought, which has been portrayed as having somehow fallen outside of time, a characterisation made perhaps most famously (in the English speaking world at least) in Isaiah Berlin’s study.⁷ Due to the brilliance of his invective, Maistre’s words were, and are, considered as pearls of wisdom by some and as corrosive as acid by others, but either way they are frequently considered to possess a transcendental, a-historical value. Seeing him as an a-historical prophet figure has come at an inevitable price: commentators have, despite their best intentions, typically seen him as a one-dimensional figure, an austere “prophet of the past”,⁸ whether or not they agree with his views.

One example will go some way to demonstrating that Maistre does not deserve this unique reputation, but should take his place within a genre of *anti-philosophe*

⁶ Emile Faguet, *Politiques et Moralistes du Dix Neuvième Siècle* (Paris: Boivin (Nouvelle Bibliothèque Litteraire), 1890), p. 60.

⁷ Isaiah Berlin, *The Crooked Timber of Humanity* (London: Pimlico, 2003), p. 91.

⁸ Barbey d’Aurevilly, *Les Prophètes du Passé* (Paris: Calmann Levy, 1889), p. 63.

discourse. Here are the words of Charles-Louis Richard, written in 1785, which match the content of any of Maistre's supposedly unique flights of prose for their intensity:

Everywhere *philosophie* lights the torch of discord and of war, prepares poisons, sharpens swords, lays fires, orders murder, massacre and carnage, sacrifices fathers by the hands of sons and sons by the hand of fathers. It directs lances and swords at the needs and breasts of sovereigns, placing them on scaffolds which it yearns to see flowing with sovereign's blood – blood that it will drink in deep draughts as it feasts its eyes on the horrible spectre of their torn, mutilated and bloody members.⁹

These words are as gruesome and as partisan as anything written by Maistre, and yet it is Maistre who has come, de-contextualised, to the world's attention as the embodiment of its worst fears of right wing, religious thought. In fact, Maistre's thought contains much that is creative, measured and worthy of serious analysis.

In adopting an approach that seeks to intellectually contextualise its subject as well as to provide a comparative analysis of his thought, this thesis is intended to run alongside a new wave of Maistrian studies which has principally emerged from France over the last decade, but which remains underdeveloped in the United Kingdom. This is in contrast to much of the initial scholarship, which viewed its

⁹ Charles-Louis Richard, *Exposition de la Doctrine des Philosophes Modernes* (Paris, 1785), pp. 52-53, quoted in Darrin M. McMahon, *Enemies of Enlightenment: The French Counter-Enlightenment and the making of Modernity* (New York: Oxford University Press, 2002), p. 27.

principal task as one of pointing out that there was more to Maistre than a sectarian caricature. This initial attitude towards him, however, has not completely disappeared, as the following extracts will demonstrate.

In his book, *A Modern Maistre*, published in 1999, Owen Bradley states:

At first glance and even at second glance, no one would seem further from our horizons than Joseph de Maistre. If he is known at all to contemporary readers, it is as the ultraconservative defender of Catholicism against the Enlightenment, monarchy against democracy, tradition against innovation, the advocate of the executioner, sacrifice and papal authority....Each of these claims will have to be considered closely...where it will be seen that Maistre's arguments were neither so one-sided nor so backward as they might appear and they may indeed provide insight into some of the defining themes of modern thought.¹⁰

Writing in 1935, Frederick Holdsworth expressed similar sentiments:

We try to indicate in the round the fruit of our researches, which we dare to believe will have revealed to the public a Maistre almost totally unknown, a completely new Maistre from all points of view because, contrary to general opinion, he is very "modern". It is time to revise judgments on Joseph de

¹⁰ Owen Bradley, *A Modern Maistre* (Lincoln, NE: University of Nebraska Press, 1999), p. ix.

Maistre as much for his supporters as for his adversaries, by the traditionalists as well as by the *soi-disant* liberals.¹¹

In another example, from 1998, Frank Lafage writes: “Maistre’s anonymity presents however an eminent advantage...to strip Maistre of the hagiographic excesses and polemical caricatures inherited from the combat of centuries past which have contributed to the distortion in his interpretation”.¹² Writing in 1944, Francis Bayle had covered comparable terrain:

Too often commentators have represented him as the symbol of sectarianism and intolerance. Knowledge of his private life but also a comprehensive reading of his work oblige us to reject this assertion...the exaggerated severity of judgments reached upon him coming most often in effect from an incomplete study of his work.¹³

These examples demonstrate that Maistre has been so little considered in the academic world that, until very recently each new person taking him as a subject, could believe that that they had discovered him afresh.

¹¹ Frederick Holdsworth, *Joseph de Maistre et l'Angleterre* (Doctoral thesis, University of Paris, 1935), p. 278. The same preoccupations were put rather more bluntly by the author of an 1858 article in the *Quarterly Review* Vol. XCVIII (1855-56), p. 538: “Most English readers will wonder who is this Count de Maistre and how he comes to be quoted as an authority necessary to corroborate and crown that of the rest of mankind?”

¹² Franck Lafage, *Le Comte Joseph de Maistre, Itineraire Intellectuel d'un Théologien de la Politique* (Paris: Editions L'Harmattan, 1998), p. 27.

¹³ Francis Bayle, *Les Idées Politiques de Joseph de Maistre* (Lyon: Imprimerie des Beaux-Arts, 1944), p. 6.

It is one of the arguments of this thesis that scholarly enquiry into Maistre's thought needs to advance beyond the purely descriptive. It is important for Maistrian scholarship to embark upon a more nuanced and deliberative consideration of his work.¹⁴ There is also a need to contextualise accounts of Maistre's thought historically. To do so we need to utilise recent scholarship, but this must be done without neglecting the valuable task of presenting Maistre's constitutional thought clearly and in comparison with the constitutional thought of other thinkers.

One particular area of neglect has been Maistre's constitutional thought, considered from a predominantly juridical perspective. There has been only one study in this area, which was written in 1961, and there exist none at all in English.¹⁵ This present study is thus the first concerned solely with Maistre's constitutional thought to be written in English, and to have had access to the recently fully opened Maistre archives in Chambéry. These archives now hold a comprehensive collection of Maistrian material, including previously unavailable papers formerly held privately by the Maistre family.¹⁶ In addition, this thesis examines and synthesises both established and more recent scholarship on Maistre, in both French and English, in the context of works on constitutional theory and public law, drawing upon some of

¹⁴ See, in this respect, 'Etat Present de la Recherche Maistrienne, Communication par Jean Louis Darcel', in *Cahiers de l'Association Internationale des Etudes Francaises, Societe d'Edition Les Belles Lettres* (Paris: *Societe d'Edition Les Belles Lettres*, 2000), p. 82 . Note Bruno Berthier's suggestions for further study, which include materials on the Russian context of Maistre's thought, its Masonic context and Maistre's own diplomatic correspondence.

¹⁵ Jean-Pierre Cordelier, *La Théorie Constitutionnelle de Joseph De Maistre* (Doctoral thesis, University of Paris, 1961), of which only 90 of 184 pages are given over to a specific discussion of constitutional themes.

¹⁶ The Maistre family archives are now in the Archives Départementale de Savoie, Chambéry. I am grateful for the assistance of the chief archivist, M. Jean Luquet in the preparation of this thesis. There are also collections of correspondence in the Archivio de Stato, Turin, and the Bibliotheque Nationale de Paris, Department de Manuscrits, Fonds Nouvelles Acquisitions Francaises. All references to Archival Material are to the Savoy Archives unless otherwise stated.

the greatest political and constitutional thinkers of modernity – Bodin, Rousseau, Montesquieu, Locke, Hobbes and Pufendorf. It also explores the resonances that Maistre's work has with certain thinkers who have come after him, such as Carl Schmitt and Michael Oakeshott.

More precisely, this thesis has the following aims. First, it is intended to provide a critical exposition of the substantive content of Maistre's constitutional thought in the light of a consideration of the primary sources and both Anglophone and Francophone scholarship. Second, it is intended to add to Maistrian scholarship through an examination and further exploration of the historical and intellectual context of Maistre's constitutional thought. In the light of these aims, the thesis is intended to address the following questions: how did Maistre express traditionalist constitutional values in the modern, post-revolutionary environment? What is the significance of this iteration for modern constitutional theory? In answering these questions, it is hoped that a full and critical account of Maistre's constitutional thought will emerge.

The substantive chapters of this thesis will examine the content of Maistre's constitutional thought. Chapters 2, 3, 4 and 5 will examine constituent power, constitutions, sovereignty, authority and power, and governing and forms of government respectively. Chapter 6, the conclusion, will discuss the significance of Maistre's thinking for public law and constitutional thought in the light of the preceding substantive chapters.

Before this analysis though, there are several preliminary tasks that this introduction must perform. First, some biographical context must be provided. Second, it is necessary to examine the existing scholarship on Maistre and evaluate it, in order to show the various ways in which his work has been construed over the years. Third, it is important to examine the ideas of the counter-Enlightenment and their relevance to Maistre, particularly in the arena of constitutional thought. Finally, some of Maistre's core presuppositions will be examined and his intellectual alignment considered within the theoretical framework of conservative thought in general. The cumulative effect of this analysis will be to provide a comprehensive overview of Maistre's constitutional thought, assessing his work factually, intellectually and in terms of his academic reception.

A Brief Biography

Born on the 1 April 1753 in Chambéry, the capital of the Duchy of Savoy, which itself formed part of the Kingdom of Sardinia, Maistre was the eldest of ten children.¹⁷ He studied at the *College Royal* of Chambéry and was educated by the Society of Jesus. From the Jesuits he received a well-rounded education; as well as French, Latin and Greek, Maistre had at least a passable knowledge of several other

¹⁷ There are several biographical accounts of Maistre's life. See, for example Robert Triomphe, *Joseph de Maistre: Etude sur la Vie et sur la Doctrine d'un Materialiste Mystique* (Geneva: Droz, 1968); Richard Lebrun, *Joseph de Maistre: An Intellectual Militant* (Montreal: MacGill-Queens University Press, 1988); Henri de Maistre, *Joseph de Maistre* (Paris: Perrin, 1991); Claude Boncompain et Francois Vermale, *Joseph de Maistre* (Paris: Korin, 2004).

foreign languages. From the age of 15 he filled notebooks with records and notes of his reading, which included the Bible, classical authors, the Church Fathers, the humanists of the Renaissance and the French writers of *le grand Siècle*. Maistre supplemented this traditional education by reading contemporary francophone philosophers such as Voltaire and Rousseau; he owned a copy of the *Encyclopédie* and he also enjoyed reading English philosophy.

In 1771 Maistre went to Turin University to study law, receiving a doctorate in 1772. He then returned to Savoy, where he began a career as a magistrate. At the age of 35 he was made a senator, and in 1774 he began to practice freemasonry,¹⁸ first in the *Trois Mortiers* lodge and afterwards in the Rectified Scottish Rite in *La Parfaite Sincérité*, a lodge with illuminist sympathies. Maistre possessed a deep Catholic faith, and this influenced his political thought, in which his inclination was to support the idea of a wise monarchy. Nevertheless, he distrusted any movement towards either absolutism or enlightened despotism. Instead, Maistre hoped for the institution of an elite group of counsellors who would be capable of supporting the king in promoting cautious and prudent reform.

From 1788 onwards, Maistre looked on anxiously at the political tumult engulfing neighbouring France. When revolution finally broke out, he disapproved of those innovators who wished to abolish fundamental laws that had been in existence for

¹⁸ For a discussion of Maistre and freemasonry, see Paul Vaulliaud, *Joseph de Maistre Franc-maçon* (Milan: Reed. Arche & Edidit, 1990). For an example of Maistre's Masonic writing, see *Mémoire au Duc de Brunswick* (1782) in *Ecrits Maconniques de Joseph de Maistre*, edited by J. Rebotton (Geneva: Slatkine, 1983).

centuries; laws which to Maistre formed the basic identity of the nation. In contrast to most of his fellow senators, he condemned the meeting of the clergy, the nobility and the third estate, and from July 1789 he was predicting the disastrous effects of this dismantling of the political hierarchy.

When the revolutionary armies invaded Savoy on 22 September 1792, Maistre (along with his family) was the only senator to leave his homeland out of loyalty to Victor Amadeus III. Even so, this was a period in which the Piedmontese cabinet regarded the intellectual elites of the kingdom with mistrust, and so Maistre was still suspected of harbouring revolutionary sympathies. In spite of his continued service and devotion to the kingdom of Savoy and Sardinia, these suspicions were to dog him for the rest of his life.

At the beginning of 1793, Maistre returned to Chambery in an attempt to protect his property, which had been threatened with confiscation, but the risk of arrest meant that he once again had to flee the country. Making his way to Switzerland, he began his career as a counter-revolutionary writer. In Lausanne he published his *Lettres d'un Royaliste Savoisien*, in the hope of gaining converts to the monarchical cause and in order to prepare the way for an attempt to re take the Savoy by a joint Sardinian and Austrian force. However, after the abject failure of this campaign, Maistre devoted himself to caring for newly arrived French *émigrés*, and was regularly informed of the atrocities being committed by the revolutionaries. It was in this context that Maistre wrote *Etude sur la Souveraineté*, which concentrates on

dismantling the theories of Rousseau outlined in the *Discours* and *Du Contrat Social*, works which – along with those of Voltaire – had created the intellectual climate in which, so Maistre believed, the Terror could be perpetrated.

At the end of 1796, the results of the elections of Germinal Year V allowed Maistre to believe for a time in the re-establishment of royalty, and prompted him to write *Considerations sur la France*. This work, which gave a providential aspect to the events of the revolution, predicted that once the revolution's outpouring of satanic energy was exhausted, monarchical sovereignty would then return without further bloodshed – a sort of regenerative chastisement – because, he believed, monarchy alone was truly constitutional for France. These sentiments, which were seen by the agents of the Restoration as somehow prophetic, were, however, initially prevented from gaining widespread distribution because the *coup d'état* of 18 Fructidor intervened.

At the beginning of 1797, Maistre was recalled to Turin by the new King of Piedmont, Charles Emmanuel IV. Shortly afterwards, France annexed the Kingdom of Piedmont – a new disaster. Maistre went into exile, sojourning in Venice for several months, after which he was ordered to go to Sardinia as a magistrate, where he attempted to reorganise the Sardinian judiciary. This proved to be an impossible task, and Maistre was opposed at every turn in his efforts by the Viceroy, Charles-Felix. On the 23 October 1802 he was nominated as ambassador to the Court of the Tsar in Saint Petersburg, but this seemingly prestigious appointment was limited by

the sorts of financial constraints that were continually to darken his diplomatic career. For economic reasons, Maistre was prevented from bringing his family with him to Russia, and in February 1805 he wrote, “At six hundred leagues distant, the idea of my family, the memories of my childhood, devastate me with sadness. I see my mother, who walks up and down in my room – such a good person – and on writing this I am crying like a child”. His letters from Russia frequently contain profound expressions of dismay and discouragement.

Arriving in St Petersburg in 1803, Maistre became well integrated with the local aristocracy in a matter of months, and in June he was presented to Tsar Alexander I. Maistre had discovered that the Russian government was intercepting his diplomatic communications to the Sardinian government and passing them on for the Tsar to read, and he tailored his correspondence accordingly, in an attempt to influence the thinking of the Russian Monarch. Through this and other means, his influence became disproportionate to the importance of the government that he represented at the court, and Maistre became a well-known figure in the salons of St Petersburg.

From Russia, Maistre watched Napoleon’s meteoric rise in horror. Day after day his correspondence attests to his disbelief at the success of the man he called a “usurper”, and in July 1807, after the signature of the treaty of Tilsit (which confirmed an alliance between Alexander and Napoleon), Maistre’s diplomatic mission in Russia became much more complex. Maistre now became the representative of a sovereign (King Charles of Piedmont) at war with France, who

was yet still allied to Russia. Maistre continued to act for the Piedmontese government on an informal basis, but a new danger arose after the annexation of Savoy by France, because Maistre had never sought to obtain Piedmontese nationality. Technically therefore, with the annexation Maistre became French, not Savoyard, and so became a fugitive who could be repatriated by the Revolutionary authorities.

Forced to limit his official duties, he began to read and write more, and to circulate his writings across the aristocratic salons of St Petersburg. Maistre felt the necessity to act because Alexander I, inspired by the reformer Count Speranski, was considering the implementation of constitutional reform that involved some form of limited representation by foreign diplomats, based on the French political model. In response to this threat, Maistre wrote the *Essai sur le Principe Générateur des Constitutions Politiques*, denouncing what he saw as the dangers of the mania for written constitutions during the period now known as the Enlightenment.

It was at this time that he began working on *Les Soirées de Saint-Petersbourg*, a series of symposia concerning the temporal application of Providence, the composition of which he interrupted in 1810 in order to write a number of articles in support of the Jesuits, who were attempting to establish a number of schools and colleges in Russia at that time. In 1812, Alexander abandoned all attempts at liberalisation and Speranski was dismissed, the Franco-Russian Alliance broke down and Maistre was called to the Tsar's court to act as a counsellor. In October 1814,

his family re-joined him in St Petersburg after eleven years of separation. However, due to his loyalty to his own sovereign, he turned down the opportunity to enter into the Tsar's service, even though this would have assured both his and his family's security. This action did not lead to any display of gratitude from the Sardinian King, neither did it result in any preferment. Indeed, when his family arrived in Russia, Maistre was forced to borrow money to cover the expenses of their journey.

In February 1816, in addition to these financial difficulties, there came political disgrace. The Russian government ordered Maistre's repatriation to Turin because he had been tainted by the scandal in which several influential aristocratic families converted to Catholicism. Accused of proselytising on behalf of the Jesuits, Maistre left St Petersburg in June 1817, a year and a half after the decree banning the Society of Jesus from Russia. En route for Turin, he travelled through France and visited Paris for the first time. Here, on 7 July 1817, he had an audience with Louis XVIII, a meeting which was not a success because the king interpreted the *Essai sur le Principe Générateur des Constitutions Politiques* as an attack on *la Charte*, and thus on his own legitimacy.

Finally, on Maistre's return to Turin he became aware that he was considered an embarrassment to the government of the day, and he had to wait until 1818 until he was given the position of Regent of the Great Chancellery, an honorific function which gave him no active political role. The last few years of his life were to be marred by material difficulties and bitterness. In 1819 he published *Du Pape*, the

argument of which was that all political association should rest, not on a constitutional monarchy or an association of Christian princes, but on the infallible authority of the sovereign pontiff. Badly received, these ideas provoked controversy not only within the French Church but also in the Vatican. In 1820 Maistre finally completed the 11th symposium of the *Soirées de Saint-Petersbourg*, which was published shortly after he died on 26 February, 1821.

Academic Opinion

The majority of studies on Maistre are, quite understandably, in French; and as they are the most numerous, and stretch from Maistre's lifetime to the present day, they will be considered first, with English language scholarship on Maistre being considered afterwards.

Francophone Scholarship

Until relatively recently the Francophone literature on Maistre fell into two polarised categories, reflecting deep-seated divisions in French political and cultural life. In the first camp are those opponents of Maistre who dismissed his ideas as being synonymous either with stereotypes of repressive inquisitorial Catholicism or 20th-century fascism, without troubling to consider the historical impossibility of either

stance.¹⁹ In the second camp are those who have sought to establish a Maistrian hagiography. Studies in this latter category are really a branch of conservative, French-Catholic apologetics.²⁰ The fluency of Maistre's prose and the persuasiveness with which he expresses counter-cultural concepts go some way to explaining his why he was so readily exploitable in the propaganda wars between these two factions (he was utilised primarily by right-wing thinkers and proponents of traditional Catholicism, but also served as a bogeyman for both liberalism and Protestantism.) And this exploitation ensured that Maistre has maintained some form of presence in French constitutional and political thought throughout successive centuries.

Robert Triomphe has similarly suggested that there have been two distinct phases of scholarly interest in Joseph de Maistre (unrelated to the categorisation made above). The first, according to Triomphe, was at the time of the confrontation between monarchical legitimism and republican *laïcisme* at the beginning of the Third Republic, and the second occurred as France approached the Second World War.²¹ Jean-Louis Darcel, another eminent Maistrian, adds another category, that of renewed post-war interest, which, according to him, was rekindled with Triomphe's thesis, which was originally written in 1955 and was published in expanded form in 1968. To these categories may be added a further phase of interest in Maistre of a

¹⁹ Even those who now seek to restore Maistre's reputation have a tendency in this regard. See Bradley A *Modern Maistre*, p. 10, who makes the following assertion: "...the step from a theory of violence to an affirmation of violence was prepared by him, for which he must bear some responsibility (just as Nietzsche for the misappropriation of his thought by the Nazis)".

²⁰ See, for example, F. Vermale, *Notes sur Joseph de Maistre Inconnu* (Chambery, France: Librairie Dardel, 1921). See also Stephane Rials, *Le Légitisme* (Paris: PUF, 1983).

²¹ See Triomphe, *Joseph de Maistre: Etude sur la Vie*, pp. 9–19.

more contemporary nature, in which scholars have expressed an interest in other aspects of Maistre's work, beyond examining areas such as his influence on domestic French far-right politics and *ultra-montane* Catholic thought.

This latter phase of scholarship has been influenced by critical theory and an increasing disillusionment with the universalising values of Enlightenment. It is a revival due in no small part to a growing discontent with liberal political and constitutional theory. Modern scholarship attributes to Maistre a host of radical qualities: he is a writer capable of de-stabilising and problematising the liberal bourgeois social and political consensus, and it is as part of this movement that the most recent Anglophone and Francophone scholarship finds common ground.

Maistre's principal works were already known in France between 1817 and 1821, the year in which he died. He was well known to his contemporaries Germaine de Stael²² and Chateaubriand, and his writings were also known to Louis de Bonald, that other paradigmatic counter-revolutionary theorist, with whom Maistre corresponded.²³ In the period immediately following his death, Maistre's life itself became a subject of interest both on account of his trenchant religious views and because of the *Kulturkampf* that were spreading through continental Europe. One writer who perpetuated a romantically inspired image of Maistre was Saint-Beuve. In the *Revue de Deux Mondes* in 1843, Saint-Beuve ranked the Savoyard alongside De Stael and Chateaubriand in the following manner, saying: "Three writers of great

²² See, for example, Madame de Stael, 'Dix Annees d'Exil,' in *Oeuvres Complètes*, ed. Paul Gautier (Paris:Plon-Nourrit, 1904), VIII, p. 298.

²³ See, for example, Letter from Maistre to Bonald, 13 July 1814 in *OC V 6 T 12*, pp. 437-438.

renown made their debut...at the same moment...under the exciting impulse of the French Revolution”.²⁴

In fact, Saint-Beuve had no doubt that Maistre’s work would have longevity, and believed that the *Considerations* had “prophetic audacity”²⁵ and represented the foundation of all Maistre’s other work. He called the *Soirées* “the finest work by M. de Maistre, the most durable, the one that addresses itself to the most numerous class of free and intelligent readers...In his work, imagination and colour in the bosom of a lofty thought make eternal problems ever present”.²⁶ But he was puzzled by how a Catholic thinker was prepared to consider so many unorthodox notions (Maistre advocates, for example, the use of religion as a mode of political and social control). Saint-Beuve’s views are of interest because they demonstrate that, even as early as 1843, at least one commentator was pursuing concerns – the a-historicity and orthodoxy of Maistre’s ideas – which persist into our own day.

It is this potential to detect a lack of orthodoxy in Maistre’s writings that perhaps attracted Lamartine to them. Whilst disagreeing with him in many ways, Lamartine shared certain of Maistre’s esoteric views on religion. Speaking of the *Soirées*, Lamartine writes: “Such is this book...a style astonishing in its vigour and flexibility, new profound insights immeasurable in their range concerning legislation, dogmas, mysteries and sometimes pleasantries out of place in serious

²⁴ C.A de Saint-Beuve, *Portraits Littéraires*, Paris n.d. II, 42, D.

²⁵ Ibid.

²⁶ Ibid., p. 448.

subject matter...a declamatory Diderot in a sincere and Christian philosopher”.²⁷

Here can be seen the advent of a much-used technique in Maistrian scholarship (and one which thesis adopts to an extent) – that of using him as one element in a comparative study, an approach which suggests that Maistre was deemed either not suitable or significant enough to be the sole subject of a scholarly study.

Alfred de Vigny,²⁸ Balzac²⁹ and Stendahl³⁰ all engaged with Maistre’s thought, as did, more surprisingly, Saint-Simon and Comte, who both read and approved of it.³¹ Comte saw in *Du Pape*, the *Soirées* and the *Considerations* a compelling description of primitive society and the justification for a moral order. He was introduced to Maistre by Saint-Simon, who detected in Maistre the outlines for a society free from the chaos of revolution, and one that might function in a moral manner.³² Of course, both Saint-Simon and Comte overlooked the religious components of Maistre’s work. Over the course of the century, however, commentators increasingly noted a strongly sectarian tendency in his writings, so that by the middle of the 19th century Maistre was being judged almost entirely in sectarian terms.

George Codogan’s work is an example of this late-19th century French Catholic hagiographic strain of Maistre criticism. Of Maistre, Codogan said: “His life gives a

²⁷ Alphonse de Lamartine, ‘Vie et oeuvres du comte de Maistre’, in *Cours Familier de Litterature* (Paris: Calmann Levy 1859), VIII, Entretien XLIII, p.44.

²⁸ See Alfred de Vigny, *Stello* (Paris: Calmann Levy, 1882), p. 176.

²⁹ ‘Memoires de Sanson’, in *Oeuvres Diverses* (Paris: Editions Louis Conard, 1956), I, p. 219.

³⁰ See *Selected Journalism from the English Reviews by Stendahl*, ed. Geoffery Strickland (New York: Grove Press, 1959), p. 276.

³¹ See Henri Gouhier, *La Jeunesse d’Auguste Comte et la Formation du Positivisme; Auguste Comte et Saint-Simon* (Paris: Vrin 1941), pp. 334-335.

³² See Bayle, *Les Idées Politiques*, p. 135.

rare and perfect example of a complete and intellectual moral unity”.³³ On the other hand, Edmund Scherer, a Protestant commentator writing in 1860, remarked: “What would he say...in noticing that the centre of gravity in the world has moved and that modern civilisation is essentially a Protestant civilisation?”³⁴ Writing in the same era, Raymond Fevrier had an agenda that was specifically anti-Catholic and anti-papal, asking of Maistre: “How does it come to pass that this man with such intelligence, was unable to judge with such perspicacity political and religious events...?”³⁵

Meanwhile, Renan regarded Maistre as a dogmatist, and identified a feature of his work – its decisionistic character – which was to be developed further in the 20th century: “Joseph de Maistre, a great Lord impatient with the slow discussions of philosophy. For God’s sake! A decision and let it be ended, true or false, little matter. The important thing is that I be at rest”.³⁶ Emile Faguet, on the other hand, gives us what has become the archetypal image of Maistre; his darkly luminous words have made a lasting impression: “A fierce absolutist, a furious theocrat, an intransigent legitimist, apostle of a monstrous trinity composed of pope, King and hangman, always and everywhere the champion of the hardest, narrowest and most inflexible dogmatism, a dark figure out of the Middle Ages, part learned doctor, part inquisitor, part executioner”.³⁷

³³ George Cogordan, *Joseph de Maistre* (Paris: Librairie Hachette, 1894), p. 130.

³⁴ Edmond Scherer, *Mélanges de Critiques Religieuses* (Paris: Cherbouliez, 1860), VIII, pp. 294-295.

³⁵ Raymond Fevrier, *Etude sur Joseph de Maistre, Théocrate Catholique* (Geneva: Imprimerie Ramboz et Schuchardt, 1877), p. 5.

³⁶ Ernest Renan, *L'Avenir de la Science* (Paris: Calmann-Levy, 1860), p. 62.

³⁷ Faguet, *Politiques et Moralistes*, p. 1.

Before the First World War, there was a flourishing of neo-monarchism in France, accompanied by a strong Catholic revival³⁸. Writers such as Maritain, Peguy and Bourget inspired a new flourishing in Catholic intellectual life.³⁹ But it was in the 1930s that a second crop of studies, whose emergence coincided with the fear of Bolshevism and the strengthening of far-right movements in France and Europe, used Maistre's work once more in an explicitly polemical fashion. The Abbe Carrét, writing in 1938, gave Maistre's divinely inspired politics a new function as a bulwark against atheistic materialism, saying: "Maistre learned that the idea which groups men by their natural affinities in hierarchical society is the divine thought which forms institutions because it is the creator of our nature and our needs: man is a political animal because he is an animal with reason, and he is one and the other at the same time because he is a creature of the Sovereign by whom other sovereigns reign."⁴⁰

Interest in Maistre continued well into the time of the Second World War: in 1944 Francis Bayle produced his thesis, in which he emphasised the political aspects of Maistre's thought and acknowledged his influence on Comte and Saint-Simon, but also took Maistre seriously as a political thinker in his own right. Writing in the 1950s, Camus noted the similarities between Maistre and Marx: "We find in Marx the same sort of creative fatalism. Maistre undoubtedly justified the established

³⁸ Personified, for example, in the figure of Saint Therese of Lisieux. See Owen Chadwick, *The Secularisation of the European Mind* (Cambridge: CUP, 1975), p 251.

³⁹ See Paul Bourget, *Pages de Critique et de Doctrine* (Paris: Librairie Plon, 1912), p. 264.

⁴⁰ Abbe Carrét, *Finesse et Géométrie dans Joseph de Maistre: Politique, Guerre, Tradition* (Isere: Imprimerie Paillet, 1938), p. 12.

order. But Marx justifies the order which is established in time...Another order must be established that will demand in the name of history a new conformity. As for the means, they are the same for Marx as for Maistre: political realism, discipline, force....”⁴¹ This Marxian theme was taken up by Cioran in 1957 in his *Essai sur la Pensée Reactionnaire*: “To attribute to the historical process a significance is to subscribe more or less explicitly to a form of providence. Bossuet, Hegel and Marx, in the way that they assign to events a sense, belong to the same family [as Maistre]”.⁴²

Robert Triomphe’s biography, published in 1968 is Janus-faced. It marks the start of a new, more academically analytical form of Maistre scholarship, and it is a *tour de force* of detailed research, amounting to 628 pages of precisely written prose. Yet, despite its careful consideration of Maistre’s work and the sources, it also suffers from the defect common to so many of those studies that had gone before. It adopts not just a critical but an unrelentingly hostile tone, and is at times unreasonably cynical as to the motivations of its subject.⁴³ At about the same time, Isaiah Berlin was unsuccessfully submitting his now seminal extended essay on Maistre to the *Journal of the History of Ideas*.⁴⁴ When Berlin’s piece was finally published, it was taken by many in Britain to be the first study of Maistre outside the Francophone scholarly community. And yet, despite the feeling that Maistre had

⁴¹ Albert Camus, *The Rebel*, trans. Anthony Bower (London: Penguin, 2000).

⁴² E.M. Cioran, *Essai sur la Pensée Réactionnaire* (Montpellier: Fata Morgana, 1977), p. 17.

⁴³ This was recognized by Triomphe in later editions of his work, in which he inserted an introductory note asking the reader “to excuse certain hasty or severe judgments, products of an excessive impatience and the heated climate [*climat passionnée*] of the immediate aftermath of war”.

⁴⁴ See Berlin, *The Crooked Timber of Humanity*. The essay was begun in the 1940s and put aside until the 1960s as being in need of further revision.

suddenly emerged into the consciousness of Europeans, in fact his work had already been available in several European countries, and even in the United States of America, at a relatively early stage.⁴⁵ Indeed, an examination of the level of awareness of Maistre in Britain and America will give us a further indication of how inaccurate are claims by writers to have ‘unearthed’ Maistre in the second half of the 20th century.

Anglophone Scholarship

In fact, even at the time when he was writing, Maistre was read – in the original French – outside of France, and his works were held in several major public and private libraries in Western and Eastern Europe. Translations of his works also appeared quite swiftly.⁴⁶ His principal works were translated into German between 1822 and 1824, for example, and in 1838 a minor, but religiously sensitive, work – *Les Letters à un Gentilhomme Rousse sur l’Inquisition* – was translated into English. By 1847, Maistre’s work was also known in the United States. Throughout the 1850s a series of articles analysing Maistre’s work appeared in certain British periodicals; the authors’ discussions of Maistre thought and oeuvre ranged quite widely, and included analyses of Maistre’s judgments of Milton and his ideas on Russia, but a typical assessment in the *Edinburgh Review* was to become an all-too familiar treatment of Maistre’s work: “No writer of anything like equal eminence

⁴⁵ See Darcel, *Cahiers de l’Association Internationale*, p. 2.

⁴⁶ *Ibid.*, p. 3.

has given expression to so startling an amount of prejudice, liberality and insulting arrogance in his books; whilst his familiar letters teem with proofs of a kindly and loving nature of candour, liberality and Christian virtues".⁴⁷

The first complete study of Maistre in English, written by John Viscount Morley, appeared in 1871. First sketching out a history of French thought at the beginning of the 19th century, Morley then argues for the existence of three schools of thought – the sensational, the Catholic and the eclectic. He then proposes to study the principles of the second of these three schools through the medium of Maistre's writing, the "incontestable chief of the Catholic group in France".⁴⁸ Maistre continued to be referred to periodically in journals throughout the last thirty years of the 19th century,⁴⁹ but interest in him then appears to have died out in Great Britain, with the exception of a study by Harold Laski in 1917⁵⁰ and a thesis (written in French) by Holdsworth, until a revival of interest occasioned by Berlin's essay.⁵¹

Berlin's interpretation was offered as part of a project charting the intellectual currents of the counter-Enlightenment, and in making it he brought Maistre to the wider attention of the English-speaking intellectual community. Berlin's essay is famous for its characterisation of Maistre as the progenitor of modern fascism, a

⁴⁷ *Edinburgh Review*, Vol. 124 (1856), pp. 343-344; see also *Edinburgh Review* 103 (1856), p. 491.

⁴⁸ Viscount Morley, *Critical Miscellanies* (London: 1871) reprinted (London: MacMillan, 1923), p. 117.

⁴⁹ See, for example, *Quarterly Review* 145 (1878), pp. 143-144; *Quarterly Review* 148 (1879), pp. 432-452.

⁵⁰ Harold Laski, *Studies in the Problem of Sovereignty*, (New Haven: Yale University Press, 1977).

⁵¹ See Holdsworth, *Joseph de Maistre et l'Angleterre*.

distorted and anachronistic portrayal which has nevertheless proved to have had a lasting impact.

Berlin's work inspired a number of more detailed studies among his students at Oxford University, many of which were of a comparative nature. Notable were studies by Larry Siedentop (on Maistre and Maine de Biran),⁵² Cyprian Blamires (on Bonald and Saint-Simon)⁵³ and Graeme Garrard (on Rousseau).⁵⁴ In 1960, at the University of Sussex, Jack Lively produced a translation of a number of Maistre's works, in which he attempted to highlight the similarities between Maistre and Rousseau.⁵⁵ All of these works were concerned primarily with political theory;⁵⁶ indeed, apart from Benjamin Thurston's doctoral thesis on Maistre's theory of linguistics, it was Maistre's political beliefs that formed the focus of most critiques of his work.⁵⁷

In North America, Richard Lebrun has done more than anyone to bring Maistre to the attention of the academic world, with two informative studies and several translations of Maistre's work.⁵⁸ It might be said of Lebrun that, in contradistinction

⁵² *The Limits of the Enlightenment: A Study of Conservative Political and Social Thought in Early Nineteenth Century France* (D. Phil thesis, Oxford University, 1965).

⁵³ *Three Critiques of the French Revolution: Maistre, Bonald, Saint-Simon* (D. Phil thesis, Oxford University, 1986).

⁵⁴ *Maistre, Judge of Jean-Jacques* (D. Phil thesis, Oxford University, 1995).

⁵⁵ Jack Lively, ed. and trans. *The Works of Joseph de Maistre* (New York: MacMillan, 1965).

⁵⁶ See also Max Huber, *Die Staatsphilosophie von Joseph de Maistre im Lichte des Thomismus* (Helbing und Lichtenbahn, Bael, 1958); A. Caponigri, *Some Aspects of the Philosophy of Joseph de Maistre* (Unpublished doctoral thesis, University of Chicago, 1942).

⁵⁷ *Joseph de Maistre: Logos and Logomachy* (Unpublished D. Phil thesis, Oxford University, 2001).

⁵⁸ See Richard Lebrun, *Throne and Altar: the Political and Religious Thought of Joseph de Maistre* (Ottawa: The University of Ottawa Press 1962), Lebrun, *Joseph de Maistre: An Intellectual Militant, and Lebrun, Against Rousseau* (Montreal: McGill-Queen's University Press 1996).

to Triomphe, his studies have not been as critical of his subject as they might.⁵⁹

More recently, another North American scholar, Owen Bradley, has written *A Modern Maistre*, a study that reflects the trend towards critical theory and postmodern criticism of liberalism. In it, the author treats Sacrifice as being the central theme of Maistre's work, and attempts to position the rest of the Allobroge's thought around this organising conceit.⁶⁰ And most recently, Cara Camcastle's study, entitled *The More Moderate Side of Joseph de Maistre*, offers an evaluation of Maistre's views on political liberty and political economy.⁶¹

Contemporary Scholarship

In France, there are a number of modern scholars involved in Maistrian studies, although none work specifically in the area of Maistre's constitutional theory: Jean-Louis Darcel, Yves Madouas, Jean Rebotton, Patrick Malvezin, Gerald Gengembre, Pierre Glaudes and Jeans-Yves Pranchère.⁶² A taste of the type of scholarship currently being conducted is provided by Pranchère's essay, "Dans la Dialectique des Lumières", which examines Maistre's writings with reference to Adorno and Horkheimer's formulation of the irrationality of the Enlightenment; characteristic of Pranchère's approach is his statement: "the traditionalism of Maistre did not express

⁵⁹ Lebrun, *An Intellectual Militant*, p. 157.

⁶⁰ See Bradley, *A Modern Maistre*.

⁶¹ Cara Camcastle, *The More Moderate Side of Joseph de Maistre: Views on Political Liberty and Political Economy* (Montreal: McGill-Queen's University Press 2005).

⁶² For example, Gerald Gengembre, *La Contre Revolution ou l'Histoire des Espérances* (Paris: Imago, 1989); Pierre Glaudes, *Joseph de Maistre et les Figures de l'Histoire* (Clermont Ferrand: Librairie Nizet, 1997).

the revulsion of a thinker against a mode of thought foreign to him, it was rather the development and exploitation of authoritarian potentialities already contained in certain version of the rational politics of the enlightenment.”⁶³ With sentiments such as these, it is clear that Maistrian scholarship has taken another tack, and this is mirrored in the work of English language, with writers such as John Gray citing Maistre with approval on several occasions, in Gray’s case in order to bolster his arguments against certain Enlightenment-influenced ideas.⁶⁴

A potential problem arises once more in this most recent bout of scholarship: that of developing a distinct degree of empathy with Maistre, and identifying with his views without taking into account the context of his beliefs. Maistre is taken by this type of scholarship to be a postmodern critic rather than a deeply reactionary 19th century Catholic; commentators who fall into this trap typically see his thought as having emerged spontaneously, through an entirely individual process of reasoning, ignoring the fact that this reasoning coincided with and formed a part of certain conservative views on liberalism and Enlightenment.

When we examine Maistre’s work, therefore, we need to provide an intellectual as well as an historical context for them, because if Maistre’s 19th-century interpreters tended towards a-historicism, those of the late 20th and 21st centuries have begun to strip him of his ideological context. Above all else, we have to accept that, although

⁶³ See Jean-Yves Pranchère, *Dans la Dialectique des Lumières*, p. 105.

⁶⁴ See John Gray, *Enlightenment’s Wake: Politics and Culture at the Close of the Modern Age* (London and New York: Routledge, 1995).

the results of his thinking may seem startlingly radical, they were in fact the product of a particular intellectual context.

Constitutional Thought and the Counter-Enlightenment

As many commentators have noted, one of the factors that makes Maistre such an interesting subject is the fact that it is difficult to determine the boundaries of his thought. This is a twofold issue. First there is the question of categorisation: determining which discipline best defines his thought. Second there is the question of whether it is possible to identify the larger intellectual movement to which he belongs. These questions are both equally pertinent: for instance, the present study is specifically an examination of the constitutional elements of Maistre's work, but it is not possible to perform this task in disciplinary isolation. In one sense, all of Maistre's thought is constitutional, in that it is constantly pre-occupied with the order of things, with the relationships between those in authority and those who submit to authority,⁶⁵ but in pursuit of this objective, Maistre's enquiry ranges over a large number of topics.

Whilst certain themes – the state, authority, sovereignty and the nature of constitutions – recur regularly, and are clearly recognisable as belonging to the field of constitutional thought, they are entwined with other – predominantly theological

⁶⁵*OC V 1 T 1*, p. 1: "What is most admirable in the universal order of things is the actions of free beings under the divine hand. Freely enslaved, they operate at the same time voluntarily and necessarily. They are able to do what they wish but without being able to disturb the general plans".

– ideas which certainly are not. Maistre’s work is shot through with these interdisciplinary moments, and these strata cannot be ignored if a comprehensive understanding of Maistre’s constitutional thought is to be attained. It will therefore be necessary to trespass from time to time on topics which may, initially, seem more relevant to the fields of history, theology and philosophy.

Maistre remarked that “Twitched one way by philosophy and the other by the law, I believe that I will escape by the diagonal”.⁶⁶ It is one of the aims of this thesis to examine whether the large part of Maistre’s work that fits neither philosophy nor law in a positivist sense finds its ‘diagonal’ in constitutional theory, an autonomous and identifiable area of study susceptible to analysis.⁶⁷ If it does, then the question remains as to whether or not Maistre’s work has had any lasting impact upon constitutional thought more generally, or on the way in which we modern Europeans perceive the nature of the relationship between those who govern and those who are governed in particular.

In this regard, this thesis will argue that, although he was a minor figure in the history of political thought, Maistre can rightfully be analysed alongside that group of modern constitutional and political thinkers – beginning with Bodin, Hobbes and Pufendorf and proceeding through Locke, Montesquieu and Rousseau – whose object was the analysis of that most influential modern European political form, the state. These are thinkers whose area of expertise is situated where the practice of

⁶⁶ Letter to the Marquise de Barol, 24 July, 1785 cited in Lebrun, *Throne and Altar*, p. 9.

⁶⁷ See Martin Loughlin, *The Idea of Public Law* (Oxford: OUP, 2003), p. 1.

governing and the juridical form of *droit publique* intersect, a place which is neither raw politics nor positive law.

It is of course both inaccurate and unfair to dismiss all constitutional thought in these negative terms, as being neither law nor politics. Above all, the positive task of constitutional thought is to explicate the relationships between those in authority in the state and those who are subject to it. Between politics and normativity, between statecraft and judicial procedure, between power and authority, there exists a living culture of public law.⁶⁸ It is concerned with matters of real significance, ranging from the existential (such as, what is man's nature? How is man to live, given this nature?) to the technical – questions about the “constitution, maintenance and regulation of governmental authority”.⁶⁹

One of the issues that this thesis will seek to resolve is just how distinctive is the process of constitutional thought in Maistre's work, and how this distinctiveness manifests itself. To begin with, it is important to realise that until the latter part of the 17th century there was no clear distinction between a ruler and the function of ruling.⁷⁰ The political existed less as an autonomous field of endeavour than as a species of applied theology.⁷¹ This fundamental concept was then gradually elaborated into a theory of society and governance which could not be considered political in the modern sense. The development of political theory in the early

⁶⁸ Ibid., p. 30.

⁶⁹ Ibid.

⁷⁰ Martin Van Creveld, *The Rise and Decline of the State* (Cambridge: CUP, 1999), p. 170.

⁷¹ Ibid., p. 171.

modern era was shaped by Machiavelli, whose innovation was to suggest that activity in the political sphere should not be regulated by Christian morality.⁷² Then, from the early 17th century onwards, the concept of the state was developed rapidly through the work of Hobbes, Locke and Rousseau.

To understand Maistre's position and the context of his thought, it is important to recognise that the secular Enlightenment, inspired by these writers, was not universally accepted.⁷³ At the end of the 18th century, most of Western Europe was still participating in a vibrant religious culture, with access to, and an understanding of, so-called pre-Enlightenment values, which were held to be not curiosities but functioning truths,⁷⁴ a situation which continued into the early 20th century.⁷⁵ At the same time, if we consider the notion of Papal Infallibility (a concept influenced by Maistre's writings, and in particular *Du Pape*) and the process by which it was officially recognised, it is possible to see the impact of secularised modernity on even such a supposedly Enlightenment-resistant and tradition-oriented structure as the Roman Catholic Church. The very fact that the notion of a divinely bestowed dogmatic absolutism had to be promulgated through the first Vatican Council like a piece of secular legislation was an admission that the epistemology of the faithful

⁷² Ibid., p. 174.

⁷³ See Darrin McMahon, *Enemies of the Enlightenment*, p. 5: "However irresistible, however justified, historians' fascination with the glittering lights of 1778 has tended to blind them from the considerable number of men and women who read Voltaire's triumph in an altogether different way".

⁷⁴ "Paris is a whole world. Everything there is on a grand scale, both good and evil. Go to the theatres, the promenades, the haunts of pleasure, all are crowded. Go to the churches: every one is packed" Goldoni, quoted in N. Hampson, *The Enlightenment* (London: Penguin, 1990), p. 132.

⁷⁵ See Chadwick, *The Secularisation of the European Mind*, p. 262: "Was it more difficult in 1900 than in 1800, was it a bigger act of faith by 1900 than by 1800 to trust that all the hairs of your head are numbered and that not a sparrow shall fall to the ground, without purpose? For all the shipwrecks and railway accidents, for all of natural selection or Marxist theory, it is not certain that the answer to that question is in the affirmative".

was no longer entirely, unselfconsciously rooted in the ancient world, but rather understood itself as able to act individually and question authority.⁷⁶

One of the major questions of this thesis is whether this sense of transition is apparent in Maistre's thought, which is certainly caught at the moment when the concepts of theodicy and providence were in retreat – in other words, seen as less and less able for the task of explaining the human condition – whilst the concepts of history, the state, science and the law came to the fore. Whilst Maistre perceived one of his main tasks as being to decry the de-sacralisation of the world, was he able to do so without making reference to ideas which are necessarily influenced by modernity?⁷⁷ In his defence of ancient methods, does Maistre conceive of the state and constitutional function in a manner which owes as much to modern political thought as it does to that of the scholastics?⁷⁸

There have been several attempts to explain in general this transitional phase between the two intellectual paradigms of tradition and modernity.⁷⁹ In his book, *Liberalism and the Origins of European Social Theory*, Steven Seidman seeks to

⁷⁶ See, for example, *Euchyridion Symbolorum*, ed. D. Rahner (Rome: Henrici Denzigwe, 1957), p. 508: "The Roman Pontiff, when he speaks ex cathedra, that is when exercising the office of pastor and teacher of all Christians, he defines...a doctrine concerning faith and morals to be held by the whole church, through the divine assistance promised to him in Saint Peter, is possessed of that infallibility with which the Divine Redeemer wished his Church to be endowed....and therefore such definitions of the Roman Pontiff are irreformable of themselves and not from the consent of the Church".

⁷⁷ See Zeev Sternhell, *Les Anti-Lumières: Du XVIII Siècle a la Guerre Froid* (Paris: Fayard, 2006), p.132 and p.257.

⁷⁸ McMahon, *Enemies of Enlightenment*, p 14: "Its defence of tradition was not traditional, its reverence for history was a historical departure, and its arguments for the family and patriarchal power were a response to novel threats both real and perceived".

⁷⁹ Thomas Kuhn, *The Structure of Scientific Revolutions* (Chicago: University of Chicago Press, 1962).

define the counter-enlightenment as one of these moments.⁸⁰ Influenced by Kuhn's methodology, Seidman does not see the counter-Enlightenment as a reactionary movement in a straightforward dialectic with the Enlightenment, but understands it as a description of the transition between the traditional order and a new, post-revolutionary epoch.⁸¹ Seidman's understanding of the counter-Enlightenment is one which sees more continuity than discontinuity between the Enlightenment and the counter-Enlightenment,⁸² a position also explored by John Gray.⁸³

At the other end of the spectrum there is the classic characterisation of the counter-Enlightenment put forward by Isaiah Berlin,⁸⁴ who saw it as literally the antithesis of the Enlightenment. To him, the movement was a German affair, involving Hamann, Jacobi, Herder and Moser, and whilst Maistre is included as an honorary Teuton, "at one with German irrationalism and fideism", he does not sit comfortably in this categorisation.⁸⁵ As Darrin McMahon points out, Berlin's approach of first identifying the main tenets of the Enlightenment and then understanding the counter-Enlightenment relative to it, in purely negative terms, limits the range of his enquiry, especially regarding the issues of context and influence.⁸⁶ For McMahon, "in the end, it is almost certainly the case that the Catholic Counter Enlightenment discussed in these pages is only one of a range of oppositional responses to

⁸⁰ See Steven Seidman, *Liberalism and the Origins of European Social Theory* (California: University of California Press, 1983), pp. 42-77.

⁸¹ Ibid., p. 42.

⁸² Ibid. "The blend of traditionalism and modernism among the critics of the Enlightenment suggest that, though they frequently defined themselves as opponents of the philosophes, in fact they were as much their heirs as critics".

⁸³ See John Gray, *Enlightenment's Wake*, p. 165.

⁸⁴ He was not, however, the first to use it. See Sternhell, *Les Anti-Lumières*, pp. 9-10:

⁸⁵ See Berlin, *The Crooked Timber*, pp. 101, 110.

⁸⁶ See McMahon, *Enemies of the Enlightenment*, p. 9.

enlightenment movements, spanning a broad geographical spectrum of regional and confessional difference”.⁸⁷

In a similar vein, Graeme Garrard’s study of the term ‘anti-Enlightenment’ emphasises its multifarious usages, and points out the distinct lack of agreement concerning its core characteristics.⁸⁸ He suggests that: “In the face of...mounting complexity, some have advocated abandoning the term ‘the Enlightenment’ altogether on the grounds that it is an essentialising concept that homogenises many disparate movements and obscures important distinctions”.⁸⁹ However, the fact that the idea of the ‘anti-Enlightenment’ itself cannot be defined tightly enough to be useful as anything more than a superficial organising concept does not mean that the intellectual root of Maistre’s thought cannot be classified. Where, then, can we search for characteristics with which to analyse and order its content? A number of different approaches have been taken in response to this task, and it is useful to look at two key authors who have made use of more strictly defined terms to categorise Maistre’s thought.

The first is Stephen Holmes, whose term of choice is ‘antiliberal’. In his *Anatomy of Antiliberalism*, Holmes attacks Maistre for being the doyen of a movement which is implacably hostile to liberalism, believing liberalism to be the source of a number of

⁸⁷ Ibid., p. 10.

⁸⁸ See, however, Sternhell, *Les Anti-Lumières*, p. 11: “Without wishing to pervert the complex realities of the period, which lasts from the beginning of the 18th century to our own day, it is permissible to affirm that there does exist a coherence and a logic in each of the two intellectual traditions”. Sternhell also asserts that: “I believe that the relationships between ideas, politics and culture are direct relationships” (p. 33).

⁸⁹ Graham Garrard, *Counter Enlightenment: From the Eighteenth Century to the Present* (London: Routledge, 2006).

societal and spiritual woes. Of the so-called ‘antiliberals’ Holmes says: “Their enmity is typically lavished on individualism, rationalism, humanitarianism, rootlessness, permissiveness, universalism, materialism skepticism and cosmopolitanism”.⁹⁰ But Holmes’s attempts at defining this tradition, of which Maistre is supposedly the godfather, founder on imprecision. “An all purpose label such as antiliberal does not suffice to describe the theorists I analyze”,⁹¹ Holmes admits, and he goes on to say that “Even at its most philosophical, admittedly, antiliberalism is as much a mindset as a theory. It is always a sensibility as well as an argument”.⁹² Holmes’ vituperative hostility to the movement he invents is only matched by the difficulty he has in providing a sufficiently rigorous framework for analysing it.

Another much-used term to describe Maistre is ‘reactionary’; he is described as such in Joseph Femia’s book, *Against the Masses*, an application of A.O. Hirschman’s analytical framework to a survey of anti-democratic thought since the French Revolution.⁹³ Following Hirschman, Femia explores three broad forms of reactionary thought: the perversity thesis, the futility thesis and the jeopardy thesis. According to the perversity thesis, “any purposive action to improve some feature of the political, social or economic order only serves to exacerbate the condition one

⁹⁰ Stephen Holmes, *The Anatomy of Antiliberalism* (Cambridge, MA: Harvard University Press, 1996), p.5.

⁹¹ *Ibid.*, p. 3.

⁹² *Ibid.*, p. 5.

⁹³ Joseph Femia, *Against the Masses: Varieties of Anti-Democratic Thought Since the French Revolution* (Oxford :Oxford University Press, 2001); Albert O. Hirschman, *The Rhetoric of Reaction* (Cambridge, MA: Harvard University Press, 1991).

wishes to remedy”.⁹⁴ The futility thesis, on the other hand, “holds that attempts at social transformation will be unavailing”⁹⁵ – in other words, attempts to right a social or political wrong will have no appreciable effect. Any alleged change “is, was or will be largely surface, a facade, cosmetic, and hence illusory as the deep structures of society remain wholly untouched”.⁹⁶ Finally, the jeopardy thesis asserts that proposed change, however desirable in itself, involves unacceptable costs or consequences of one sort or another. Progress in human societies is so problematic that any new proposed forward move will endanger or cause damage to dearly held traditional values. Femia categorises Maistre as a perversity theorist, but in doing so he unwittingly exposes the limitations of this approach: the threefold categorisation is essentially arbitrary, and Maistre could readily be defined by any one of them. John Dunn, in his critique of this model, even goes so far as to suggest that Hirschman’s categories are actually indistinguishable from one another.⁹⁷

Clearly, our attempt to classify Maistre’s intellectual allegiance appears not to have progressed. However, there does seem to be one common denominator that explicitly links the work of Seidman, Femia and Hirschman, and implicitly connects that of Garrard and Holmes: the idea that Maistre’s thought is conservative. Seidman, for example, believes that the counter-Enlightenment movement should be sub-divided into categories, one of which – the category that includes Maistre – is

⁹⁴ See Hirschman, *The Rhetoric of Reaction*, p. 7.

⁹⁵ Ibid.

⁹⁶ Ibid., p. 43.

⁹⁷ See J. Dunn, “A New Book by Albert Hirschman”, in *Government and Opposition*, 26, Issue 4 (1991), 520-525.

conservatism.⁹⁸ For his part, Femia, commenting on Hirschman's use of the term 'reactionary', remarks, "It might have been advisable for him to settle for 'conservative' instead".⁹⁹ Garrard characterises Maistre's thought as defined by the Savoyard's horror of philosophical reasoning, but he does endorse Seidman's categorisation of Maistre.¹⁰⁰ Finally, Holmes takes as his starting point Maistre's conservative credentials, even if his ultimate purpose is to supplement them with charges of more heinous allegiances.¹⁰¹ In the light of this commonalty amongst the critics, then, it would seem appropriate to examine Maistre's conservatism in greater depth, in order to see whether it allows us to gain a firmer grasp of his general intellectual alignment.

A Conservative Thinker?

Imperfection

Conservative thought frequently emphasises the imperfection of the individual, and conservative thinkers have based their faith in human imperfection on various foundations, whether moral, cognitive and/or biological.¹⁰² For Maistre, the overriding pre-requisite of any thought was the axiomatic belief that humanity

⁹⁸ Seidman, *Liberalism and the Origins of European Social Theory*, p. 54.

⁹⁹ Femia, *Against the Masses*, p. 7, n. 14.

¹⁰⁰ Garrard, *Counter Enlightenment*, pp. 3-4.

¹⁰¹ Holmes, *The Anatomy of Antiliberalism*, p. 15.

¹⁰² For an example of a conservative argument, that of imperfection derived from biology, see Arnold Gehlen, "Mensch und Institutionen", in Arnold Gehlen, *Anthropologische Forschung* (Hamburg: Reinbeck /Rowohlt, 1961), pp. 69-77.

possessed an explicitly sinful, fallen nature. In his writings, he places a strong emphasis on this form of imperfection, the result of “original sin which explains everything and without which nothing is explained.”¹⁰³ Man’s condition is expressed in something approaching Pauline terms: “He does not know what he wants; he wants what he does not want; he does not want what he wants; he wants to want; he sees within himself something which is not himself and which is stronger than himself. The wise man resists and cries, ‘Who will deliver me?’ The fool gives in and calls his weakness happiness”.¹⁰⁴

Maistre believes that the liberation of humanity in the Enlightenment sense, whereby humanity is able to rely on its own autonomous reason in order to achieve perfection, is impossible, and that any attempts to attain a secular salvation will end in chaotic, nightmarish failure. Man’s brokenness is the beginning of the need for government. It follows that hierarchical structures – the government, the state and sovereignty – are necessary because of this corruption; this is aptly demonstrated in the following passage, which, in characteristic style, oscillates between metaphysical concerns and second-order considerations.

Hobbes is perfectly right, provided that one does not give too much extension to his principles. Society is really a state of war; we find here the necessity of government – for since man is bad he must be governed...Government therefore is not an affair of choice, it results from

¹⁰³ *OC V 2 T 4*, pp. 61.

¹⁰⁴ *OC V 2 T 4*, pp. 67-68.

the very nature of things. It is impossible that man be what he is and not be governed, for a being that is social and bad must be under the yoke.¹⁰⁵

Conservative thought has a tendency to express epistemological imperfection, and so society is far too complicated an organism to be interpreted and understood as if it were a blueprint or plan.¹⁰⁶ Falling into line with this view, Maistre once again draws upon the notion of original sin, and in so doing he strikes a distinctly Augustinian note: “The incapacity to enjoy the sun is, if I am not mistaken, the unique consequence of original sin.... Reason, can, it seems to me, raise itself up to that; and I believe that it has the right to congratulate itself on this without ceasing to be docile”.¹⁰⁷ No matter how hard man tries, he will never be able to perfect himself: this is a conservative value that Maistre’s with which Maistre’s work is deeply imbued.

Epistemology

In the realm of pure philosophy, Maistre extols his belief in the imperfections of the human intellect, which leads to a profound clash with Enlightenment thinking. On the question of the perception and acquisition of knowledge, Maistre positions

¹⁰⁵ OC V 4 T 7, p. 563.

¹⁰⁶ See Michael Oakeshott, *Rationalism in Politics* (Indiana: Liberty Fund, 1991), p.6: “[the rationalist] is the enemy of authority, of prejudice, of the merely traditional, customary or habitual...he is fortified by a belief in a ‘reason’ common to all mankind, a common power of rational consideration”.

¹⁰⁷ OC V 2 T 4, pp. 71-72.

himself in direct opposition to Bacon and Locke.¹⁰⁸ He offers a critique of sensationalism in which he rejects the claim that sense experience itself is enough to acquire knowledge, or that only knowledge gained by natural scientific method is valid. Instead, Maistre offers up a theory of innate ideas, saying that there are original notions common to all men “without which they would not be men”.¹⁰⁹ In this way, Maistre postulates an idealist position, a Christianised, Platonic perspective on humanity in which “all the truths are within us, they are us and when man thinks to discover them he has only to look within himself and say YES”.¹¹⁰ This process of discovery is configured as revelation, “that draws back the fatal veil which does not permit man to read in man”.¹¹¹ In an echo of Saint Paul, Maistre goes so far as to conjecture that the visible world may just be a world of appearances.¹¹²

While his pure philosophical thought is derivative, consisting as it does of platonic and neo-platonic influences filtered through readings of Augustine, Bossuet and Barruel, it does have an original impact on the structure and content of important elements of Maistre’s constitutional thought. For example, his epistemology, as outlined here, is closely linked to his views on revelation and reason, the

¹⁰⁸ Maistre’s critique of Bacon is to be found in his *Examen de Bacon*, OC V 3 T 6, and *Soirees*, OC V 2 T 4, pp. 256-257 and 269-272. His critique of Locke can be found in *Soirees* OC V 2 T 4, pp. 109-121, 317-377.

¹⁰⁹ OC V 2 T 4, p. 353. This is expressed further at p. 354: “All rational doctrine is founded upon an antecedent knowledge, for man can only learn by that which he knows, Since syllogism and induction always proceed from principles posed as already known, it is necessary to acknowledge that before arriving at a particular truth we already know it in part”.. See also OC V 2 T 4, pp. 354-355: “In effect the essence of principles is that they are anterior, evident, non-derived, indemonstrable, and are causes in relation to the conclusion; otherwise they would have to be demonstrated themselves, which is to say they would cease to be principles”.

¹¹⁰ OC V 3 T 5, p. 54, n. 1.

¹¹¹ OC V 3 T 6, p. 270.

¹¹² Hebrews 11:3.

epistemological roots of Catholicism.¹¹³ These in turn feed into his conception of the foundation of government. Like Bonald, Maistre possesses a belief in primitive divine revelation, suggesting that man's first act of knowledge must be an act of faith based on the revelatory aspect of authority structures: "Human reason is manifestly impotent for guiding men: for few are in a position to reason well and none to reason well on everything; so that in general it is good, whatever is said, to start with authority."¹¹⁴ The conservative belief that all is not knowable to reason chimes perfectly with Maistre's understanding of man as fallen being and with his conviction that truths are discovered, not by the imperfect individual's puny reason, but through the revelation of a greater Providential plan.

Institutions

Maistre's belief in human imperfection, which is a consequence and expression of his faith, leads him to endorse institutions, or what he terms "patterned social formations with their own rules, norms, rewards and sanctions".¹¹⁵ To the conservative mind, institutions are vital for ensuring that humanity flourishes; without them, human beings are bound to err. As Burke commented, "the restraints

¹¹³ See the *Catechism of the Catholic Church*, (London: Chapman, 1996) paragraph 156, note 124, p. 39: "What moves us to believe is not the fact that revealed truths appear as true and intelligible in the light of our natural reason: we believe because of the authority of God Himself, who reveals them, who can neither deceive or be deceived."

¹¹⁴ *OC V 2 T 4*, p. 108.

¹¹⁵ Jerry Z. Muller, *Conservatism: An Anthology of Social and Political Thought from David Hume to the Present* (Princeton: Princeton University Press, 1977), p. 11.

of men as well as their liberties are to be reckoned amongst their rights”.¹¹⁶ This paradoxical idea of a liberating restraint is a strong feature of Maistrian thought in particular, and authoritarian thought in general. Institutions provide a particular type of liberation, which is didactic in nature, channelled towards a final destination, and decided not *by* but *for* those whose goals are to be achieved through conformity with the practical application of a given theory (theory and practice being intrinsically linked).¹¹⁷

Custom, Habit and Prejudice

Faith in institutions is closely connected with another tenet of conservative thought – the reliance on and endorsement of custom, habit and prejudice. Plato’s myth of metals is probably the most famous expression of this in terms of political theory.¹¹⁸ In the same way, conservatives argue that society should rely on customary moral rules, even when those rules cannot be rationally justified, in order to reinforce the hierarchical order. Words such as ‘duty’ and ‘faith’ are therefore important in the vocabulary of the conservative thinker.

We have already seen how Maistre’s views on revelation and accepted authority are connected to this proposition. He treats the fundamental constitutional problem of

¹¹⁶ Edmund Burke, *Reflections on the Revolution in France* (London: Penguin, 1968), p. 85.

¹¹⁷ See Stephen Holmes, “The Constitution of Sovereignty in Jean Bodin”, in *Passions and Constraint: On the Theory of Liberal Democracy* (Chicago: University of Chicago Press, 1995), pp. 108-109.

¹¹⁸ Plato, *Republic*, ed. G.M.A. Grub, trans. C.D.C. Reeve (Indianapolis: Hackett, 1992).

legitimacy, for example, purely in terms of the endorsement of custom, a form of historical utilitarianism which is a defining characteristic of conservative thought.¹¹⁹ Thus he says "We must begin with a general and incontestable principle: we know that every government is good when it is established and it has existed without dispute for a long time".¹²⁰ Similarly, his conception of authority has as one of its elements the weight of precedent, established by the generally accepted thinking of the past: "the traditions of the peoples, and especially general traditions, are, in a sense, necessarily true, that is to say that they admit of alteration, exaggeration and other ingredients of human weakness, but that their general character is unalterable and necessarily founded on truth. In effect, a tradition whose object is not a particular fact cannot commence against the truth: there is no way to make this hypothesis".¹²¹

The Role of Religion

For Maistre religion plays as much of a part in political and social processes as it does for many other conservative thinkers. Although not all conservative thinkers agree on the use of religion as a tool to maintain the *status quo*, religion, for most, plays a significant role in society. Religion diffuses social discontent, legitimates the state and promotes conformist behaviour. And for his part, Maistre approaches

¹¹⁹ See Muller, *Conservatism*, p. 10.

¹²⁰ *OC V 1 T 2*, p. 253.

¹²¹ *OC V 4 T 7*, p. 547.

religion not simply as a believing Catholic but also as a conservative who is fully aware of its social utility.¹²²

And yet here we encounter one of the more fundamental ambiguities in Maistre's work, and one which forms one of the central questions of the whole of his thought.¹²³ His cast of mind, at once traditionally Catholic and of its age, does not prevent Maistre from adopting a conservative position in asserting that institutions and social structures arise following a process of historical development, a standpoint which involves a rejection of universalism which is at the heart of Catholic thought. In so doing Maistre endorses the view that, just as people are different to one another, so will their social and conceptual structures be differently constructed, not only in different cultures but also in different epochs.¹²⁴ All in all, these factors loosely contextualise Maistre's constitutional thought, but there is one other concept that more concretely links this more general philosophy with his constitutional thought: the concept of unity.¹²⁵

¹²² *OC V 1 T 1*, pp. 299-300: "The more an institution's basis is divine, the more durable it is. For greater clarity, we should add that the religious principle is, by its nature, creative and conservative in two different ways. First, since it acts more strongly on the human mind than does any element, it draws prodigious efforts from it.... Second, although the religious principle is so powerful in the way that it works, it is infinitely more so in what it prevents, because of the veneration with which it imbues everything under its protection... If you wish to conserve everything, dedicate everything".

¹²³ *OC V 1 T 2*, pp. ix-x: "The dogmas and even the maxims of high Catholic discipline are only, in great part, the laws of the world divinised, and sometimes also innate notions or venerable traditions sanctioned by revelation".

¹²⁴ *OC V 1 T 2*, pp. 235-236: "Each century has its prejudices and its manner of seeing according to which it must be judged. It is an insupportable sophism of ours to suppose constantly that what would be condemnable in our time was the same in times past".

¹²⁵ *OC V 1 T 1* pp. 375-376: "Religious and political dogmas, mixed and, entwined, must form a universal reason or national reason strong enough to suppress the aberrations of individual reason, which is by its very nature the mortal enemy of every association, no matter what, because it only ever produces divergent opinions".

The Quest for Constitutional Unity

Maistre believed that modern constitutional developments were a distortion of humanity, and, like his Enlightenment adversaries, he tracked the course of this mutation from the Renaissance through the Reformation to the French Revolution.¹²⁶

Unlike them, however, he viewed this progress as facilitating the destruction of the state of Being, which he saw as representing a unified conception of wholeness that governed all existence. And Maistre was particularly concerned to examine the effects that a philosophical withdrawal from an acceptance of the world as something cosmologically defined would have upon the constitutional order.¹²⁷

For Maistre, unity comprises three important ingredients: hierarchy, authority and community. Consequently, the effects of a withdrawal from a unified view of the world are manifested in three ways in the constitutional environment: the destruction of hierarchies, structures of authority and communitarian links. In place of hierarchy there emerges the notion of equality; the destruction of authority entails the autonomisation of human reason; and the abolition of communitarian links goes hand in hand with the unchecked growth of atomistic individualism.¹²⁸

¹²⁶ *OC V 5 T 9*, p. 169: "I have often drawn attention in exposing the surprising analogy of the revolution of the 16th century and that which we see, which is nothing but a political Calvinism".

¹²⁷ *OC V 4 T 8*, p. 65.

¹²⁸ *Ibid.*, pp. 65-66.

One of the major philosophic bases of this flight from communitarian unity might be said to be the advent of man's self-consciousness as a subject. Maistre interprets the political developments of revolution as the latest stage in this process, one which for Maistre could not be further from liberation. On the contrary, Maistre sees this increase in subjectivity as leading to a de-authentication of experience, ultimately resulting in man's de-humanisation.¹²⁹

It is possible to see here an implicit, and occasionally explicit, critique of Cartesian philosophy, which in the eyes of conservative thinkers such as Maistre brought into doubt the value of received wisdom and created a *carte blanche* with regard to tradition. It invested in man the belief in his capacity to think independently without reference to his context. Ultimately, Maistre believed that through renaissance, reform, enlightenment and revolution man has come to see himself as the first foundation and the ultimate end, clearly an astonishing inversion of the traditional, religious understanding of human existence.¹³⁰

Maistre sees these as destructive impulses, and as factors which brought about the beginning of Protestantism. This reform movement was, for him, the religious expression of Cartesian thought – allowing the examination of scripture by individual reason.¹³¹ From here it was possible to plot the course to social contract

¹²⁹ OC V 4 T 8, p. 95: "The Protestant is a man who is not catholic in the sense that Protestantism is only a negation. That which is real is Catholic".

¹³⁰ Ibid., p. 64: "The great enemy of Europe, which demands to be snuffed out by all means which are not criminal; the dreadful ulcer which attaches itself to all sovereignties, and which eats away at them without ceasing, the son of pride; the father of anarchy; the universal dissolvent: Protestantism".

¹³¹ Ibid.

theories, a belief in the shared equality of man and the idea of mankind as being naturally in isolation. This movement led to an emphasis on those constitutional values of equality, independence and individualism that were so crucial to the revolutionary and Enlightenment ideal.

Indeed, Maistre saw the Enlightenment as the philosophic expression of this threefold demand, whilst the Revolution was the project to bring these values to political fruition. All three were connected, in Maistre's eyes, by the breaking of the bonds which exist between humans, a moment which constituted a rejection of transcendence and entailed a vast intellectual arrogance which puts individual reason, rather than God, as Founder. Maistre's way of dealing with this intense subjectivisation is by believing that man has not placed himself in these situations, but rather has been placed in them. This leads Maistre to a cultivation of a complex theory of Providence which, whilst outside the scope of this present thesis, underpins the whole of his work.¹³²

For Maistre, revolution is merely a new form of despotism, a descent into arbitrariness and servitude. The individual independence which results from the destruction of hierarchies involves a social atomism which separates individuals from their ancient modes of protection, rendering them powerless and incapable of

¹³² The importance of this pre-constitutional orientation has been noted by several commentators. Pierre Manent has declared that providentialism is "the Maistrian theme par excellence" (Introduction to *Considerations sur la France* (Paris: Editions Complexe, 1988), p. ix). Franck Lafage states that "the originality of Maistrian thought resided essentially in its providentialism" (*Le Comte Joseph de Maistre: Itinéraire Intellectuel d'un Théologien de la Politique* (Paris: l'Harmattan, 1998), p. 106), whilst for Aidan Nichols, "the foundations of Maistre's theological counter-revolutionism lies in his acute understanding of the practical correlates of original sin" (*Catholic Thought Since the Enlightenment: A Survey* (Pretoria: Unisa Press, 1998), p. 37).

accomplishing anything worthwhile or of lasting value. Maistre's constitutional thought is a way of expressing his belief that hierarchy, heteronomy and communitarian values are the necessary conditions for authentic human co-existence, and are the means by which the critical constitutional value of unity is sustained.

Of course, this necessitates a hierarchical view of the state in which some are destined to command and lead whilst others obey and serve. Arendt comments that a hierarchical, authoritarian constitutional structure of the type that Maistre envisages must entail the belief that submission to principles comes from a source external to the structure.¹³³ This explains the existence of a gap between governors and governed, an engaging argument in that it dispenses with the need to have to deal with the problem of circularity inherent in liberal democracies, which are based upon a theory of the sovereignty of the people.

When the hierarchical principle is used to found a political community, it cannot be said to proceed from superiors, rest on the consent of inferiors or be established by an accord between people. If a human origin were allowed to be suggested, this would intimate the possibility of original equality, and thus hierarchy would no longer be the guiding principle. Certainly it may be sustained by force, but the system must be established as if it were more ancient, more fundamental than the human force which maintains it or the wills which conserve it.

¹³³ Hannah Arendt, "What is Authority?" In *The Portable Hannah Arendt*, ed. Peter Baehr (London: Penguin, 2003), p. 467.

These, then, are the most pressing of a number of constitutional concerns that run through Maistre's work, and considering them leads us to questions of a different order: how does a traditionalist thinker respond to the new political realities? Does Maistre's traditionalist constitutional position remain pertinent for a modern, post-revolutionary age? The remainder of this thesis seeks to address these questions. Through an examination of Maistre's thought on a number of important themes – including constituent power, constitutions, sovereignty and government – we will see how Maistre's work re-states constitutional traditionalism for post-revolutionary modernity.

CHAPTER TWO: MAISTRE AND CONSTITUENT POWER

Introduction

The problem of constituent power (i.e. the source of authority in political society) presents a challenge to modern constitutional theory, because the series of transformations from which it is formed are both vital to and yet suppressed by liberal constitutional thought. These transformations involve the shift from multitude to people; nature to civil society; isolation to community and from liberty to law and are crucial to an understanding of modern constitutions. One could go as far as to say, as Yves-Charles Zarka does, that the history of modern sovereignty turns on these issues, “even in relation to those thinkers whose intention is to show that the notion of the sovereignty of the people is fundamentally unviable”.¹ Maistre is one such thinker, and his views on constituent power are a vital element in his constitutional thought.

Constituent power provides an account of the formation of society, and the role of the modern individual within it, in a way which does not rely on any traditional notion of authority or order. For this reason its existence tends to be suppressed in modern constitutional discourse, because the ability of individuals to determine and re-determine the political order (one of the implications of using the contract as a

¹ Yves-Charles Zarka, “Le Tournant Rousseauiste ou la Réinvention de la Souveraineté du Peuple”, in *Penser la Souveraineté à l’Epoque Moderne et Contemporaine*, eds. Gian Mario Cazzaniga and Yves Charles Zarka, (Paris: J. Vrin, 2001), p. 287.

constitutional principle) is a powerful and potentially uncontrollable force.

Consequently, constituent power is a concept that those who subscribe to modern contractualist modes of state formation have often been eager to neutralise.²

The concepts of constituent power, the state of nature and the social contract – all elements key to a modern understanding of the constitution – were of critical importance to Maistre. Indeed, his vehement opposition to these ideas and their consequences is a dominant motif of his work, in particular the *Examination of a Work by J-J. Rousseau*³ (which is a critique of Rousseau's *Discours sur l'Origine et les Fondements de l'Inégalité Parmi les Hommes*)⁴ and Book One of the *Study on Sovereignty*,⁵ a critique of *Du Contrat Social*,⁶ although his antipathy towards contractual constitutionalism can be traced throughout the whole of his writing and correspondence.⁷

² And not only by modern theorists, such as John Rawls in *A Theory of Justice* (Oxford: Oxford University Press, 1972) or Bernard Yack in "Popular Sovereignty and Nationalism", in *Political Theory* 29 (2001), pp. 517-36; the same technique was also used by Grotius in *De Jure Belli ac Pacis*, I, III, VII, trans. Jean Barbeyrac as *Le Droit de la Guerre et de la Paix* (Amsterdam, 1724), reprinted in *Bibliothèque de Philosophie Politique et Juridique* (Caen: Université de Caen, 1984). See also Thomas Hobbes, *Leviathan*, ed. Richard Tuck (Cambridge: Cambridge University Press, 1991) and Burlamaqui, *Principes du Droit Public* (Amsterdam, 1751), reprinted in *Bibliothèque de Philosophie Politique et Juridique* (Caen: Université de Caen, 1984).

³ Joseph de Maistre, *OC V 4*, T 7, pp. 509-566.

⁴ Jean Jacques Rousseau, *Discours sur l'Origine et les Fondements de l'Inégalité Parmi les Hommes/Discours sur les Sciences et les Arts*, with an introduction by Jacques Roger (Paris: G.F. Flammarion, 1972).

⁵ *OC V 1 T 1*, pp. 311-554.

⁶ Jean-Jacques Rousseau, *Du Contrat Social*, with an introduction by Bruno Bernardi (Paris: GF Flammarion, 2001).

⁷ See, for example, the Maistre Family Archives, Département de Savoie, Chambéry, where a notebook entitled *Miscellanea* contains a note on *Principe Fondamental du Droits des Souverains* (1788), mentioning "Rousseau's terrible maxim that sovereignty resides essentially in the people". And in *OC V 5 T 9*, p. 494 (1805): "The principle of the sovereignty of the people is so dangerous that, even in the case that it were true, it would be necessary not to allow it to be demonstrated".

The story of Maistre's critique of the modern theory of constituent power is that of his reaction to the philosophical fruits of political trauma in early modern England, and, of course, the upheaval of the French Revolution. After the political and intellectual turmoil of civil war, Hobbes' innovative version of the social contract theory provided a basis for sovereignty that was not predicated on a theory of divine entitlement to Kingship.⁸ For its part, the French Revolution provided the conditions for the practical expression of this theory, which resulted in the promulgation of the political doctrine of democracy.⁹

This chapter will analyse two aspects of Maistre's approach to constituent power and the emergence of democracy. First it will deal with Maistre's critique of the modern theory of the establishment of sovereignty, which involves an examination of his views on the state of nature and the social contract. Second, it will explore his alternative to the modern conception of constituent power, namely the figure of the legislator, which illustrates a significant aspect of Maistre's constitutional thought. From this it will become apparent that Maistre's ideas on constituent power hold some significance for constitutional theory today, not least because the issue of constituent power and the viability of the sovereignty of the people remain problematic, if largely unexamined,¹⁰ concepts.

⁸ For a French perspective, see Bossuet, *Politique Tirée des Propres Paroles de l'Ecriture Sainte*, ed. J. Le Brun (Geneva: Slatkine, 1967); and for an English perspective, see Sir Robert Filmer, *Patriarcha and Other Political Works*, ed. P. Laslett (Oxford: Blackwell, 1949).

⁹ Robespierre, for example, proposed to include in the Declaration of the Rights of man the clause that "every institution which does not suppose the people good and the magistrate corrupt is vice-ridden". Speech of 24 April 1793, quoted in Maxmillien Robespierre, *Textes Choisis* (Paris: Editions Sociales, 1958).

¹⁰ For treatments of the contemporary notion of constituent power, see Olivier Beaud, *La Puissance de l'Etat* (Paris: PUF, 1994); Antonio Negri, *Insurgencies: Constituent Power and the Modern State*

The Overthrow of the Old Order

The state of nature

For Maistre, the state of nature is the first stage in the singularly modern process of imagining the founding of sovereignty without reference to theological or naturalist teleological conceptions.¹¹ All those thinkers who espouse the social contract affirm that a state prior to any formative pact must exist: that is, a state in which political institutions are absent and in which some form of equality exists between human beings. It is obvious that, even when reduced to this basic formulation, such a conception fundamentally destabilises the traditional understanding of the foundation of political society.

This radical effect of the state of nature expresses itself in three ways. First, the idea that individuals are independent and equal denies to individuals all rights to command by virtue of superior birth or status.¹² Second, the fact that civil society is

(Minneapolis: University of Minnesota Press, 1999); and Claude Klein, *Théorie et Pratique du Pouvoir Constituant* (Paris: PUF, 1996).

¹¹ For an account of medieval political belief in a unified constitutional environment, see Otto Gierke, *Political Theories of the Middle Ages*, trans. Frederick Maitland (Cambridge: Cambridge University Press, 1922). For example, at p. 9: "Now the constitutive principle of the Universe is in the first place Unity. God, the absolutely one, is before and above all the World's Plurality, and is the one source and one goal of every Being".

¹² Benedict Spinoza, *Traité Théologico-Politique*, Chap xx, trans. C. Appuhn (Paris: G F Flammarion, 1965), pp. 329-332.

formed through a renunciation of the state of nature by naturally good individuals is a rejection of the Augustinian notion that man's political subjection is the result of original sin. Third, the fact that the state of nature does not necessarily lead to the foundation of civil society, nor does it lead to the use of the covenant to legitimate its foundation, implies that man is not, by nature, a political animal; this is a rejection of any theory that political authority can be exercised as a divine right.¹³ These conclusions have a resounding impact on the perception of constitutional order, because they breach the unity of the cosmological hierarchy of creation. It follows from them that man is the creator of the conditions of his existence, rather than the effect of them, and the difference between man and other created beings is no longer as a result of his natural quality of political association. The *polis* is no longer a fact of nature; rather, it is something artificial that free and independent men provide for themselves in order to further their own objectives, and which is only legitimate on the condition that it fulfils these ends. In applying the doctrine of the state of nature, the idea of the political order is instrumentalised and the classical relations of political determination are inverted.

The Social Contract Theorists

Whilst the theorists who effected this rupture all rejected a classical-scholastic teleology in their assessment of the origins and development of a political society, it would be too simplistic to suggest that they were all identical in the detail of their

¹³ Simone Goyard-Fabre, *Philosophie Politique xvi-xx Siecle* (Paris: PUF, 1987), p. 206.

thought. Whilst the general aim of a theory of the state of nature was to remove man from the web of traditions, practises and associations which had previously helped political theorists define the conditions of a fully human existence, the writings of, say, Pufendorf and Locke are notably different to those of Hobbes and Rousseau.

Pufendorf and Locke, for example, sustain that aspect of the theory which suggests that the natural law gives rights and imposes obligations.¹⁴ Men in the state of nature constitute a kind of natural community: each individual is subject to duties as well as being in possession of rights. The problem is that human beings are not capable of determining with certainty the application and limits of such rights and duties, and it is thus necessary to found a political power to make them effective.¹⁵ For Hobbes, on the other hand, this natural moral state does not exist and the law of nature changes its sense: it does not possess a transcendental character. Hobbes's unique contribution was to introduce the idea that man is not naturally a being of duty;¹⁶ for him there are only appetites and desires, which individuals eventually discover they cannot satisfy unless they renounce their unbounded natural rights for a limited civil right.¹⁷ Rousseau also underlines the fact that there are no duties in the state of

¹⁴ Samuel Pufendorf, *On the Duty of Man and the Citizen*, ed. James Tully (Cambridge: Cambridge University Press, 1991), II.1 sec. 8 (p. 117), II.2 sec. 3 (p. 120); John Locke, *Two Treatises on Government*, ed. P. Laslett (Cambridge: Cambridge University Press, 1967), Second Treatise, p. 6: "[T]hough [the state of nature] be a State of Liberty, yet it is not a State of Licence....The State of nature has a Law of nature to govern it, which obliges every one: And Reason, which is that law, teaches all Mankind...that...no one ought to harm another in his Life, Health, Liberty, or Possessions".

¹⁵ Pufendorf, *On the Duty of Man*, II.1 sec. 9 (on an absence of security); II.1 sec. 8-10 (on enforcement of duties and settlement of disputes on a voluntary basis); II.5 sec. 9 (on failure of self-government); II.5 sec. 9, II.6 sec. 4-6 (on states removing the causes of insecurity).

¹⁶ Hobbes, *Leviathan*, p. 92.

¹⁷ *Ibid.*, p. 89, p.117.

nature, there is only the existence of desire for well-being and peace, which is limited by the lack of development of man's faculties.¹⁸

Even though they differ markedly in the nature of the desire that they attribute to natural man, both Hobbes and Rousseau share the same basic view of this state as being de-juridified. The political state is artificial because, in order to realise it, it is necessary to pass from an understanding of the individual as a being of appetite to an understanding of him as a being of law.¹⁹ According to these two theorists, it is only in this interpretation of the state of nature that there exists an authentic understanding of the transformative capacity of the social contract as a human act which gives birth to a relationship of law.²⁰ This is significant for constitutional thought because it introduces the fact of the self-generated opposition of law and liberty that is crucial to an understanding of political modernity.²¹

¹⁸ Rousseau, *Discours sur l'Origin*, p. 224.

¹⁹ Hobbes, *Leviathan*, p. 89 "The Desires and other passions of man are in themselves no Sin. Nor are Actions, that proceed from those passions, till they know a Law that forbids them: which till Lawes be made they cannot know: nor can any Law be made, till they have agreed upon the Person that shall make it".

²⁰ Rousseau, *Du Contrat Social*, p. 60: "This passage from the state of nature to the civil state produces a really remarkable change in man in substituting justice for instinct in his conduct and in giving to his actions a morality which was hitherto lacking".

²¹ See below, p. 89 ff.

Maistre and Rousseau²²

This tension between the concepts of law and liberty in Rousseau's thought is emblematic of a well-documented ambiguity of purpose in his works as a whole. As a consequence, even in a brief survey of the contemporary secondary literature available in English²³ it is evident that there are few modern assessments of his work which do not take the form of a belief in the "desirability of resolving antinomies",²⁴ antinomies which are witnessed by the fact that his work was taken up both by Catholic apologists for the *ancien regime*²⁵ and by Robespierre.²⁶

²² For the relationship between the two, see, for example, Ernest Seilliere, "Joseph de Maistre et Jean-Jacques Rousseau", in *Séances et Travaux de l'Académie des Sciences Morales et Politiques* CXIV (1920) pp. 321-363; Jack Lively, Introduction to *The Works of Joseph de Maistre* (New York: Macmillan, 1964), pp. 1-45; Richard Lebrun, "Joseph de Maistre and Rousseau", in *Studies on Voltaire and the Eighteenth Century* LXXXVII (1972), pp. 881-98; Jean-Louis Darcel, Introduction to *De l'Etat de Nature* in *Revue de Etudes Maistriennes* no. 2 (1976), pp. 58-99.

²³ See, for example, Norman Hampson, *The Enlightenment: An Evaluation of its Assumptions, Attitudes and Values* (London: Penguin, 1968), p. 9: "It may be argued with equal plausibility that Rousseau was either one of the greatest writers of the Enlightenment or its most eloquent and effective opponent"; Ernst Cassirer, *The Philosophy of the Enlightenment*, trans. F. C. Koelln and J. P. Pettegrove (Princeton, NJ: Princeton University Press, 1951), p. 273: "Rousseau is a true son of the Enlightenment even when he attacks it and triumphs over it"; Robert Wokler, ed. *Rousseau and Liberty* (Manchester: Manchester University Press, 1995), p. ix: "He at once belonged to the Enlightenment and opposed it"; Raymond Tallis, *Enemies of Hope* (London: Macmillan 1998), p. 2: "It is arguable that in the person of Rousseau, Enlightenment and Counter-Enlightenment were born twins"; Maurice Cranston, *In Search of Humanity: The Role of the Enlightenment in Modern History* (New York: George Braziller, 1960), p. 160: "It is impossible to say that he was only a man of the Enlightenment, but equally difficult to say that he was not a man of the Enlightenment".

²⁴ Quentin Skinner, "Meaning and Understanding in the History of Ideas", in *Vision of Politics* Vol. I (Cambridge: Cambridge University Press, 2002), p. 71.

²⁵ See Derrin McMahon, *Enemies of the Enlightenment: The French Counter-Enlightenment and the Making of Modernity* (Oxford: Oxford University Press, 2001), pp. 34-35.

²⁶ Robespierre, "Dedication to Jean-Jacques Rousseau", in Carol Blum, *Rousseau and the Republic of Virtue: The Language of Politics in the French Revolution* (Ithaca and London: Cornell University Press, 1986), pp. 156-7: "Divine man you taught me to know myself; while I was still young you made me appreciate the dignity of my nature and reflect upon the great principles of the social order".

Like those who supported the French Monarchy in its final throes, post-revolutionary, counter-Enlightenment thinkers have enjoyed an ambivalent relation with Rousseau. On the one hand he is identified as the ancestor of Jacobinism and the Terror; on the other it is impossible to mistake Rousseau's imprint on counter-revolutionary literature. According to Jean-Yves Pranchère, this ambivalence is present in Chateaubriand and in the German Romantics, and apparent in authors such as Bonald or Ferrand, who "cite Rousseau as often as they are able".²⁷

This ambivalence extends apparently to Maistre, who, for example, shares with Rousseau the view that the rights of sovereignty should be absolute. Rousseau is a privileged adversary for Maistre, because, for Maistre, the ultimate political alternative is represented by the choice between the Rousseauist doctrine of a sovereign people and Maistre's own understanding of sovereignty as a single entity. This relationship has even led some commentators to argue for a resemblance between the two writers,²⁸ for example by Graeme Garrard, who has argued strongly to that effect, suggesting that Rousseau acted as a 'precursor' to the counter-Enlightenment ideas of Maistre,²⁹ and that Maistre "selectively appropriates" Rousseau's ideas.³⁰

²⁷ Jean-Yves Pranchère, *L'Autorité Contre les Lumières: La Philosophie de Joseph de Maistre* (Geneva: Droz, 2004), p. 200.

²⁸ For an earlier essay in the same vein, see Lively, *The Works of Joseph de Maistre*, pp. 1-45.

²⁹ Graham Garrard, "Rousseau, Maistre and the Counter-Enlightenment", in *History of Political Thought* 15 (Spring 1994), pp. 97-120.

³⁰ *Ibid.*, p. 98.

This focus on similarities almost inevitably masks the real difference between the two thinkers, which perhaps comes from mistaking shared *terminology* for shared *meaning*,³¹ or from placing too strong an emphasis on the superficially similar conclusions and not enough on the radically different causes of those conclusions advanced by the two thinkers.³² For Maistre, Rousseau was the epitome of Enlightenment thought³³, the “prophet and founder of the French Revolution.”³⁴ who incarnated all the horror of the Terror: the immorality, the political and individual autonomy of the will and the egalitarianism that Maistre, following Bergier and Bonald, sets out to refute.³⁵ “It is Rousseau,” writes Maistre, “who breathed everywhere the scorn for authority and the spirit of insurrection...who traced the code of anarchy and who...posed the disastrous principles of which the horrors we have seen are only the immediate consequences”.³⁶ But it is not solely because he is “the author of revolution”³⁷ that Maistre confronts Rousseau. It is also because Rousseauist social contract theory is contract theory taken to its logical

³¹ Maistre himself is conscious of this terminological difference; see *OC V 4 T 7*, p. 552: “one can observe in all his works that he takes all abstract terms to have their common meaning”.

³² For an example of this, see Richard Lebrun, *Introduction to Against Rousseau* (Montreal: McGill Queen University Press, 1996): “Maistre and Rousseau are in fact in rather close agreement about the nature of the political problem. The vocabulary and the approach are different, with Rousseau repudiating the old Christian explanation of original sin and Maistre continuing to maintain that it “explains everything” but for both the state is a necessary remedy for human failings” (p xiv - xv)

³³ *OC V 1 T 1*, p. 407: “Ultimately, the glory of having made the revolution belongs exclusively neither to Voltaire nor to Rousseau.... The one undermined politics in corrupting morals and the other undermined morals by corrupting politics”.

³⁴ See Gordon McNeil, “The Anti-revolutionary Rousseau”, in *American Historical Review* LVIII (1953), pp. 808 - 823 at p. 808.

³⁵ See Pranchère, *L'Autorité Contre les Lumières*, p. 201.

³⁶ *OC V 1 T 1*, pp. 407-408.

³⁷ *Ibid.*, pp. 405 -6. See also Zeev Sternhell, *Les Anti-Lumières Du xviii Siècle à la Guerre Froide* (Paris: Fayard, 2006), pp. 52-53: “The hundred pages of the *Discours sur l'Origine de l'Inégalité Parmi les Hommes*, where Rousseau enquires into the origins of civil society, gives us an extraordinary philosophical anthropology without God. Rousseau as man of the Enlightenment produces a history of the origins of humanity which destroys the religious conception of life. This is why he was the most hated thinker of the enemies of Enlightenment, the one who eliminated Revelation from the life of men and the one who raised, with the very first stirrings of capitalism, the flag of revolt against social injustice”.

conclusion: to demonstrate its incoherence will be to refute the whole notion of the social pact.³⁸ This, above all, is Maistre's aim in negotiating Rousseau.

Rousseau's Description of the State of Nature

Rousseau's version of the state of nature, as set out in the *Discours sur l'Origine et les Fondements de l'Inégalité Parmi les Hommes*, is founded upon the conceit that individuals in their natural state live in virtual isolation.³⁹ Rousseau believed that the mistake of previous contract theorists was that they extrapolated the characteristics of man in the state of nature from contemporary conditions in society, which led them to conclude that there was an inevitability about the composition of civil society.⁴⁰ Rousseau's theory, on the other hand, involved a complete rejection of any such teleological impulse.⁴¹

Since Rousseau believed that man is not primarily political or social, he divests man of all qualities connected with life in the community, the most important of these

³⁸ See Pranchère, *L'Autorité Contre les Lumières*, p. 199.

³⁹ Rousseau, *Du Contrat Social*, p. 181.

⁴⁰ For example, take Locke's views on property: Locke, *Two Treatises on Government*, p. 27 (on the natural right to property) and pp. 138-39 (on the preservation of property being the goal of government). See also Rousseau, *Du Contrat Social*, p. 229.

⁴¹ Rousseau, *Du Contrat Social*, p. 158, in a striking passage: "Just like the statue of Glaucus, which time, the sea and storms had truly disfigured, so that it looked less like a God than a ferocious beast, so the human soul, altered within society by a thousand causes, recurring ceaselessly by the acquisition of a multitude of facts and errors, by the changes visited upon the construction of the body and by the continual shock of the passions, has, so to speak, changed its appearance to the point of being almost unrecognisable".

being reason.⁴² Rousseau believed, however, that there are two principles that humans exhibit prior to developing this faculty: self-love and pity.⁴³ In contrast to Hobbes, Rousseau's rejection of original sin leads him to the view that the savage's actions are characterised by goodness and innocence, and that any inequality that exists is due to man's natural limitations.⁴⁴ Furthermore, man is distinguished by two capacities which remain as potentialities within them: the potential for free will and the potential for self-protection.⁴⁵

Maistre's Critique of the State of Nature

The basic structure of Maistre's thought throughout his critique of the state of nature and the social contract is a form of modified Aristotelian naturalism, an alignment that allows him to reject Rousseau's central premise that man is not naturally a sociable being. This critique is twofold – in the *Examination* Maistre offers a methodological criticism of the state of nature described in the *Discours sur l'Origine et Fondements de l'Inégalité Parmi les Hommes*; he also uses this work as a touchstone for his own substantive ideas on the nature of political society.

The methodological critique that Maistre advances in the *Examination* depends on a literal reading of the text, and in it he is concerned with pointing out the

⁴² Ibid., p. 195.

⁴³ Ibid., p. 161.

⁴⁴ Ibid., pp. 219-220.

⁴⁵ Ibid., pp. 181-182.

inconsistencies in Rousseau's account.⁴⁶ Where modern commentators find it difficult to repress the urge to attempt to harmonise contradictions in Rousseau's work and to lend it a sense of internal consistency,⁴⁷ Maistre sees only incoherence. Take, for example, Maistre's analysis of Rousseau's description of the advent and progress of inequality among men. After having performed a detailed exegesis of the text,⁴⁸ Maistre comes to the derisory conclusion that, for Rousseau, inequality has "three first epochs and two second epochs. What an analysis! What profundity! What clarity!"⁴⁹ In his zeal to highlight Rousseau's inconsistencies, Maistre calls on the services of different disciplines, including Enlightenment science⁵⁰ and, most importantly, history. Indeed, his most significant methodological criticism concerns the Rousseau's failure to accurately refer to history, a discipline of vital importance to Maistre in establishing objective, concrete truth:⁵¹ "One may only imagine two ways of knowing the destination of man: history and anatomy. The first shows that

⁴⁶ Pranchère, *L'Autorité Contre les Lumières*, p.201-202: "Maistre's reading of Rousseau is an impatient reading, which does not proceed without malice or contradiction; his polemical excesses limit its authentically critical significance. It would, however, be hasty to conclude that it is devoid of all objective foundation. Maistre's affirmation that Rousseau, "has consecrated half his book to refuting the other half" is not simply polemic; even the most charitable commentator cannot avoid noting with Alexis Philonenko that "the social contract has for its first and principal objection the social contract itself.""(A.Philonenko, *Jean-Jacques Rousseau et la pensée du malheur*,(Paris: Vrin, 1984), t.3, p.65.

⁴⁷ Although note Skinner, "Meaning and Understanding", p. 68: "If it is first assumed for example that the business of interpreting Rousseau's philosophy must centre on the discovery of his most fundamental thought, it will readily cease to seem a matter of importance that he contributed over several decades to several different forms of enquiry".

⁴⁸ OC V 4 T 7, p. 515.

⁴⁹ Ibid., p. 515 and p. 530, "Rousseau who abuses all words, none more so than those of nature. He uses it without defining it; he annoys good sense".

⁵⁰ Ibid., p. 542: "One may invoke here a general principle, which the illustrious Newton has made one of the bases of his philosophy: it is that in philosophy one must not admit more causes than are necessary to explain natural phenomena" And on p. 543 he says: "Linnaeus applied this incontestable maxim to the object which occupies us in this chapter".

⁵¹ Jean-Louis Darcel, Introduction to *De la Souveraineté du Peuple* (Paris: PUF, 1992), p. 12: "To argue against the sovereignty of the people Maistre uses three factors: historical, philosophical and polemical. The work is a reflection on the comparative history of political institutions from antiquity to modern states....The only approach which appears to him to be appropriate to refute the hypothetical-deductive method adopted by Rousseau ...is recourse to erudition".

which he has always been; the second shows how his organs respond to his destination and certify it”.⁵²

History, Maistre believes, is a barrier against universalising abstraction. The most direct and wisest way to know the nature of man is undoubtedly to learn what has always been the case.⁵³ The advent of theories which exist unsupported by, or even opposed to, fact is a disastrous development.⁵⁴ In commenting that “the imaginary man of the *philosophes* is foreign to the statesman who works only with what exists”,⁵⁵ Maistre makes a clear distinction between the abstractions of the Enlightenment and the reality of modes of thought rooted in tradition, and this idea is developed further to form a link between history and politics. “History,” says Maistre, “is experimental politics”.⁵⁶

According to Maistre, both history and politics are disciplines which are reflective and backward looking, and which look to practical reason and not to theoretical knowledge in their operation. In this, Maistre is reminiscent of Burke, whose view is that “human nature cannot be found in those shaky metaphysical principles on which French revolutionaries liked to found their *Droits de l’Homme et du Citoyen*, but only how human nature articulated itself in the historical institutions human

⁵² OC V 4 T 7, p. 539.

⁵³ OC V 4 T 7, p. 539 – 540: “...in general, it is not such a bad method to establish the law by fact: the quickest and the wisest way to know the nature of man is undoubtedly to know that which he has always been. Since when have theories been able to be opposed to facts?”

⁵⁴ See also Jurgen Habermas, *Between Facts and Norms*, trans. William Rehg (Cambridge: Polity Press, 1997), p. 488: “As a matter of fact, the instrumentalism underlying a practice that directly attempts to realize theory has had disastrous effects”.

⁵⁵ Ibid., p. 541.

⁵⁶ Ibid., p. 540.

beings gave themselves in the course of time.”⁵⁷ Like all the *philosophes*, Rousseau’s tendency towards the abstract leads him towards a vacuous cosmopolitanism – he “confuses the progress of human-kind in general with the progress of particular nations”.⁵⁸ This insistence on a uniform cosmopolitanism leads Rousseau – in Maistre’s eyes – to neglect the historical. History, according to Maistre, disproves the abstractions of the state of nature theorists: “Wherever man has been able to observe man, he has always found him in society: this state is therefore for him, the state of nature”.⁵⁹

But Maistre’s conception of history transcends the empirical and embraces a wider cultural-mythical understanding, an ideological leap which distinguishes it from the more pragmatic conservatism of Burke. Maistre turns to Ovid,⁶⁰ Homer⁶¹ and Plutarch⁶² to support his argument that man has always been a political being.⁶³ He delves into a wide variety of sources, taking in the Greeks, the Egyptians and “Orientals really more ancient than them”,⁶⁴ even extending his search to include myth and tradition because “it should never be forgotten that the traditions of peoples, and especially the general traditions, are necessarily true in a sense, which is to say that though they admit of alteration, exaggeration and other ingredients of

⁵⁷ F.R. Ankersmit, “Edmund Burke: Natural Right and History”, in *Political Representation*, (Stanford, CA: Stanford University Press, 2002), pp. 35-59, 44.

⁵⁸ *OC* V. 4, T. 7, p. 516.

⁵⁹ *Ibid.*, p. 549.

⁶⁰ *Ibid.* p.540.

⁶¹ *Ibid.*

⁶² *Ibid.*, p.541.

⁶³ *Ibid.*: “It is necessary to know, thanks to the writers who teach us, that which men have done and thought throughout the ages....now if we ask of history what man is, history answers that man is a social being, and that he is always seen in society”.

⁶⁴ *Ibid.*, p. 546: “If we pass from the Egyptians to Orientals really much more ancient than them...we will find again a myriad of centuries, and always the reign of Gods preceding that of men”.

human weakness, still their general character is inalterable and necessarily founded upon the truth”.⁶⁵ Significantly, there is nothing in tradition or myth about the state of nature. In this way Maistre attempts to argue that the expansive reasoning of the *philosophes* must ultimately be constrained by the political realities embedded in history and tradition. In classical authors and in the myths of ancient civilisations, Maistre finds paradigmatic examples of his own view that man is only man when fully contextualised, a social animal not a creature of nature, and thus understood not as a function of abstract reason but as embedded in a particular culture.

Following on from this rebuttal, Maistre turns to his substantive critique of the *Discours* to analyse what Rousseau actually means by the term ‘nature’. Citing Pufendorf to support his argument⁶⁶ that the “state of nature pure and simple...is not the state to which nature has destined man”,⁶⁷ Maistre asserts the seeming paradox that the state of nature for man is to be *against* nature,⁶⁸ whereas Rousseau’s man “is only man less all that he has from the institutions that surround him...which is to say a man who is not a man”.⁶⁹ As an alternative to Rousseau’s conception, then, Maistre provides two linked definitions of the state of nature: it is divine action

⁶⁵ Ibid., p. 547.

⁶⁶ Ibid., p. 526: “I quote the famous Jurisconsult even though he is not in fashion because he expresses ideas which are, more or less, in all minds and which it only a question of developing”.

⁶⁷ Ibid., p. 525 - 526: Maistre quoting Pufendorf, *Droit de Nature et des Gens*, in Jean Barbeyrac’s translation, Book I.II.4. Other sections of the translation that Maistre quotes in support of the same argument are at p. 526 (I.II sec. 1): “It [the state of nature which is against nature] is when one understands that each is placed by birth, making abstraction of all inventions and establishments that are purely human or whose inspiration are divinely inspired .. and by which we understand not only the diverse types of arts with all the comforts of life in general, but also civil societies whose formation is the principal source of good order apparent among men” and p. 526 (I.II sec. 2): “ “In a word, man in the state of nature is a man who has fallen from the clouds.”

⁶⁸ Ibid., p. 526: “That is to say that the state of nature is against nature, or, in other words, that nature does not wish man to live in a state of nature”.

⁶⁹ Ibid.

manifested in the universe; and it is a cause acting under direction of the divine action. Thus, when one says nature, one necessarily invokes the idea of an intelligence and a will.⁷⁰

Maistre then presses home this point by providing another definition of the term: he defines it as the state capable of being modified by human action, before it has been acted upon by humans.⁷¹ Maistre's refutation of Rousseau's state of nature is thus now clearly founded upon a critique of Rousseau's distinction between nature and art.⁷² Maistre seeks to show that man has never been in a state of nature, because there has never been a time when there has not been any human art⁷³. In fact, attempting to oppose human artifice to nature, as Rousseau does, is doomed to failure, because it is impossible to discern any clear dividing line between the two.⁷⁴

Even on the question of human art, the two philosophers disagree. The human art *par excellence*, says Maistre, is perfectibility. This is a quality which Rousseau also

⁷⁰ Ibid., p. 527.

⁷¹ OC V 4 T 7, p. 525: "Man, being an agent whose action extends over all that he can reach, has the power to change a host of beings and to change himself; thus it was necessary to explain the state of these beings before and after they had been subject to human action and, on this point of view, nature is opposed to art (which is human power)".

⁷² Ibid., p. 530; see also p. 533, which contains a truncated form of the following quotation from Rousseau's *Discours*: "For it is not an easy undertaking to separate that which is original and that which is artificial in human nature and truly to know a state which no longer exists..."

⁷³ Ibid., p. 533 "M. Burke has said with a profundity that cannot be admired enough that "art is the nature of man". Here is the great saying which encapsulates more truth and more wisdom than the works of twenty philosophers that I know".

⁷⁴ Ibid., p. 532: "From the moment that one opposes art and human nature, one does not know where to stop. It is perhaps as far from the cavern to the cabin as from the cabin to the Corinthian column, and...all is artificial in man". See also p. 532: "I suppose then that this man, suffering from the intemperate air, takes shelter in a cave; until then he is still natural man; but if, finding it too narrow, he decides to lengthen the shelter and weave some branches together, supported by posts, this is, incontestably, art. Does he cease then to be a natural man; and this roof of foliage: does it belong to the divine will or to human art?"

uses, and their understanding of the term superficially appears to be similar.⁷⁵ But for Rousseau, perfectibility is a quality like any other, whilst for Maistre, “perfectibility is the quality of all other qualities”,⁷⁶ a view that not only echoes the concept of the platonic ideal, but also brings to mind the scholastic quality of practical reason.⁷⁷ As for man’s faculties, for Maistre it is unacceptable that they be either left dormant or used against the will of the Creator in contravention of the teleological order, in the manner that Rousseau states.⁷⁸ The teleological quality of societal development and the existence of human faculties together prove that man is made for society, because a creature cannot have received faculties that he is not meant to use.⁷⁹ For Maistre, morality only refers to doing good or evil in one’s

⁷⁵ Rousseau, *Discours sur l’Origine*, p. 184. For Rousseau, perfectibility is an open-ended process of improvement without any predetermined goal, and with no concept of achieved perfection. According to Nicholas Dent in *Rousseau* (London: Routledge, 2005), p. 61, perfectibility refers to man’s “capacity to learn about his environment and to acquire new skills to enable him the better to make use of it for his own benefit.”

⁷⁶ OC V. 4, T. 7, p. 551.

⁷⁷ See Plato, *The Republic*, trans. Desmond Lee (Penguin: London, 1955), p. 239, and John Finnis, *Natural Law and Natural Rights* (Oxford: Oxford University Press, 1980), pp. 100-101: “practical reasonableness...is participated in precisely by shaping one’s participation in the other basic goods, by guiding one’s commitments, one’s selections of projects, and what one does in carrying them out....The principles that express the general ends of human life do not acquire what would nowadays be called a ‘moral’ force until they are brought to bear upon definite ranges of project, disposition or action...how they are thus brought to bear is the problem for practical reasonableness”.

⁷⁸ OC V 4 T 7, p. 533; “It is absurd to imagine that the Creator gave faculties to a being which it must never develop and even more absurd to suppose that any being whatsoever might give itself those faculties or use those which he received to establish an order of things contrary to the will of the Creator”. Also see Rousseau, *Discours sur l’Origine*, p. 169: “Religion tells us to believe that God himself, having drawn men from the state of nature immediately after creation, created them unequal because he wanted them to be that way; but we are not prevented from conjecturing – drawing upon the nature of man alone and the beings which surround him – about what would have become of the human race had it been left to itself”.

⁷⁹ Maistre uses the example of language to illustrate this point. OC V 4 T 7, p. 553ff.: “Besides, language alone would prove that man is a social being in essence...if man is made to talk, it is apparently to talk to someone”. This reflects an orthodox Catholic position; see Thomas Aquinas, *Commentary on Aristotle’s Politics*, trans. Richard Regan (London: Hackett Publishing, 2007), p. 17: “Language is a property only of man, because in comparison with other beings it is the privilege of man to have the knowledge of good and evil and consequently of the just and unjust and the like, of what can be uttered by language. Therefore, language is by nature due to man and has as its natural end that man may live in community for good or evil, for right or wrong, it must be concluded, on the strength of the axiom that nature does not produce anything for nothing, that man, impelled by nature shall live in community.” See also Benjamin Thurston, “Joseph de Maistre et la Tour de

apportioned place: it does not entail being able to change that order.⁸⁰

Consequently, Maistre rejects Rousseau's view that, to make a change in the order, man may use that which is a potential within him, but it is also possible that this potential may remain dormant: it is absurd, Maistre thinks, to believe that man possesses faculties that could remain undeveloped.⁸¹

These, then, are the positive aspects of the Maistrian critique of the state of nature, in which he stresses the natural development of political society and emphasizes the fact that man has a unique capacity for perfectibility which leads him to exercise his qualities in relation to other human beings, and which renders a capacity for association a part of his nature. This is the fundamental structure of Maistre's political theory – that man has a capacity to relate to his fellows and to strive towards perfection. Unlike Rousseau, Maistre believed that socio-political structures were a fundamental part of human nature, not an assumed set of structures that pervert that nature.

Despite these positive assertions regarding the nature of human association, however, his work also reveals the presence of darker forces. Certainly, says Maistre, quoting Marcus Aurelius, man is sociable because he is reasonable, but he is also corrupt in his essence, and as a consequence must be governed.⁸² If scholastic reasoning shows its influence in the positive aspects of Maistre's theory of

Babel", in *Joseph de Maistre*, ed. Phillippe Barthelet (Lausanne: Editions L'Age d'Homme, 2005), p. 309.

⁸⁰ Ibid.

⁸¹ *OC V 4 T 7*, p. 551.

⁸² Ibid., p. 556.

political society, then this element of pessimism is influenced by the Augustinian heritage in European thought, as well as Maistre's detailed reading of Hobbes.⁸³ Thus, where Rousseau asserts that man is naturally good and that his vices derive not from his nature, but from society,⁸⁴ Maistre's view is the opposite. For him, man is composed of two warring essences, one of which is good, the other bad.⁸⁵ "How can such a being live with his fellows?"⁸⁶ Maistre asks.

The answer is that, without some form of intervention, he cannot: since he is at least in part evil, he must be governed.⁸⁷ Here, a theological motif is incorporated into a political anthropology by Maistre to form a definition of government based on the need to resolve conflict between individuals.⁸⁸ But this government comes from the nature of things and is not a matter of choice.⁸⁹ Here then, contrary to orthodox Catholic political thought,⁹⁰ Maistre describes a complex situation in which a Hobbes-like view of the state of man without government as being akin to warfare,

⁸³ For the influence of Augustine on Hobbes, see Luc Foisneau, "Obeissance Politique et Salut du Chretien: Hobbes et l'Augustinisme", in *Religion et Politique: Les Avatars de l'Augustinisme* (Saint-Etienne: Publications de l'Université de Saint-Etienne, 1998) p.83; Bonnie Kent, "Augustine's Ethics", in *The Cambridge Companion to Augustine* (Cambridge: Cambridge University Press, 2001) p. 218. For Maistre's reading of Hobbes, see, for example, Archives Cote 2J 19 Notebook, p. 667 et seq., comprising Maistre's notes on *De Corpore Politico*.

⁸⁴ Rousseau, *Discours sur l'Origine*, annotation to p. 184: "Men are bad; a sad and continual experience unnecessary to prove; however, man is naturally good. I believe that I have shown this".

⁸⁵ OC V 4, T 7, p. 561: "One of his [i.e. Socrates'] most illustrious disciples has transmitted to us the ideas of his master on this astonishing contradiction which is in man. Nature, Socrates said, has united in this being the principles of sociability and of dissension".

⁸⁶ Ibid., p. 563.

⁸⁷ Ibid.

⁸⁸ Ibid.: "It is necessary that, when several people want the same thing, a power superior to all the competitors judges the matter and prevents them from fighting".

⁸⁹ Ibid.: "Government is not, then, a matter of choice, it is as a result of the nature of things".

⁹⁰ Heinrich Rommen, *The State in Catholic Thought* (New York: Greenwood Press 1945), p. 228: "The state is not a consequence of sin. The doctors had to uphold this proposition against several sects which declared that the state originated in sin".

is grafted onto a naturalist view of political society, to establish the existence of an unbridgeable nature of the relationship between the governors and the governed.⁹¹

In the *Examination of a Piece by J-J Rousseau*, Maistre shows a distinct empathy with Hobbes' description of the human condition in the state of nature, suggesting that "Hobbes was perfectly right, providing that his principles are not taken too far".⁹² For Maistre, the sociable state exhibits the hallmarks of the state of war, even under the reign of Sovereigns.⁹³ This is not so different from the thought of Hobbes, whose examples of this condition once having existed are drawn from his observation of man's condition *within* society.⁹⁴ Maistre goes so far as to say that, during revolutions, "when the divine power is suspended", nations quickly fall into what Hobbes terms a state of warfare, and become "tormented by a deluge of crimes".⁹⁵

Ultimately, Maistre's political anthropology is not idealistic, and he offers no resolution to this conception of human society as fundamentally broken. He accepts the continuing irreconcilability of antithetical values as part of the political condition, believing that this antithesis can only be fully resolved if unity exists as

⁹¹ OC V 4 T 7, p. 563: "It is impossible that man be that which he is and not be governed, because a social and an evil being must be under the yoke".

⁹² Ibid.

⁹³ Ibid. "Society is really a state of war...one must have a sovereign and laws, and even under their auspices, is not society still a raging battle field?"

⁹⁴ Hobbes, *Leviathan*, p. 89: "It may seem strange to some man, that has not well weighed these things, that nature should thus dissociate, and render men apt to invade, and destroy one another: and he may therefore, not trusting to this Inference, made from the passions, desire perhaps to have the same confirmed by Experience. Let him therefore consider with himselfe, when taking a journey, he armes himselfe, and seeks to go well accompanied; when going to sleep, he locks his doores; when even in his house he locks his chests; and this when he knowes there be lawes, and publicke Officers, armed, to revenge all injuries shall bee done to him".

⁹⁵ OC V 4 T 7, p. 563.

an organising concept that prevails throughout the constitutional order. For adherents to the contractarian theory however, the existence of political life, predicated on a moment of transition, renders a different theory of man's nature necessary. The rejection of traditional authority pushes the search for perfectibility into the realm of the political: the possibility of salvation comes with the moment of consent to the formation of the commonwealth.⁹⁶

The Social Contract

Rousseau's Theory of the Social Contract

The passage from the state of nature to that of law defines the ordering of political society in liberal modernity. Constituent power emerges as a theme in political thought, alongside the conviction that the authority of government rests upon the consent of the people. It is the crystallisation of the idea that legitimate government is the artificial product of the voluntary agreement of free moral agents. As Hobbes states in *Leviathan*, "From this Institution of a common-welth are derived all the Rights and Facultyes of him, or them, on whom the Soveraigne Power is conferred by the consent of the People assembled".⁹⁷

⁹⁶ See Michael Oakeshott, *The Politics of Faith and the Politics of Scepticism*, ed. Timothy Fuller (New Haven: Yale University Press, 1996), p. 39.

⁹⁷ Hobbes, *Leviathan*, p. 121.

It is this version of the social contract described in *Du Contrat Social*, rather than the version presented in the *Discours*, which is the target of Maistre's criticism.⁹⁸

Rousseau holds true to the common features of the contractarian tradition – the state is the outcome of a covenant amongst men, its purpose is the protection of the people to which it owes its being and the figure of the sovereign must have enough power to provide some protection. To this extent, Rousseau is in accord with Hobbes' assertion that sovereignty must be absolute or not at all.⁹⁹

But Rousseau disagrees with an associated conclusion of Hobbes, that man must either be free or constrained by the rule of the sovereign,¹⁰⁰ for Rousseau's radical version of the social contract maintains that men can, at the same time, be both free and members of a political society.¹⁰¹ Whereas for Hobbes once the multitude performs its covenanting function it ceases to perform a political role,¹⁰² for

⁹⁸ Rousseau, *Discours sur l'Origine*, pp. 238-9. In the *Discours*, Rousseau represents the social contract as a trick played by the rich and powerful on the poor and weak. The rich stress the necessity for law in order to bring stability to society and to reduce the conflict which has grown up in the state of nature., but this form of the social contract only gives increased power to the rich and further oppresses the weak. In the *Du Contrat Social*, by comparison, the act of contracting is more abstract, a hypothetical coming together of equals – see Rousseau, *Du Contrat Social*, p. 55.

⁹⁹ Rousseau, *Du Contrat Social*, p. 55: "I suppose that men come to the point where the obstacles which detract from their preservation in the state of nature are greater than the strength that each individual has to survive in this state. So, this state no longer being able to exist, humans would perish if they did not change their way of life. Now as men may not create new forces, but can only unite and direct those which exist, the only method of preserving themselves is by forming, by aggregation, the sum of their forces by which they can overcome any resistance, putting them in operation by a single force and making them act in concert".

¹⁰⁰ Hobbes, *Leviathan*, p. 148.

¹⁰¹ Whence the infamous passage by Rousseau, *Du Contrat Social*, p. 60: "In order that the Social pact not be a vain formula, it is tacitly stated in this commitment, which alone can give force to others, that whoever refuses to obey the general will shall be constrained by the whole body; that which means nothing other than he will be forced to be free".

¹⁰² Hobbes, *Leviathan*, p. 121.

Rousseau, the people as a people retain a purpose.¹⁰³ Rousseau's conception builds, perhaps, on Locke's acknowledgment of the people's continuing role, with its implicit recognition of its destabilising potential as a political force.¹⁰⁴ And from Locke's admittedly ambiguous account of the people there emerges the fundamental question as to how a multitude might determine the appropriate structure of political authority.

The solution proffered by Rousseau returns to the terms of the fundamental tension expressed in the notion of constituent power. His solution in fact represents an attempt to synthesise this most profound of constitutional antinomies, that between liberty and law: the essence of the transition from nature to civil society.¹⁰⁵

Rousseau's belief is that man can be both ruled and free if he rules himself.

Following from this, a people can be free if it retains sovereignty over itself.¹⁰⁶

Rousseau dispenses with the Hobbesian notion of alienation from sovereignty and instead adopts a principle of thought which is originally Stoic in conception,¹⁰⁷ and in so doing he is able to proffer a solution to the problem caused by the falling away of ancient hierarchical authority forms. In Maurice Cranston's words, "Rousseau's

¹⁰³ Rousseau, *Du Contrat Social*, p. 65: "I say then that sovereignty being only the exercise of the general will may never be alienated, and that the sovereign, which is only a collective being, may only be represented by itself".

¹⁰⁴ Locke, *Two Treatises on Government*, p. 385: "There remains still in the People a *Supream Power* to remove or alter the Legislative". See also J.H. Franklin, *John Locke and the Theory of Sovereignty* (Cambridge: Cambridge University Press, 1978).

¹⁰⁵ Rousseau, *Du Contrat Social*, p. 60.

¹⁰⁶ *Ibid.*, p. 61: "That which man loses by the social contract is his natural liberty and an unlimited right to all that which tempts him and that he may attain; that which he gains is civil liberty and the ownership of all that he possesses.... To that which has preceded one could add moral liberty to the acquisition of the civil state, which alone makes man truly master of himself".

¹⁰⁷ See Malcolm Schofield, "Epicurean and Stoic Political Thought", in *The Cambridge History of Greek and Roman Political Thought*, ed. Christophe Rowe and Malcolm Schofield (Cambridge: Cambridge University Press, 2000), p. 444.

solution of the problem of how to be at the same time ruled and free might plausibly be expressed as democracy”.¹⁰⁸ And it is this double aspect of Rousseau’s work – embracing the possibility of consent to form a political society and the associated possibility that sovereignty might reside in the people – that Maistre understands provided the basis for post-revolutionary democracy.

Maistre’s Critique of the Social Contract

Rather than interpreting Rousseau’s alignment of liberty with law as a neo-Stoic “pure act of the intellect with all passions subdued,” as one commentator has put it,¹⁰⁹ Maistre believed that Rousseau’s formulation of the people as sovereign expressed the terrible dangers inherent in the political contradictions of modern constitutional thought.¹¹⁰ To Maistre, the sovereignty of the people promised perpetual political impermanence, anarchic fragmentation and /or despotic consolidation; in any event, it hastened the retreat from unity that Maistre feared.¹¹¹ The result of that withdrawal, and the corresponding advance of the constituent notion of the sovereignty of the people, involves the imposition of the unfulfillable

¹⁰⁸ Maurice Cranston, Introduction to the *Social Contract* (London: Penguin, 1968), p. 30.

¹⁰⁹ Martin Loughlin, *The Idea of Public Law*, p. 105.

¹¹⁰ OC V 5 T 9, p. 494: “The principle of the sovereignty of the people is so dangerous that even in the event that it were true, it would be necessary not to permit to be demonstrated”.

¹¹¹ OC V 1 T 1, p. 320: “It is Rousseau’s eternal mania to mock the *philosophes* without suspecting that he too is a *philosophe* in the full sense of the meaning that he attributes to this word; thus the *Social Contract* denies from start to finish man’s nature – which *exists*, to explain the social contract – which does not. This is how one reasons when man is separated from God”.

task of eliding the governors with the governed.¹¹² This manoeuvre, though doomed to failure, will nevertheless generate dangerous political and social incoherence.¹¹³

Maistre's *Study on Sovereignty* is thus, in Jean Louis Darcel's words, "an anti-social contract",¹¹⁴ which focuses upon and rejects this very notion of the constituent power of the people as a means of founding political sovereignty. Maistre's critique can be divided into three parts: the examination of the theory of the consent of the people and its relationship to the notion of sovereignty; the notion of the sovereignty of the people itself; and a critique of the abstraction that results from the uniform application of the social contract.

In considering the impact of the social contract, Maistre turns once more to the discipline of history in order to re-affirm certain Aristotelian certainties,¹¹⁵ arguing in particular that there is not a single example of a people who have been constituted in a contractarian manner into a political body.¹¹⁶ Although he refutes the idea that

¹¹² Ibid., p. 324: "Everyone knows this famous line: *the first to be king was a lucky soldier*. Perhaps nothing so false has ever been said: on the contrary it must be said that *the first soldier was sent to war by a king*."

¹¹³ Ibid.: "The term 'the people' is a relative one which has absolutely no meaning separated from the idea of sovereignty".

¹¹⁴ Jean-Louis Darcel, Introduction to Joseph de Maistre, *De la Souveraineté du Peuple* (Paris: PUF, 1992), p. 13: "*De la Souveraineté du Peuple* is on this basis an anti-social contract. Just as Locke had written his treatise to refute Robert Filmer's thesis supporting Anglican theocracy, and just as Rousseau had written the *Du Contrat Social* in response to the theories of the school of natural law and to refute those writers (in particular Grotius) whom he saw as proponents of despotism, so Joseph de Maistre refutes...the Citizen of Geneva".

¹¹⁵ OC V 1 T 1, p. 321: "The question comes down to knowing if man became a political animal as Aristotle said, by or against the divine will".

¹¹⁶ Ibid., p. 315: "... in place of the perfectly simple proposition that is self evident, the subject of metaphysics is manipulated to support vague hypotheses which are disproved both by good sense and by experience".

consensus demonstrates the validity of a proposition,¹¹⁷ Maistre does concede that in an ‘inferior’ sense, it may be argued that human consent founds sovereignty, because if a people suddenly decided not to obey a ruler, sovereignty would disappear and it would be impossible to imagine the establishment of a sovereign without imagining a people consenting to obey.¹¹⁸ In introducing this observation in opposition to those statements of his that deal with constituent power as coming from God, Maistre blurs the distinction between the Divine and the mundane in the constituent process.

This is reminiscent of Pufendorf’s project to situate political power somewhere between an impenetrable transcendentalism and rationalist sufficiency,¹¹⁹ and these ideas lead to the conclusion that the positive laws of civil society have the obligatory force of divine law.¹²⁰ Pufendorf’s attempt to shift the locus of authoritative political power away from the theological realm resulted in ambiguity, however, and Maistre’s thought also inhabits an indistinct zone of meaning somewhere between the theological and the political.¹²¹ The effect of this is that certain privileged concepts can have more than one sense. In this way, Maistre tempers the pure absolutist view that Divine authority directly constitutes the political order without

¹¹⁷ Maistre Family Archives, Cote 2J 15-18 CD 49, NB 94: “What proof! All the people have believed in magic, in astrology, in the influence of the moon!”

¹¹⁸ OC V 1 T 1, pp. 312-13: “It is very true, in an inferior and crude sense, that sovereignty is founded on human consent, for if any people agreed suddenly not to obey, sovereignty would disappear, and it is impossible to imagine the establishment of sovereignty without imagining a people who consent to obey”.

¹¹⁹ Simone Goyard-Fabre, *Philosophie Politique, XVI-XX Siecle* (Paris: PUF, 1987), p. 257.

¹²⁰ Pufendorf, *Droit de la Nature et les Gens*, Ref., II, III, sec. 24, trans Jean Barbeyrac, p. 258.

¹²¹ See, for example, OC V 1 T 2, p. ix: “The dogmas and even the maxims of high Catholic practice are only for the large part the laws of the world divinised”.

accepting the power of the masses, and reveals himself to be in a different category to, say, divine-right theorists such as Bossuet and Filmer.¹²²

This blurring of the notion of constituent power is emphasised when Maistre returns to the theme of the law and its relationship with the process of founding political society. Sovereignty, says Maistre, comes from God in the same way that laws do.¹²³ Maistre argues that, just as the statements ‘the law comes from God’ and ‘the law come from man’ are not mutually contradictory, so it is with sovereignty.¹²⁴ The crucial question, Maistre believes, is to examine the concept of sovereignty itself in order “to examine what is divine and human within it”.¹²⁵

In addition, the implicit recognition of the political existence of the people, which, however undesirable it is, cannot be denied, adds to the sense that his thought is marked with the stamp of modernity.¹²⁶ Again, this is not to say that Maistre believed that God *qua* God is precluded entirely from the process of the formation of political society. To deny that sovereignty comes from God just because he uses man to establish it is akin to saying that God has not created man because every human being has a mother and a father.¹²⁷ Yet, as much as this statement of the respective roles of God and man in the establishment of sovereignty is a

¹²² OC V 1 T 1, p. 313: “God not having judged it appropriate to employ supernatural instruments for the establishment of empires, it is certain that...everything has to be done by men”.

¹²³ Ibid., p. 313-314.

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ On the emergence of the people as a political phenomenon, see Margaret Canovan, *The People* (Cambridge: Polity, 2005) and Rogers M. Smith, *Stories of Peoplehood: the Politics and Morals of Political Membership* (Cambridge: Cambridge University Press, 2003).

¹²⁷ OC V 1, T 1, p. 313.

pronouncement of theological belief, it also affirms temporal, hierarchical political values – there is no question of pact or contract or the meeting of wills - and removes any decisive constituent function from the domain of the masses. Authority derives as much from the fact of its otherness as from the identity of its source.¹²⁸

Maistre's hybrid conception contains no egalitarian implications – whilst people and sovereign necessarily coincide,¹²⁹ it is impossible for a people to exist without a sovereign. As soon as families, the basic unit of community, come into contact with each other, they need a sovereign¹³⁰ and this sovereign makes them a people by giving them laws. Society therefore *only* exists through a sovereign. This account of the constitution of the political regime is suffused with a belief in the importance of unity. The idea of a people “is the aggregation around a common centre”,¹³¹ namely the sovereign, without which a people cannot come together or attain political unity.¹³²

Thus, Maistre describes a complex inter-relationship which contains a juridical or relational element, and is not merely defined by its physical characteristics or by the fact of dominance,¹³³ the population, whatever its anterior organisation into family

¹²⁸ OC V 1 T 1, p. 265 “It is always necessary for the origin of sovereignty to appear as being outside the sphere of human control, so that the very men who appear to be directly involved are nevertheless only circumstances”.

¹²⁹ Ibid., p. 323.

¹³⁰ Ibid., p.324.

¹³¹ Ibid.

¹³² Ibid.

¹³³ Ibid., annotation to p. 323: “In observing that no human association may exist without some kind of domination, I do not intend to establish an exact equivalence between paternal authority and sovereign authority”. See also Christophe Boutin, “Le “Caractere National” chez Joseph de Maistre: Patriotisme Contre Indentite Juridique”, in *Joseph de Maistre*, ed. Barthelet, p. 458.

or tribe, forms a people at the moment it recognises a common sovereign.¹³⁴ This is why Rousseau's idea of sovereignty as "a principle of equality which identified the ruled element or subjects themselves as supreme authority"¹³⁵ is nonsensical to Maistre, because this is to suggest that the populace must be sovereign over itself, meaning that the people are both sovereign and subject – a nonsense because "the people that commands is not the people that obeys".¹³⁶

To enunciate the idea of the sovereignty of the people is to enunciate a new way of thinking about the world, although, as John Dunn notes, this "is never wholly convincing".¹³⁷ The notion of the people as sovereign is an attempt to reconcile the tensions between freedom and necessity which run through constitutional discourse, in order to narrow the perception of the gulf between the governors and the governed.¹³⁸ For Maistre, the impossibility of identifying those in authority with those under it is vital to the correct sequencing of constitutional order; without such a hierarchy the very *sense* of the questions involved is altered.

¹³⁴ *OC V 1 T 1*, p. 324: "As soon as families meet, there must be a sovereign over them".

¹³⁵ Robert Wokler, "Ancient Post-modernism", in *The Cambridge Companion to Rousseau*, ed. Patrick Riley (Cambridge: Cambridge University Press, 2001), p. 423.

¹³⁶ *OC V 1 T 1*, pp. 311-12: "There is here surely some equivocation, if there is not a mistake, because the people who commands is not the people who obeys".

¹³⁷ John Dunn, *Setting the People Free: The Story of Democracy* (London: Atlantic Books, 2005), p. 142.

¹³⁸ See Niccolò Machiavelli, *Il Principe* (Einaudi: Turin 1995), pp. 5-6: "And I hope it may not be accounted presumptuous if a man of lowly and humble station ventures to discuss and direct the conduct of princes, for as those who wish to delineate countries place themselves low in the plain to observe the form and character of mountains and high places, and for the purpose of studying the nature of the low country place themselves high upon an eminence, so must one be a prince to know well the character of the people and to understand the nature of the prince well one must be of the people".

The challenge of the modern theory of constituent power is to demonstrate this contrary stance, “to show the governed that the authority which confronts them is their own, that it is their will which stands behind it and their interests which it is in the end compelled to serve.”¹³⁹ The point of the modern notion of constituent power is that it is not linked to particular traditions or integrated into national histories or cultural customs. Like much of Enlightenment thought, it is an abstract notion that possesses a quality of universalised instrumentality, a quality that came to exist after the old doctrine of the essence of man as a compound substance was abandoned for Cartesian rationalism.¹⁴⁰

It is these implications that Maistre understands, and by which he is repelled, and his objections to them continue to have a resonance in contemporary considerations of the notion of constituent power. Jürgen Habermas, for example, believes that Maistre’s arguments should be used “to remind overly naïve believers in progress of the limits of what can be done. The overextended project of a self-organising society, so the argument goes, carelessly disregards the weight of traditions, organically developing reserves and resources that cannot be created at will”.¹⁴¹ The social contract as a mechanism for instigating sovereign power does not possess the capacity to discern the differences in political society that may exist due to the varied characteristics of different communities and their different cultural traditions.

¹³⁹ Dunn, *Setting the People Free*, p. 142.

¹⁴⁰ See Michel Villey, *La Formation de la Pensée Juridique Moderne* (Paris: PUF, 2006), p. 507; Rommen, *The State in Catholic Thought*, p. 225.

¹⁴¹ Habermas, *Between Facts and Norms*, p. 488.

Maistre, on the other hand, is fascinated by different cultures and cultural practices and takes a relativist attitude towards the merits of differing political systems.¹⁴² In doing so, he defends tradition in whichever form it is expressed against the uniformity of modernity by referring to the diversity of actual cultural and political systems and with an insistence on the reality, rather than the Enlightenment *ideal*, of political form.¹⁴³ The power that created social authority and sovereignty has determined that there should be different modifications to it, according to the varying circumstances of nations. As a result, Maistre believes that institutions must accommodate a myriad of historical and cultural factors.¹⁴⁴ This opposition to the universalising, imperialist tendencies of rational European modernity's quest for cosmopolitan pre-eminence shows up strongly in Maistre's critique of constituent power.¹⁴⁵

According to this view, the same laws cannot suit different countries. "Put away from you these absurd theories which they send you from France...what! All men are made for the same government and that government is pure democracy! What! Are all political philosophers mistaken from Aristotle up until the time of Montesquieu?"¹⁴⁶ For Maistre, nations possess a common soul and a moral unity

¹⁴² *OC V 1 T 1*, p. 328: "From these different national characters are born the different modifications of governments. It may be said that each has its character".

¹⁴³ *Ibid.*, p. 328, "The general objects of every good institution must be modified in each country by the relationships which come as much from the local position as from the character of the inhabitants; and it is on these relationships that a system of institutions must be assigned to each people which are the best, not perhaps in themselves but for the State to which it is destined".

¹⁴⁴ *Ibid.*, p. 329.

¹⁴⁵ For a detailed discussion of this point in relation to constitutions, see Chapter 4 below.

¹⁴⁶ *OC V 4 T 7*, p. 222; see also *OC V 1 T 1*, p. 328: "It must not therefore be believed that "every form of government suits every country: liberty for example, not being a fruit of every climate, is not

which is unique to that constitutional configuration.¹⁴⁷ It follows that the social contract is a chimera.¹⁴⁸ If there are as many different governments as there are people, and if the forms of these governments are determined by moral, physical and geographical positions, then one cannot speak of a universalised, uniform pact.¹⁴⁹

Maistre thus denies the possibility of the people constituting itself into a sovereign body. He finds just as abhorrent the suggestion that the sovereignty of the people is a uniform concept, which, its proponents believe, will fit every constitutional scenario, and as equally unacceptable to Maistre are the implications for traditional constitutional order of the political system with which the sovereignty of the people is intimately connected – democracy. “Despotism”, says Maistre with seeming equanimity, “is as natural and legitimate as democracy for another”.¹⁵⁰ But the mildness of this even-handed statement belies the vehemence with which Maistre goes on to oppose the idea of democracy and examine the associated concepts of law and liberty.

available for all people”. The more one meditates on this principle established by Montesquieu, the more one senses its truth”.

¹⁴⁷ It is important to note that Maistre’s notion of diversity is one based upon there being an international plurality of cultures and does not depend upon an intra-national multiculturalism. For Maistre, as for Carl Schmitt, homogeneity is of some constitutional significance. See Chapter 6, below.

¹⁴⁸ *OC V 1 T 1*, p. 329.

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*; also see the annotation on p. 329: “Will one say even in this hypothesis that there is always a pact in virtue of which each contracting party is held to maintain government, such as it is? In this case, for despotism or absolute monarchy, the pact will be precisely that which Rousseau ridiculed at the end of his pitiable chapter on servitude. “I make with you a convention totally to your disadvantage and totally to my profit which I will observe as long as it pleases me and you will observe as long as it pleases me””. (Maistre is quoting from Rousseau, *Du Contrat Social*, p. 54).

Democracy, Law, Liberty

Democracy

For Maistre, democracy, which was born out of the French Revolution, is synonymous with the sovereignty of the people¹⁵¹. The French Revolution appeared to him, “to express the idea of constituent power in all its direct, historical specificity”,¹⁵² representing a moment when the implications of a power grounded in the will of the multitude became startlingly apparent. Throughout his work, Maistre offers a number of formulations of this new and – for him – troubling political phenomenon. It is, “an association of men without sovereignty”,¹⁵³ which reflects his view that the sovereignty of the people is an impossibility, but he also defines it as “a government in which the masses exercise sovereignty”,¹⁵⁴

These two contrasting formulations serve to illustrate different aspects of Maistre’s view of the formation of political society by means of the power of the people. The first statement expresses the idea that the construct that is ‘the people’ is not equal to the task of bearing authority. In such a case, democracy leads inevitably to disintegration, anarchy and incoherence. In the second statement, Maistre uses the

¹⁵¹ For Maistre, “Pure democracy exists no more than absolute despotism....The idea of a entire people as both sovereign and legislator shocks good sense so strongly that the Greek politicians...never spoke of democracy as a legitimate form of government...Aristotle especially defines democracy as an excess of republic” (*OC V 1 T 1*, p. 464). For the limited occasions in which Maistre specifically considers democracy as a viable political form, see Chapter 6 below.

¹⁵² Loughlin, *The Idea of Public Law*, p. 109.

¹⁵³ *OC V 1 T 1*, p. 465.

¹⁵⁴ *Ibid.*, p. 42.

term ‘masses’ to demonstrate his explicit awareness of the existence of this modern unit of constitutional discourse and his recognition of its constitutional energy.

There is thus in Maistre’s work an acknowledgment of the relation between democracy and the raw political force of the people¹⁵⁵ – although he may have been conservative in principle, he was clearly not blind to the political realities of the day.

Law

Just as significantly, both of these formulations exclude any mention of the law, a theme which, as we have seen, threads itself throughout Maistre’s discussion of the validity of the foundation of political society. The conception of the law as the will of a governing entity is a fundamental element of his belief in the constitution as unity. The existence of law implies the generation of obligation, a vital part of Maistre’s understanding of the individual’s relation to the constitutional community.¹⁵⁶ Law, which must emanate from a single source outside the control of those who are subject to its authority, entails obligation; obligation defines the nature of the hierarchical structure, which in turn explicates the correct ordering of the constitutional scheme. Law necessarily presupposes a superior will that must be obeyed.¹⁵⁷

¹⁵⁵ See, for example, *OC V 5 T 9*, p. 11: “I do not know how to express to you how it has reinforced my anti-democratic ideas....I understand very well how systems fermenting in human heads become passionate; believe me that one could not abhor too much this abominable assembly”.

¹⁵⁶ *OC V 1 T 1*, p. 236.

¹⁵⁷ *Ibid.*

Maistre contrasts this view of the law, which represents an answer to Rousseau's "greatest political problem",¹⁵⁸ with that of Locke, who in attempting to reconcile democracy with the claims of law sought to find democracy's source in the unification of wills, the modern constituent act. For Maistre, in contrast, it is precisely democracy's character as a collection of wills which excludes the idea of law from it, and consequently prevents democracy from ever forming a lasting political settlement.¹⁵⁹ His belief that law is the product of a superior will, a thing designed to control and which is oriented towards the past, means that he sees law as a political imperative linked not only with revelation but with tradition.¹⁶⁰ In this way it stands in contrast not only with the nomocratic impulses of the Enlightenment,¹⁶¹ which understood law to be an explication of Universal Reason, but also with the ideals of democracy as an expansive, forward-looking and irresistible force.¹⁶²

¹⁵⁸ See Rousseau, *Lettres Philosophiques* (Paris: Flammarion), p. 98: "That of a doctrine of law whose foundation is placed above man".

¹⁵⁹ OC V 1 T 1, p. 237: "Law is only properly law and has a genuine sanction if it is taken as emanating from a superior will; so that its essential feature is that it is not the will of all. Otherwise law would be only regulations, and as the author [Bergier] already cited earlier says again, "those who have had the liberty to make these compacts have no less the power to revoke them; and their descendants, who have no part in them, are even less obliged to observe them"" (Maistre quotes Bergier's, *Traité historique et dogmatique de la religion*, V III, Ch IV, s. 12, pp. 330, 331).

¹⁶⁰ OC V 4 T 7, p. 154: "There are excellent prejudices which are the most sacred and the most ancient of laws".

¹⁶¹ Simone Goyard-Fabre, *Philosophie Politique XVI – XX Siecle* (Paris: PUF, 1987), p. 267, in which are listed significant texts on legislation:

- 1755: *Le Code de la Nature* by Morelly
- 1756: *L'Ami des Hommes ou Traité de la Population* by Mirabeau
- 1764: *Treaty of Delicts and Punishments* by Cesare Beccaria
- 1765: Commentaries on the laws of England by Blackstone
- 1767: Treaty on civil laws by Simon-Nicolas-Henri Linguet
- 1776: *On Legislation, or, The Principles of the Laws* by Mably
- 1789: Introduction to Moral Principles and Legislation by Bentham
- 1802: Treatise on civil and criminal law by Bentham

¹⁶² Loughlin, *The Idea of Public Law*, p. 100: "Democracy is not easily reconciled to law. It is an expression of an expansive or innovative movement that asserts the capacity of the people to decide for themselves the type of ordering under which they might live. As the primary legitimating

Maistre clearly states his conviction that it is impossible to reconcile democracy with law as a function of unity: “The accord of the people is impossible...and accord is absolutely not law and does not obligate anyone”.¹⁶³ Recalling the first definition of democracy given above (“an association of men without sovereignty”), Maistre states that the sovereignty of the people lacks the force of law, which is a vital ingredient of any valid political structure. Democracy is antithetical to law in Maistre’s thought – its acceptance emphasises the upheaval of traditional constitutional values that bind society together in the correct hierarchical sequence. And bound to this new, expansive political form is the concept of liberty, which, understood in its modern sense, is another challenge to Maistre’s understanding of the law.

Liberty

Another formulation of the law proffered by Maistre is that it is a general rule without passion to limit the passions.¹⁶⁴ According to this formulation, law opposes the modern value of liberty, an opposition which is just one aspect of a dialectic between authority and liberty that emerges at every stage of the argument between Maistre and the contractarians. Liberty is a value privileged by the thinkers of liberal democratic modernity, who at the same time are conscious of the

principle of modern political order, democracy fixes on the present and is orientated towards the future”.

¹⁶³ OC V 1 T 1, p. 236.

¹⁶⁴ OC V 4 T 7, p. 147.

consequences of allowing unmediated democratic power to remain intact.¹⁶⁵

Maistre's conception of liberty reflects his view that there are political values that override negative freedom, understood to be an attribute of democracy.¹⁶⁶ Any understanding of Maistre's view on constituent power and the sovereignty of the people must therefore address his conception of liberty.

Like Hobbes, Maistre believes that man has a fundamental need of order,¹⁶⁷ but unlike Hobbes there is no question of Maistre accepting the premise that man has a pre-existing liberty to renounce in the way that the social contract theorists describe.¹⁶⁸ For Maistre, liberty as a political consideration does not take precedence over the other concepts with which, in his writing, it is intimately linked – those of mastery, servitude and government.¹⁶⁹ Rather, the implications of liberty, as undermining the core constitutional value of unity, leads him to speak of it in pejorative tones: “There are no two words which fight each other and exclude each other more visibly than those of liberty and the law common to all [*droit commun*]: because if you ask to live like all others, you do not then want liberties; and if on the other hand you ask for it, you exclude explicitly the law common to everyone”.¹⁷⁰

¹⁶⁵ See, for example, Stephen Holmes, *Passions and Constraint: On the Theory of Liberal Democracy* (Chicago: The University of Chicago Press, 1995), p. 9.

¹⁶⁶ See Paul Kelly, *Liberalism* (Cambridge: Polity Press, 2004), p. 61.

¹⁶⁷ OC V 1 T 2, p. 339: “Man in general is too wicked to be free”. See also Hobbes, *Leviathan*, p. 120.

¹⁶⁸ Ibid., p. 338: “The opposite of this foolish assertion, man was born free is the truth”. See Hobbes, *Leviathan*, p. 86.

¹⁶⁹ OC V 2 T 3, p. 252.

¹⁷⁰ Ibid.

It is possible to see here the influence of ancient conceptions of the idea of liberty, and in particular the Platonic view of political freedom as the goal of democracies: in other words, the absence of control over the activities of individuals and of the people as a whole.¹⁷¹ Certainly, in claiming that the quest for a private domain corrupts one's attachment to the community, Maistre opposes Constant's definition of modern liberty in which the liberty of the private individual must be defended against the State.¹⁷² But Maistre by no means shares a view of liberty with all ancient conceptions of the term; in particular he rejects that strain of thought which identifies liberty with self-mastery,¹⁷³ strongly believing that man is incapable of ruling himself.¹⁷⁴ This enables him to conclude that liberty consists only in obeying the law, understood as an external force,¹⁷⁵ a belief he holds without identifying with Rousseau's faith in the idea of communitarian allegiance.

Whilst Maistre states that liberty, in a political sense, "can only ever be a negative expression which signifies the absence of an obstacle",¹⁷⁶ it is also the gift of kings and cannot be willed or created by man,¹⁷⁷ and it is certainly not an essential political value – "men are not in general made for liberty or even a degree of

¹⁷¹ Plato, *The Republic*, p. 319.

¹⁷² Constant, "De la Liberté des Anciens Comparée a Celle des Modernes", in *De l'Esprit de Conquête et de l'Usurpation* (Paris: GF-Flammarion, 1986), p. 265.

¹⁷³ See, for example, Saint Paul, Romans 7; Charles Taylor, *Sources of the Self: The Making of the Modern Identity* (Cambridge: Cambridge University Press, 1989), p. 115; although see OC V 2 T 4, p. 43: "It [i.e. philosophy] well understood that the strongest inclination of man is vicious to the point where he tends towards the destruction of society, so that there is no greater enemy than himself, and he understood that when he has learned to conquer himself, he knows all".

¹⁷⁴ OC V 1 T 2, p. 175: "The efforts of the peoples to create or increase their liberties result almost always by putting them in irons". Also OC V 7 T 13, p. 73: "It is the servitude of a part of this people which renders this State [i.e. Russia] peaceful: if each individual were master of his actions, I do not believe that peace would be possible at the present time".

¹⁷⁵ Archives, Cote 2J 22 Bis, CD No. 19, p. 46; Notebook page 119.

¹⁷⁶ OC V 2 T 3, p. 252.

¹⁷⁷ OC V 1 T 1, p. 68; OC V 7 T 13, p. 46.

liberty”.¹⁷⁸ Political movements like democracy have obscured this truth and have led to a misconception of the term. Furthermore, the Enlightenment insistence on emphasising liberty as an absolute right will, in Maistre’s eyes, lead to calamity: “Liberty and equality have come to present themselves to you under the guise of two divinities, but soon, throwing away these misleading disguises and deploying their dismal wings, they have glided down onto an unfortunate earth and shown their bloody ways”.¹⁷⁹ And this is just one of a number of deleterious effects that the sovereignty of the people and its political expression of democracy will engender, effects which Maistre goes on to examine in some detail.

Effects of Democracy

In any state, Maistre believes that a bond of allegiance is generated between an individual and the sovereign, no matter what form the figure of the sovereign takes. In a democracy, Maistre believes, that bond is between an individual and all the other members of the state, as sovereignty is divided between them. Thus the strength of attraction between the individual and the state is diluted, because instead of it going to an indivisible entity, it goes to every member of society.¹⁸⁰ Consequently, democracies can only sustain themselves through a process of

¹⁷⁸ *OC* V 4, T 7, p. 149; see also *OC*, V 7 T 14, p. 167: “Among the innumerable stupidities of the moment...is to believe that liberty is something absolute”.

¹⁷⁹ *OC* V 4 T 7, p. 161.

¹⁸⁰ *Ibid.*, p. 223.

‘exaltation’,¹⁸¹ but exaltation is not a natural state for human beings to maintain.¹⁸²

When the fervour for democratic unity dies away, the government is left with “no centre, no unity, the people no longer know what to do with their power, they do not know any longer where their power resides”.¹⁸³ Here, then, is one possible effect of democracy that Maistre gives: its potential to induce political and social fragmentation, the opposite of Maistre’s own “constituent principle... [which] is unity”.¹⁸⁴ For Maistre, constituent power without a strong organising principle is doomed to failure, and that organising principle cannot come from within democracy, because the realities of the social order will impinge upon any democratic ideal. Democracy could not exist for a moment if it were not tempered by aristocracy.¹⁸⁵

But in his second definition of democracy (“a government in which the masses exercise sovereignty”) Maistre anticipates the possible emergence of despotism. For Maistre, the tyranny of democracy is seen in its potential to generate power without restraint, with devastating consequences: “A light excess of severity...revolted a few months ago. In the most severe acts of the old government you always saw a marked moderation... The most absolutist of princes was aware of a multitude of restraints: he was restrained by his own character, by religion, by shame, by politics, by salutary counsel, by public opinion: but popular tyranny has absolutely no

¹⁸¹ *Ibid.*, p. 224.

¹⁸² *Ibid.*

¹⁸³ *Ibid.*

¹⁸⁴ *OC V 6 T 12*, p. 471.

¹⁸⁵ *OC V 1 T 1*, p. 473.

decency”.¹⁸⁶ These hypothetical consequences of democracy – the atomisation of society on the one hand, the danger of despotism on the other, and above all the need to temper the rawness of democratic power – will be familiar themes to readers of Tocqueville, who was almost certainly aware of Maistre’s writing,¹⁸⁷ and who shares Maistre’s deep concern with the root of these problems, namely an individualism that has inspired and is also the fruit of democracy. This, individualism, Tocqueville and Maistre both argue, has bred a faith in individual reason as the sole basis for opinion and belief.¹⁸⁸

Both men identify the paradoxical result of modernity’s demand for constitutional uniformity, which is based on the acceptance of Rousseau’s figure of the subject-sovereign and his understanding of the human being as being split into man and citizen.¹⁸⁹ According to Tocqueville and Maistre, in the modern state the democratic man is – as well as being an expression of political will – an individual separated from all established institutional relationships with his fellow man, for with the advent of civil society each being is freed from the static hierarchy of tradition, and

¹⁸⁶ *OC V 4 T 7*, p. 100. In a subsequent, powerful passage (pp.102-103) Maistre describes a crypto-Orwellian state of affairs: “A smile, an innocent gesture may pass as a conspiracy...Thoughts are crimes. It is necessary to remain and suffer, this is the law. The towns are nothing but great prisons in which all the public functionaries are gaolers. And do not believe that these misfortunes are only passing sufferings...a type of tunnel through which one must pass in order to arrive at happiness and liberty. The principles of the law that they preach to you are essentially vicious, their basis detestable. And again at *OC V 1 T 1*, p. 474: “When one opines on the rooftops, one cuts throats in the streets”.

¹⁸⁷ Through Tocqueville’s close association with Mme. Swetchine. For Maistre’s association with her, see, for example, *OC V 7 T 13*, pp. 417-426.

¹⁸⁸ *OC V 4 T 8*, p. 66; Maistre, speaking of the Reformation, which he sees as a pre-figuration of political insurrection, writes: “In freeing the people from the yoke of obedience and giving to it religious sovereignty, it unchained the general pride against authority and put discussion in place of obedience”. See also Alexis de Tocqueville, *De la Démocratie en Amérique*, Vol II (Paris: Gallimard, 1961), p. 143.

¹⁸⁹ Rousseau, *Du Contrat Social*, pp. 57-58; Tocqueville, *De la Démocratie*, p. 140.

is bound now only by the network of fleeting contacts that he has with his fellow citizens.¹⁹⁰ As a result, he comes to be defined only by his own interests, and thus lacks any idea of civic obligation.¹⁹¹ As a result, man is separated from his peers twice in the sequence of modern political thought, once at each extreme of modernity's conception of civilisation: first as an isolated man in the state of nature and then as a democratic individual.

Democratic man is as much of an artificial construct as man in a state of nature.¹⁹² The reality of man does not correspond with the abstract construction of the Godless democratic illusion. Contractualist modernity has effected a separation between the person rooted in a unified culture and tradition and the democratic individual whose image is subject to identical reproduction *ad infinitum*.¹⁹³ Where Tocqueville's solution to this problem is to accept the existence of democracy as a providential creation and to believe in its powers to overcome its own shortcomings,¹⁹⁴ Maistre proposes an alternative version of constituent power that is consonant with the values that he upholds: the figure of the Legislator.

¹⁹⁰ OC V 1 T 1, p. 467; Tocqueville, *De la Démocratie*, p. 23.

¹⁹¹ OC V 1 T 1, pp. 468-69; Tocqueville, *De la Démocratie*, p. 144.

¹⁹² OC V 1 T 1, p. 464.

¹⁹³ Ibid., p. 74: "The 1795 constitution, like its predecessors, was made for man. But there is no such thing as man in the world. During my life, I have seen Frenchmen, Italians, Russians and so on; thanks to Montesquieu I even know that one can be Persian, but I must say that, as for man, I have never come across him anywhere; if he exists, he is completely unknown to me... a constitution made for all nations is made for none; it is a pure abstraction, an academic exercise of the mind, according to some a hypothetical ideal, that should be addressed to man, in whatever imaginary realm he inhabits". See also Theodor W. Adorno and Max Horkheimer, *Dialectic of Enlightenment*, trans. John Cumming (London: Verso, 1997), p. 120.

¹⁹⁴ Tocqueville, *De la Démocratie*, p. 42: "To want to halt democracy appears then to be to fight against God himself, and it only remains open to nations to accommodate themselves to the social state which has been imposed on them by Providence".

The Legislator

As we have seen, Maistre forcefully refutes the possibility that valid constituent power can emanate from the multitude, because its political expression, democracy, is the antithesis of what he believes to be the primary constitutional building block, the law. Democracy, to Maistre, is an uncontrollable, destructive power which presents itself either in the atomisation of society or the emergence of a form of tyranny. And yet, despite his qualms about democracy, Maistre does not deny the existence of a constituent political process *per se*, and even attempts to explain the transition from raw unformed, political energy into an organised constitutional format. Given what we have learned of Maistre's political ideology so far, it should not come as a surprise to discover that Maistre's theory is an historically grounded, teleological process that places an emphasis on unity, law and decisive authority. It mediates between the (putatively divine) origins of political power (which stand outside the closed system of constitutional positivism) and the formalised patterns of constitutional energy. At the same time, Maistre describes an important aspect of his notion of the sovereign, which helps to shed light on the theoretical structure as a whole.

Social contract theorists describe the transformation from constituent to constituted power in terms of how the multitude are able to deliberate on the appropriate structure of constituted authority. This leads to a series of conceptual difficulties

and the subsequent need for circumlocution on the topic. The social contract theorist is involved in a process of justifying a certain view of political authority, but in so doing he holds two simultaneous aims in view. The first involves explaining in real political terms the division between governors and governed, whilst the second involves explaining why, in theory, this divide is illusory (because those who govern are authorised by the governed). This paradoxical state of affairs results in attempts to conflate profound antinomies that lie at the heart of constitutional thought, and which by the nature of liberal-democratic constitutional structures will remain antithetical, no matter how much effort is expended in reconciling them.

And theories of constituent power based on the contractualist model cannot readily explain the foundation of political authority in constitutional arrangements which are not those of nation states. The political authority of a modern-day institution such as the European Union singularly fails to fit the hypothetical requirements of contractualist discourse, because it appears to be a product of a singular will – in other words, it is a product of the law rather than of democratic constituent energy, and its legitimacy defies any attempt to identify those who exercise authority with those over whom it is exercised.

Maistre's thought is able to avoid these sorts of constitutional conundrums, because in his model constituent power is transformed into a viable constitutional form by a unitary entity, which acts in keeping with the precepts of the law whilst performing a function imbued with creative constitutional energy. Avoiding the abstract,

deliberative techniques of democratic theorists,¹⁹⁵ Maistre turns instead to a figure enmeshed in and yet reaching beyond tradition and particularity, a figure which offers a solution to the problem of translating the fact of political power into the norm of the constitution. This figure is the legislator, who assimilates political, factual power and juridified function in a single body.

Both Rousseau and Maistre use the figure of the law-giver, which is drawn from their readings of classical sources and in particular from Plutarch's account of Lycurgus, the founder of the Spartan constitutional order.¹⁹⁶ Historians of the classical world now interpret the existence of law-givers such as Lycurgus as evidence that the constitution of the *polis* was not seen to have been ordained by divine sanction or fixed by tradition, but that it was mutable by human decision; to a large extent, Maistre's interpretation conforms to this view.¹⁹⁷

The law-giver is also, of course, a figure of modern political theory, first appearing in Machiavelli¹⁹⁸ and then reaching its apogee in the Enlightenment.¹⁹⁹ But both Rousseau and Maistre depart from the model in that they pay scant regard to the concept of natural law:²⁰⁰ Rousseau's law-giver performs a highly elaborate and complex functional role, whilst Maistre's bestrides a constitutional decision that

¹⁹⁵ For contemporary examples, see J. Fishkin, *Democracy and Deliberation: New Directions for Democratic Reform* (New Haven: Yale University Press, 1991); J. Bohman and W. Rehg, eds., *Deliberative Democracy: Essays on Reason and Politics* (Cambridge, MA: MIT Press, 1997).

¹⁹⁶ Plutarch, *On Sparta*, trans. Richard J. A. Talbert (Penguin: London, 1988), pp. 3-38.

¹⁹⁷ Kurt A. Raaflaub, "Poets, Lawgivers and the Beginnings of Political Reflection in Archaic Greece", in *The Cambridge History of Greek and Roman Political Thought* (Cambridge: Cambridge University Press, 2005), p. 42.

¹⁹⁸ Machiavelli, *The Discourses*, trans. Leslie J. Walker (London: Penguin, 2003), p. 109.

¹⁹⁹ See above, p. 91.

²⁰⁰ Lebrun, *Against Rousseau*, p. xix.

takes place at a specified moment in history.²⁰¹ It is perhaps the fact that Maistre's law-giver – the product of history as much as law – “belongs only to the ancient world or in the youth of nations”²⁰² that further distances this figure from its seventeenth and eighteenth century predecessors and makes it, if anything, reminiscent of the Hegelian world-historical individual.²⁰³

The task of the legislator in Rousseau's model is “to succeed in attaching the citizen to his city with indissoluble links in such a fashion that the love of the fatherland fashions all his existence”.²⁰⁴ He must bring to the social body the light that it needs by bringing an individual into conformity with the general will, so that the individual may be incorporated into something greater than himself and so enjoy a new communal existence.²⁰⁵ In short, the legislator organises the multitude into a people.

Rousseau's legislator is thus an attempt to find a solution to what some commentators have identified as the central problem of all Rousseau's thought: “To find a form of non- authoritarian educative authority that will “make men what they ought to be”, without (permanently) depriving them of the freedom without which “neither virtues, nor vices, nor merit, nor demerit, nor morality in human actions” are conceivable.”²⁰⁶ Conscious of the problematic status of liberty in his model,

²⁰¹ Rousseau, *Du Contrat Social*, pp. 79-83.

²⁰² *OC V. I, T. 1*, p. 229.

²⁰³ G. W. Hegel, “Introduction to the Philosophy of History”, in *Hegel: Selections*, ed. J. Lowenberg (New York: Charles Scribner, 1929), p. 375.

²⁰⁴ Bronislaw Baczko, “Moïse, législateur...”, in *Rousseau* (Manchester: Manchester University Press, 1982), p. 124.

²⁰⁵ Rousseau, *Du Contrat Social*, p. 80.

²⁰⁶ Patrick Riley, “Rousseau's General Will”, in *The Cambridge Companion to Rousseau* (Cambridge: Cambridge University Press, 2001), p. 126.

Rousseau cannot allow the legislator to rule, but only help the people find the general will it is seeking – or would seek if it knew of it. Assuming the legislator had decisive authority, “he would not have to bend over backwards to persuade without convincing – so that freedom can finally arrive”.²⁰⁷

From one point of view, it appears that the legislator represents a tacit acknowledgment that the people are incapable of constituting themselves as a unified body. The consequent impossibility of explaining away the gulf between governors and governed means that the legislator – so crucial to the coherence of the Rousseauist theory of the general will²⁰⁸ – finishes by being “of all his images of authority, the least genuine, the most wooden, one-dimensional figure”.²⁰⁹ And so Rousseau’s figure effectively remains as an intellectual exercise, functioning only on a metaphysical level.²¹⁰ The law-giver – as Rousseau himself admits – is undeniably a problematic figure in constitutional modernity because it is composed of two seemingly incompatible things: “a task beyond human capability and, to carry it out, an authority which amounts to nothing”.²¹¹

However, whilst Rousseau’s law-giver remains yet another product of his incoherent thinking,²¹² and wields an authority that amounts to nothing, Maistre’s own has “an

²⁰⁷ Ibid., p. 138.

²⁰⁸ Pranchère, *L'Autorité Contre les Lumières*, p. 205.

²⁰⁹ Judith N. Sklar, “Rousseau’s Images of Authority (Especially in *La Nouvelle Heloise*)” in *The Cambridge Companion to Rousseau*, p. 178.

²¹⁰ Loughlin, *The Idea of Public Law*, p.105.

²¹¹ Rousseau, *Du Contrat Social*, p. 80.

²¹² OC V 1 T 1, p. 333: “Rousseau wrote a chapter on the legislator in which all the ideas are confused in an intolerable way. In the first place, this word can have two different meanings: usage allows us to apply it to the extraordinary men who promulgate constitutive laws, and also to the less

authority that amounts to everything”.²¹³ Because Maistre does not need to use the figure in order to reconcile the paradoxes intrinsic to democratic modernity, his creation is far more decisive: the law-giver is a figure of constitutional decision who “communicates to a people a common soul”.²¹⁴ Indeed, certain qualities and forces remain mere potential until they are developed by circumstances manipulated by the “skilful hand” of the legislator.²¹⁵ It is he who “assembles elements which pre-exist in the customs and characters of the people”.²¹⁶ He has “an extraordinary power”,²¹⁷ promulgates constitutional laws and “literally engenders a nation”.²¹⁸ Whilst Rousseau’s law-giver remains ineffectually metaphysical, still tied to the emphasis on legislative function of the enlightenment stereotype, the distinctive quality of Maistre’s legislator is his practical good sense and his capacity to interact far more profoundly with the raw materials of the constitutional order.²¹⁹

As well as being existentially decisive, the legislator also has a teleological role. He commences his task as a unified entity full of constitutional possibility; in Maistre’s words, “Every seed is necessarily one”.²²⁰ Thus it is always from a single law-giver

remarkable men who pass civil laws. It seems that Rousseau understood the word in the first sense, because he speaks of “he who dares to undertake to institute a people and who constitutes a republic”. But soon after that he says that “the legislator is in all respects an extraordinary man in the state”. Here there is already a state: the people is therefore constituted. It is no longer a question then of instituting the people, but more likely reforming it”.

²¹³ Ibid., p. 340.

²¹⁴ Ibid., p. 342. On this basis, Richard Lebrun, in *Against Rousseau*, p. xvii, has argued that Rousseau and Maistre’s lawgivers perform the same role, but it is difficult to see how this can be the case, given these fundamental differences of orientation; it is perhaps once again a question of mistaking shared terminology for shared function.

²¹⁵ Ibid., pp. 343 - 344.

²¹⁶ Ibid., p. 71.

²¹⁷ Ibid., p. 345.

²¹⁸ Ibid., p. 342.

²¹⁹ Ibid., p. 339.

²²⁰ Ibid., p. 342.

that each people receives its dominant trait and its distinctive character.²²¹ The law-giver has an, “extraordinary penetration”, but he is not all-knowing, and acts on instinct rather than reason.²²² He “divines the forces and qualities of the nation”,²²³ bringing them to life and setting them in motion.

Maistre’s legislator also speaks in the name of the Divinity – who confers power on rare men – as a true elect.²²⁴ This relationship demonstrates without question that the ultimate source of authority is most assuredly not the will of the governed. With the source placed unquestionably outside of the positivised system, there is no chance of the occurrence of the circularity which besets discussion of constituent and constituted power in liberal democratic thought. The assembling of the customs and character of the people in a constitutional form by the legislator is so closely linked with creation *ab nihilo* as to be almost indistinguishable from it,²²⁵ and belongs to the zone of indeterminacy between the theological and the political characteristic of his thought.²²⁶

²²¹ Ibid.

²²² Ibid., p. 344.

²²³ Ibid.

²²⁴ Ibid.

²²⁵ OC V 1 T 1, p.71 “...this assembly, this rapid formation , which is close to creation.”

²²⁶ Ibid.: “Politics and religion mix together”.

The Legislator and Sovereignty

As noted above, a key quality of the law-giver is decisiveness, and it is this quality, perhaps above all others, that brings the constitutional structure into existence. The legislator's style of action comes from inspiration and not from deliberation, Maistre notes;²²⁷ he acts with a moral force that bends the will.²²⁸ If he picks up his pen, "it is not to write essays, it is to command".²²⁹ It is this quality of decisive command that exposes one of the essential distinctions between Rousseau's facilitative legislator and Maistre's figure of authority: their relationship to the concept of sovereignty, one of whose perennial characteristics is the power to command, to make a decision. Whilst for Rousseau, seeking to explain the existence of a new egalitarian political structure built upon an absence of traditional authority, the legislator cannot be a sovereign²³⁰, for Maistre the figure is entirely bound up with sovereignty. Indeed, Maistre goes so far as to state that almost all great legislators have been kings²³¹ and that "the two most famous legislators [i.e. Moses and Mohamed] were *more* than kings".²³²

This confluence of the law-giver and the sovereign has proved a powerful model for illiberal theorists of constitutional thought, and particularly for Carl Schmitt's model

²²⁷ Ibid., p. 344; see also p. 72.

²²⁸ Ibid. p. 72.

²²⁹ Ibid. p. 344.

²³⁰ Rousseau, *Du Contrat Social*, p. 79.

²³¹ *OC V 1 T 1*, p. 346.

²³² Ibid.

for the sovereign as founder.²³³ More recently, Andreas Kalyas defined sovereignty as the power to found a constitutional order, which coincides with the central characteristics of the Maistrian law-giver.²³⁴ Kalyas argues that it is possible to see sovereignty, not as the ultimate coercive power, but as the power to posit or constitute.²³⁵ In advancing this alternative model, he outlines certain fundamental traits that are worth examining in greater detail, because of the light it sheds on Maitre's own conception of the legislator and because it demonstrates the continuing relevance of Maistre's constitutional thought.

The first trait of the constituting sovereign is that the sovereign 'posits': he is the one who creates the constitution and establishes a new legal and political order.²³⁶

Kalyas defines the sovereign as the one who "determines the constitutional form, the juridical and political identity and the governmental structure of a community in its entirety."²³⁷ Rather than command or rule, as in the traditional model of sovereignty, Kalyas's sovereign creates, and legislates rather than rules.²³⁸ The constituent legislator is not an absolute ruler but a founding figure.²³⁹

The second fundamental trait is defined by the nature of the founder's relationship to the constitutional order that he founds.²⁴⁰ The constituent sovereign moves inside

²³³ Carl Schmitt, *Die Diktatur* (Berlin: Dunker and Humblot, 1989), p. 7.

²³⁴ Andreas Kalyas, "Popular Sovereignty, Democracy, and the Constituent Power", in *Constellations* 12, No. 2 (2005), pp. 224-244.

²³⁵ *Ibid.*, p. 226.

²³⁶ *Ibid.*, p. 227.

²³⁷ *Ibid.*

²³⁸ *Ibid.*, p. 229.

²³⁹ *Ibid.*

²⁴⁰ *Ibid.*, p. 228.

and outside of the constitution, and his actions cannot be traced back to any juridical norm.²⁴¹ This, Kalyas states, allows the constitution to be understood in political terms and politics to be analysed in constitutional terms, thus bridging the distance between factual power and constitutional normativity.²⁴²

Kalyas goes on to identify the problem common to all theories of the legislator: how to deal with the potential for arbitrariness. Kalyas's solution seems to contradict his earlier assertions: he suggests that the power to found is an exclusively juridical power.²⁴³ In so doing, he appears to adopt a course of reasoning beset with the same circularity as those who equate the constituted with constituent power. If one wishes the constituent power to bear the epithet of sovereign, one must also accept that this concept operates on the line of demarcation *between* the political and the legal, and so remain open to the possibility that sovereign power may act in an arbitrary manner, and that events outside the gamut of positivised norms may have some impact upon them.

That said, Maistre's own idea of the legislator avoids the charge of arbitrariness in a number of ways that differentiate it from the legislator of the Deists or from Kalyas' notion of juridical power. First, Maistre's legislator begins a teleological process whose ends are contained within its beginning; second, the legislator is grounded in

²⁴¹ Ibid.

²⁴² Ibid., p. 231.

²⁴³ Ibid., p. 233: "Undoubtedly insightful, these claims do not strike at the core of constituent power. They expose the most serious difficulties with this notion of sovereignty. But the concept of the constituent power itself allows the possibility of three responses, all of which are related to its juridical nature. Although associated with extra-legality, antecedent to any established legal form, the constituent power is a juridical category *par excellence*".

a moment of historical and political fact rather than existing as a theoretical archetype; third, the legislator performs a single act of constitutional decision, which, being drawn from pre-existing custom and tradition, is endowed with a stabilising contextualisation. And whereas Kalyas argues that this is a separate model of sovereignty, it would be more accurate to say that, at most, Maistre's law-giver is an attribute of the wider conception of sovereignty, to be regarded not as an alternative but as a different aspect of one unified concept.

It is because he founds the constitutional order through undeliberated decision that the law-giver (be it Numa, Solon, Draco, Lycurgus, Mohamed or Moses) is a perfect model for those constitutional structures which, by virtue of their teleological aspiration, do not easily fit into the deliberative model. Indeed, in his essay, "We Will Do and We Will Harken",²⁴⁴ J. H. Weiler uses the example of Moses (the *non plus ultra* of Maistre's legislators) and his presentation of the covenant to the Israelites²⁴⁵ to address the question of why the commencement of the constitutional project of European unification was not preceded by deliberation.²⁴⁶ Weiler's analysis coincides with Maistre's model of the law-giver as authoritative institutor.

In his essay, Weiler asks a rhetorical question: who would be foolish enough to accept such a foundational arrangement without first deliberation? The answer is that 'Who?' is a difficult question, because one of the things that the covenant with

²⁴⁴ J. H. Weiler, "We Will Do and We Will Harken", in *The Constitution of Europe: "Do the New Clothes Have an Emperor?" And Other Essays on European Integration* (Cambridge: Cambridge University Press 1999), pp. 3-9.

²⁴⁵ Exodus 24:7

²⁴⁶ Weiler, "We Will Do", p. 4.

the Israelites did was to constitute its subject in a new way.”²⁴⁷ Both for Weiler and for Maistre, the endowment made by the legislator is revolutionary not just in its substantive content, but in “the very ontological underpinning of its subject”.²⁴⁸ And Weiler echoes Maistre’s own language when he comments that the handing down of the covenant is an act of existential decisiveness, an act “of veritably taking one’s destiny in one’s hand of following an institution, an ideal, an aspiration”.²⁴⁹ “The sequence”, he comments, “is history: an inevitable dynamic of doing first and thinking later”.²⁵⁰ It is also undemocratic, for the transformation of the ‘We’ that Weiler speaks of “is the political class”.²⁵¹

Weiler’s use of a Mosaic analogy to explain the origin of the constitutional trajectory of the European Union also effectively illustrates many of the key features of Maistre’s alternative to constituent power that emanates from the multitude. The legislator orientates constitutional values. He does not debate, he inspires. At the same time, the legislator stands for decision. There is, as Weiler notes, an existential quality to the founding moment,²⁵² for whilst teleological development plays its part, will and decision are the core aspects of the foundational moment – and it is upon these features that Maistre, in his exposition of the legislator, chooses to dwell. The combination of teleology and foundational decision which make up Maistre’s Legislator are well suited to describing the establishment of a constitutional form

²⁴⁷ Ibid., p. 5.

²⁴⁸ Ibid. p 6

²⁴⁹ Ibid., p. 7.

²⁵⁰ Ibid.

²⁵¹ Ibid., p. 8.

²⁵² Ibid., p. 7.

whose emphasis rests upon the unified pursuit of an aim, and whose view of political association might be defined by the term *universitas*.

Conclusion

In his theory of the foundation of political society, Maistre gives an account of the phenomenon of constituent power which is antithetical to most modern assumptions about the sources and functioning of political authority. His sharp critique of the creation myth of the modern state²⁵³ highlights the shift in focus in modern political philosophy, from the traditional aim of explaining the sequence of politically authoritative relations to the desire to justify the coercive powers of political institutions.²⁵⁴

The tensions between these two conflicting ways of thinking about the constitutional order become apparent when considering constituent power; the tensions can be articulated in a series of antinomies: between the state of nature and natural society, between the social contract and the hierarchical order and between the sovereignty of the people and that of a single will. And these tensions are exemplified in the contrast between the democratic paradox of Rousseau's will and the authoritarian consistency of Maistre's model of the legislator.

²⁵³ See Henry Tudor, *Political Myth* (London: Pall Mall, 1972).

²⁵⁴ Alasdair MacIntyre, "Politics, Philosophy and the Common Good", in *The MacIntyre Reader* (Cambridge: Polity Press, 1998), pp. 235-252.

It is important to note the use of the term ‘authoritarian’ in relation to Maistre’s views, because certainly one of the implications of Maistre’s constituent model is that it is, at the very least, undemocratic. Arguments that validate a teleological thesis based on the notion of the Law and not subject to any form of democratic check may trouble those familiar with the constitutional history of repressive regimes. After all, an irresolvable tension is perhaps what lies at the reasonable heart of modern conceptions of democratic society, and efforts to resolve it – although destined to fail in their stated aim of reconciling the governors with the governed – bring into ever sharper focus all those political values that we consider desirable.

At the same time, it should also be recalled that Maistre’s state, built on imperfect foundations (which his belief in original sin entails), does not necessarily aspire to the all-encompassing salvational myth of totalitarianism. And in this respect, Rousseau’s belief in the perfectibility of man and the notion of the Ideal City has just as disturbing implications.²⁵⁵ In contrast to Rousseau’s figure, Maistre’s legislator is only part of a constitutional scheme which, in the main, remains deeply opposed to any belief that human accomplishment can lead to political perfection.

In the next chapter we will see how, by building on opposition to the constituent power of the multitude and the failure of the contract as a metaphor to explain

²⁵⁵ Rousseau, *Du Contrat Social*, p. 80: “It is necessary, in a word, to take from man his own qualities to give him powers foreign to him and which he can not use without the help of others. The more his natural qualities are either dead or extinguished, the more the acquired ones are strong and lasting, the more the also the institution [the State] is solid and perfect”.

political relations, Maistre's opposition to the Enlightenment's accommodation of the contradictory values of individual will and rational abstraction is expressed in his conception of the constitution as unified Being rather than a positivised, self-contained juridical text. Studying this issue will further develop the context of the notion of sovereignty in Maistre's work.

CHAPTER THREE: MAISTRE AND CONSTITUTIONS

Introduction

The modern constitution is the product of radical early modern contractarian thought,¹ which found tangible political expression in the form of the American and French Revolutions. The idea of the modern constitution positively expresses a number of values, amongst them abstraction, rationality, individual autonomy and universality. At the same time it suppresses other long-lived and important characteristics of the constitutional order: tradition, collectivity, shared identity and a sense of political unity. The modern conception embodies an understanding of the constitution in legalistic terms, which are isolated from wider political considerations.

The idealisation of these positivised principles of the modern constitution has led to the development of a one-sided account of the existence and functioning of constitutions that does not reflect reality. In one modern commentator's words, "Today, when someone speaks of a nation's "constitution", Americans, at least, usually think of a written document. They also usually assume that the courts will

¹ See Olivier Beaud, "Constitution et Constitutionnalisme", in *Dictionnaire de Philosophie Politique*, ed. Phillipe Raynaud and Stephane Rials (Paris: PUF, 1996), p. 133; G. Stourzh, "Constitution: Changing Meanings of the Term from the Early 17th to the late 18th century", in *Conceptual Change and the Constitution*, ed. T. Ball and J. G. A. Pocock (Kansas: Kansas University Press, 1988), p. 35.

have the ultimate responsibility for enforcing the constitution”.² And this view, it hardly need be said, is not limited solely to the Constitution of the United States, but is prevalent in all countries that possess constitutions written or inspired by the draftsmen of the Enlightenment.

Maistre’s view opposes this Enlightenment belief that constitutions are solely written documents. He advanced an alternative to what he saw as the pernicious nature of these artificial constitutional principles, which he considered incompatible with a true understanding of constitutional relations and ultimately destructive of the political community. Maistre offers a picture quite different to that painted by modern constitutionalism.³ His work shows up complexities that are an inherent part of the functioning of the constitutional regime, but which are all but ignored by a narrow mode of thinking which concentrates exclusively on a purely textual interpretation of the term ‘constitution’.

Although commentators have criticised Maistre’s writings for being theocratically propagandist and lacking in intellectual refinement, in fact his work contains complex tensions and irresolutions which allow him to develop his thought on

² David Strauss, “Constitutions, Written and Otherwise”, in *Law and Philosophy* ,(2000),119, No. 4, pp 451-464, p. 451.

³ C. H. McIlwain, *Constitutionalism Ancient and Modern* (Ithaca: Cornell University Press, 1940), p. 24: “In all its successive phases, constitutionalism has one essential quality: it is a legal limitation on government...The most persistent and the most lasting of the essentials of true constitutionalism still remains what it has been almost from the beginning, the limitation of government by law”. According to the O.E.D., the word constitutionalism was first used in 1832; Harold J. Berman, in *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge: Harvard University Press, 1983), asserts that the word was used in the American Revolution; S. B. Chrimes, “The Constitutional Ideas of Dr. John Cowell”, in *English Historical Review* ,(1949),64, pp. 461-487, notes that the adjective ‘constitutional’ was a novelty even in the mid-eighteenth century, but that the noun ‘constitution’, with a modern political connotation, came into use during the debates that led up to the English Civil War of 1642.

constitutions – a key component of his constitutional thought in general – with real subtlety. Indeed, his entire corpus is suffused with his thinking on the notion of constitutions and his private and diplomatic correspondence is also testimony to this concern. But it is in the *Considerations on France*, the *Study on Sovereignty* and the later *Generative Principle of Political Constitutions* that he focuses more closely on constitutional topics in the narrower, more technical sense of the term. These can be seen as the full expression of Maistre’s ideas on the subject: although these works were written over a number of years, the ideas they contain remain relatively consistent.⁴

The primary objective of this chapter is thus to explore what Maistre understood by the concept of the constitution and to examine some aspects of the modern, liberal notion of the term in this light. This will involve a comparative analysis of the traditional and modern constitutions, with reference to the work of Edmund Burke and the extent of his impact on Maistre. Maistre’s own understanding of the constitution will then be discussed in more detail, and two prominent features of this structure will be highlighted: first, Maistre’s insistence on the non-written nature of constitutions, and second, his emphasis on the impossibility of deliberation in the formation of constitutions. This further analysis will give greater insight into

⁴ For a further account of the historical context of Maistre’s writing on constitutions, see F. Bayle, *Les Idées Politiques de Joseph de Maistre* (Lyon: Imprimerie des Beaux Arts, 1944), p. 48: “The material of the *Considerations on France* is closely linked to the history of revolutionary France; it contains the essentials of Maistre’s ideas on constitutions which he will take up again from a more general point of view in the *Essay on the Generative Principle of Constitutions* and in his *Study on Sovereignty*”.

Maistre's model and provide a challenging critique of certain aspects of modern constitutionalism.

Aside from deepening our understanding of the alternatives to understanding the constitution in a narrow, textual sense, there is another reason to describe and analyse Maistre's constitutional thought. Vital to Maistre's own view of the constitutional environment is an irresolvable tension between two conceptions of the constitution that he himself holds. An examination of this dialectic will develop a better understanding of Maistre's constitutional thought, supporting the argument that understanding the issue rests upon accepting two competing constitutional considerations, with the effect that we gain a sophisticated and nuanced interpretation of the constitution, rather than one that is the product of a simplistic and absolutist point of view.⁵ In order to fulfil all of these related tasks, it is necessary to begin by examining the respective features of the textualised, modern constitution and the ancient, organic constitution, a task without which, the nature of the dispute regarding the essence of a constitution cannot be understood.

⁵ For a discussion of the dialectical nature of constitutional theory, see Martin Loughlin, "Constitutional Theory", in the *Oxford Journal of Legal Studies*, 2005, 25 (2) pp. 183-202, at p.194: "Underpinning this account will be the argument that these issues [i.e. liberalism and democracy, norm and exception, identity and difference, community and cosmopolis] can be adequately addressed only when the tensions between the two conceptions of a constitutions are acknowledged and constitutional discourse recognized as taking a dialectical form".

Two Differing Conceptions of the Constitution

The modern conception – constitution as foundational text

The radical version of contractualism examined in the last chapter involved the idea that the construction of civil society and political power depended upon the will of individuals, and of there being free agreement between them.⁶ In this way, the classic doctrine of the social contract embodied the modern idea that political authority was immanent rather than transcendent, contingent rather than teleological.⁷ It considered humans to be a collection of individuals and believed that sovereign power must rest on their explicit, individual consent. The state, in a radical departure from previous conceptions, was now considered to be the expression of the independence and equality of individuals.⁸

Modern constitutionalism is intimately linked to this view, that political power comes from the people and that those who govern are not to be considered as distinct from those who are governed.⁹ From this view flows the need to ensure the accountability of the governors to that new political and constitutional entity, the people, which in turn inspires the idea that the constitution can take the form of a

⁶ See Chapter 2 above, p. 59

⁷ See Atila Ozer, *L'Etat* (Paris: G. F. Flammarion, 1998), p. 17.

⁸ *Ibid.*, p. 18.

⁹ Rousseau, *Du Contrat Social* (Paris: GF Flammarion, 2001), p.56: "To find a form of association which, with all collective force, defends and protects the person and the goods of each associate and by which all unite together, only obeying however himself and remaining as free as before".

written text – a logical way to deal with the notion of political authority in the absence of traditional and transcendental values.¹⁰ Both the American and French revolutions demonstrated in practical terms this shift in perceptions of governing authority; the concept of a written constitution as the legitimating foundation of state power is a modern idea of bourgeois revolutionary origins. And it assumes a highly instrumentalised character,¹¹ because the constitution is a document that receives its authorisation from the people¹² and is envisaged in a positivised legal form: the constitutional text itself is a source of fundamental law.¹³

In an intellectual *volte-face*, positive law now lays the foundation of the political order (rather than the traditional position in which the political grounds the legal) and thus the defining characteristic of the modern constitution involves understanding it as a supreme juridical norm.¹⁴ One result of this mode of understanding is that the constitution is envisaged as a juridical technique to limit power and guarantee the liberty of an individual.¹⁵ In the modern sense, the constitution has come to have a narrow meaning: that of a system based upon a

¹⁰ Jefferson to Roger C. Weightman, June 24, 1826, in *The Writings of Thomas Jefferson*, ed. Andrew A Lipscomb and Albert Ellery Bergh (Washington D.C.: The Memorial Edition, 1903-1904) XVI, 181-182: "May it [i.e. the Declaration of Independence] be to the world, what I believe it will be...the signal of arousing men to burst the chains, under which monkish ignorance and superstition had persuaded them to bind themselves, and to assume the blessing and security of self government".

¹¹ Gopal Balakrishnan, *The Enemy: An Intellectual Portrait of Carl Schmitt* (London: Verso, 2000), p. 91.

¹² Thomas Paine, "Rights of Man", in *Rights of Man, Common Sense and Other Writings*, ed. Mark Philip (Oxford: Oxford University Press, 1995), p. 122: "A constitution is a thing antecedent to a government...a government is only the creature of a constitution".

¹³ Martin Loughlin, *The Idea of Public Law*, p. 49.

¹⁴ Beaud, "Constitution et Constitutionnalisme", p. 135: "The constitution is a juridical act superior to all other edicts by those who govern. It is a 'fundamental law'".

¹⁵ *Ibid.*

written document, enforced by the courts, that primarily works as a means of co-ordinating the legislature, executive and judicature.¹⁶

One of the problems raised by this conception of the constitution is that, once the modern constitutional text is treated as positive law, then the issue of the authority of governments becomes problematic, because the modern ideal of the constitution does not reflect the practical realities of governing or the political truth of constitutional relationships between governors and governed.¹⁷ Instead, the dominant image the modern constitution provides is one of both governors and governed being regulated by a juridical text. This image has generated a significant constitutional difficulty, namely, the belief that the solution to inherently political problems may be found solely by reference to that text. It is this culture of legalism which has made it increasingly difficult to identify and acknowledge the political aspects of constitutional arrangements.

The problem of modern constitutionalism is one of, in Oakeshott's words, "mistaking the part for the whole":¹⁸ its intense focus on the exclusive validity of the norm results in the suppression of any political conception of the constitution. Yet to focus solely on the legal norms generated by a text is to treat an effect of constitutional discourse as its cause, a situation which has arisen due to the neglect

¹⁶ See Scott Gordon, *Controlling the State: Constitutionalism from Ancient Athens to Today* (Cambridge: Harvard University Press, 1999), p. 284ff.

¹⁷ See, for example, Michael Foley, *The Silence of Constitutions: Gaps, Abeyances and Political Temperament in the Maintenance of Government* (London: Routledge, 1989).

¹⁸ Michael Oakeshott, "Rationalism in Politics", in *Rationalism in Politics and Other Essays* (Indianapolis: Liberty Fund, 1991), p. 16.

in much constitutional theorising since the 19th century of the existence of another constitutional model.

The old conception of the constitution – constitution as political relation

The constitution was once defined very differently to the way it is understood in modern/liberal society, and was defined in terms that are specifically excluded by the modern juridical conception: as the political identity of a human community.¹⁹ From this perspective, writes Campagna, “The constitution is...a political, concrete decision about the manner and form of political existence”.²⁰ The constitution is much more than a written charter, and the etymological root of the term, the Latin word *constitutio*, bears this out. The term *constitutio* originally bore physiological as well as legal-political meaning:²¹ in the physiological sense, it conveyed the idea of a state of being, of an organism as a whole, whilst in the legal domain it referred to the commission of an *authentic* act. It is evident that rich conceptual possibilities flow from these overlapping meanings, because, in contrast to the modern

¹⁹ For examples of the old conception, see *The Politics and the Constitution of Athens*, ed. Stephen Everson, trans. Benjamin Jowett and Jonathan Barnes (Cambridge: Cambridge University Press, 1996); Plato, *The Republic*, trans. G. M. A. Grube and C. D. C. Reeve (Indianapolis: Hackett, 1992); Hegel, *Elements of the Philosophy of Right*, ed. Allen W. Wood, trans. H. B. Nisbet (Cambridge: Cambridge University Press, 1975); “James Harrington as Aristotelian”, in *Political Theory* 7 (1979), pp. 371-89; H. J. Bolingbroke, *Political Writings*, ed. I. Kramnick (Arlington Heights: Harlan Davidson, 1970); R. Nisbet, “De Bonald and “The Concept of the Social Group””, in *Journal of the History of Ideas* 5 (1944), pp. 315-31.

²⁰ Norbert Campagna, “Le Droit”, in *Le Politique et La Guerre: Deux Chapitres sur la Doctrine de Carl Schmitt* (Quebec: Les Presses de l’Université Laval, 2004), p. 34.

²¹ See Otto Gierke, *Political Theories of the Middle Ages*, trans. Frederic Maitland (Cambridge: Cambridge University Press, 1922), p. 24: “Mankind as a whole, not only the Universal Church and the Universal Empire but also every Particular Church and every Particular state and indeed every permanent human group is compared to a natural body (*corpus naturale et organicum*). It is thought of and spoken of as a Mystical Body”.

understanding of constitution, they imbue the term with an organic, rather than simply institutional, meaning. In this sense, the constitution regulates the action and the life of the state, just as the constitution in a medical sense stands for the life and movement of the physical body. Taking the term in this sense, every state – whether it possesses a written constitutional document or not - has a constitution, “because all that exists has a manner of existence, good or bad, conforming or not conforming with Reason”.²² The constitution in this sense corresponds to the real structure of the political organism and not to its idealised, normative pattern.

This way of thinking about constitutions has come to be associated with illiberal thought, because the way it privileges the political order and emphasizes the unity of a community tends to presuppose the existence of an authority capable of maintaining such an order. Far from guaranteeing individual liberties (which are upheld by those who propound the normative textual constitution), the old model represents the principle of the union of members of a social body, leading to the unity of State. The constitution is less a rule of law limiting the powers of governors than it is an expression of harmony between the State and members of the political community. It is this relation which permits the conservation of the unity of a people, and the constitution in this sense thus involves concepts of shared identity, collectivity and tradition – all values which are anathema to those who seek an instrumentalised, universalised, textual understanding of the constitution.²³

²² P. Rossi, quoted in Beaud, “Constitution et Constitutionnalisme”, p. 133.

²³ See, for example, Gordon, *Controlling the State*, p. 361: “The thesis argued in this book is that efficient government and constrained government are not incompatible and I have endeavoured to show that both objectives have been realised, in practice, in numerous states dating as far back as

The old conception is nowhere better expressed than in the work of Edmund Burke, whose writings have set the tone for much conservative and traditionalist writing on the subject, including Maistre's. For this reason it is worth pausing to examine Burke's views on the constitution in order to assess its influence on traditionalist thought in general and on Maistre in particular, before going on to look in greater detail at Maistre's own theories of the constitution.²⁴

Burke's view of the Constitution

A recurrent theme in Burke's work on constitutions is an emphasis on the moral and political evils that flow from the intrusion of theory into political practice. Burke roundly rejects abstract theorisation,²⁵ denouncing "the speculatists of our speculating age".²⁶ For Burke, settled, time honoured, tried-and-tested arrangements

Athens...all of them have been modelled on a pluralist distribution of power and the principle of countervailance".

²⁴ For the relationship between Burke and Maistre, see Graeme Garrard, *Counter-Enlightenments: From the Eighteenth Century to the Present* (London: Routledge, 2006), p. 48; Richard Lebrun, *Joseph de Maistre: An Intellectual Militant* (Kingston and Montreal: McGill-Queen's University Press, 1988), p. 102, p. 296 n. 143; Michael Fuchs, "Edmund Burke et Joseph de Maistre", in *Revue de l'Université d'Ottawa* 54 (1984), pp. 49-58; Richard Lebrun, "Joseph de Maistre and Edmund Burke: A Comparison", in *Joseph de Maistre: Life, Thought and Influence: Selected Studies*, ed. R. A. Lebrun (Montreal and Kingston: McGill-Queen's University Press, 2001), pp. 3-12; Jean-Pierre Cordelier, *La Théorie Constitutionnelle de Joseph de Maistre* (Paris: Thèse de la Faculté de Droit de Paris, 1961), p. 72; Jean-Louis Darcel, introduction to *Considérations sur la France* (Geneva: Slatkine, 1980), p. 23.

²⁵ See, for example, *Observations on a Late Publication Intituled the Present State of the nation* (1769) and *Thoughts on the Cause of the Present Discontents* (1770).

²⁶ *The Works of Edmund Burke* (hereafter '*Burke's Works*'), 8 Vols. (London: Bohn 1854-89), Vol. III, p. 139.

are preferable to the uncertainties of speculative projects.²⁷ The constitution of a country is not the result of the choices of one generation of people, but is “made by the peculiar circumstances, occasions, tempers, disposition and moral, civil and social habitudes of the people which disclose themselves only in a long space of time”.²⁸ Prescriptive thought, therefore, rather than abstract philosophising is the way to establish the authority of the government and determine political obligation.

In place of theory, historical perspective informs Burke’s views of the constitution. The State is the result of historical, organic growth and thus is greater than the sum of its parts. The constitution – the collection of relationships which make up society – is made up of mores and customs and all the explicit and implicit rules which regulate our social activity.²⁹ It is here, Burke believes, that politics and the constitution rest on what he calls opinions or prejudices, which contain the “latent wisdom” of “ready application in an emergency”.³⁰

“The congruency of the ensemble” writes Ian Hampsher-Monk, “is for Burke a result of piecemeal accommodation by past generations melding the whole

²⁷ David Boucher, “Edmund Burke”, in *Political Thinkers from Socrates to the Present*, ed. David Boucher and Paul Kelly (Oxford: Oxford University Press, 2003), p. 372.

²⁸ Burke, Speech on the Reform of Representations, in *Select Works of Edmund Burke (1974-8)*, ed. E. J. Payne, 4 Vols. (Indianapolis: Liberty Fund, 1999), Vol. IV, p. 21.

²⁹ “Custom is to be regarded with great deference especially if it be an universal custom; even popular notions are not always to be laughed at. There are some general principles operating to produce Customs, that is a more sure guide than our Theories. They are followed indeed often on odd motives, but that does not make them less reasonable or useful.” Cited in R. R. Fennessy, *Burke, Paine and the Rights of Man* (The Hague: Martinus Nijhoff, 1963), pp. 64-65.

³⁰ *Burke’s Works*, Vol. II, p. 359; Boucher, “Edmund Burke”, p. 376.

together”.³¹ Although Burke’s conception of the constitution is bound to a historical perspective, however, he does not envisage an unchanging, monolithic, ancient constitution, but rather an entity which gradually and imperceptibly develops over time.³² Constitutions certainly must grow, but they are kept both from purposeless fluidity and the trauma of violent change by ‘establishments’.³³ The ‘establishments’ of the British constitution supply stability and security, so that, for Burke, “Establishment is a verbal noun whose substance is gathered from its processes”.³⁴

One of the important constitutional consequences of this is that society is not properly subject to rational scrutiny, because the accommodation of practices, customs and institutions does not conform to the general laws³⁵ – rather, the direction of human affairs belongs to prudence.³⁶ Instead of establishing what could be the best possible State, he celebrates the genius of a particular constitution – that of Great Britain and it is perhaps fair to say that his political philosophy emerges as a conflation of these two vital elements – the establishments of British constitution and the governing principle of prudence.³⁷

³¹ Ian Hampsher-Monk, “Edmund Burke”, in *The Blackwell Encyclopaedia of Political Thought*, ed. David Miller, Janet Coleman, William Connolly and Alan Ryan (Oxford: Blackwell, 2004), p. 51.

³² See J. G. A. Pocock, “Burke and the Ancient Constitution: A Problem in the History of Ideas”, in *Politics, Language and Time, Essays in Political Thought and History* (Chicago: Chicago University Press), p. 202; *Burke’s Works* Vol. II, p. 435.

³³ They are for example, the Church, the landed nobility, the military and the monarchy. See *Burke’s Works* Vol. II, pp. 106, 363, 434).

³⁴ Harvey Mansfield, Jr., “Edmund Burke”, in *A History of Political Philosophy*, Third Edition, ed. Leo Strauss and Joseph Cropsey (Chicago: Chicago University Press, 1987), p. 699.

³⁵ “We must venerate where we are not presently able to comprehend”. *Burke’s Works* Vol. III, p 114.

³⁶ Prudence is, “the god of this lower world....it has the entire dominion over every exercise of power committed to its hands.” (*Burke’s Works*, Vol. II, p. 28), Prudence is “the first of al the virtues, as well as the supreme director of them all.” (*Burke’s Works* Vol. VII, p. 161).

³⁷ Harvey Mansfield, Jr., “Edmund Burke”, p. 693.

Burke's influence on Maistre

There are several elements of Burke's constitutional thought which are worth highlighting in any discussion of his and Maistre's work. However, the first point of comparison is also one of difference: unlike Maistre, Burke is distinctly distrustful of anything overtly authoritarian, and so for Burke a constitution cannot be "the effect of a single instantaneous decision".³⁸ Furthermore, although Burke does not believe in democracy as a viable regime,³⁹ he does believe that governing is not in essence about ruling; it is, rather, concerned with changing, reforming, balancing or adjusting the constitutional mechanism.⁴⁰ And perhaps because of this aversion to constitutionally authoritarian, decisionistic structures, Burke has a dislike of theocratic, absolutist models of political thought.⁴¹ In order to consolidate his belief that a government has ambiguously human origins, he adopts the language of contract from modern theorists.⁴² But for Burke, this contract is one between the living, the dead and those still unborn.⁴³ In Burke's model, the past and future

³⁸ *Burke's Works* Vol. II, p. 554.

³⁹ See *Burke's Works* Vol. III, p. 85; V, p. 227. "A perfect democracy is...the most shameless thing in the world" (*Burke's Works* Vol. II, p. 365).

⁴⁰ Harvey Mansfield, Jr., "Edmund Burke", p. 696.

⁴¹ *Ibid.*

⁴² *Burke's Works* Vol. II, pp. 177-178; VI, p. 21.

⁴³ "Society is indeed a contract....As the ends of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living, but between those who are living, those who are dead and those who are to be born. Each contract of each particular state is but a clause in the great primeval contract of eternal society, linking the lower with the higher natures, connecting the visible and invisible world" *Ibid.*, Vol II.

substitute for the divine in order to ensure, “that present government governs with a sense of shame.”⁴⁴

In light of this, it can certainly be seen why the question of Burke’s influence on Maistre, superficially so appealing, is a subject of some debate. Indeed, two of the most prominent contemporary Anglophone Maistrian scholars, Graeme Garrard and Richard Lebrun, have questioned the level of impact that the Anglo-Irishman had upon Maistre.⁴⁵ Lebrun, for instance, points out that although Maistre wrote about Burke’s *Reflections on the Revolution in France* in positive terms, saying “I was delighted and I can hardly find words to convey to you the extent to which it reinforced my anti-democratic, anti-Gallican ideas”,⁴⁶ there are otherwise “very few references to Burke in Maistre’s published works”: Lebrun goes on to say that “in more than 5,000 pages of Maistre’s registers of lectures I have found only four brief references to the *Reflections*”.⁴⁷ On this basis, Lebrun summarises the relationship between the two men in the following terms: “Maistre’s reaction to Burke’s reflections is an instinctive acclamation of an emotional revulsion similar to his own”,⁴⁸ rather than an adoption of Burke’s work as the intellectual basis for his own theories – Burke was a stimulus rather than an influence.

⁴⁴ Ibid.

⁴⁵ Graeme Garrard, *Counter-Enlightenments*; Richard Lebrun, *Joseph de Maistre*.

⁴⁶ *OC V 5 T 9*, p. 11; see also *OC V 1 T 1*, p. 321: “Mr Burke has said, with a profundity which it is difficult to admire enough, that art is the nature of man”; *OC V 4 T 8*, p. 71: “would it not be right to consider the act of the king as a voluntary abdication following the hypothesis that Mr Burke has so ingeniously developed in respect of James II”; *OC V 4 T 8*, p. 90: “Without doubt this grand patriot, this great writer, this famous prophet who foresaw the French Revolution”.

⁴⁷ Lebrun, *Joseph de Maistre*, p. 296, n. 143.

⁴⁸ Ibid., p. 102.

And yet, Lebrun's argument is in sharp contrast to Francophone scholarship on the same point. Jean-Louis Darcel comments that "it is no exaggeration to say that all Joseph de Maistre's reflection on the revolution rests on the analysis of the great English politician",⁴⁹ whilst Cordelier devotes a whole section of his book to Burke, asking: "Burke first, Maistre afterwards. Do they not belong to the same current of ideas?" He goes on: "Burke published his *Reflections* in 1790 and Maistre his *Considerations* in 1796. Despite one being more political and the other more religious, the influence of the first on the second is undeniable".⁵⁰

Although Lebrun is correct in asserting that Maistre makes only a handful of references to Burke by name in his work, it is difficult not to view this as an overly literal, narrow way of assessing the influence of one writer's work upon another. If Maistre's writing on constitutional themes is taken as a whole, Burkean terms and ideas clearly emerge to the extent that it is difficult to deny the terminological similarity between the two writers.⁵¹ This is not to say that Maistre is merely repeating Burke's theories verbatim, although it is hard not to see Burke's influence at work (and in particular in his interpretation of the constitution as organism), albeit modified to fit Maistre's distinctive cast of thought.

⁴⁹ Jean-Louis Darcel, "Joseph de Maistre et la Revolution Francaise", in *Revue des Etudes Maistriennes* 3 (1977), pp. 29–43.

⁵⁰ Cordelier, *La Théorie Constitutionnelle*, p. 72.

⁵¹ On Maistre's use of the term 'prejudice' see below, pp. 137 - 140 On Maistre's use of the term 'establishments', see *OC V 4 T 7*, p. 423: "One will be astonished perhaps that a constituted nature has no juridical system, but it is necessary to distinguish in the French Republic between the establishment and the organisation. An establishment is the work of the constitution and the organisation is that of the constituents".

Isaiah Berlin adopts a less extreme view than Lebrun, suggesting that “there is little doubt that Maistre was in some degree influenced by Burke’s views”,⁵² but expressing the belief that Maistre was not a disciple of Burke, and like “Every opponent of the French Revolution drew weapons from that great armoury.”⁵³ What they had in common was an opposition to liberation from the interwoven forces of tradition, social texture and the inner life of communities and states, “the impalpable strands which hold societies together and give them their character and strength”.⁵⁴ Berlin goes on to differentiate the two writers by saying that whilst Burke was cautious conservative, an advocate of compromise and adjustment, Maistre was “addicted to extremes”⁵⁵ – specifically, extremes of violence and irrationality.⁵⁶ Berlin quotes in full a passage from the *Soirées de Saint Petersburg* which illustrates “Maistre’s famous, terrible, vision of life. His violent preoccupation with blood and death belongs to a world different from the rich and tranquil England of Burke’s imagination, from the slow, mature wisdom of the landed gentry”.⁵⁷

Here Berlin reveals the most significant difference between the two. Maistre’s vocabulary – which is only as extreme in one direction as the general abstract rationalism of Enlightenment vocabulary is in another – confirms him as thinking in a different manner to Burke: Maistre was more existentially, more dialectically engaged with the discourse of the *philosophes*, and was thus more modern.

⁵² Isaiah Berlin, “Joseph de Maistre and the Origins of Fascism”, in *The Crooked Timber of Humanity*, p. 128.

⁵³ *Ibid.*, p. 129.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*, p. 130.

⁵⁷ *Ibid.*, p. 112.

Maistre's talk of altars, of the sacred, and of the divinity of war and sacrifice are the necessary correlatives of concepts such as the Rights of Man, *Egalité*, *Fraternité* and *Liberté*.⁵⁸ Maistre's talk of altars and of the sacred is the antithesis of Paine's pocket-sized constitution only because it is commensurable with it. Maistre clearly belongs to a very different world to Burke, as do the revolutionary and Enlightenment thinkers, in that their thought is of a programmatic, structured nature (of a cosmopolitan character on the part of the *philosophes*; of a providential character on Maistre's).⁵⁹ In criticising modernity, Maistre first must have had access to its terminology and seen the world through its lens, and because of this his work reflects far more readily than do Burke's the core values of modernity.

Nevertheless, despite the differences between them it is clear that Burke did have an influence on Maistre's work, as is attested by the majority of Maistrian commentators. This is particularly apparent in a theme that runs through a major strand of Maistre's writing on constitutions – that of a refusal to make an ultimate determination as to the origins of constitutions. As we move on to examine the structure of Maistre's constitution, we will see how this particular theme is actually central to the functioning of the Maistrian constitutional project.

⁵⁸ See M. Horkheimer, *The Eclipse of Reason*, trans. J. Cumming (New York: Seabury, 1974), p. 18.

⁵⁹ See Pranchère, "Ordre de la Raison, Déraillement de l'Histoire: L'historicisme de Maistre et ses Sources Classiques," in *Joseph de Maistre* pp. 366-390, p 372: "The modernity of Maistre's thought comes from the fact that it is the place of invention of an historicism which takes history for the declaration of the will of God and thus for the ultimate source of norms".

The Architecture of the Maistrian Constitution

From the outset it is evident that Maistre shared Burke's belief that a constitution cannot be the product of universalised, abstract reason.⁶⁰ Maistre consistently rejects the Enlightenment constitutional formulation on this basis, and eschews any attempt to impose an order on the State which is based solely on the criterion of universally applicable philosophical reason.⁶¹ He clearly feared that the constitutional text might become a global phenomenon (what David Armitage, writing of the written American Declaration of Independence, has termed "An event, a document, the beginning of a genre")⁶² – like the constitutional texts of the American Revolution, those of the French Revolution were also documents "of state-making not of nation formation".⁶³

Both the American and French texts affirmed "the existence of a population...and implied a form of government but...did not define a territory".⁶⁴ These new constitutions were juridical texts capable of mass dissemination, and represented a new, instrumentalised conception of society – of peoples, not territories detached from local particularities.⁶⁵ Here were bold new values of abstraction,

⁶⁰ OC V 4 T 7, p. 166: "Keep us from extremes, and especially from airy-fairy systems founded uniquely upon what is called reason and which is however nothing but reasoning".

⁶¹ OC V 2 T 3, p. 394: "I would never counsel a nation to change its ancient institutions, which are always founded on profound reasons".

⁶² David Armitage, *The Declaration of Independence, A Global History* (Cambridge: Harvard University Press 2007), p. 4.

⁶³ Ibid., p. 17.

⁶⁴ Ibid., p. 19.

⁶⁵ Ibid., p. 145; for a list of Declarations of Independence during the period 1776-1993; see p. 4: "The authors of the declaration had claimed independence only for themselves and not for others. Their

cosmopolitanism, replication and uniformity in place of those based on territory, unity and tradition, and it was these new formulations which Maistre was to attack in unequivocal terms: “A constitution made for all nations is made for no-one, it is a pure abstraction”.⁶⁶

The correlative of this position, according to Maistre, is a firm belief that constitutions should be particularised to suit the circumstances of a nation: “It has already been seen that it should never be asked what the best type of government is in general because there is not one which will suit all of the people, each nation has its own”.⁶⁷ This results in a theory which at times approaches the utilitarian: “What is the constitution?” Maistre asks, “Given the population, the morals, the religion, the geographical situation...[is it not] to find the laws which suit it?”⁶⁸ There is no abstract political ideal to which a nation should aspire; instead, Maistre aims to identify and assess the character of actually existing constitutional arrangements, a feature of his thought which makes him much more a constitutional thinker than a political theorist.⁶⁹

specific and particular idea of independence would nonetheless assume near- universal significance in the centuries after 1776 as the American example spread across the world”.

⁶⁶ *OC V 1 T 1*, pp. 74-75: “But a constitution which is made for all nations is made for no-one: it is a pure abstraction, a work of scholarship done to exercise the mind according to a hypothetical ideal and which must be applied to man in the imaginary spaces which he inhabits.”

⁶⁷ *Ibid.*, p. 489: “One must never ask what is the best government in general because there is not one which suits all peoples. Each nation has its own as it has its language and its character and this government is the best for it”.

⁶⁸ *Ibid.*, p. 75. See also *Diplomatic Correspondence*, p. 351: “The people that is the best constituted is that which is best governed”

⁶⁹ *OC V 1 T 1*, pp. 279-280: “May a formal abuse, a vice be constitutional? Yes, without doubt, for every political constitution has essential defaults which attach to its nature and which it is impossible to separate from it”.

Maistre opposes the Enlightenment view of man as a generic category because 'man' is a meaningless term outside of a specific context of tradition and history. A constitution made for all men is a pure abstraction".⁷⁰ In accordance with this fact, and emphasising his anti-instrumentalist stance, Maistre believes that it is impossible to create constitutions in an *a priori* manner: nothing made by humans can last, and so governments cannot construct a nation as if following a blueprint. "Will one say that the government makes the morals? I deny it. It is, on the contrary, morals which make the government...the first impulse; the generative impulse comes always from the morals and from the national character."⁷¹

Maistre's repudiation of Enlightenment *a priori* thinking is crystallised in his criticism of Thomas Paine, whose 'evil book' Maistre condemns. "There never has been, there never will be, and there cannot be a nation constituted *a priori*. Reason and experience unite to establish this real truth. What eye is capable of taking in at once the collection of circumstances which must give an individual such and such a constitution?"⁷² What Paine believes to be a fault is in fact a law of nature; the

⁷⁰ OC V 1 T 1, p. 74.

⁷¹ Ibid., p. 205: "Does one say that the government makes the mores? I expressly deny it. It is the mores, on the contrary, that make governments...the first impulse, the generative principle, always comes from mores and from the national character". See also Ibid., p. 344: "One of the greatest errors of this century is to believe that the political constitution of the people is a purely human work; that one may make a constitution as a watchmaker makes a watch".

⁷² Ibid., p. 369. See also, OC V 6 T 11, p. 408: "The greatest folly of this century is that of constitutions. Men are not happy until they have been able to make a constitution as one makes a machine. The French, for their part, have made seven or eight in less than twenty years... but it has all ended up in an iron despotism in place of the admirable and gentle monarchy in which they used to rejoice".

natural constitution of a nation is always anterior to its written constitution and can dispense with it.⁷³

Given this absolute rejection of the *a priori* position, the question arises as to how a constitution *can* be defined. Maistre actually gives several definitions of a constitution, at different times, in order to illustrate different facets of his argument.⁷⁴ He also provides one or two keystone definitions upon which his theory rests. Chief amongst these is the following formulation, which encapsulates the essence of the Maistrian constitution:

A constitution in the philosophical sense is nothing other than the mode of political existence attributed to each nation by a power above it: and in an inferior sense, a constitution is nothing other than the collection of laws...which declare this mode of existence.⁷⁵

A number of questions spring immediately from this statement, and particularly from the idea that the constitution is a mode of political existence.⁷⁶ What is meant by 'political existence', and what does the term 'nation' signify in his constitutional thought? How do the inferior and superior definitions relate to each other? In order

⁷³ *OC V 1 T 1*, p. 373.

⁷⁴ For example *OC V 1 T 1*, p. 81: "The constitution is the collection of fundamental laws which suit a nation and which should give it such and such a force of government"; *ibid.*, p. 89: "What is the French constitution? It is that which you feel when you are in France, a mix of freedom and authority, laws and opinions".

⁷⁵ *Ibid.*, p. 369.

⁷⁶ *Ibid.*, p. 216: "A political code is a whole, a general system of corresponding parts"; *Ibid.*, p. 352: "From this it follows that a free constitution is only assured when the different pieces of the political edifice are born together and next to one another".

to obtain answers to these questions it is necessary to explore the varied implications of the statement in greater detail.

One of the consequences of Maistre's denial of the existence of a state of nature concerns the importance of the notion of community to his constitutional thinking.⁷⁷ According to Maistre, because man is never isolated he must always be in a community of one form or another; at all the different levels of human association,⁷⁸ and in terms of the constitutional structure of those associations, the most important unit is, first, that of the people and, second, that of the nation. "What is a people?" asks Maistre rhetorically – "There is a people, a civilisation of some sort and a sovereign as soon as men meet".⁷⁹ The word 'people' is thus a relative term which can in no way be separated from the idea of sovereignty.⁸⁰ The idea of a people contains the idea of "an aggregation around a common centre and without a sovereign one may not be a community or a political unit".⁸¹

Crucial to any constitutional discussion, therefore, is the idea of communal unity, and the formation of the people is inextricably linked with political existence, one of

⁷⁷ *OC V 1 T 1*, p. 317.

⁷⁸ For Maistre, the family plays a significant proto-constitutional role. See *OC V 1 T 1*, p. 316: "Thus there were only families, and these families, disseminated in this way, were, individually or by their future reunion, still only embryos of peoples". See also *OC V 1 T 1*, p. 323: "The first man was king of his children, each single family was governed in the same manner". In this respect, note Maistre's similarity with the teachings of the Roman Catholic Church: see *Compendium of the Social Doctrine of the Church*, Pontifical Council for Justice and Peace (London: Continuum, 2005), p. 110ff.

⁷⁹ *OC V 1 T 1*, p. 324.

⁸⁰ Ibid. It is interesting to note Christophe Boutin's observation in "Le Caractère National chez Joseph de Maistre: Patriotisme Contre Identité Juridique" in *Joseph de Maistre*, ed. Barthelet, pp. 457-462 at p. 458 "One may ask if there is not, in Maistre's work, a simple transfer of the notion of the contract, moving from a transition between equal individuals and society, to that existing between tribes and the State".

⁸¹ *OC V 1 T 1*, p. 324.

the requisites of Maistre's definition of a constitution.⁸² The transformation that occurs as the people become a nation is the development of a national consciousness, which lends a degree of cohesion and distinctiveness to the people: in Maistre's terms, this is the point at which the people acquire a *soul*. "Nations have a general soul and a true moral unity which makes them what they are",⁸³ he says, and although this national soul depends partly upon purely physical elements (i.e. the physical aggregation of the people into recognisable groups), it is not only of a material nature. The character, opinions and especially the language of the nation constitute its unity in the moral order.⁸⁴

It is these physical and moral characteristics which help to form the identity of a nation, and which give birth to a particular form of the state – a specific constitution, an organisation of powers which naturally suits a people. This supersedes the concept of sovereignty alone (which Maistre conceives as being the relationship between authority and obedience which necessarily exists in any state).⁸⁵ It is this character of the nation which is the true constitution of the State, and it is this character which regulates the constitution.⁸⁶ But how is this character, this national identity, expressed?

⁸² See Loughlin, *The Idea of Public Law*, p. 36: "From Schmitt's perspective, it is only through the establishment of a state that a group of people within a certain territory becomes 'a pacified unity encompassing the political'".

⁸³ *OC V 1 T 1*, p. 325.

⁸⁴ *Ibid.*; see also p. 329, and see Boutin, in *Joseph de Maistre*, ed. Barthelet, p. 459: "We recall that, in effect, for our author, a nation's worth on the international scene is that which its language is worth, and that the pre-eminent place of France in Europe is due to the French language more than to the French".

⁸⁵ *OC V 1 T 1*, p. 328.

⁸⁶ *Ibid.*, p. 351.

For Maistre, it cannot occur as the result of rational human analysis, and it is not the result of a single cause; neither can individual opinion define how it is constituted.⁸⁷ As man cannot create anything, it must be brought into existence and administered by other means. It is here that Maistre uses the ostensibly Burkean device of prejudice in formulating the foundational idea that the constitution is an expression of the national soul. Prejudice, in the Burkean sense, did not have the pejorative connotation that it has today. If prejudices are formed as a result of familiarity with social practices over long periods of time, or an inherited tradition, they may be well founded. Individual reason is notoriously fallible and a very poor test against which to measure the efficacy of established institutions. We cherish that which we have inherited, and cherish it all the more the longer its lineage, knowing that it embodies the collective wisdom of the ages or nation. Prejudice is superior to individual reason because it embraces not only reason, but also emotions and sentiment.⁸⁸

This is a view wholeheartedly adopted by Maistre. There are, he says, “nothing more important than prejudices”, which are “any opinion adopted before all examination.”⁸⁹ The true character of a government is formed by these prejudices. They are the most sacred and ancient of laws.⁹⁰ They are the constitutional antidote

⁸⁷ Ibid., p. 375.

⁸⁸ See Boucher, “Edmund Burke”, p. 376.

⁸⁹ *OC V 1*, T 1, p. 375.

⁹⁰ *OC V 4 T 7*, p. 154. Ibid., p. 154: “...all governments are the result of a tacit convention of united men, and the real expression of their assent is founded on their character and innumerable circumstances”. This is the nearest Maistre comes, in his discussion of prejudices, to using the metaphor of the contract in quasi-Burkean terms.

to abstract rationality: “Man has need of prejudices or practical rules, of sensible ideas, material, palpable. One will go nowhere with syllogisms”.⁹¹

But there is an important difference in their application of the prejudice, for Maistre is more systematic than Burke in his treatment of the concept. His thought continually asserts the need for some form of hierarchic control:

Human reason reduced to its individual forces is useless, not only for creating but also for conserving all religious or political association, because it only produces disputes and man, to direct himself, has not need of problems but of beliefs. His cradle must be surrounded by dogma and when his reason wakes up, it is necessary that he find all his opinions already formed...there is nothing more important for him than prejudices.⁹²

Maistre believes that religious and political dogma should be combined to form the faculty of national reason, a category of community-aligned thought, “strong enough to suppress the aberration of individual reason, which is by its nature the mortal enemy of any association because it produces nothing but divergent opinion”.⁹³ For Maistre this is thus the pinnacle of constitutional achievement: to achieve unity, a communal measure that even encompasses thought. In Maistre’s view, correct constitutional relations are to be achieved through obedience to national reason,

⁹¹ *OC* V 4 T 7, p. 166.

⁹² *OC* V 1 T 1, pp. 375-376.

⁹³ *Ibid.*, p. 376.

through the denial of individual dogma and the acceptance of “the absolute reign of national dogma, which is to say prejudices”.⁹⁴

In mixing the religious and the political, as he does, for example, in his formation of the national reason,⁹⁵ Maistre generates an indeterminacy which makes it difficult to determine the limits or identity of ultimate authority in his constitutional order.

“Government,” he comments, “is really a religion – it has dogmas, mysteries. It is only this by national reason, which is to say by political faith, which is a symbol”.⁹⁶

Here, Maistre could not be further from Burke in portraying the constitutional community as commensurate with a religious one. But it is not necessary to take him literally: Maistre understands the power of analogy and metaphor, and the references to religion may be interpreted as a comment on the political, a fact which Maistre recognises when he states: “As in religion, where there is a point where faith must be blind, there is likewise in politics a point where there must be obedience”.⁹⁷

The importance of this remark for the continued existence of the constitution is picked up on by Philippe Benton, who comments that “in Maistre’s eyes a society which has lost that which is impenetrable is perpetually menaced with dissolution”.⁹⁸

This adherence of the subject to national reason, this political faith, is evoked in Maistre’s use of the term *patriotisme*, which he defines as the national reason of which he has spoken. It is the abnegation of the individual. “Faith and patriotism

⁹⁴ Ibid., p. 376.

⁹⁵ Ibid., p. 356; p. 409.

⁹⁶ Ibid., p. 376

⁹⁷ Cited in Christophe Boutin, “Le caractère ‘nationale’ chez Joseph de Maistre”, p. 461.

⁹⁸ Philippe Benton, cited in Christophe Boutin, *ibid.*

are the two great thaumaturges of the world”, says Maistre: “both are divine; all their actions are prodigious”.⁹⁹ Once again the ambiguity between sacredness and political authority becomes apparent, for Maistre goes on to say that any institution is a political edifice. Recalling Bodin,¹⁰⁰ he comments that a great building cannot be set on narrow foundations. If, in the political order, one wishes to build something on a grand scale, something that will last for centuries, then one must rest one’s work on a great and profound belief, and if one searches for the bases of all possible institutions “of the first or second order” then one always finds religion and patriotism.¹⁰¹

Although Maistre’s conclusions are starkly radical, one of his traits as a thinker is his ability to weave strands of traditional and conservative thought into an altogether more modern and reactionary garment; here, in developing this model of the constitution – one based upon prejudice, character and opinion, institutions and irrational, obscured bases – Maistre clearly shows a Burkean influence. In particular, in a number of passages Maistre puts forward the view that, since the wisdom contained in institutions is not based on abstract reason, it cannot be reduced to first principles that can be clearly enunciated or shown to be the cause of a particular institution.

⁹⁹ *OC V 1 T 1*, p. 377.

¹⁰⁰ Jean Bodin, *The Six Bookes of a Commonweale*, trans. Richard Knowles, ed. Kenneth Douglas McRae (Cambridge: Harvard University Press, 1962), p. 517: “Hard it is for high and stately buildings long to stand, except they be upholden and staid by most strong shores, and rest upon most sure foundations”.

¹⁰¹ *OC V 1 T 1*, pp. 408-409.

This is highly reminiscent of Burke's desire to encase the origins of the constitution in the immemorial mists of tradition and time. According to Maistre, the constitution "is the work of circumstance and the number of circumstances is infinite."¹⁰² The true roots of government have always existed, and it is impossible to show their origins "for the simple reason that they are as old as the nations and, not being the result of an accord, there remains no trace of a convention".¹⁰³ No important and truly constitutional institution ever establishes anything new: it only defends and declares anterior rights,¹⁰⁴ which are "good customs, good because they are not written and because one cannot assign to them neither commencement nor author".¹⁰⁵

Ernst Cassirer, quoting Maistre, sees in this imemorializing of the origins of the state two features of romantic thought which emerged in reaction to the Enlightenment.¹⁰⁶ The first was a new interest in history; the second was a new conception and valuation of myth.¹⁰⁷ And yet Maistre did not intend to poeticise political experience in the way that, say, the archetypal romantic Schelling does.¹⁰⁸ Instead, he sought to establish two principles of a primarily political nature:¹⁰⁹ first, by ascribing immemoriality to the constitution Maistre believed that the constitutional

¹⁰² *OC V 1 T 1*, p. 246; see also Archives cote 2J 15-18 JP 159.

¹⁰³ *OC V 1 T 1*, p. 347.

¹⁰⁴ *Ibid.*, pp. 347-348.

¹⁰⁵ *Ibid.*, pp. 373-374.

¹⁰⁶ Ernst Cassirer, *The Myth of the State* (New Haven: Yale University Press, 1946), p. 180.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*, p. 183.

¹⁰⁹ An interesting perspective on this is given by Schmitt in *Political Theology*, trans. George Schwab (Chicago: The University of Chicago Press, 2005), p. 37: "What we immediately recognise in them [i.e. Bonald, Maistre and Cortes] is a conceptually clear and systematic analogy and not merely that kind of playing with ideas, whether mystical, natural-philosophical or even romantic, which as with everything else yields colourful symbols and pictures".

community would be endowed with the facility to grow and adapt through of its various traditions and institutions; second, by reaffirming the conceit that the constitution had no ultimate origin he was able to deny that individual reason had any responsibility for the process. Ambiguity about origins prevents reason from claiming responsibility for the principles upon which the process is based.¹¹⁰

Maistre's denial of constitutional origins was thus a technique designed to assert the importance of tradition, in the interests of upholding a set of clearly defined hierarchical values.

Extra-legal governmental action

Understanding the constitution in this way – i.e. in terms of institutions, nations, peoples, patriotism and all the components of immemorial tradition – brings to the fore the fact that it is constructed of concrete (i.e. political) relations.¹¹¹ This is a strong denial of the Enlightenment belief in the possibility of the existence of abstract textual constitutions that contain a number of norms uniformly applicable to mankind. For Maistre, the constitution has nothing to do with ideal forms that can fit every possible event or predicament perfectly and which can, if applied diligently, negate any need for the messy business of politics and the even more messy business of ruling.

¹¹⁰ J. G. A. Pocock, "Burke and the Ancient Constitution", p. 203.

¹¹¹ *OC V 1 T 1*, p. 374.

For Maistre, the constitution is vital and real, the very opposite of the Enlightenment process by which sovereign authority is decommissioned and the advent of the rule of rules is commenced.¹¹² It is a place neither of perfection nor of uniformity: two elements which help constitute modern rationalism¹¹³. Maistre would concur with Michael Oakeshott that constitutions and constitutional theory cannot be “the diligent search...for an innocuous power which may safely be made so great as to be able to control all other powers in the human world.”¹¹⁴ For Maistre, the constitution is ambiguous, contentious and full of the possibility for discretionary action.

In his essay, Oakeshott identifies two types of knowledge – the technical and the practical – which then define two corresponding types of constitution. Technical knowledge involves the formulation of rules, principles and maxims. It gives the appearance of certainty and, significantly, can be learned from a book.¹¹⁵ Practical knowledge, on the other hand, cannot be formulated by rules: it exists only in use; it is not reflective. Its way is not that of formulated doctrine, and because of this Oakeshott calls it “traditional knowledge” – i.e. knowledge without which the

¹¹² Loughlin, “Constitutional Theory”, p. 14: “The liberal ideal is that of the institutionalisation and the realisation of ‘the normative state.’ This aims at the elimination of the figure of the sovereign so that there will be no ultimate law-giver, but only the rule of laws”.

¹¹³ Oakeshott, “Rationalism in Politics”, p. 9.

¹¹⁴ *Ibid.*, p. 11.

¹¹⁵ Oakeshott, “Rationalism in Politics”, p. 12; also see *OC V. 4 T 7*, p. 38: “When a child is given one of its toys which has moving parts, something which it cannot explain, a set of internal workings, after playing with it for a moment, breaks it see what is inside. This is how the French have treated their government. They have wanted to look inside. They have decided to discover political principles, they have opened the eyes of the masses to objects which it is never advisable to examine without first reflecting that there are things that are destroyed when brought to light.

mastery of any skill is impossible.¹¹⁶ Traditional knowledge leads to the true understanding of any activity, an understanding gained both from experience and from the subtle nuances of practice, and which imbues these activities with meaning. Both Maistre and Oakeshott share a language in identifying the importance of this type of knowledge to the activity of governing: “As there is always something in music which is not possible to write down, in the same way in all governments there is something which is not possible to write”.¹¹⁷

Enlightenment and revolutionary constitutions, in Maistre’s view, are devoid of this practical, traditional element; the seeming self-completeness of any written constitution is illusory.¹¹⁸ Translated into specifically constitutional terms, Maistre believes that for practical, prudential reasons the juridified constitution cannot stand apart from the well-spring of tradition and political context that supports it and nurtures it. In illustrating this point, he begins by examining the constitution of Ancient Rome. “The compilers of the Roman Constitution have thrown, into the first chapter of their collection a fragment of really remarkable Greek jurisprudence. Among the laws which govern us, says the passage, some are written whilst others are not. Nothing simpler and nothing more profound”.¹¹⁹

The point is re-stated: “Does one know of any Turkish law which expressly allows a sovereign immediately to send a man to his death without the intermediary decision

¹¹⁶ Oakeshott, “Rationalism in Politics”, p. 12.

¹¹⁷ *OC V 4 T 7*, p. 153.

¹¹⁸ Oakeshott, “Rationalism in Politics”, p. 17.

¹¹⁹ *OC V 1 T 1*, p. 238.

of a tribunal? Does one know of any written law, including religious, which prevents the Christian sovereigns of Europe from doing so?”¹²⁰ And yet, Maistre thinks, this is the case. Likewise, in examining the history of the Roman Senate, it is possible to believe that it would have been better if the powers of populace and senate had been written down, “but this would be very wrong, laws like this, forever endangered by unforeseen cases and unlikely exception would not have lasted six months or would have toppled the republic”.¹²¹ Here once more is an example of the impossibility of the technical being entirely self-sufficient.

Maistre goes on to give several examples “nearer to us”, i.e. from the constitution of England, to further develop this idea:¹²² “If it [i.e. the English constitution] is examined closely, it can be seen that it works only by not working (if this play on words is excused).”¹²³ He uses the example of *Habeas Corpus*, which “has been suspended so often and for such long periods that it could be argued that the exception has become the rule.”¹²⁴ If the authors of the act had attempted to lay down the circumstances in which it could have been suspended, they would have destroyed it.¹²⁵ As for the Privy Council, it is “a body that the constitution does not

¹²⁰ Ibid.

¹²¹ Ibid. p. 240,

¹²² OC V 1 T 1, p. 246 – Maistre considers the English Constitution in the following terms: “The Constitution is the work of circumstance and the number of circumstances is infinite. The Roman laws, the ecclesiastical laws, the feudal laws, Saxon, Norman and Danish customs, the privileges, prejudices and pretensions of all classes; wars, revolts, revolutions; the conquest; the crusades; all the virtues, all the vices, all the knowledge all the mistakes, all passions, all elements, finally acting together and forming by their mixture and the reciprocal action of the combinations multiplied by myriads of million has produced, finally, after several centuries, the most complicated unity and the most beautiful balance of forces that one has ever seen in the world”.

¹²³ Ibid., p. 240.

¹²⁴ Ibid.: “Habeas Corpus, for example, has been suspended so often and for such a long time that one must doubt if the exception had not become the rule”.

¹²⁵ Ibid.

know. If , though, one were to make a law to give a constitutional existence to the Privy Council and to regulate and vigorously circumscribe its privileges and its attributes with precautions necessary to limits its influence and to prevent it from abuses, one would overthrow the state”.¹²⁶

In this, Maistre advances a clear understanding of the necessity for the practical as well as the technical in the functioning of the constitution and iterates a basic law of political necessity: rulers must be able to take action to ensure that dissension and conflict are managed effectively outside of the proceduralised, juridified sphere of the textual constitution. Maistre’s views on the constitution reflect a reality: “It is always necessary to leave something to the arbitrary...it is always necessary that there is, independent of legal force, an administrative power which is liberated from the forms and which can act vigorously on a host of occasions”.¹²⁷ These words are an acknowledgement that to act constitutionally is not necessarily to act legally. They contain an understanding that the constitution is not entirely constructed of positivised norms, and that political power cannot be entirely institutionalised. This is, in effect, an acknowledgment of the role of Reason of State, which has been defined by Carl Schmitt as the exception to normative constitutional rules.¹²⁸ Maistre is clear that there are certain problems for which no legal-institutional solution is available.¹²⁹

¹²⁶ Ibid., p. 241.

¹²⁷ OC V 4 T 7, pp. 147-148.

¹²⁸ See, for example, Giorgio Agamben, *States of Exception*, trans. Kevin Attel (Chicago: University of Chicago Press, 2005).

¹²⁹ OC V 1 T 1, p. 447: “That which is truly constitutional in government is absolutely not that which is written down on paper”.

His insistence on the pre-eminence of the material and political over the normative is re-enforced throughout his writing by the extraordinary emphasis he places on the necessity of constitutionally significant institutions remaining unwritten: for Maistre, the positivised law pertaining to the State is completely dependent on the structure of the material, political constitution.¹³⁰ Thus the most fertile constitutional concepts and institutions – the constitution’s prejudices, fundamental laws and sense of national reason – are unwritten. In view of this fact, the substance of Maistre’s dislike of the written word, which forms such a distinctive part of his constitutional thought, needs to be examined in further detail.

The unwritten nature of the Maistrian constitution

For Maistre, the written text sums up the paradox of Enlightenment values: it is at once too vague and too individualistic. On the one hand, Maistre rejects the philosophic abstraction, whilst on the other he refutes the possibility that man’s puny individual reason can construct anything of worth. As constitutions represent rather than dictate the character of nations, he maintains, they are in no need of being written in order to be valid. This position is put forward with some forthrightness: “No truly fundamental and constitutional law may be written”.¹³¹ These fundamental

¹³⁰ Archives CD 18 JP 330 / 331: “The fundamental laws are never written, however they are the basis of the written laws so that when one interferes with the first, the state falls like a building whose foundation has been destroyed”.

¹³¹ OC V 6 T 12, pp. 58-59.

and constitutional laws have a character of “holiness and immutability”;¹³² there is no doubt that this understanding of a category of fundamental laws is of some importance to the Maistran constitutional settlement and in particular to the prohibition on writing in the constitution.

What Maistre means by ‘fundamental law’ is more than merely a law or convention which appears to have particular political importance to certain individuals or groups.¹³³ For Maistre, a fundamental law is an intangible norm from which it is not possible to derogate.¹³⁴ It is also, in a more profound sense, a principle of political unity and order. It is an expression of the notion of the material constitution as Being in contrast to the instrumentalised Enlightenment view of the constitution.¹³⁵ As an example, Maistre cites the Salic law, which, though unwritten, was nonetheless a constitutional law adopted by the French monarchy.¹³⁶ That which applies to the Salic law applies to all fundamental laws: they are the “assembly of mother ideas and political axioms that the entire nation regards as incontestable truths”.¹³⁷

Rousseau had commented that, like the Spartans under Lycurgus, “the true constitution of the state” was “engraved in the hearts of citizens”, and formed by

¹³² OC V 1 T 1, p. 236

¹³³ Carl Schmitt, *Verfassungslehre*, trans. into French as *Théorie de la Constitution* by Lilyane Deroche (Paris: PUF, 1993), p. 173.

¹³⁴ Ibid.

¹³⁵ Ibid.; see also p. 174: “These different senses combine together most often in different ways and one may emphasise or privilege different aspects – intangibility, unity, order, character of a principle, restrictive function, etc. In general, one may say that the notion becomes relativised and pluralistic from the point at which consciousness of political existence dissolves”.

¹³⁶ OC V 1 T 1, pp. 235-236.: “It has often been thought that one can play an excellent joke on the French by asking them in which book the Salic law was written, but Jerome Bignon answered strongly on this subject...that it was written in the hearts of the French”.

¹³⁷ Maistre, *Cinquième Lettre d’un Royalist Savoisien*, p. 67, ed. J. L. Darcel”, *Revue des Etudes Maistriennes* 4 (1978).

“mores, customs and especially opinions”. Rousseau concluded that a state is more ‘vicious’ when it has laws, because, “the multitude of the laws announce that they are without vigour”;¹³⁸ Maistre joins in with this praise for the Spartan constitution and extends Rousseau’s argument, adding that it is not only the number of laws but the very fact of fixing them down in writing which is a sign of the ill-health of the political body.¹³⁹

Fundamental laws should never be written, because when it has become necessary to articulate them in a text they are clearly no longer fully effective in themselves, and no longer sustain the “public spirit” which for Maistre is synonymous with the constitution¹⁴⁰. The necessity of writing down the constitution only emerges when its existence is in danger and its precepts no longer internalised by members of the constitutional community; in other words, says Maistre, “The more that one writes, the more the constitution is weak”.¹⁴¹

What, then, would be the effect of a constitution in which all the laws were exhaustively written down? It would be moribund for two reasons. First, because a law needs to be written down only when it is no longer spontaneously respected, a completely written constitution would demonstrate, by the mere fact of its having been written down, its total lack of worth. It could and would be contested.¹⁴²

¹³⁸ Rousseau, *Du Contrat Social*, Bk. II, Ch.12, p. 94. On Rousseau and Maistre’s praise of Sparta, see P. Vidal-Naquet, *La Démocratie Grécque vue d’Ailleurs* (Paris, Flammarion, 1990), p. 161ff.

¹³⁹ *OC V 1 T 1*, p. 370.

¹⁴⁰ *Ibid.*

¹⁴¹ *OC V 1 T 1*, p. 69.

¹⁴² See Jean-Yves Pranchère, *L’Autorité Contre les Lumières*, p. 169.

Second, an entirely written constitution would be one which was entirely fixed; it would thus be the opposite of a living constitution and so be incapable of following the changes of political circumstance. A legitimate constitution cannot be written because it must be able to evolve; given that the national constitution is equivalent to the character of the people, it is subject to change: “a thousand events may change the relationship of a people”.¹⁴³ And the unforeseeability of these events means that it would be harmful to attempt to encapsulate the constitution in writing – it would result in what Oakeshott has called the “orderliness of the graveyard”.¹⁴⁴ As Maistre puts it, “No great and true institution should be founded on a written law, because men, themselves instruments of the establishment, do not know what they must become”.¹⁴⁵

Stephen Holmes also draws attention to Maistre’s valorisation of verbal rather than written discourse, but does so as part of a wholesale disparagement of Maistre, who, according to Holmes, is “exceptionally fond of the argument advanced in Plato’s *Phaedrus* that speaking is superior to writing because speakers can be more selective than writers about the recipients of their communications”.¹⁴⁶ This observation unfortunately seems to have more to do with Holmes’ desire to align Maistre with Leo Strauss rather than with any desire for interpretive accuracy.¹⁴⁷ Maistre’s

¹⁴³ OC V 1 T 1, p. 328.

¹⁴⁴ Michael Oakeshott, *The Politics of Faith and the Politics of Scepticism*, ed. Timothy Fuller (New Haven: Yale University Press, 1996), p. 94.

¹⁴⁵ OC V 1 T 1, p. 259.

¹⁴⁶ Holmes, *The Anatomy of Antiliberalism*, p. 21.

¹⁴⁷ Ibid.: “Indeed, Maistre makes it possible, for the first time, to see how Schmitt and Strauss, decisionism and esotericism, may be combined in a single theory”.

argument is not, ultimately, an esoteric trifle, it is a serious intellectual position that continues to have relevance in the constitutional debate.

The first reason why Maistre prefers the spoken word is linked to one of the original meanings of *consitutio* – speech, like the constitution, is an authentic act. For Maistre, the spoken word is fact and the written word only an approximation of reality, and is lacking in true authenticity. Referring to Plato, Maistre comments that:

Speech [...] is to writing as a man is to his portrait. The products of the painting appear alive to us, but if they are questioned they keep their silence with dignity. It is the same with writing, which knows not what must be revealed to a man nor what it must hide from another. If one goes to attack it without reason it cannot defend itself because its father is never there to help it. Thus, he who imagines that he can establish a clear and durable doctrine by writing alone is a great fool.¹⁴⁸

According to Maistre, Christian tradition offers the same lesson as that of Plato.¹⁴⁹

It is a tradition in which the fundamental epistemological question concerns what something *means* rather than how it *works*, of Being rather than function, and this is reflected in the importance to Christian intellectual development of the spoken word. The Greek term *logos*, for example, which is critical to the central tenets of Christian

¹⁴⁸ *OC V 1 T 1*, p. 255.

¹⁴⁹ *Ibid.*, pp. 248-249.

dogma, can be translated most accurately as *speech* rather than *word*.¹⁵⁰ From this it follows that speech has creative qualities; it possesses a social dimension and dynamism. For Maistre it is this combination of qualities – its identification with Being, its centrality as a communication tool and its capacity to aid creativity – that nourishes the constitutional environment. It is *logos*, the word, and not the text that can be transmitted through the generations and so has qualities of permanence and veracity. For Maistre, the power of the spoken word comes from the fact that things (including constitutions) exist and are known before they are written.¹⁵¹

It is a sign of the enduring conflict between Maistre's position and that of liberal constitutionalists that a recent commentator, Jed Rubenfeld, writing in the late 20th century,¹⁵² addresses the same concerns. He writes: "The capacity of humans to relate to themselves over time has a condition: the capacity to write".¹⁵³ This statement is emblematic of the text-focused instrumentalism of constitutionalism, which is unable to see beyond the positivised, and which demonstrates its lack of awareness of the verbal mode of self-relation within different cultures during different epochs – a mode which has allowed texts as diverse as the Homeric epics, the Koran, or the oral histories of countless indigenous peoples to be transmitted, and thus allowed these cultures to sustain a cohesive societal self-awareness.¹⁵⁴

¹⁵⁰ Edward Norman, *The Roman Catholic Church* (London: Thames and Hudson, 2007), p. 35.

¹⁵¹ *OC V 1 T 1*, pp. 247-248.

¹⁵² Rubenfeld, "Legitimacy and Interpretation", in *Constitutionalism: Philosophical Foundations*, ed. Larry Alexander (Cambridge: Cambridge University Press, 1998), pp. 194-234.

¹⁵³ *Ibid.*, p. 214.

¹⁵⁴ For a discussion of the contrast between American and European post-Enlightenment constitutionalism and other cultures see James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995).

This process of detaching constitutional issues from any cultural context exemplifies the imperialistic, machine-like characteristics of Enlightenment thought that Maistre detested.¹⁵⁵ Rubinfeld goes on to say, “The first freedom of self-governing people is not...the freedom of speech. It is the freedom to write; to give oneself a text.”

Maistre would undoubtedly have viewed the provision of a codified constitutional text less as source of liberation and more as a form of ideological imprisonment. For one consequence of narrowing the constitutional focus so that the text is the only object worthy of consideration is the avoidance of any discussion of the origins and legitimacy of the constitution as a non-juristic problem. Maistre’s view is that, far from being a hermetically sealed system of norms, the constitution is open to the inevitable conflicts and compromises that take place within a constitutional (which is to say national) community. He recognises that the interpretation of the fundamental provisions of a constitution involve inescapably political assumptions.

Any attempt to generate a pure theory of law based on text and eliminating politics is a meaningless exercise. This normative conception of the constitution is particularly erroneous if it fails to refer to an extra-legal political agent.¹⁵⁶ The constitutionalist response to this is to ignore the crux of the debate and instead to transform the non-legal founding factual situation into a norm.¹⁵⁷ But in this case,

¹⁵⁵ Tully speaks of this phenomenon as the “empire of uniformity” (p. 58).

¹⁵⁶ For a discussion of a similar point with reference to Carl Schmitt, see Balakrishnan, *The Enemy*, pp. 80-115.

¹⁵⁷ See, for example, H. Kelsen, “Professor Stone and the Pure Theory of Law”, in *Stanford Law Review* 17 (1965), pp. 1128-1157. “In my essay “On the Basic Norm” I formulated the question which leads to the assumption of the basic norm as follows: “If we ask for the reason of the validity of a positive legal order, since it is a peculiarity of law that it regulates its own creation and a legal norm is valid if it is created in a way determined by another legal norm, the basic norm is the ultimate reason for the validity of the legal order because it authorises the historically first legislator”.

the constitutional text cannot be authenticated by anything above or behind it, so the basic norm must remain hypothetical.¹⁵⁸ The result is that hard questions of legitimacy, authority and the nature of the transformation of the political into the normative are simply ignored, a stance which Maistre's work opposes: a constitution must have a foundation in a political will that precedes it.

This is not to say that Maistre does not see the uses of written constitutions. The act of defining the rules of political conduct establishes clear principles and focuses the nature of the relationship between subject, or citizen and the State, and can aid in controlling political practices. In this sense, the written constitution can be a useful aid to the "activity of statecraft".¹⁵⁹ As Maistre writes:

All these constitutions are vain attempts because it is a capital axiom . . . that each nation has the government that it deserves, thus all that one can do for a nation... means nothing, has no effect, it only produces evil. But if one considers these constitutions as proper political measures to calm, to lead, to satisfy, to distract, even to mislead the imagination of the people (because this is often necessary) they merit all sorts of praise.¹⁶⁰

¹⁵⁸ Ibid.: "I have always...clearly distinguished between the basic norm presupposed in juristic thinking as the constitution in a legal-logical sense and the constitution in a positive legal sense, and I have always insisted that the basic norm as the constitution in a legal-logical sense – not the constitution in a positive legal sense – is not a norm of positive law, that it is not a norm 'posited' i.e. created by a real act of will of a legal organ, but a norm presupposed in juristic thinking".

¹⁵⁹ Loughlin, *The Idea of Public Law*, p. 47.

¹⁶⁰ OC V 7 T 13, p. 321.

In Maistre's view, there should be no confusion between a textual constitution – which is a technique of government – and true constitutional authority. There is never a time when Maistre believes that a constitution receives its authorisation from the people as a consequence of democracy. It is this sentiment which informs the second feature of his approach to the subject of constitutions, his identification of an *aporia* at the heart of democratic-contractualist discourse.

Deliberation, Constitutional Pre-commitment and Self-binding

Maistre sustains a continual and absolute denial of the contractualist theory of state formation, a rebuttal which takes the form not only of a denial of the human origins (and therefore the textual basis) of the constitution, but also of a refusal to accept that constitutions can ever be created by deliberation. This is stressed in emphatic terms: "That which is sure is that the civil constitution of a people is never the result of a deliberation,"¹⁶¹ comments Maistre. "The faults and inconveniences of a code made by an assembly would be incalculable".¹⁶² Elsewhere he says: "An assembly may not make up a nation".¹⁶³

These views not only reflect Maistre's general anti-contractualist theory,¹⁶⁴ they also express a particular concern of his regarding a fundamental aspect of the viability of

¹⁶¹ *OC V 1 T 1*, p. 346; *ibid.*, p. 67.

¹⁶² *Ibid.*, p. 217.

¹⁶³ *Ibid.*, p. 72.

¹⁶⁴ See Chapter 2 above, page 67 ff.

constitutions under a democratic regime, which became apparent to constitutional theorists of the immediate post-revolutionary era, particularly in America. Maistre's thought once again provides a critique of a quintessential problem for constitutional modernity, this time the problem of constitutional pre-commitment and self-binding.

Soon after the emergence of a contractualist democracy characterised by the fact that it could not be bound by the edicts of previous generations, the full implications of the revolutionary textual constitution were also recognised: that certain constitutional laws were subject to entrenchment and could not be changed through normal law-making procedures in the popularly elected assembly. It became apparent that a profound opposition existed between these two conceptions: between the politics of the majority and the restraint on democracy inherent in the quest for constitutional stability. This conflict is one of the most glaring flaws of the liberal-democratic project, and one to which Maistre was very much alive. How is it possible to justify a democratic system which has at its heart the means of obstructing the will of the majority? Maistre identifies two different strands to this conundrum, which confronts all democratic thought that strives to be constitutionalist.

The first strand is the problem of inter-generational binding. Democracy promotes a tirelessly inventive system, and is oriented towards unceasing change and endless reform. This being so, how can the constitutional founders impose their will on

successive generations?¹⁶⁵ It is not only traditionalists that recognised this particular difficulty: Hamilton notes that the fundamental principle of republican government is “the right of people to alter or abolish the established Constitution whenever they find it inconsistent with their happiness.”¹⁶⁶ It seems, then, that if one accepts democracy, one must also accept that no generation has the right to bind the next.

The second, related, strand concerns whether an individual can make a binding promise to him or herself. In other words, “we the people” formulations, (although they confirm – with admirable clarity the status of the new political values) present a constitutional problem, because an individual cannot legally or philosophically bind him or herself to any future course of conduct. Maistre identifies this difficulty when he comments: “Supposing that a law of this importance exists only because it is written, it is certain that whatever authority has written it will have the right to annul it; the law would not therefore have that aura of sanctity and immutability that distinguishes truly constitutional laws”. This follows on from his belief that the essence of a fundamental law is that no-one has the right to abolish it.¹⁶⁷ From this perspective, constitutions which claim to be both binding and democratic are simply incoherent.

Rousseau comments that “it is self contradictory to sovereign authority to shackle itself...it runs against the nature of the body politics that the sovereign imposes on

¹⁶⁵ *OC V 1 T 1*, p. 237.

¹⁶⁶ Quoted in Holmes, *Passions and Constraint: On the Theory of Liberal Democracy* (Chicago: University of Chicago Press, 1995), p. 138.

¹⁶⁷ *OC V 1 T 1*, p. 236.

itself a law that it cannot transgress...in the state there is no fundamental law that cannot be revoked, not even the social contract”.¹⁶⁸ To which Maistre adds: “The agreement of a people is impossible, and even if it were possible, an agreement is not law and obliges no-one unless there is a superior authority guaranteeing it”.¹⁶⁹ On this basis, it is not possible for a sovereign people to keep a promise that it has made to itself, because, according to its own precepts, it cannot create a constitutional framework that cannot be altered at will at any time in the future.

Maistre addresses the question regarding whether it is possible constitutionally to self – bind, in two ways. We have seen how Maistre first refers back to an understanding of fundamental laws as being immutable. He contrasts his own interpretation with the liberal, constitutionalist belief that fundamental laws are not substantively different from any other positivised norm. Maistre criticises the liberal constitutionalists for their failure to distinguish between material and formal laws, a failure that means that a law defining the state is of the same category as that which prohibits Sunday trading. Maistre’s second solution to the conundrum is more radical, and stems from his belief that there must be an external will in order to ground a constitution and imbue it with lasting effect. For Maistre, the basic premise of the liberal constitutionalist conundrum – self-authorisation – does not arise. For him, in order to provide a binding settlement it is necessary to have a higher, superior will that enforces obedience. Purely human constitutional deliberation is impossible.

¹⁶⁸ Rousseau, *Du Contrat Social*, Bk I, Ch. 7 pp. 58-60 and Bk III, Ch. 18, pp. 139-141.

¹⁶⁹ *OC V 1 T 1*, p. 236; *ibid.*, p 420.

The conceptual device employed by Maistre to make a constitution binding is to be found in the generative principle of constitutions, which, “Presupposes a superior will enforcing obedience”.¹⁷⁰ In the Hobbesian system:

the authority of civil laws derives solely from a contract; but if there is no natural law which obliges men to carry out the laws that have been made, for what are they? Promises, engagements, and oaths are mere words; it is as easy to break these weak links as to forge them. Without the dogma of a law-giving God, all moral obligation is chimerical. On the one hand power, on the other powerlessness, this is the only bond uniting human societies.¹⁷¹

Clearly Maistre believes this explanation regarding the source of constitutional authority to be of general applicability.

Whilst for Maistre the generative principle is thus, at least in some of its manifestations, divine, its importance for constitutional thought is to be found in Maistre’s statement that “It is always necessary for the origin of sovereignty to appear as being outside the sphere of human control”.¹⁷² In this respect, the vital aspect is the recognition that there must be an alterity, an externality from which authority emanates in order to provide binding constitutional durability, and it remains unclear as to whether Maistre intends the principle to be interpreted as

¹⁷⁰ Ibid., p. 236.

¹⁷¹ Ibid., pp. 236- 237 – Maistre, quoting Bergier.

¹⁷² Ibid., p. 265.

primarily political or religious, or whether the religious acts as a metaphor for the political (or vice versa).

Stephen Holmes specifically identifies this generative principle as being worthy of attack, for it does indeed seem to raise a valid and effective objection to liberal democratic theory,¹⁷³ and it is thus worth examining Holmes' criticisms of Maistre in order to understand the liberal constitutional position. Holmes specifically addresses the theological aspect of Maistre's argument, and relies on an *ad hominem* critique of Maistre's standing as an orthodox Christian thinker. Holmes essentially criticises Maistre for not being sufficiently Christian: "For one of the distinguishing features of Christianity, in contrast to pagan religions, is the idea of a God who can bind himself. This innovative conception fact seems to have been an important intellectual precondition for the emergence of constitutionalism in the West that is the improbable modern idea of a self-binding community".¹⁷⁴

Unfortunately, Holmes either misunderstands or deliberately misuses the dialectical subtleties of scholastic theology, and tells only half the story. What Holmes has done is to describe that which is known as God's ordained power, which is to say the power that comes into force when He acts *de jure* in accordance with the rightful law He has established.¹⁷⁵ Holmes has neglected to mention the co-existent Christian faith in God's absolute power, by which He can, *de facto*, act apart from or

¹⁷³ Holmes, *Passions and Constraint*, pp. 146-148.

¹⁷⁴ *Ibid.*, p. 151.

¹⁷⁵ Francis Oakley, "The Absolute and Ordained Power of God and King in the 16th and 17th Centuries: Philosophy, Science, Politics and Law", in *Journal of the History of Ideas* 59, number 4 (October 1998), pp. 669-690, p. 670.

against the very law that He has created.¹⁷⁶ This belief was used alongside the other in political as well as theological matters. In constitutional terms, the existence of this absolute power means that, although the Prince ought to live and discharge his duties in accordance with the law, he is not bound to do so out of necessity. Instead, he does so out of benevolence – that is, by freely choosing to bind himself in the normal exercise of his power whilst retaining the prerogative of being able to act above or aside from the law. Above all, the omnipotent God cannot be said to be bound by the nature or morality of the legal or salvific order that He has established.¹⁷⁷

Whilst God is certainly capable of making a free decision to commit Himself through the covenant and promise to follow a certain pattern of dealings with creation, this is not at all the same type of stricture as Holmes identifies, and which has apparently so influenced Western constitutional practice. In fact, Maistre is heir to a long (and Christian) intellectual tradition which recognised and debated the relative pre-eminence of ordinary and absolute powers.¹⁷⁸ Indeed, Bodin, who Holmes cites as proof that only the ordained type of power applied, properly speaking, in 16th century political thought,¹⁷⁹ clearly spoke of his Prince as being able, by his “absolute power”, to derogate from the ordinary right.¹⁸⁰

¹⁷⁶ Ibid., p. 670.

¹⁷⁷ See Francis Oakley, “Omnipotence and Presence: The Legacy of the Scholastic Distinction of Powers”, in *Etienne Gilson Series* 23 (March 2002), p. 7.

¹⁷⁸ According to Oakley, in “The Absolute and Ordained Power of God”, this distinction “has taken us across no less than seven centuries of European intellectual history” (p. 686); it is a “phenomenon of very wide intellectual significance indeed.” (p. 690).

¹⁷⁹ Holmes, *Passions and Constraint*, p. 151.

¹⁸⁰ Francis Oakley, “Jacobean Political Theology: The Absolute and Ordinary Powers of the King”, in *Journal of the History of Ideas* (1968), pp. 329-31, notes 35, 39 and 41.

Holmes is not alone in failing adequately to counter Maistre's arguments; a number of other liberal commentators on constitutions also seem to endorse a need either for a concept approximating Burke's entailed inheritance or for some form of external authority in order to create a binding, durable constitution. Rubinfeld, for example, comments that "A commitment [i.e. the necessary form of an act in order to ensure constitutional durability] is always an engagement not only with an uncertain future but with an object at least in part external to self".¹⁸¹ Michelman also identifies this need for externality, and calls it the authority-authorship syndrome. He rejects the idea that we should grant binding force to any predecessor law-giver's say-so just because it was theirs.¹⁸² We should, however, accept the decisions of an earlier generation, only if we can satisfy ourselves that, "they and we are relevantly the same people".¹⁸³ For his part, Elster comments that "our intuitive notion of what it is to bind oneself seems to require that we temporarily deposit our will in some external structure".¹⁸⁴

It is initially quite difficult to see how these solutions do more than re-state Maistre's own explanation for the need to have an entailed inheritance or an external source in a way that is politically and epistemologically more palatable to a modern, secular

¹⁸¹ In fact, Rubinfeld appears to descend into incoherence: on the preceding page he comments that a "commitment is the normative operation a temporally extended subject engages in, when without entering into an agreement with another, he imposes temporally extended obligations on himself".

¹⁸² Frank I. Michelman, "Constitutional Authorship", in *Constitutionalism*. pp. 64-98.

¹⁸³ *Ibid.*, p 81.

¹⁸⁴ Elster, *Ulysses and the Sirens: Studies in Rationality and Irrationality* (Cambridge University Press 1984) p. 43.

audience.¹⁸⁵ Although at first sight Maistre could not be further from Rubenfeld, Michelman and Elster, what they have in common is a desire to identify the sources and meaning of authority, the fundamental issue of constitutional thought. However, one of the many differences between them comes from the fact that modern constitutionalists are impeded by their absolute commitment to normativity.¹⁸⁶ For Maistre, a contrasting problem exists: that of retaining a constitutional identity separate from the political or the theological sphere. The answer to the problem of Maistre's radical openness to other disciplinary spheres such as the political or theological lies perhaps in the fact that the generative principle is not in fact in harmony with that other conception of the constitution that he held, the one based on the Burkean-influenced indeterminacy of origins. The generative principle, in contrast, is based on a moment of decision, a definitive and creative external act.

The Maistrian constitutional model, far from being a simplistic apology for reactionary, Ultramontane Catholicism, is in fact creative and nuanced enough to be able to accommodate two competing conceptions of the constitution. The consequence of this disjuncture between a decisive foundation and an indeterminate origin, between tradition and revelation, needs to be explored in some detail, as it reveals a significant feature of Maistre's understanding of the constitutional regime.

¹⁸⁵ Indeed, in reviewing Michelman's and Rubenfeld's essays, Strauss concludes that "we still need some justification for why we accept the outcome of such an evolutionary process. A Burkean account is the obvious candidate" (Strauss, "Constitutions: Written or Otherwise", p. 462).

¹⁸⁶ Strauss, "Constitutions: Written or Otherwise", p. 452: "If...the collection [of essays] is to be criticised, it is because the essays uniformly consider constitutionalism on a highly abstract level – essentially as a series of theoretical properties about the relationship between a written constitution and a democratic political system. What is perhaps missing...is a full recognition that the relationship is no longer just a theoretical one".

Maistre's Two Constitutions

The dichotomy between the two ways of viewing the constitution is expressly noted by Maistre in a passage in which he discusses the origins of constitutions. It is worth considering in full:

The author of all things has only two ways of giving a government to a people: almost always he reserves the formation to himself, which is to say germinating insensibly like a plant by means of an infinity of circumstances that we call fortuitous, but when He wants to build the foundations of a political edifice immediately and show the universe a creation of this kind, it is to rare men, it is to the truly elect that he confers his powers.¹⁸⁷

Here, Maistre entertains the possibility of there being two different modes of engendering constitutions, and in the *Considerations on France* he develops this basic idea outlined above by describing an environment in which the two conceptions of the constitution may exist at the same time, not as separate entities, but as different aspects relating to one another dialectically within the same overarching constitutional structure.

The relevant passage in *Considerations* begins with a discussion of the form of the French constitution before 1789, in which Maistre confirms his basic position that

¹⁸⁷ OC V 1 T 1, p. 344.

the constitution is the model of the political existence of a country. “Some have claimed that the nation did not have a constitution...this sentiment is unsustainable...The mistake which those who claimed France did not have a constitution derived from their great error regarding human powers, anterior deliberation and written laws”.¹⁸⁸ But, if a “man of good faith” were to ask what the constitution was, the answer would be, “the mixture of liberty and authority, of laws and of opinions which would make a foreigner who was subject of a monarchy and travelling in France believe that he was living under another government than his own”.¹⁸⁹

Having thus defined the constitution as material rather than normative, Maistre goes on to describe its bifurcation. In doing so, he quotes extensively from the *Développement des Principes Fondamentaux de la Monarchie Française*, adopting the arguments as his own.¹⁹⁰ On the one hand, the constitution attributes legislative power to the king, so that all jurisdiction emanates from him. He has the right to render justice and to have it rendered by his officers. He may give grace and favours and may accord privileges and remuneration. The king may dispose of offices, raise people to nobility, convoke and dissolve national assemblies, make peace and war and raise armies.¹⁹¹ And yet, Maistre continues, “Let us see what the French

¹⁸⁸ OC V 1 T 1, p. 89.

¹⁸⁹ Ibid.

¹⁹⁰ Between summer 1791 and 1792, the magistrates of several of the *Parlements* met in Germany and Luxembourg to draft a Treaty on the fundamental principles of the French Monarchy. It was submitted to the Court in October 1792. Although they were advised not to make it generally available, it was published anonymously in Neuchatel in 1795. See *Considerations Sur la France*, ed. Jean-Louis Darcel (Geneva: Editions Slatkine, 1980) p. 137, n. 10.

¹⁹¹ OC V 1 T 1 p. 92.

constitution puts in the other basin of the scales”.¹⁹² He goes on to consider the constraints on the King: “The king reigns only by the law and does not have the power to do everything according to his appetite”.¹⁹³

Maistre advances two arguments as to why the King does not break these laws. The first is based on the ordained nature of his power: “It is the laws that the kings themselves have avowed...in happy powerlessness to break them, these are the laws of the kingdom”. These stand in contrast to the laws of circumstance or non-constitutional laws, called the laws of the King.¹⁹⁴ The second argument is more radical, and refers to the inviolability of fundamental laws, even by the monarch: “The constitution is nothing other than the collection of fundamental laws, and the king cannot touch these laws”.¹⁹⁵ This is very different from a self-imposed ordinance to respect a covenant: the constitutional laws in this last sense stand apart even from the absolute sovereign.

There are thus two patterns of the constitution in Maistre’s thought. The first is that of the absolute monarchy, of absolute power, which develops naturally from that strain in Maistre’s work that is apparent also in his discussion of the legislator.¹⁹⁶ This conception involves notions of decision, will and command, it raises existential questions and it is closely connected with the Generative Principle. It is a constitution that is *given*, proceeding from an external source, and it defines political

¹⁹² Ibid.

¹⁹³ Ibid.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid., p. 103.

¹⁹⁶ See Chapter 2, p. 99 ff.

authority from a hierarchical perspective. Here legitimacy is subservient to authority.

The second aspect of the constitution is influenced by Burkean notions, and is a model in which, in contrast to the legislator model, origins are deliberately obscured, theological sentiments are played down, and tradition, custom and prejudice are emphasised. It is the constitution of the people's character and of immutable, ancient, fundamental laws; it explains political authority from a relational perspective; in it authority is subservient to legitimacy.

Each model involves two very different notions of law: the first involves a conception of law as hierarchy, proceeding from top to bottom;¹⁹⁷ in the second, the law functions as *droit politique*, and represents a means of recognising the existence of the State.¹⁹⁸ In Loughlin's words, this latter type of law, which coincides with the more profound understanding of fundamental law discussed above, "is a set of practices embedded within and acquiring its identity from a wider body of political practices".¹⁹⁹ And yet this explanation, although helpful, does not strike at the heart of the distinction between the two competing aspects of the Maistrian constitution, which have to do with *origin* as well as *function*. To better grasp the critical differences between them, it may be more useful to again turn to Schmitt's *Verfassungslehre* and his classification of the various types of constitution.

¹⁹⁷ OC V 1 T 1, p. 420: "...for no power being able to possess a coercive force over itself, all amenable force beneath another power is necessarily subject to this power, because the latter makes the laws which dominate the former".

¹⁹⁸ OC V 4 T 7, p.154; OC V 1 T 1, pp. 228-229: "... (3) The rights of peoples properly speaking come almost always from the concessions of sovereigns, and one can show this historically, but the rights of the sovereign and of the aristocracy have neither date nor known author. (4) Even these concessions have always been preceded by a state of things which necessitates them and which does not depend on the sovereign. (5) Whilst the written laws may only ever be declarations of anterior rights, it must be the case however that these rights may be written".

¹⁹⁹ Loughlin, *The Idea of Public Law*, p. 43.

In the *Verfassungslehre*, Schmitt identifies three models of the constitution, one of which – the relativist constitution – is synonymous with the liberal-constitutionalist position that sees constitutional law merely as a collection of a discrete positive laws.²⁰⁰ The second, the absolute conception of the constitution, is the constitution conceived as a totality. It is the, “concrete mode of existence, self-given with all political entities”.²⁰¹ The resonance with Maistre’s own views of the constitution is evident here. Schmitt then breaks down the existence of the absolute constitution into a number of sub-groups.

First, the constitution is the concrete, global structure of the political body and the social order of any given state – the state, in this sense, does not *have* a constitution, it *is* the constitution: the constitution is its soul, its concrete life and existence.²⁰² In the second sense, the constitution is a particular form of political and social order. The constitution here designates the concrete mode of the hierarchy and subordination; it represents the particular form of domination that is unique to each state and which one may not separate from its political existence. Here it is equal to the form of government that exists within a state.²⁰³ There is a third sense in which the constitution is absolute, and that is in its dynamism. Although this seems to contradict the other two definitions, whose distinctive characteristic is that they are

²⁰⁰ Schmitt, *Verfassungslehre*, p. 141.

²⁰¹ *Ibid.*, p. 132.

²⁰² *Ibid.*

²⁰³ *Ibid.*, p. 133.

status related, this third category shares with the others a notion of the constitution as Being and Existence.²⁰⁴

These, then, are the first two conceptions of the constitution; the third, represented in Maistre's work by the generative principle and the figure of the legislator, is what Schmitt calls the positive constitution, i.e. the constitution born out of an act of constituent power,²⁰⁵ an act which determines by a single decision the totality of the political body from the point of view of its particular form of existence.²⁰⁶ Behind the constituent act there is always a subject who gives the constitution to this political unit.²⁰⁷ In the constitution, before all norms, one encounters the fundamental political decision of the source of constituent power.²⁰⁸ Clearly, all of these constitutional models, although related (in that they are both types of material constitution), are not identical, and will irritate each other. Their co-existence generates different constitutional perspectives and explains the existence of ambiguities, indecisions and conflicts.

Ultimately it is the existence of these two different conceptions of the founding of constitutions in Maistre's work – the one self-given, the other given by an external source – which marks his work as distinct from that of Burke or from romantic thinkers such as Herder,²⁰⁹ because it is much more attuned to the realities of post-

²⁰⁴ Ibid., p. 134.

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ Ibid., p. 154.

²⁰⁹ See Isaiah Berlin, *Three Critics of the Enlightenment: Vico, Hamman, Herder* (London: Pimlico, 2000), p. 168.

revolutionary constitutional discourse than either traditional conservatism or romanticism. Although it is certainly conservative, it is not nostalgic, and confronts the developments of modernity head on, albeit in horror. Whilst it shares the vocabulary of romantic nationalism, it does not reduce the existential realities of the political to the level of the nebulously aesthetic. Maistre is alive to the significance of the concept of constituent power in the formation of the constitutional regime, although he refutes any of its democratic implications, and he presents us with an alternative to the revolutionary model. Maistre's work is an attempt to provide an explanation for the mysterious transformation from political will to constitutional form; an explanation that does not suffer from the problems associated with theories of democratic self-authorisation. At the same time, the persistence of the absolute, material constitution in his thought anchors the constitution in political reality and provides a check on the absoluteness of power implied by the terms of the given, positive constitution.

Conclusion

This examination of Maistre's thinking on the structure and nature of constitutions has revealed complexities frequently overlooked by those who seek to represent him as a theocratic reactionary lacking in any meaningful constitutional relevance. In fact, his work reveals a subtle and nuanced approach to the subject, which can be analysed in two distinct yet interlinked ways, both of which involve a consideration

of constitutional issues in dialectical form. The most important understanding of the constitution that Maistre's work emphasises is that of the constitution as political existence, not as a synonym for the supreme juridical norm.

Maistre's view of the constitution and its outstanding features acts as a counterweight to the overwhelming discourse of modern liberal constitutionalism. It stands against the abstract, rational, deliberative and instrumental; in place of the values of juridified constitutionalism it proposes a constitutional perspective based on collectivity, unity and particularity, a world-view that is bound up with tradition, custom and prejudice. The series of antinomies that are revealed by the juxtaposition of the two modes of thinking about constitutions provides a strong dialectic: text versus word; legal uniformity versus political unity; technical versus practical knowledge.

Schmitt's *Verfassungslehre* assists us in understanding this distinction between the relativist and the absolute conceptions of the constitution; the *Verfassungslehre* also helps us also to distinguish between the two conceptions of the constitution that exist within Maistre's work, and which provide different constitutional possibilities and perspectives. Their lack of exact coincidence – their imperfect symmetry – explains the existence of a series of tensions which run throughout Maistre's thinking on the form and content of the constitution. This too may be expressed by a number of antinomies, the most basic being that between the given and the self-given views of the constitution; between law as command and law as a species of political,

fundamental right; between prudential, temporally extended reason and decisive constitutional revelation. Conceptually distinct but dialectically related, each of these different facets helps to explain the shifting and indeterminate nature of constitutional discourse. They also demonstrate Maistre's originality as a constitutional thinker, for it is possible to see in his work an attempt to accommodate the modern notion of constituent power into the traditional model of the material constitution.

CHAPTER FOUR: MAISTRE AND SOVEREIGNTY

Introduction

The concept of sovereignty is vital to understanding the importance of Maistre's constitutional thought, for in a sense it is threaded through all of his political and constitutional writing and is synonymous with some of the most fundamental constitutional questions that he considers. Through investigating such issues as the nature of power and authority, Maistre comes to address one of the most profound puzzles of the modern political milieu: the nature of the relationship between the individual and the State. As Francois Huguenin comments: "Maistre was closely concerned with the notion of sovereignty for a long period ...the theme is central to Maistre as a man of his time, the inheritor of a seventeenth century which saw the power of the state affirmed in a new and decisive way".¹

In his thought on sovereignty Maistre demonstrates a reliance on both tradition and innovation; far from being the esoteric maverick of liberal myth, Maistre clearly inherited many of the characteristics of his version of sovereignty from well-established forebears, including Bodin and Hobbes. But it is equally important to note that his views on the subject are by no means derivative or fixated on the past: his work has an originality which continues to inform more recent expositions of the

¹ Francois Huguenin, "Souveraine Modernité de Joseph de Maistre", in *Joseph de Maistre, Dossiers l'Age d'Homme* (Lausanne, Switzerland: Editions L'Age d'Homme, 2005), p. 418.

subject. As we shall see, one of the most contentious of all modern constitutional theorists, Carl Schmitt (whose definition of the sovereign as “he who decides on the exception” has become infamous), was heavily influenced by the work of the Savoyard.²

All of these thinkers – Bodin, Hobbes, Maistre and Schmitt – have in common a particular approach to sovereignty. They all proffer solutions to the same political problem: the perceived fragmentation of both the institutions and the identity of the state. They also defend a notion of unity which they believe is in the process of being prised apart.³ For Bodin, the cause of disintegration was the religious strife in France of the sixteenth century,⁴ whereas for Hobbes, the political mutations which inspired the English Civil War inspired him to write *Leviathan*.⁵ And for Schmitt, the dissolution of the bourgeois constitution itself, through the corrosive effects of mass politics, acted as the spur for his theoretical writings.⁶ In all of these cases, the promotion of an authoritarian model of sovereignty is the response to constitutional crisis. For Maistre, the threat comes from revolution and the political transformation

² Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Chicago: The University of Chicago Press, 2005), p. 5.

³ Gerard Mairet, *Le Principe de Souveraineté: Histoires et Fondements du Pouvoir Moderne* (Paris: Gallimard, 1997), p. 187.

⁴ See Olivier Nay, *Histoire des Idées Politiques*, (Paris: Armand Colin 2004) p. 159 : .

⁵ See, for example, Richard Tuck, in his introduction to *Leviathan* (Cambridge: Cambridge University Press, 1991), p. xi, says: “So when reading *Leviathan* we have to bear in mind Hobbes’s uncertainty about the result of the civil wars in both England and France, and his hope that the arguments in this book might have some effect upon the outcome”.

⁶ See Tracy B. Strong, in her forward to *Carl Schmitt: The Concept of the Political* (Chicago: University of Chicago Press, 1996), p. ix, says: “he probed the nature and sources of what he took to be the weakness of the modern liberal, parliamentary state, both in its embodiment of the Weimar constitution and more broadly as the modern form of political organisation”.

that this entails.⁷ He sees his task as upholding the essential nature of sovereignty as a unified, ordering force in the face of the chaos brought about by an adherence to Enlightenment thought.⁸

In constructing his idea of sovereignty, Maistre continued to explore those themes and antinomies that have been introduced and examined in previous chapters, and his work on this subject reveals more of the relationship between, on the one hand, the decisive power of the legislator creating *ex nihilo* and, on the other, the authority generated by the institutions of immemorial constitutional tradition. This dynamic will find further expression in a series of oppositions – norm versus fact, law versus legitimacy and, in particular, authority versus power – relationships which are crucial to an understanding of the modern state.

This chapter certainly seeks to situate Maistre's view of sovereignty within the absolutist constitutional tradition that encompasses the work of Bodin and Hobbes, but it will outline not only this continuity but also the innovations present in Maistre's work, and consider its influence on contemporary views of sovereignty – in particular those of Carl Schmitt. In the course of this analysis, those themes that emerge in discussion of constituent power⁹ and constitutions¹⁰ will be re-addressed.

⁷ See Lucien Jaume, "Citizen and State Under the French Revolution", in *States and Citizens*, eds. Quentin Skinner and Bo Strath (Cambridge: Cambridge University Press, 2003), p. 132: "The Revolution sought to fundamentally detach (*sic*) the individual from allegiances to all forms of social grouping and hierarchy in order to place him under the sole authority of the law; for a horizontal membership of traditional communities, the Revolution substituted a vertical allegiance to the law".

⁸ *OC V 1 T 2*, p.15: "...because the Church, like every moral being, cannot exist without unity"; see also p. 24: "Remove the queen of a swarm, you will have as many bees as you like, but a hive, never".

⁹ See above, Chapter 2.

Ultimately the chapter will address the question of whether Maistre's conception of sovereignty offers any resolution to the tensions in his own thought or modern constitutional thought in general. The principal work consulted is *Du Pape*, but as sovereignty is a notion which exercised Maistre so much, references to it are to be found throughout Maistre's other works, correspondence and private notes.

The Absolutist Tradition: Bodin, Hobbes, Maistre

Whilst the problem facing classical and medieval political philosophy was that of discerning the best possible regime, that facing modern politics is to determine the reasons for legitimate obedience.¹¹ Sovereignty, which is one solution to this conundrum, is therefore a foundational concept of modern constitutional thought. The modern process of governing could not emerge as an autonomous activity until the materialisation of the modern state,¹² and sovereignty forms part of this project, expressing the power to command which the state holds. In short, sovereignty is the central criterion of the modern state, and Maistre unavoidably participates in constitutional modernity by employing the term.¹³

¹⁰ See above, Chapter 3.

¹¹ Pierre Manent, *Dictionnaire des Oeuvres Politiques* (Paris: PUF, 1986), p. 344.

¹² See Martin Loughlin, *The Idea of Public Law*, p. 74.

¹³ See *Dictionnaire de Philosophie Politique*, ed. Philippe Raynaud and Stephane Rials (Paris: PUF, 1996), p. 735; see also Mairet, *Le Principe de Souveraineté*, p. 189.

Nevertheless, modern attitudes towards sovereignty tend either to discredit it¹⁴ or to define it in ambivalent terms. Take, for example, the representative formulation tendered by Preston King, who defines it as “The power or authority which comprises the attributes of an ultimate arbitral agent entitled to make decisions within a political hierarchy with some degree of finality”.¹⁵ Because of this ambivalence, if we are to understand it fully (and so comprehend the foundations upon which Maistre’s version of sovereignty rests) it is necessary to return to the work of Jean Bodin (*Les Six Livres de la Republique*)¹⁶ and Thomas Hobbes (*Leviathan*) – seminal texts on sovereignty whose modernising premises were so influential for Maistre’s own treatment of the concept as a unique and vital constitutional project.¹⁷

Bodin defines sovereignty as the highest power to command,¹⁸ stating that without such a power, a modern state could not really be held to exist. Although Bodin builds on the work of later medieval political theory,¹⁹ the *Six Books of the*

¹⁴ See, for example, Michael Keating, *Plurinational Democracy: Stateless Nations of the United Kingdom, Spain, Canada and Belgium in a Post-Sovereign World* (Oxford: Oxford University Press, 2001); R. B. J. Walker and Saul H. Mendlovitz, ed., *Contending Sovereignties: Redefining Political Community* (Boulder, Colorado: Lynne Rienner, 1990); Jean Picq, *Histoire et Droit Des Etats; La Souveraineté dans le Temps et l'Espace Européens* (Paris: Sciences Po Les Presses, 2005), p. 381; J. Chevallier, *L'Etat Postmoderne* (Paris: LGDJ, 2004); Linda Basch, ed., *Nations Unbound* (Amsterdam: Gordon and Breach, 1997); Timothy Brennan, *At Home in the World: Cosmopolitanism Now* (Cambridge, MA: Harvard University Press, 1997).

¹⁵ See *The Blackwell Encyclopaedia of Political Thought* (Oxford, Blackwell Publishing, 1987), p. 492. And consider this, from Thomas Berns, *Souveraineté, Droit et Gouvernmentalité: Lectures du Politique Moderne à Partir de Bodin* (Paris: Editions Leo Scheer, 2005), p. 7.

¹⁶ Jean Bodin, *Les Six Livres de la Republique: Un Abrégé du Texte de l'Edition de Paris de 1583* (Paris: Librairie Generale Francaise, 1993).

¹⁷ See archival material – Notebook, Cote 2J 15-18, p. 404, in which Bodin is cited in an index of references; Notebook Cote 2J 19, pp. 667-675, a detailed commentary on “Hobbes’s tripos in 3 discourses, London 1684”.

¹⁸ Bodin, *Les Six Livres*, p. 151.

¹⁹ See Jean-Fabien Spitz, *Bodin et la Souveraineté* (Paris: PUF, 1998), p. 12. See also J. Moreau-Reibel, *Bodin et le Droit Public Comparé dans ses Rapports avec la Philosophie de l'Histoire* (Paris:

Commonwealth is the first constitutional text to explicitly exclude the Aristotelian notion of the mixed regime, and to discard the associated idea that the king is primarily an administrator of justice.²⁰

Bodin's innovation,²¹ which came in response to the religious fragmentation (and consequent crisis of political allegiance) occurring in France at that time,²² is that he develops a theory of sovereignty which does not depend upon whether or not the laws of a king are just, in an Aristotelian sense, but on whether or not the sovereign has the requisite power to pass those laws.²³ As Bodin's model does not grant subjects the right to register either consent or dissent to the laws of the sovereign,²⁴ this theory thereby takes its place as one of the keystones of political absolutism.²⁵

Vrin, 1933), p. 140, where Moreau-Reibel argues that Bodin condenses elements of the treatises *De Imperio* and the *Juridictiones* of the Digest of Bartolus. For an opposing view, see A. L. Fell, *The Origins of Legislative Sovereignty and the Legislative State*, Vol III: *Bodin's Humanistic Legal System and the Rejection of "Medieval Political Theology"* (Boston, MA: Harvard University Press, 1987). See also Morgen Chorms Jacobsen, *Jean Bodin et le Dilemme de la Philosophie Politique Moderne* (Copenhagen: Museum Tusculanum Press, 2000), p. 120. See also Bodin, *Méthode de l'Histoire*.

²⁰ See, for example, the work of Henry de Bracton, *De Legibus et Consuetudinibus Angliae*, ed. G. E. Woodbine, rev. and trans. S. E. Thorne, 4 Vols. (Cambridge, MA: Harvard University Press, 1968-77); see also Michel Villey, *Philosophie du Droit: Définitions et Fins du Droit / Les Moyens du Droit* (Paris: Editions Dalloz, 2001), p. 103.

²¹ Bodin was certainly conscious that he was innovating; see Bodin *Les Six Livres*, p. 111: "Here it is necessary to define sovereignty because neither jurisconsults nor political philosopher have defined it".

²² See Martin Van Creveld, *The Rise and Decline of the State* (Cambridge: Cambridge University Press, 1999), p. 176: "In a world where God is no longer capable of providing a consensual basis for political life, Bodin wanted to endow the sovereign with his qualities and put Him in His place". For a biographical account, see Jacobsen, *Jean Bodin et le Dilemme de la Philosophie Politique Moderne*.

²³ Bodin, *Les Six Livres*, pp. 156-157.

²⁴ *Ibid.*, p. 160.

²⁵ See Julian H. Franklin, "Sovereignty and the Mixed Consitution: Bodin and his Critics, in *The Cambridge History of Political Thought, 1450-1700*, ed. J. H. Burns (Cambridge: Cambridge University Press, 1991), p. 299.

This notion of sovereignty had a profound effect on Maistre, especially Bodin's understanding of sovereignty as something both absolute and perpetual.²⁶

Bodin and Maistre – sovereignty as absolute

The first characteristic of Bodinian sovereignty is unsurprisingly that it is absolute by nature,²⁷ a trait which, for the purposes of closer analysis, may be sub-divided into two characteristics. The first of these is the quality of *indivisibility*, which is to say that sovereignty cannot be shared amongst several entities (as in the case of medieval feudal regimes and the *polis* of the ancient philosophers).²⁸ Because, for Bodin, sovereignty is the principle by which the state establishes its constitutional unity, it must be concentrated in a single place.²⁹ This also provides one of the foundational elements of Maistre's understanding of the purpose of sovereignty: he declares that "The principle of monarchy, as in every form of command, is that there may only be one will".³⁰

This strong desire for unity on Bodin's part has led to criticism by commentators such as Julian Franklin, who argues that, taken to its logical conclusion, the

²⁶ Bodin, *Les Six Livres*, p. 111. At least this is the definition that pertains in the *Six Livres de la République*. For a comparison between this and *La Méthode de l'Histoire*, see Jacobsen, *Jean Bodin et le Dilemme* and Julian H. Franklin, *Jean Bodin et la Naissance de la Théorie Absolutiste*, trans. Jean-Fabien Spitz (Paris: PUF, 1993), p. 67.

²⁷ See Bodin, *Les Six Livres*, p. 118.

²⁸ See Aristotle, *The Politics*, trans. T. A. Sinclair (London: Penguin, 1962), p. 101, p. 193.

²⁹ Simone Goyard-Fabre, *Les Principes Philosophiques du Droit Politique Moderne* (Paris: PUF, 1997), p. 102.

³⁰ OC V 5 T 10, p. 10. See also Diplomatic Correspondence p. 349: "Sovereignities may be differently constituted but all by their nature are absolute".

philosophy leads to a pure theory of ruler sovereignty.³¹ And Maistre does indeed appear to adopt this stark, monist position when he comments that: “This indispensable supremacy may only be exercised by a single organ: to divide it is to destroy it”.³² But although he asserts sovereignty’s indivisibility here, Maistre nevertheless makes a clear distinction between the person of the sovereign and the office he holds, saying: “This is not a question of monarchy but of sovereignty, which is extremely different”.³³ This point of view leads him to the conclusion that a division of power within the state is not necessarily in opposition to a modern, unified conception of sovereignty, and does not necessarily imply the existence of an Aristotelian or federal conception of state power.³⁴ Instead, the division of power may well explicate and therefore reinforce a concept of unified sovereignty: “The fact is that without power in the state, without body, without society, without strong institutions, well organised...the sovereign cannot govern because he only has one head and two arms”.³⁵

Importantly, the existence of these secondary institutions in no way implies a division of the one-ness of sovereignty. “Everywhere powers are divided”, Maistre notes; “the combat of these different powers may be considered as the deliberation of a unique sovereign, whose reason balances the advantages and disadvantages. But when a side is taken, the effect is the same and the will of any sovereign is

³¹ See Julian H. Franklin, “Sovereignty and the Mixed Constitution”, p. 307.

³² *OC V 1 T 2*, p. 157.

³³ *Ibid.*, p. 178.

³⁴ See Raynaud and Rials, *Dictionnaire de Philosophie Politique*, p. 738.

³⁵ *OC V 6 T 12*, p. 127; see also *OC V 7 T. 13*, p. 51: “Legitimate sovereigns have publicly sanctioned the maxim of dividing, partitioning and adjudication of sovereignties for simple reasons of convenience”.

always invincible”.³⁶ Here Maistre shows a distinctly modern appreciation of the differences between the alienation and the delegation of sovereignty. The test of sovereignty remains the same – one of unity – even in those constitutional arrangements which admit a degree of complexity, and it is important to note that Maistre makes a strong conceptual distinction between sovereignty and government. “In considering governments where powers are divided, it is necessary to envisage them in their unity [...] and to ask oneself if the sovereign will which results from their united wills may be stopped, constrained or punished”.³⁷

And this notion of invincibility – the idea that the sovereign may not be “stopped, constrained or punished” – leads into the second quality of sovereignty, which is that it is *unlimited*: it imposes itself in an incontestable manner on all, and, in particular, it does not require consent or legitimation from those upon whom it imposes itself. Furthermore, the sovereign may not be subject to the command of anyone else.³⁸ Maistre sets out this attribute of unlimited superiority in categorical terms: “I will never understand these words: the king cannot.”³⁹ And, “always there must be one to whom one may not say: you have erred”.⁴⁰ In his view, “Sovereign authority is as much incapable of modifying itself as alienating itself. To limit it is to destroy it. It is absurd and contradictory that the sovereign recognises a superior”.⁴¹

³⁶ OC V 1 T 1, pp. 417-418.

³⁷ Ibid., pp. 422-423.

³⁸ Bodin, *Les Six Livres*, p. 112 : “If it were otherwise, and that absolute power conceded to a lieutenant of the prince were called sovereignty, he would be able to use it against his prince, who would then be no more than a cipher: the subject would then command his lord and the servant his master, which would be absurd”.

³⁹ Diplomatic Correspondence Vol 2, page 303.

⁴⁰ OC V 1 T 2, p. 3.

⁴¹ OC V 1 T 1, p. 418.

Maistre emphasises one particular quality of this attribute, which also represents an expression of his concern with the individualism of the era of the *philosophes* and the defiance of sovereign authority (in the form of revolution) which is an expression of that individualism. The unlimited nature of sovereign power, he says, means that “The sovereign may not be judged: if it were to be so, the power which had this right would be the sovereign, and there would be two sovereigns, which implies contradiction”.⁴² This is a characteristic which resonates throughout the entirety of Maistre’s work on sovereignty and which, as will be seen later, he uses in an innovative way.

Bodin and Maistre– the perpetual nature of sovereignty

The second (and less commented upon) of Bodin’s characteristics of sovereignty is that it is perpetual,⁴³ and, once again, this idea may be considered to have two aspects, the first of which is its *public* nature. To be perpetual means to resist the changes of time,⁴⁴ and in Bodin’s model, sovereign power is not affected by the contingencies of history. As Maistre (echoing Bodin’s ideas) puts it: “the sovereign that never ages is, in consequence, never subject to losing its memory”.⁴⁵ It

⁴² Ibid.

⁴³ Bodin, *Les Six Livres*, p. 111. See also Franklin, “Sovereignty and the Mixed Constitution” above p 177: “To the extent that the problem of the perpetual is practically without influence in the constitutional controversies of the age, and to the extent that it is linked in quite a loose manner to the other elements of Bodin’s theory, there has hardly an appropriate place to discuss it in this text”.

⁴⁴ Goyard-Fabre, *Les Principes Philosophiques*, p. 106.

⁴⁵ Diplomatic Correspondence Vol. 2, p. 127.

incarnates the principle of continuity which resides in all power. Bodin thus constructs a principle of sovereignty which distinguishes the crown, which is eternal and sacred, from the king, who is a physical being.

And it is this distinction that establishes the public character of sovereignty – the sovereign power is not private property, the product of an exclusive relationship between one person and another with respect to an object,⁴⁶ it is a public relationship between one person and a transcendent institution that governs all. Maistre then develops Bodin's ideas into a theory which reflects his own concerns about the issues of popular sovereignty and representation that are the products of Enlightenment and revolutionary thought. Like Bodin, he is keen to point out that, as a consequence of its public nature, sovereignty cannot be intermittent: "A periodic and intermittent sovereign is a contradiction in terms. For sovereignty must always live, always guard. It makes no distinction between between sleep and death".⁴⁷

Here Maistre echoes Rousseau's belief in the inefficacy of representation,⁴⁸ and these lines are linked to an intense distrust of representation's effect on the primacy of the sovereign: "I simply say that the intermittent representative body, if it is above all accidental and non-periodic, is by the very nature of things everywhere and

⁴⁶ See Loughlin, *The Idea of Public Law*, p. 77.

⁴⁷ *OC V* 1, T 2, p. 12.

⁴⁸ Rousseau *Du Contrat Social*, p. 65.

always incapable of governing; and that even during its sessions, it only has existence and legitimacy from its leader”.⁴⁹

The second, closely connected, characteristic derived from the perpetual nature of sovereignty is its *impersonal* nature, which comes from the fact that it resides entirely in a representative office.⁵⁰ Maistre thus reinforces the distinction between the entity of the state and the type of government in power, suggesting that the diversity of forms of government has no bearing on the existence and exercise of sovereign power, however much one might find a particular form more attractive than another.⁵¹ Sovereignities may be differently constituted, but all are absolute by their nature and may not be judged by any power, because this power would then become sovereign, a sequence which could continue *ad infinitum*.⁵²

This recognition of the impersonality of sovereignty sets Maistre apart from traditional divine-right theorists. His understanding of sovereignty, based upon Bodin’s innovative definition in addition to establishing its fundamental characteristics of being absolute and perpetual, makes a distinction between the office and the person which is crucial for the maintenance of the modern concept of sovereignty.⁵³

⁴⁹ OC V 1 T 2, p. 26.

⁵⁰ See Otto Gierke, *Political Theories of the Middle Ages*, trans. F.W. Maitland (Cambridge, Cambridge University Press, 1922), p. 61.

⁵¹ See below, Chapter 5, p. 293

⁵² OC V 1 T 2, p. 2: “Sovereignty has different forms, without doubt. It does not speak in Constantinople as it does in London: but when it speaks in one place or another, the Bill in its own way is as without the possibility of appeal as the Fatwah”.

⁵³ Louis de Bonald, for example. For a commentary on his work, see Frederick Copleston, *A History of Philosophy: 19th and 20th Century French Philosophy* (London: Continuum, 1975), p. 5.

Hobbes and Maistre

Bodin's work clearly had a direct influence on Maistre's conception of sovereignty.

In Bodin's hands, the modern concept of sovereignty is still in a state of development, the disengagement from both Roman and Thomist traditions being a protracted process lasting into the sixteenth century and beyond.⁵⁴ In Villey's words: "The definitions of [sovereignty by] Doneau...remain uncertain; those of Bodin really hesitant, those of Althusius confused and those of Grotius not exempt from embarrassment and contradictions".⁵⁵ Of all the constitutional theorists of the early modern era it is Hobbes who, "resolutely anti-Aristotelian, renounced the cosmological horizons of the political world and refuses to place the microcosm of the State in the natural macrocosm willed by God and ruled by Him".⁵⁶ Whilst this view may underestimate the innovative contribution to constitutional thought of the early modern thinkers, it is right to say that Hobbes offers an undeniably modern sequencing of sovereignty: in doing so he reflects the advent of a de-transcendentalised world, an intellectual environment no longer based on the old Aristotelian assumptions.

⁵⁴ Goyard-Fabre, *Les Principes Philosophiques*, p. 108.

⁵⁵ Michel Villey, *La Formation de la Pensée Juridique Moderne* (Paris: PUF, 2003), p. 573 .

⁵⁶ Goyard-Fabre, *Les Principes Philosophiques*, p. 124; see also Spitz, *Bodin et la Souveraineté*, p. 15.

Consequently, the relationship between Hobbes's work and that of Maistre is a difficult one. Indeed, at first glance it is difficult to find any similarity between the Catholic-hating⁵⁷ Hobbes, who claimed that his theories had a rational, scientific basis⁵⁸ and whose political model was predicated on the notion of individualistic free will,⁵⁹ and the organicist, ultramontane Savoyard, one of whose principal aims was to assert the importance of collective prejudice over the primacy of purely human reason. It has, for example, already been noted how Maistre opposes contractarian thinking and rejects the possibility of man-made political institutions.⁶⁰ Nevertheless, despite a plethora of differences between the two, Hobbes's thought did have an impact upon Maistre, and the content and aims of their thought are often more nuanced, less polarised than is commonly believed.

This is principally due to the fact that, despite the reactionary and conservative structure of his writings, Maistre's constitutional and legal thought bears the unavoidable and indelible imprint of secularised modernity (the very fact that he uses the term 'sovereignty' is testament to this). It is also because Hobbes is not entirely free of an intellectual world-view imbued by religion in which Maistre also participates.⁶¹ In part this extends to their views on sovereignty, and whilst it is

⁵⁷ See Chapter XLIV *Of the Kingdome of Darknesse*, in Hobbes, *Leviathan*, p. 417.

⁵⁸ See Douglas Jesseph, "Hobbes and the Method of Natural Science", in *The Cambridge Companion to Hobbes*, p. 86.

⁵⁹ See Hobbes, *Leviathan*, p. 117.

⁶⁰ See Chapter 2.

⁶¹ See Michael Oakeshott's introduction to *Leviathan* in his *Hobbes on Civil Association* (Indianapolis: Liberty Fund, 1975), pp. 50-58; see also Ellen Kennedy, *Constitutional Failure: Carl Schmitt in Weimar* (Durham and London: Duke University Press, 2004): "The modern state emerged...on the foundation of a community endowed with a mystical character; from James's claim to "be" England, it was not so far to Hobbes's declaration in *Leviathan* that the sovereign is "the real unity of them all"". For French perspectives, see Lucien Jaume, *Hobbes et l'Etat Représentatif*

beyond the scope of this chapter to give a full account of Hobbes's understanding of this notion, in order to understand Maistre's own view it is necessary to examine what elements they held in common⁶². There is, in particular, one archetypal Hobbesian theme which contributes to the development of the notion of sovereignty and which also forms an integral part of the Maistrian view of the concept – the so-called positivisation of the law.

Hobbes, Maistre and the positivisation of the law

As we have seen, Bodin's model of sovereignty had already begun to establish the idea that the Prince was "above the laws" – indeed, for him it was a necessary concomitant of sovereignty.⁶³ It was Bodin who specified the sovereign's ability freely to break and to create juridical norms, but it was Hobbes who brought this new conception into a fully realised form and who therefore "expresses perfectly the

Moderne (Paris: PUF, 1986); F. Lessay, *Souveraineté et Légitimité chez Hobbes* (Paris: PUF, 1988); M. Malherbe, *Hobbes* (Paris: Vrin, 1984); R. Polin, *Politique et Philosophie chez Thomas Hobbes* (Paris: Vrin, 1977); Y. C. Zarka, *La Décision Métaphysique de Hobbes* (Paris: Vrin, 1987).

⁶² See Chapter 3; Their convergence on this matter is explained by a passage from Michael Oakeshott (*Hobbes on Civil Association*, p 63): "For Augustine, on the other hand, the predicament [i.e. of deducing civil society from "the very condition of human nature] arises from a defect in human nature, from sin. Where does Hobbes stand in this respect? The widely accepted interpretation of Hobbes' view is that for him the predicament springs from the egoistical character of man and that therefore it is vice and depravity that create the chaos. Moreover it is a genuinely original depravity, for the fall of man (or anything to take its place) is no part of Hobbes's theory...he appears to take his place on this question beside Plato and Spinoza, basing his theory on the "known natural inclinations of mankind. But not without difficulty. First, the striving after power which is characteristic of the human individual may in Hobbes's view be evil; it is so when it is directed by Pride. And Pride is so universal a defect in human nature that it belongs to the constitutive cause of the predicament. And if, by interpreting it as illusion Hobbes deprives Pride of moral significance, it still remains a defect. And since Pride (it will be remembered) is the Augustinian interpretation of the original sin, this doctrine of Hobbes seems to approximate his view to the conception of the predicament as springing from, not nature, but defect in nature".

⁶³ Bodin, *Les Six Livres*, p. 11 and 12.

spirit of modern law”,⁶⁴ which is to say a regime in which sovereignty corresponds to the total mastery of the law. Thus, where law is an equivocal term for Bodin, for Hobbes it is categorically a commandment which emanates from an authority figure who is legally constituted: in Michel Villey’s words, “the law is posed no longer by God but solely by the will of man”.⁶⁵ Hobbes’s originality lies in the reservation of the creation of the juridical order to the law of the state alone, completing the disassociation of God from the rule of law that was begun by Bodin.

It thus may seem odd to suggest that Hobbes, who aimed to end any connection between divine morality and the law and sever the meaning of the great Chain of Being, should exert such an influence on a writer who was apparently dedicated to sustaining the traditional modes of political understanding. Hobbes’s law no longer has the true God as author, a being who is too far away from our broken humanity, whereas for Maistre, God remains defined as the supreme authority over human affairs.⁶⁶ However, on further examination the differences between the two men are not so marked. The Hobbesian author of the law is, after all, forged on the model of God. The author is personal like God (because all law is the expression of an individual will) and sovereign through His example (because every law is the command of an authority); the sovereign is therefore the “mortal God”.⁶⁷ The fact that Hobbes uses this very image suggests that the separation between the

⁶⁴ Olivier Beaud, in *Dictionnaire de Philosophie Politique*, eds. Philippe Raynaud and Stephane Rials, p.736.

⁶⁵ Villey, *La Formation*, p. 597.

⁶⁶ Hobbes, *Leviathan*, p. 199: “In a Commonwealth, a subject that has on certain and assured Revelation, particularly to himself concerning the will of God, is to obey for such, the Command of the Commonwealth”.

⁶⁷ Hobbes, *Leviathan*, p. 120.

theological and the secularised state, which he promoted, has not been entirely successful.⁶⁸ Indeed, several commentators argue strongly that Hobbes's work retains the imprint of the cosmological world view – albeit in distorted form – that he sought to reject.

Michel Villey writes that “the civil law is only the analogue of the divine law but transposed to the use of this broken world. It is like an imitation of it, a crude counterfeit... the civil law is not a recast form of the natural law...but remodelled in order to be used in this terrestrial world”.⁶⁹ Bernard Manent believes that in *Leviathan*, obedience to God comes to be confused with obedience to the sovereign,⁷⁰ and Michael Oakeshott advances a thesis that demonstrates the link between the Hobbesian and religious conceptions of the law.⁷¹ Indeed, the Hobbesian process of positivising the law has, in Marian H. Morales view, “demystified natural law at the expense of mystifying its positive content”.⁷²

These commentators have sought to show that Hobbes's system expresses more than just a detached, secular rationality; at the same time, if Maistre's view of the law is analysed, we can see that it has qualities which are frequently attributed to the

⁶⁸ See Luc Foisneau, *Hobbes et la Toute-puissance de Dieu* (Paris: PUF, 2000), p. 127.

⁶⁹ Villey, *La Formation*, p. 607.

⁷⁰ See Manent, *Histoire Intélléctuelle du Liberalisme* (Paris: Hachette, 2004), pp. 52–53.

⁷¹ Oakeshott, *Hobbes on Civil Association* pp. 51-53: “The Europe of his day was aware of three positive religions: Christianity, the Jewish religion and the Moslem. These, in the language of the Middle ages, were *leges*, because what distinguished them was the fact that the believer was subject to a law....The consequence in civil life of the existence of these laws was that every believer was subject to two laws...”

⁷² “Hobbes”, in *The Philosophy of Law: An Encyclopaedia*, ed. Christopher B. Gray (New York Garland Publishing, 1999), p. 374.

Hobbesian legal system.⁷³ First, laws and authorities have a hierarchical relationship expressed in such a way that the validity of any law or authority must be derived from a superior law or authority.⁷⁴ Second, the hierarchical system is closed by a final authority beyond which there is no right of appeal.⁷⁵ When considered in this light, the Hobbesian and Maistrean conceptions of sovereign order are not so dissimilar: Hobbes undeniably retains traces of the traditionally theological in his work, and Maistre's conception of the law is of a far more positivistic bent than one would expect from a scholar working within the Catholic-Aristotelian tradition.

In fact, Maistre seems to break with the Catholic natural law tradition in many other respects – or, to put it more accurately, he simply ignores it.⁷⁶ Nowhere, for example, does he attempt an examination of any of the different versions of the theory of natural law. Even though he cites Pufendorf⁷⁷ and Aquinas,⁷⁸ Maistre “seems not to be aware of either the diversity of natural law traditions nor of the central character of the notion of natural law and natural right in the Thomist tradition”.⁷⁹ In Max Huber's view, this abandonment of the vocabulary of the natural law is an indication that Maistre's version of legal positivism is incompatible

⁷³ For a general overview see M. M. Goldsmith, “Hobbes on Law”, in *The Cambridge Companion to Hobbes*, ed. Tom Sorell (Cambridge: Cambridge University Press, 1996), pp. 274-304.

⁷⁴ OC V 1 T 1, p. 236: “The agreement of the people is impossible and, even if it were otherwise, an agreement is not law and obliges no-one, unless there is a superior authority which guarantees it”.

⁷⁵ OC V 1 T 2, pp. 2-3: “In the judicial order, which is nothing but a part of government, can it not be seen that it is absolutely necessary to have a power which judges and is judged, precisely because it pronounces in the name of the supreme power”.

⁷⁶ Jean-Yves Pranchère, *L'Autorité Contre les Lumières* (Geneva: Droz, 2004), p. 359.

⁷⁷ OC V 4 T 7, pp. 525-7 is the section in *Examen d'un Ecrit de Rousseau* where this most frequently occurs.

⁷⁸ Archives, Cote 2J 15-18 (CD 18 nb p.404)

⁷⁹ Pranchère, *L'Autorité Contre les Lumières*, p. 359.

with a vision of the state based on natural law and the common good, which are essential doctrines of scholasticism.⁸⁰

The position is complicated by the fact that whilst Maistre repeatedly describes the law in terms of command/authority, a secular concept, his formulation of it is irretrievably entwined with the symbols and imagery of religion, leading to a positivisation of the theological and a theologisation of the secular. There are in fact numerous examples, particularly in *Du Pape*, of this cross-fertilisation. Maistre uses ecclesiastical and political terminology interchangeably, which gives rise to a system of thought wherein the two spheres are perfect analogies for each other.⁸¹ This emphasis on a positivised law, crucial to an understanding of sovereignty, combined with Maistre's detestation of revolution and the ensuing anarchy that revolution brings, inevitably leads him to understand sovereignty in terms of the imposition of order within the state. "Each sovereign is an ordering and regulating being: he is

⁸⁰ Max Huber, *Die Staatsphilosophie von Joseph de Maistre in lichte des Thomismus*, (Helbing & Lichtenhahn, Basel/Stuttgart, 1985), p 10, 112, 186 cited in Pranchère n.76 above, p 359.

⁸¹ There are two points to note in this regard. First, Maistre undoubtedly intends this process to occur (*OC V 1 T 2*, p. 24: "politics will furnish us with new analogies"). Second, there is a distinct equality between the two spheres (*OC V 1 T 2*, p. 157: "The Church demands nothing more than other sovereignties"). Of the many examples of this cross-fertilisation, it is important to detail a number, in order to convey the extent to which Maistre's work is permeated with the idea. See, for example: *Diplomatic Correspondence*, p. 351: "Councils are religious parliaments as parliaments are political councils"; *OC V 4 T 8*, p. 144: "A revolt is nothing but a political schism, just as a schism is only a religious revolt"; *OC V 2 T 4*, p. 203: "Do not have any repugnance in believing and saying that one beseeches God as one beseeches a sovereign"; *OC V 1 T 2*, p. 15: "Thus ecumenical councils are and may only be the parliament or the estates general of Christianity convened by the authority under the auspices of the Sovereign."; *OC V 1 T 2*, p. 4: "What difference is there between the church of God, led solely by his word and the great one and indivisible republic, solely governed by the laws and delegates of the sovereign people? None"; *OC V 1 T 2*, p. 6: "If someone proposed a kingdom of France without a king of France, one would with justification believe him to have lost his mind: this would be the same idea as a church without its head"; *OC V 1 T 2*, p. 188: "There is much analogy, much fraternity, much dependence between pontifical power and that of kings – never can one shake up the first without touching the second"; *OC V 1 T 2*, p. 4: "In the 16th century the rebels attributed sovereignty to the church...the 18th century just transposed these maxims to politics".

born to order and he only understands order”.⁸² This sense of order is in some respects the prime characteristic of a sovereign figure, who must withstand the chaos of revolution: “Happy the man who could make himself understand how much the talent of the sovereign, which employs men and puts them in their place, is enough in itself and independent of all other quality”.⁸³ This line of thought leads Maistre to exhort subjects to “Love the sovereign as you must love order: with all the might of your intelligence”.⁸⁴

Oakeshott comments that Hobbes’s civil philosophy is a composite of two themes, Will and Artifice.⁸⁵ It could be said that Maistre’s civil philosophy follows Hobbes’s in embracing Will, but departs from it in entirely rejecting Artifice.⁸⁶ Maistre’s dismissal of the early modern and Enlightenment faith in the idea that consent might form a viable basis of the state marks a deliberate excising from his political model of any concept of active participation by the people in the political sphere. When this rejection of consent is combined with the intensity of Maistre’s emphasis on command, the result is to create an effect of extreme positivisation, of a system of a hierarchical and hermetically sealed system of law . This strain of thought, combined with an absence of natural-law theorising, creates a God-like

⁸² *OC V 6 T 11*, p. 517.

⁸³ *OC V 6 T 12*, p. 214.

⁸⁴ *OC V 4 T 7*, p.157.

⁸⁵ Oakeshott, *Hobbes on Civil Association*, p. 60.

⁸⁶ Meinecke viewed the existence of the element of artifice as a distinct failing of the Hobbesian state, it being merely an instrument to promote “the welfare, the security and the comfort of individual men” In Meinecke’s view there was no place in Hobbes’s state for “the devotion founded on faith and the attachment to the State” that Meinecke viewed as essential “for the truly living and personal State”. See Friedrich Meinecke, *Machiavellism: The Doctrine of Raison d’Etat and its Place in Modern History* (London: Routledge, 1984), p. 215.

mortal (rather than a mortal God); and the implications of this conceptual inversion are significant.

There is the danger that, in Maistre's model, *Salus populi suprema lex* may become *voluntas suprema lex*.⁸⁷ His brand of Divine positivism does not collapse the spiritual into the temporal, an effect of which Hobbes was well aware ("Temporal and spiritual government are but two words brought into the world, to make men see double, and mistake their lawful sovereign", he said⁸⁸). Instead, it makes possible a species of sovereignty which is both spiritual *and* temporal,⁸⁹ an all-encompassing understanding of the notion with truly totalitarian dimensions. But to suggest that Maistre's interpretation of sovereignty is purely based on Will is to neglect the triangulation between the command, sovereignty and the law which informs his work. This interplay leads to an understanding of sovereignty as power and as a juridical form.

⁸⁷ Heinrich A Rommen, *The State in Catholic Thought* (New York: Greenwood Press, 1945), p. 393.

⁸⁸ Hobbes, *Leviathan*, quoted in Oakeshott, *Hobbes on Civil Association*, p.55 and see *Leviathan*, p. 311: "Lastly, seeing it hath been already proved out of divers evident places of scripture...that the Kingdom of God is a Civil Common – wealth, where God himself is Sovereign...)

⁸⁹ Oakeshott, *Hobbes on Civil Association*, p. 55: "And the recipient of the transferred right [in Hobbes's system] is the artificial, sovereign authority, an authority which is not temporal and spiritual....but single and supreme".

The Juridical View: Sovereignty as Power, Sovereignty as Law

An intimate link between sovereignty, power and law began to be forged in the early modern era.⁹⁰ As Michel Villey comments, “the meaning of *potestas* begins to be mentioned and all juridical science is ordered around it. These doctrines accord with the individualist tendencies of a bourgeois, Christian world”.⁹¹ To have power is to be the cause of a certain number of actions;⁹² it represents the ability to bring about intended effects.⁹³ In this formulation, the notion of power thus finds its expression in the political domain, through sovereignty, and is an “essentially empirical phenomenon”.⁹⁴

For sovereignty is the supreme power – that which is exercised over citizens and subjects and is unrestrained by law. Sovereign power itself, however, is essentially ambivalent: he who has the power to heal also has the power to kill; he who has the power to do good for his country also has the power to lead it to its destruction.⁹⁵

⁹⁰ It is interesting to note the etymological closeness of sovereignty and power. Robert Derathe, in *Rousseau et la Science Politique de Son Temps*, (Paris: J. Vrin, 1988), p. 385, notes that “in the juridical language of the 18th century, public power, empire, sovereign authority, sovereignty are synonymous terms”. French jurists used the terms ‘sovereignty’ and ‘power’ as pertaining to the state from the time of Bodin onwards. In German, the term ‘sovereignty’ can be translated both literally (*Souveranitat*) and conceptually (*Staatsgewalt*). The also holds true for terms denoting power: *Herrschaft* means domination, *Macht* means force and power and *Gewalt* means either power or violence, and when combined with the term for the state refers to public power (*Staatsgewalt*).

⁹¹ Villey, *La Formation*, p. 573.

⁹² Celine Spector, *Le Pouvoir* (Paris: GF Flammarion, 1997), p. 9.

⁹³ Martin Loughlin, *Sword and Sales; An Examination of the Relationship Between Law and Politics* (Oxford: Hart Publishing, 2000), p. 125.

⁹⁴ Ibid.

⁹⁵ Spector, *Le Pouvoir*, p.10.

Crucially, sovereign power belongs in the domain of means rather than ends, and Maistre understands it in the sense of an empirical ability to make things conform to its will: “Both [i.e. sovereignty and infallibility] express this high power which dominates all, from which all others derive, which governs and is not governed, which judges and which is not judged”.⁹⁶ His formulation almost equates sovereignty with the domination of the strongest over all others: “Sovereignty is before everything and everything must give way to it”.⁹⁷

Maistre believes that force may preside over the installation of a new power or may maintain it as it is exercised⁹⁸. This is an acknowledgment that violence plays both a foundational and a permanent role in the history of sovereign power, but violence, in the hands of the state, founded on the law, becomes a juridical phenomenon of organisation and regulation. “The juridicisation of sovereignty is”, in Olivier Beaud’s words, “a testament to a revolution in the history of law, which is the emergence of legal positivity: that is to say of a new way of representing law...which accompanies an essential change in the relation between spiritual and temporal power”.⁹⁹ The figure of the sovereign as an ordering power is crucial in

⁹⁶ *OC V 1 T 2*, p. 2.

⁹⁷ *OC V 7 T. 14*, p. 76. See also p.164: “It is necessary that major principles fall on the people from high to low, like the rain”; *OC V 1 T 1*, p. 423: “One will find that every sovereign is despotic and that there are only two paths to take in this respect: obedience or insurrection”; *OC V 7 T.13*, p. 51: “Sovereignty must be assessed not by its essential character, but by its physical power set against the ancient definition, universal, invariable, which always asked of each Prince: Who are you and not what can you do?”

⁹⁸ *OC V 5 T 9*, p. 188: “Everyone knows that there are fortunate revolutions and usurpations which are truly criminal in their principles, to which however it pleases providence to fix the seal of legitimacy by long possession”.

⁹⁹ Olivier Beaud, *La Puissance de l’Etat* (Paris: PUF. 1994), p. 55.

explaining the potential that power has to be expressed through violence, but for that violence to be legitimised by the law.¹⁰⁰

The intimate connection made here by Beaud between sovereignty and the law describes Maistre's own predicament, meaning that Maistre must consider the issue of legitimacy, the law's dialectically related conceptual quality. Does the sovereign power that is underpinned by force need to create conditions for voluntary submission based upon sentiments other than fear? Treating sovereignty as a legal concept, Maistre's response is categorical: "I believe that I read somewhere that there are very few sovereigns able to justify the legitimacy of their origins",¹⁰¹ he comments. The sovereign is able to say, "I possess because I possess".¹⁰² If it is to be a panacea for disorder and conflict, then sovereignty must operate as a function of power and be founded by the person who commands: "Never is a sovereign obliged to give reasons to his subjects or the whole of society will disintegrate",¹⁰³ Maistre insists: to take into consideration the views of his subjects would be to invert the principle of order that establishes legal sovereignty and through which it functions.

This view of sovereignty as forming part of a conceptual trinity along with power and law is based on principles espoused by Bodin and Hobbes, and represents a strong strategy for stabilising the state by means of imposing order and unity. By rejecting the notion of legitimacy, Maistre emphasises both the unchallengeability of

¹⁰⁰ Pranchère, *L'Autorité contre les Lumières*, p. 132.

¹⁰¹ OC V 1 T 1, p. 264.

¹⁰² OC V 7 T 13, p. 124.

¹⁰³ OC V 4 T 8, p. 145.

the source of law – he is unconcerned with the justness or otherwise of its content – and the gulf that exists between governors and the governed. He essentially develops the conceptual schema that he created in his discussion of the constitution as promulgated by the legislator. Yet whilst his notion of power as an expression of sovereignty is crucial to his thinking, it does not fully define his understanding of the concept and Maistre's model of sovereignty goes much further in describing and analysing the complex forces and relations that make up the modern understanding of the term

The Structural Ambiguity of Sovereignty

During his discussion of the legalistic, command-orientated characteristics of sovereignty, Maistre continually stresses another related aspect: that of its inviolability,¹⁰⁴ a characteristic which results from Maistre's specific concerns about the effects of revolution on the political order. It is a concern which is voiced throughout his work: "The king is sovereign. His person is inviolable..."¹⁰⁵ he says, and "Sovereigns are inviolable and may not be judged".¹⁰⁶ Initially it might seem that inviolability is another straightforward juridical proposition, which merely gives another shade of meaning to the absolute nature of sovereignty in the Bodinian

¹⁰⁴ *OC V 1 T 1*, p. 418: "However one defines and places the Sovereign, it is always one, inviolable and absolute".

¹⁰⁵ *Ibid.*, p. 445.

¹⁰⁶ *OC V 4 T 8*, p. 318.

juridical sense. However, Maistre further elucidates the concept, incorporating subtleties which render this initial assessment inadequate.

First, inviolability has to be understood in a relational sense. It depends upon a very modern acceptance that there exists a separate political entity, 'the people', which must be considered in any account of the term; as he says, "It would be easy to prove to you that everything they have done against the sovereign tends to render sovereignty more inviolable for the people".¹⁰⁷ Moreover, Maistre acknowledges that the people are capable of acting, although they should not do so, against sovereignty: according to Maistre, the people must accept that "Royal authority categorically does not come from men, that God is the author of it, that the sovereign is inviolable, that no-one may judge him for any reason and that all men who harm it are despicable".¹⁰⁸ Here, then, Maistre posits the existence of some form of actual relationship between sovereign and subjects. He admits the existence of a body or force capable of unsettling or deposing the sovereign, accepting that an agency not included in the realm of juridical sovereignty might nevertheless impinge upon it. From a purely legalistic viewpoint, one that understands sovereignty to be a disposition dependent solely on the dissemination of command, Maistre's theory seems incomprehensible. How can the contradiction be resolved?

Before we can answer that question, we must consider a second difficulty posed by Maistre's view of the sovereign as a product both of power and of the law. An

¹⁰⁷ *OC V 6 T 12*, p. 429.

¹⁰⁸ *Ibid.*, p. 48.

essential element of Maistre's discourse on the matter is that of the possibility of the limitation of sovereignty, which derives from his desire to distinguish between an absolute sovereign and a tyrant:¹⁰⁹ "How can one restrain the sovereign power without destroying it?"¹¹⁰ Maistre asks. It is impossible to address this issue using only the concept of power for, as we have seen, power is a concept concerned only with factual dominance and not with the manner in which (or to what end) that dominance should be exercised.

In order to arrive at a solution we need to turn once more to Bodin, who frames the dilemma and provides some answers to it. Although Bodin insists that sovereignty "is the most, high, absolute and perpetual power over citizens in a commonwealth" and represents "the greatest power to command",¹¹¹ he also asserts that there are a number of restraints on the sovereign, arguing that "All princes of the earth are subject unto the laws of god, of nature and of nations".¹¹² In short, there is a paradox. How can one have an absolute sovereign if one is also forced to accept "division, constraint, the partition, the equal or, of course, "superior" of the

¹⁰⁹ OC V 1 T 1, p. 422: "The great problem would not therefore be to prevent the sovereign from having an invincible will, that which implies contradiction, but to prevent him from having an unjust will".

¹¹⁰ OC V 1 T 2, p. 171; see also pp. 27-28: "If the king found that several things were to be done parliamenterially, that is to say following the true principle of constitutions, he could give royal sanction to these different dispositions which would become binding laws even for the king, who is, in this especially, the image of God on earth: for following the beautiful words of Seneca, God obeys the laws, but it is He who has made them"

¹¹¹ Bodin, *Les Six Livres*, p. 111

¹¹² Ibid.

sovereign”?”¹¹³ In this case one would have a sovereign who was both limited and absolute.¹¹⁴

Of course, the possibility must not be ignored that Bodin may be using the word ‘law’ equivocally; as a transitional thinker the categories to which he refers are fluid and often paradigmatically incompatible with one another. Even so, there is a contradiction here which does not reflect a theoretical impasse, but instead provides an extremely fruitful basis for conceptualising sovereignty as a unifying commanding force that has no equal, but which is nevertheless prevented from exceeding the limits of its power. Stephen Holmes writes of Bodin’s paradox that, “we must not erase the verbal contradiction too hastily, the drama of Bodin’s position lies precisely here, in this systematic oscillation between two, not quite compatible claims”.¹¹⁵ It is fair to say that this oscillation between asymmetric conceptions of the same notion also drives Maistre’s theory of sovereignty, which both establishes the law and is governed by it.

Now we can attempt an answer to both conundrums that seem to face Maistre’s theory of sovereignty: i.e. the questions surrounding the inviolability of the sovereign and the limitlessness of his power. The answer to both conundrums lies in the fact that sovereignty possesses a structural ambiguity. To understand sovereignty fully, one must accept that it has more than one trajectory. Adopting a

¹¹³ Spitz, *Bodin et la Souveraineté*, p. 9.

¹¹⁴ Ibid.

¹¹⁵ Stephen Holmes, *Passions and Constraints: On the Theory of Liberal Democracy* (Chicago: University of Chicago Press, 1995), p. 105.

solely juridified, unilateral understanding of the term will lead to an impasse.¹¹⁶ To reduce it purely to dimensions of power and law is to cut oneself off from another meaning, a truth which is exposed when questions such as the nature of the relation between sovereign and subject or the limitation of the unlimited sovereign are posed.

The Political View: Sovereignty as Authority, Sovereignty as Relation

For Maistre, sovereignty is also an expression of the basic political relationship between the people and the institutional framework of state power.¹¹⁷ Certainly, law represents the command of the sovereign, but since the sovereign is an office-holder who exercises official power, the will of the sovereign must be promulgated through institutional forms: only in this way can a governing order be established.¹¹⁸

Furthermore, the existence of a governing order necessarily gives rise to questions concerning its source and the ends to which it is directed. Power may be described as the means by which sovereignty operates, but, taken by itself, the notion cannot fully explain sovereignty in its entirety. Maistre's emphasis on the command-driven aspects of sovereignty is tempered with the recognition that effective command also depends upon the ability of the sovereign to establish authority, a constitutional phenomenon which must be distinguished from unadulterated power. This notion of authority is inherently political; it is "a complex phenomenon. It is rooted in the

¹¹⁶ Beaud, *Constitutions et Constitutionnalisme*, p. 20.

¹¹⁷ OC V 1 T 2, p. 443: "In ending this discussion, I declare that I am protesting equally against all types of exaggeration: that pontifical power be retained in its correct limits".

¹¹⁸ OC V 1 T 1, p. 408: "Any institution whatsoever is nothing but a political edifice".

division between governors and governed and it underpins the concept of sovereignty”.¹¹⁹

Authority, so important to a full appreciation of sovereignty, forms a significant theme in Maistre’s writing. We have seen how one aspect of the Maistrian constitution is predicated on the existence of a particular type of authority, which is composed of a sense of antiquity in terms of well-established belief patterns and immemorial traditions. This vision of authority, which underlies the material constitution of the nation, is connected with conformity of usage: in other words, ways of doing, being or feeling. It involves acknowledging a heritage to which one belongs and which one cannot ignore without denying and losing one’s identity.¹²⁰ It is the guardianship of the eternal yesterday, “of customs sanctified by their immemorial validity and by habit rooted in man to respect them”.¹²¹ Commentators agree that the structure of Maistre’s thought outlined here is generally permeated with references to authority, but to unravel some of the intricacies of the term as applied specifically to sovereignty it is helpful to turn to Hannah Arendt’s celebrated analysis of the notion of authority.¹²²

Arendt’s argument is that in modern times the historic underpinnings of political systems have disappeared, a development that has coincided with the decline of the

¹¹⁹ Loughlin, *The Idea of Public Law*, p. 63.

¹²⁰ Jean-Yves Baziou, *Les Fondements de l’Autorité* (Paris: Les Editions de l’Atelier, 2005), p. 48.

¹²¹ Max Weber, *Le Savant et le Politique* (Paris: Union Generale d’Edition, 1974), p. 102.

¹²² Hannah Arendt, “What is Authority?” in *Authority*, ed. C. Friedrich (Cambridge, MA: Harvard University Press, 1959), repr. in *The Portable Hannah Arendt*, ed. Peter Baehr (London, Penguin, 2003) pp. 462-507.

‘Roman trinity’ of religion, tradition and authority.¹²³ This has resulted in the modern realisation that we must once more resolve the elementary problems of how to live together. Maistre also has a strong image of authority in this Arendtian sense, and so analysing this major element from their writings will enable us to grasp the conceptual shape of Maistre’s view of sovereign authority.

For Arendt, authority demands obedience.¹²⁴ Maistre also sees obedience as an essential component of sovereignty: “The sovereign acts, obedience is general, quiet and constant. The opposition is there is any in particular, turbulent, transient”.¹²⁵ Moreover, obedience is necessary for an understanding the political meaning of sovereignty: “Respect for authority, for example, is found everywhere, because it is necessary, obligatory and fundamental, and without it the political world would not be able to turn”.¹²⁶ Arendt also argues that, unlike power, authority is a phenomenon which is more than persuasion and less than force, a quality that follows on from its political nature.¹²⁷ Maistre concurs, saying: “Sovereigns move forward as themselves, without violence on the one hand, without marked deliberation on the other. It is a species of magnificent tranquillity”.¹²⁸ In this sense, authority should

¹²³ Ibid., p. 464.

¹²⁴ Ibid., p. 463. See also Bertrand de Jouvenel, *Sovereignty: An Enquiry Into the Political Good*, trans. J. F. Huntingdon (Indianapolis: Liberty Fund, 1997), p. 35: “By authority I mean the faculty of gaining another man’s assent”.

¹²⁵ OC V 7 T 13, p. 124.

¹²⁶ OC V 6 T 12, p. 180.

¹²⁷ Arendt, “What Is Authority?” p. 463: “Yet authority precludes the use of external means of coercion; where force is used, authority itself has failed”.

¹²⁸ OC V 1 T 1, p. 232; see also Jouvenel, *Sovereignty*, p. 37: “What I mean by authority is the ability of the man to get his own proposals accepted”.

not be considered as antonymous with liberty. The distinguishing mark of authority is that it exercises power only over those who voluntarily accept it.¹²⁹

Proceeding on the belief that persuasion, which is “in the egalitarian order”,¹³⁰ is not part of authority, Arendt argues that we can deduce that what he who commands and he who obeys have in common is the hierarchy, in which both have a pre-determined place.¹³¹ In Maistre’s terms, “If I may be permitted to establish the degrees of importance among the things of a divine institution, I would place hierarchy above dogma”.¹³² Maistre is also adamant that political authority does not rest on a notion of equality: “In a sense...one could say that all men were the same; but in another just as correct, one could say that they were all different”.¹³³

For both Arendt and Maistre, sovereign power, as an absolute (i.e. in the Bodinian sense of pure power), is perpetual and therefore out of time.¹³⁴ Authority, on the other hand, is intimately related to tradition. It has its roots in the past; rather than creating from nothing, it augments that which already exists.¹³⁵ For Maistre: “the forms of sovereignty are not the same all over: they are fixed by fundamental laws

¹²⁹ Jouvenal, *Sovereignty*, p. 39.

¹³⁰ Arendt, “What Is Authority”, p. 463.

¹³¹ Ibid.: “The authoritarian relation between the one who commands and the one who obeys rests neither on common reason nor on the power of the one who commands; what they have in common is the hierarchy itself, whose rightness and legitimacy both recognize and where both have their predetermined stable place”.

¹³² OC V 4 T 8, p. 142.

¹³³ OC V 6 T 12, p. 180.

¹³⁴ Diplomatic Correspondence Vol. 2, p. 291: “Sovereignities have more to do with the future than with the present”.

¹³⁵ Arendt, “What Is Authority”, p. 465: “Authority, resting on a foundation in the past as its unshaken cornerstone, gave the world the permanence and durability which human beings need precisely because they are mortals – the most unstable and futile beings we know of. Its loss is tantamount to the loss of the groundwork of the world”.

whose true bases are never written. This is not a question of monarchy but of sovereignty, which is entirely different”.¹³⁶ Running throughout both Arendt’s and Maistre’s accounts is the overriding proviso that authority is not to be confused with power. In Maistre’s words, political (as opposed to juridical) sovereignty is by nature “neither universal, nor indivisible, nor perpetual”.¹³⁷

This distinction between authority and juridical power is explored still further in Maistre’s writings. Although authority demands obedience, unlike pure power it does not do so by threatening force, but by engendering loyalty to the state. Maistre believes that the state’s authority – its political capacity – is enhanced by the strengthening of the bonds of allegiance between the governors and the governed. It is clear now why this aspect of sovereignty was impossible to conceptualise using juridical notions, for it is an achievement which clearly belongs in the political realm. It departs from considerations of normativity and instead expresses itself as fact; it is capacity not competence. For Maistre, authority – being a device that is less than force but more than persuasion – operates by means of political relationships and institutions in order to build up its capacity and reinforce sovereignty.

Sustaining his belief that authority is relational, not absolute, Maistre suggested that public power, a key requisite of sovereignty, is formed through the institutionalisation of political authority: “No-one could reasonably doubt that the

¹³⁶ *OC V 1 T 2*, pp. 177-178.

¹³⁷ *Ibid.*, p. 19.

particular and distinctive characters of these diverse sovereignties were very profound, if often invisible, causes. The people adhere to the national forms to the point where they are unhappy or even insulted when they see them destroyed or contradicted".¹³⁸ Using constitutional institutions, sovereignty generates political authority by way of the relationship between the state and the people.¹³⁹ It is a deeply complex relationship, being based not only on the connections but also on the fissures which exist between governors and governed.¹⁴⁰

The power generated is the result of the attachment of the state's subjects to the constitutional system. In this way, public power in the Maistrian system may be said, in part, to rest on opinion and belief.¹⁴¹ Authority rests upon the allegiance of the people, and once support is withdrawn, then the authority – as distinct from the power – of those who govern is dissipated.¹⁴² Maistre's technique for the generation of the constitutional enthusiasm necessary for the proper functioning of sovereignty consequently rests upon two pillars. First, Maistre advocates the use of civil religion; second (and more surprisingly given his reputation), he asserts the need for a positive constitutionalism based upon a limitation of the sovereign. These two

¹³⁸ OC V 6 T 12, pp. 408-409.

¹³⁹ Baziou, *Les Fondements de l'Autorité*, p. 49.

¹⁴⁰ OC V. I, T. 1, p. 354: "The masses have nothing to do with political creations. They only respect the government because it is not their work". See also Diplomatic Correspondence Vol. 1, p. 350, on the constructive use of this divide: "That a good adviser must always speak to the people of the rights of the sovereign and to the sovereign of the force of the people: in other words, he must ceaselessly preach the benefits of authority to the people and the benefits of liberty to kings".

¹⁴¹ OC V 1 T 1, p. 375: "Now these kinds of opinions are essential to man; they are the real basis of his happiness and the palladium of empires. Without them, there can be neither religion, nor morality, nor government".

¹⁴² Ibid., p. 408: "You cannot build a great edifice on narrow foundations or a durable one on a moving or transient base. Likewise, in the political order, in order to build high and to build for centuries it is necessary to rely on an opinion or a belief which is broad and deep: for if the opinion does not hold the majority of minds, nor is it deeply rooted, it will only provide a narrow and transient base".

devices, whilst directed towards the same aim, highlight the different aspects of Maistre's thought in respect of political authority – civil religion emphasises the relational aspects and positive constitutionalism emphasises the institutional aspects.

Maistre's understanding of the relation between religion and the state is an ambiguous one. It is frequently unclear whether state practice is subservient to religion or if religion is to be considered as a function of the state. It is, in part, this imprecision which gives his constitutional thought its power, and it is used to good advantage in the inculcation of civil religion in the Maistrian state: Maistre argues that "There should be a state religion just as there is a state political system; or rather religion and political dogmas, mingled and merged together, would together form a general or national mind".¹⁴³ The strength of political institutions is dependent upon the development of a relationship of this nature;¹⁴⁴ indeed, Maistre comes to the conclusion that sovereignty is only respected when it is sacred. He identifies the intense loyalty engendered "when citizens are believers and government is a true religion"¹⁴⁵ – thus, he concludes, political belief should be a creed, a faith¹⁴⁶ through which relations could be intensified between subjects and institutions, which is to say the sovereign power of the State.¹⁴⁷

¹⁴³ Ibid., p. 375.

¹⁴⁴ Ibid., p. 361: "Great political institutions are perfect and durable to the extent that the union of politics and religion within them is all the more perfect."

¹⁴⁵ Ibid., p. 376.

¹⁴⁶ Ibid., p. 363: "Numa had given to Roman politics this religious character which was the heart, the soul and the life of the republic. It is a constant fact ... that the oath was the true cement of the Roman constitution. It is by the oath that the most turbulent plebeian, lowering his head before the council which asked his name, bore under the flags the docility of a child".

¹⁴⁷ Ibid., pp. 408-409: "Now if you seek the great and solid bases of all possible institutions of the first and second order, you will always find religion and patriotism".

His treatment of civil religion has obvious similarities with Rousseau,¹⁴⁸ who also recognised the importance of religion's ability to sustain and even promote civil order.¹⁴⁹ Religious sentiments invest civil obedience with a deeper significance, he believed, so that citizens are more likely to embrace it fully.¹⁵⁰ And yet the species of authority which encourages obedience, and which is in turn nurtured by the deeper understanding of obedience promoted by religion, makes heavy demands on the subject of the State. There is first a development and then a manipulation of constitutional emotion: the concentration on patriotism and national dogma involved in civil religion leads to an intense level of attachment between citizens and the sovereign.¹⁵¹ The species of authority generated through the establishment of a civil religion is profound and intense, justifying the etymology of the word 'authority' itself, which suggests something that has divine, mystical or even magical origins.¹⁵²

¹⁴⁸ See also Rousseau, *Du Contrat Social*, Chapter 8 ("De la Religion Civile"), pp. 169-180. For more on Rousseau's views, see P. P. Masson, "Le Probleme de la Religion Civile", in *La Religion de Jean Jacques Rousseau* (Paris: Hachette, 1916); B. Griethuysen, *Jean Jacques Rousseau* (Paris: Gallimard, 1949), pp. 269-281; R. Derathe, "La Religion Civile Selon Rousseau", in *Entrètiens de Genève* (Paris: Armand Colin, 1962), pp. 161-180. Rousseau was also conscious of Hobbes's crucial work in reconciling the tensions between the theological and the political; see Rousseau, *Du Contrat Social*, p.172 : "Of all Christian authors, the philosopher Hobbes is the only one who saw clearly both the evil and the remedy, and who dared to propose reuniting the two heads of the eagle [i.e. Church and state] and fully restoring that political unity without which neither the state nor the government will ever be well constituted".

¹⁴⁹ Rousseau, *Du Contrat Social*, p. 178: "There is, then, a purely civil profession of faith of which it concerns the Sovereign to decide the articles, not exactly as religious dogma but as sentiments of sociability without which it is impossible to be either a good Citizen or a faithful subject".

¹⁵⁰ Ibid.: "Now it is very important to the state that each citizen should have a religion which makes him love his duty". The difference between the two men is that for Rousseau, Catholicism had a corrosive effect on the relation between citizen and state – he averred that it was so manifestly bad that the pleasure of demonstrating its badness would be a waste of time, whereas Maistre saw Catholicism as the perfect vehicle for encouraging loyalty to the state.

¹⁵¹ A technique found frequently but not exclusively in totalitarian regimes. Consider, for example, pledging allegiance to the flag in the USA or the now defunct practice of standing for the national anthem at the end of cinema performances in the UK.

¹⁵² See E. Benveniste, *Le Vocabulaire des Institutions Indo-européennes*, Vol. II, (Paris: Editions de Minuit, 1969), p 149, and G. Dumezil, *Idées Romaines* (Paris: Gallimard, 1980), pp 83-84.

In contrast to the quasi-mystical nature of civil religion, Maistre's second means of inculcating political authority – positive constitutionalism – is a moderate one.

Where civil religion uses intense pressure to extract sentiments from the subject, positive constitutionalism deepens the citizen's attachment to the state by ensuring the moderation and regularity of the sovereign. For positive constitutionalism, authority rests on the belief in the validity of defined laws, and of a positive competence founded on established, rational rules. It is an authority engendered by obedience, "which fulfils its obligation in accordance with established statutes" – which is to say, in conformity with procedures and rules which can be explained.¹⁵³

In contrast to the Enlightenment's view of the constitution as being purely a check on those in power, then, Maistre believed that it creates institutions, assigns responsibilities and inculcates aims. In short, it makes a country governable.¹⁵⁴

With this in mind, Maistre promulgated a constitution which is expressly designed to strengthen the state, in the belief that, in Holmes's words, "state capacities can be sharply increased by strategic limitations on state power".¹⁵⁵

Maistre begins his exposition of positive constitutionalism by explaining its effect as a uniquely Western phenomenon. Whilst oriental potentates possess total unmediated power over their subjects, they are liable to assassination by them at any

¹⁵³ Bayziou, *Les Fondements de l'Autorité*, p. 48.

¹⁵⁴ Holmes, *Passions and Constraints*, p. 101.

¹⁵⁵ *Ibid.*, p. 109; see also Loughlin, *The Idea of Public Law*, p. 160.

time,¹⁵⁶ in the West, on the other hand, “Kings surrender the power to judge by themselves, and people in return declare the kings infallible and inviolable. Such is the fundamental law of the European Monarchy”.¹⁵⁷ From this proceeds a crucial formula: as power is sacrificed, authority is augmented.

This arrangement, “a miraculous equilibrium”, gives the Prince “all the power which does not amount to tyranny, properly speaking, and to the people all the freedom which does not exclude indispensable obedience”.¹⁵⁸ In other words, positive constitutionalism is based on the idea that there are limits which impinge upon the sovereign’s freedoms. The absolute sovereign knows a host of restraints: “the canons, laws, national customs, sovereignties, great tribunals, national assemblies, prescriptions, representations and negations, and the insistence of the call of duty, fear, prudence and, above all...opinion, queen of the world”.¹⁵⁹

These influences are strong and would have had a part to play even in the most severe acts of the old government, when (Maistre argues) the sovereign actually acted in moderation: “The most absolutist prince knew a multitude of restraints: he was restrained by his own character, by his religion, by shame, by politics, by salutary counsel, by public opinion”.¹⁶⁰ The curious result of this is a recognition

¹⁵⁶ *OC V 1 T 2*, p. 170: “The immense posterity of Shem and Ham, took another direction. Since primitive times until those that we see today, it has always said to man: Do all that you wish and when we are ready, we will slaughter you. For the rest, it has never been able or wanted to understand that which is a republic, it understands nothing by the balance of powers, nothing of all its privileges, of all its fundamental laws of which we are so proud”.

¹⁵⁷ *Ibid.*, p. 412.

¹⁵⁸ *Ibid.*, p. 414.

¹⁵⁹ *Ibid.*, p. 153.

¹⁶⁰ *OC V 4 T 7*, p. 100.

that limited power is more powerful than that which is unlimited; as Holmes comments, “restraints strengthen”.¹⁶¹ A king cannot rule effectively without devices to retard his actions; and so, Maistre states: “I confirm to myself every day that it is a fact of absolute monarchy, and I tend to believe that the monarch who wants to keep his power will do well to sacrifice a portion: or to put it better to legally constrain the abuse”.¹⁶² There is a world of difference between the absolute monarch and the tyrant: “Be persuaded that to strengthen the monarchy it must be seated on laws and evade the arbitrary”.¹⁶³

Maistre builds on Bodin’s attempt to re-conceptualise traditional restraints as instruments of princely authority. Institutional arrangements, which are based upon a series of forms found in the traditional constitution, make it difficult for the all-powerful (from a legal perspective) sovereign to misuse his position. Just as Bodin’s treatment of sovereignty transforms the management of conflict within the state,¹⁶⁴ Maistre’s own understanding of public law as ‘political jurisprudence’¹⁶⁵ presents a model within which the interaction between the sovereign and his subjects is defined by relation.

¹⁶¹ Holmes *Passions and Constraints*, p. 109.

¹⁶² *OC V 5 T 9*, p. 74.

¹⁶³ *Ibid.*, p. 80.

¹⁶⁴ Loughlin, *The Idea of Public Law*, p. 137: “Bodin’s treatment of sovereignty builds on a distinction between public and private, between the state and the economy, between the sphere of the power and that of domination. It recognises the ‘brokenness of the political domain’ as the gulf existing between governors and governed that turns politics into conflict management and which gives shape to the representative form of the public sphere”.

¹⁶⁵ *OC V 1 T 2*, p. 154: “The essential is for each nation to keep its particular discipline, that it to say the sort of usages which, without being dogmatic, nevertheless constitute a part of its public law, and these have been amalgamated for a long time with the character of the nation, so that one may not touch it without disturbing it or materially displeasing it”.

Viewing sovereignty in this way – as something political and factual, but also as containing a relational element which is expressed institutionally – leads Maistre once again to consider the question of legitimacy, although this time viewed from the perspective of authority rather than power. Where power is “ultimately nothing but a blind affirmation of will”, authority “responds to a principle of legitimacy”,¹⁶⁶ he argues. In the political sphere, legitimacy constitutes a barrier against caprice or anarchy, the arbitrary or the insensible. The earlier comparison between Maistre’s and Arendt’s theories of legitimacy showed that political authority must not be confused with domination, nor absorbed into the fact of government. Instead, it must correspond to the right to govern: that is, to be licit and well-founded. In which case, something other than power must ground and justify it. Legitimacy, an expression of political authority, fulfils this task.

The Circle of Legitimacy

According to Loughlin, relationality precedes authority and authority precedes legitimacy.¹⁶⁷ Certainly this sequence correlates with Maistre’s own understanding of the structure of legitimacy, which for him is the cumulative effect of authority (a tradition-enhancing concept) and relationality (here, the strengthening of the allegiance of subjects to sovereign through the use of constitutional institutions). The admission of legitimacy as a viable concept by Maistre leads him to develop his

¹⁶⁶ See Raynaud and Rials, *Dictionnaire de la Philosophie Politique*, p. 47.

¹⁶⁷ Loughlin, *The Idea of Public Law*, p. 81.

perspective on the Bodinian paradox still further: “When I say that no sovereignty is limited”, he comments, “I mean in its legitimate exercise, and it is this that one must carefully note”.¹⁶⁸

In order to explore the relationship between these concepts in greater detail, Maistre introduces the notion of the ‘circle of legitimacy’, a view which is different from rational, contractualist ideas of legitimacy which has its democratic roots in civil authority. In differing from the contractarians’ understanding of legitimacy, Maistre is close to Hume’s conception of the term: Hume, like Maistre, denounced the procedural errors of abstract and theoretical rationality in constitutionalist doctrines.¹⁶⁹ Hume’s belief that reasoning can never provide a basis or guarantee for the authority of governments is also clear in Maistre’s work. Power is never legitimised though abstract postulation or speculative reason with scientific pretensions, it is the very customs, traditions, opinions and habits of the people which found political authority.¹⁷⁰ Sovereignty is judged to be legitimate only when it coincides with the institutional structure of the country.

According to Maistre, one may, with equal validity, either say that all sovereignty is limited or that sovereignty is never limited. It is limited in that no sovereign may do all things; equally, it is not limited because, “in its circle of legitimacy, traced by the

¹⁶⁸ *OC V 1 T 2*, p. 178.

¹⁶⁹ David Hume, *David Hume’s Political Essays*, ed. Charles W. Hendel (New York: Liberal Arts Press, 1953), especially “Of the Original Contract”, “Of Passive Obedience” and “Idea of a Perfect Commonwealth”.

¹⁷⁰ David Hume, “Of the First Principles of Government”, “Of the Original Contract”, “Idea of a Perfect Commonwealth”, “Of the Coalition of Parties” and “Of the Rise and Regress of the Arts and Sciences”.

fundamental laws of each country, it is always and everywhere absolute, so that no person has the right to say that it is unjust or mistaken". For Maistre, legitimacy does not consist of sovereignty conducting itself in a certain manner within its circle but in never transgressing the circumference, defined by the fundamental constitutional laws.¹⁷¹ These fundamental laws to which Maistre refers are the wider political practices which form a part of and at the same time contextualise sovereignty;¹⁷² they do not modify its nature but guarantee and reinforce its majesty.¹⁷³ In other words, "the maintenance of forms following the fundamental laws alters neither the essence nor the rights of sovereignty".¹⁷⁴

Sovereignty does not lose its dignity when it is restrained by a natural constitution regulated by fundamental laws. The legitimacy of power, prescribed by the limits of the circle, the fundamental laws, permits a determinate exercise of sovereignty, whilst at the same time preserving its prerogatives. The circle which Maistre describes allows sovereign power to be contained but not judged.¹⁷⁵ Furthermore, the constraints imposed upon it by legitimacy do not weaken sovereignty, but strengthen it, and its juridical absoluteness is kept intact even as its factual exercise is restrained. The circle formed by the fundamental laws allows the attributes of

¹⁷¹ *OC V 1 T 2*, p. 178.

¹⁷² For a discussion of fundamental laws in general, see Chapter 3.

¹⁷³ Loughlin, *The Idea of Public Law*, pp. 156-157: "The [durable legal] framework [of government] must be conceived as a set of formal practices rooted within, and acquiring identity from, a wider body of political practices. The expression 'fundamental law' is a reference to these wider political practices".

¹⁷⁴ *OC V 1 T 2*, p. 179.

¹⁷⁵ See Michael Rabier, "La Couronne et la Tiare: Joseph de Maistre, Philosophe de L'ultramontanisme", in *Joseph de Maistre: Dossiers H* (Lausanne: Editions de l'Age d'Homme, 2005), p. 436ff.

sovereignty to be politically contextualised, but the manner in which these attributes are used may not be judged. Maistre reaffirms this point at some length:

And when I speak of the legitimate exercise of sovereignty, I do not intend or I do not speak of its just exercise... one does not wish to say that all that it does in its circle is just or held to be so: that which is the truth. It is thus that a superior court, provided that it does not exceed its functions, is always right; for it is the same thing in the practice of being infallible or of being mistaken without possibility of appeal.¹⁷⁶

The clear distinction between legitimacy and justice that Maistre makes here is an attempt to retain the absolute character of sovereignty even while accepting its political qualities. Questions of justice may not be considered, so that the stability and thus the unity of the political environment may be preserved. This is, however, to assume that sovereignty remains within its prescribed boundaries. What, though, is the situation if this circle of legitimacy is breached and the limits of legitimate sovereign power exceeded? Maistre's response to this question is complex and is in two parts. The first consists of an exploration of the possibility of the right of resistance; the second, which is an analysis of the figure of the Pope as sovereign, is the key to some of the more profound questions thrown up by the relationship between sovereignty as power and as authority in Maistre's work.

¹⁷⁶ *OC V 1 T 2*, pp. 274-275.

The first response: The abuse of power and the right of resistance

Maistre's views on the question of whether resistance to the sovereign is ever permissible can be seen in some respects as a direct response to – and even a rebuttal of – the work of John Locke, with which Maistre was familiar.¹⁷⁷ In the *Two Treatises*,¹⁷⁸ Locke discusses in some detail the conditions under which subjects may rightfully employ forcible resistance against the government. He believes that resorting to such force is warranted when the abuse of governmental power is so manifest and widespread that the government has lost all claim to legitimacy, and when every other avenue of lawful redress has been closed.¹⁷⁹

Locke's view is that forcible resistance to government cannot legitimately be undertaken by an individual subject simply on his own account, but should be motivated only by the collective oppression of the people. Furthermore, such resistance is admissible only when "The Legislative acts against the Trust reposed in them, when they endeavour to invade the Property of the Subject, and to make themselves, or any part of the Community, Masters, or arbitrary Disposers of the Lives, Liberties or Fortunes of the People".¹⁸⁰

¹⁷⁷ Examples of Maistre mentioning Locke: *OC V 1 T 1*, p. 236; Archives Cote 2 J 15-18 CD 18 nb. p. 99 and nb. p. 403.

¹⁷⁸ John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1960).

¹⁷⁹ *Ibid.*, pp. 414–415.

¹⁸⁰ *Ibid.*, p. 412.

Of intrinsic importance here is Locke's belief that a government may cease to be legitimate by abusing the trust of the people, whereupon the state of nature is restored through the intervention of the people (via rebellion or revolution), who then "have a Right to resume their original Liberty and establish a new Legislative".¹⁸¹ But who is to be the judge as to whether or not the government really has abused their trust? Ultimately, it must be the people themselves: "Who shall be Judge whether the Prince or legislative act contrary to their Trust?...I reply: The People shall be Judge...but if the Prince declines that way of Determination, the appeal then lies nowhere but Heaven".¹⁸²

Maistre attacks Locke for reasons common to all the philosopher's detractors, who criticise him for the vagueness and imprecision of his arguments.¹⁸³ Maistre's own critique begins, unsurprisingly, with a bold statement of belief that rebellion in any form is unacceptable. "The moment that one can resist it [i.e. the government] under the pretext of error or injustice, it no longer exists",¹⁸⁴ he argues, but Maistre cannot ignore the actual existence of revolution; after all, he admits, "One can deprive a nation, despite itself, of a legitimate sovereign",¹⁸⁵ elsewhere he says: "When

¹⁸¹ Ibid.

¹⁸² Ibid., p. 427.

¹⁸³ See, for example, E. J. Lowe, *Locke* (London: Routledge, 2005): "Locke is rather vague concerning the means by which the people's judgement is supposed to emerge"; see also Peter Laslett in his Introduction to Locke, *Two Treatises*, p.115: "The trend of Locke's statements about the ultimate right of the people to revolt is quite unmistakeable. But close examination shows that it was not formulated with much precision, and its connection with the concept of trust has to be filled in for him. In the chapter of the dissolution of government he is not at all explicit about what actually happens when people find themselves at liberty to entrust new hands with the government".

¹⁸⁴ *OC V 1 T 2*, p. 2.

¹⁸⁵ *OC V 7 T 13*, pp. 51-52.

authority commands, there are only three paths to take – obedience, representation and revolt”.¹⁸⁶

However, for Maistre, even if one were to concede the right to resistance from a theoretical or moral perspective, problems would remain in terms of the practical application of that right. “I strongly admire these beautiful maxims [i.e. *philosophes*’ theories on the right to resist],” writes Maistre, “but they possess the fault of not shedding any light on the question of deciding on hard cases, where theories are useless. When one decides ...that one has the right to resist the sovereign power and to make it re-enter its limits, one has not yet done anything because it remains to know when one may exercise this right and which men have that [right] of exercising it”.¹⁸⁷ The right of resistance may thus be justified when the abuse of power – in the form of tyranny – arises.

But how are we to agree on what tyranny is? There is always someone for whom any constraint will appear tyrannical. At what point does an abuse of power begin?¹⁸⁸ Indeed, Maistre tacitly acknowledges this problem: “We believe that perfection does not belong to humanity. Every sovereign...necessarily abuses his power more or less in such a way that if all abuse of power is called tyranny and if

¹⁸⁶ OC V 1 T 2, p. 89.

¹⁸⁷ Ibid., p. 174.

¹⁸⁸ Ibid., “The most ardent promoters of the right of resistance agree (and who could doubt them?) that it should only be justified by tyranny. But what is tyranny? A single act, if it is atrocious, may it bear the name? If there must be more than one, how many must there be, and of what type?”

every tyranny legitimates insurrection, all the people would be all the time in a state of insurrection”.¹⁸⁹

Nor do the problems end there, for when a case that fits the definition of tyranny has been found, the question remains as to who will make the decision to initiate revolution: “What power in the state has the right to decide that the case for resistance has arrived? If the tribunal [making the decision] already exists it would already form a part of [the existing]sovereignty, and in acting against the other portion would cancel it out; if it did not already exist, by which tribunal is this [new] tribunal established?”¹⁹⁰ Clearly, there could be infinite regression in this process. Maistre also believed that the act of resistance could degenerate into something worse than the original wrong: a precedent for revolution. In essence, it would justify *a priori* all revolt against sovereignty: “A fine experience has taught us that the worst evils that come from obedience do not equal the smallest part of that which results from revolt”.¹⁹¹

Maistre’s dismantling of Locke’s arguments shows that he does not accept a role for the people in the determination of sovereignty. He does, however, believe in a form of constituent power; the political does ground the legal in Maistrian constitutional thought. For Maistre, then, sovereignty is based upon political relations and

¹⁸⁹ OC V 4 T 7, p. 60.

¹⁹⁰ OC V 1 T 2, p. 174.

¹⁹¹ Ibid., p. 89; see also pp. 174-175: “History has only one cry, to teach us that revolutions started by the wisest men are always finished by fools; that their authors are always victims of them, and that the efforts of the people to create or increase their liberty almost always finish with them being clapped in irons. One can see the abyss on both sides”.

constitutional institutions. We have, however, also seen in his work a command-oriented, juridical view of the sovereign who wields power without the consent of his subjects, and who imposes a regime based upon the source rather than the content of the laws.

These two opposing aspects of sovereignty – of power and authority – are a further development of two strains of Maistre's constitutional thought that have also been identified in his work on constituent power and constitutions: on the one hand notions such as law, normativity, command and decision can be grouped together (along with power). On the other (along with authority) are grouped the constitutional values of legitimacy, fact, relation, politics and tradition.

What has not yet been considered in this thesis is whether a connection between these elements exists. On the one hand, if sovereignty is understood only in the juridical sense it may lead to tyranny; on the other hand, if sovereignty is only considered from the political perspective, it might be identified solely with pure popular legitimacy. How, then, do these two opposing views of sovereignty relate to each other, if at all? This question is examined in *Du Pape*, in which Maistre's defence of infallibility and the primacy of the Pope is a task that is carried out with reference to the secular notion of sovereignty. Indeed, *Du Pape* is an exposition of the core components of sovereignty in the modern age, and it is to this work that we now turn.

The second response: The significance of Du Pape and the notion of infallibility

In the previous section we learnt that Maistre denied the possibility that the people could wield any constituent power, but at the same time he acknowledged that an energy equivalent to this revolutionary urge exists within the constitution.¹⁹²

Consequently, Maistre needed to find an alternative receptacle in which to contain this energy, and this takes the form of an authoritarian figure: for Maistre, this is the legislator, but it can also be the Pope.¹⁹³

Just as the legislator is the factual instigator of constitutional order in Maistre's work, so the Pope acts as a factual limit on the juridical power of the temporal sovereign, should he seek to transgress the limits of the circle of legitimacy surrounding him.¹⁹⁴ In order to avoid the charge that he has, despite his best intentions, described a force capable of overthrowing the sovereign, Maistre argues that the Papacy is no actual challenge to the temporal sovereign because its power belongs to the sphere of the spiritual, saying: "They have only ever claimed the

¹⁹² See Chapter 3.

¹⁹³ Indeed, Maistre sees the functions of sovereign and legislator coalescing in the same figure – see *OC V 1 T 1*, pp. 346-347: "Almost all the great legislators were kings...thus the greatest legislators were sovereigns".

¹⁹⁴ *OC V 1 T 2*, p. 182: "But if it is absolutely necessary to arrive at positing legal limits for the sovereign power, I would hope with all my heart that the interests of humanity were confided in the Holy Father".

right to judge princes which was granted to them in the spiritual order, when these princes were made themselves guilty of certain crimes".¹⁹⁵

Whilst superficially this may appear as a return to the medieval order of things,¹⁹⁶ the true significance of Maistre's argument is intimately connected to the intellectual currents of his era concerning the right of resistance. In fact, Maistre's profile of the Pope, in this interpretation, is an exploration of how to limit the possibility of abuse by the sovereign without granting the people the right to undertake such a task. In this sense, it is a restatement of his argument for an authoritarian constituent power separated from any notion of democratic participation.¹⁹⁷ Maistre both concedes the need for constituent power and acknowledges its force, but, not wishing to accept its populist implications, he seeks to retain its effect but change the nature of its cause. He does so by contrasting the nuanced skill of the Pope with the crude ineffectuality of the people.¹⁹⁸

Maistre's attempt to accept that legal sovereignty suffers intrusion from the political domain without making any concessions to democracy is not overly successful. In Francis Bayle's words, "In our own age, when political questions are more and more

¹⁹⁵ Ibid., p. 248; see also OC V 1 T 2, p. 250: "What is then this temporal all powerfulness which has no temporal force, which ask for nothing temporal or territorial...which anathematizes all attacks on the temporal power and whose temporal power is so weak that the bourgeois of Rome often mock it?"

¹⁹⁶ Ibid., p. 257. People in the Middle Ages only had useless laws and corrupt morals.. It was thus necessary to look for this indispensable restraint from elsewhere. This restraint was found and could only be found in the authority of the popes.

¹⁹⁷ Ibid., p.182: "But if the right to resist changed into the right to prevent and instead of it residing in the subject, it belonged to a power of another order, the problems would not be the same because this hypothesis allows for resistance without revolution and without any violation of sovereignty".

¹⁹⁸ Ibid., pp.182-183: "Moreover, this right to oppose, resting on one known and unique head, would be subject to rules and exercised with all imaginable prudence and with all imaginable subtlety: whereas internal resistance may only be exercised by subjects, by the masses, by the people and abroad and consequently only by the way of insurrection."

of laicised character and when the temporal sovereignty of the papacy is no more than a necessary symbol which assures the free exercise of the spiritual power of the sovereign Pontiff, [the argument in *Du Pape*] seems to us a utopia which parts from the generally realist tenor of Maistre's arguments."¹⁹⁹ The problem is one that relentlessly plagues his constitutional thought: Maistre struggles to reconcile three conflicting factors, these being his recognition of modern constitutional concepts, a desire to show orthodoxy in matters of faith and his wish to defend the authoritarian, conservative political order.

It is in his attempt to explain the Pope's ability to control modern sovereignty that the fragility of a position based on this triad of irreconcilable aims is most harshly exposed. Nevertheless, at the very least, the use of the figure of the Pope in this way is a further acknowledgment of the impossibility of sealing sovereignty into the sphere of the juridical. Bayle comments that, "the excesses of the French Revolution had reinforced Maistre's profound hostility to disorder. He did not wish to leave to the people the right of deciding to themselves and sought to confer the duty to a superior power".²⁰⁰ The Pope is an exterior force that might legitimately break through to disturb the enclosed normative sphere if abuses occur. It is a reminder of the proximity of fact to norm and of politics to law in discussions of sovereign power.

¹⁹⁹ Francis Bayle, *Les Idées Politiques de Joseph de Maistre* (Paris: Domat-Montchrestien, 1988), p. 107.

²⁰⁰ Bayle, *Les Idées*, p. 108.

The possibility that there might be an alternative interpretation of *Du Pape* is provided by the ambiguous vocabulary Maistre uses to express the respective duties, rights and status of the temporal monarch and the Pope.²⁰¹ In this reading, the Pope is not viewed as a species of factual limit on juridical sovereignty – a force which may interject into sovereignty’s sphere – but instead is seen as the epitome of the command-oriented sovereign. This reading is reinforced by the ambiguity between the political and the theological that Maistre encourages throughout the book,²⁰² an ambiguity specifically engaged by his use of the notion of infallibility. For Maistre: “Infallibility in the spiritual order and sovereignty in the temporal order are two perfect synonyms”.²⁰³

This ambivalence regarding the institutional identity of the holder of the supreme power (king or pope), and the associated confusion regarding the sphere in which discourse is conducted (theology or politics), means that in a number of places Maistre’s work does not emphasise the importance of who the holder of the power is, but instead stresses the qualities of the characteristic itself. As a result, in places

²⁰¹ It is also based upon the evidence of Maistre’s dealings with the Vatican regarding publication of the work. Maistre desired an official endorsement of his work from the Holy See, and there ensued a lengthy correspondence between him and the *Curia*, after which the theologian charged with reviewing Maistre’s work reported: “The author recognised that he was censured by me with reason for having founded the infallibility of the church and the Pope on the fact that their judgments were without appeal...for having spoken with, at the very least, a great deal of exaggeration against the authority of the general councils; for having designated as common to all Catholics, the view that lends to the Church a monarchic form, tempered by aristocracy...in disavowing these passages, he [Maistre] still retains a certain attachment to opinions which he puts forward, and one may fear, correctly, that the modifications [he has made] are not sufficient to change their meaning”. (from the Introduction to *Du Pape: Edition Critique*, ed. Jacques Lovie et Joannes Chetail (Geneva: Droz, 1966), p. xxxi. Maistre’s refusal to change these views on the cross-pollination between the political and the religious realms – a refusal which came at the expense of papal endorsement – demonstrates the strength of his commitment to his point of view.

²⁰² See above, p. 191, footnote 81.

²⁰³ *OC V 1 T 2*, p. 2.

it is infallibility itself that determines whether or not an institution is sovereign: “The only, but certainly important difference that exists between civil and religious society is that, in the first, the sovereign may fool himself so that the infallibility which is accorded to him is only a supposition (which has however all the force of reality) whilst spiritual government is necessarily infallible, literally speaking”.²⁰⁴

By conceiving of sovereignty as an act in this way, Maistre provided intellectual fuel for future commentators: this significant innovation has had an impact on contemporary conceptions of sovereignty, and in particular on the work of that paradigmatic theorist of sovereignty in the twentieth century, Carl Schmitt. His 1922 work, *Political Theology*,²⁰⁵ drew heavily on Maistre in its attempts to re-define the concept of sovereignty by exploring how largely undefined emergency powers play a role in the interpretive “gaps” of a constitutional order.²⁰⁶ Schmitt was keen to emphasise that, for Maistre, infallibility was the attribute which predominantly defines sovereignty, saying: “De Maistre spoke with particular fondness of sovereignty which essentially meant decision...infallibility was for him the essence of decision...”²⁰⁷ Schmitt rightly suggests that this moment of supreme decision-making is based on the sovereign capacity to judge without possibility of

²⁰⁴ OC V 4 T 8, p. 145: “Because sovereignty is infallible by its nature, God first divinised this law”; OC V 1 T 2, p. 2: “When we say that the church is infallible...we demand only that she enjoys the right common to all sovereigns, who all act necessarily as if they were infallible because all government is absolute, and the moment that one may resist under pretext of error or injustice, it no longer exists”; *ibid.*: “The government is thus by its nature infallible, which is to say absolute, otherwise it would no longer govern”.

²⁰⁵ See Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* trans. George Schwab (Chicago: The University of Chicago Press, 1985)

²⁰⁶ Gopal Balakrishnan, *The Enemy: An Intellectual Portrait of Carl Schmitt* (London: Verso, 2000), p. 45.

²⁰⁷ Schmitt, *Political Theology*, p. 55.

appeal, arguing that “what characterised [Maistre’s and Donoso Cortes’] counterrevolutionary political philosophy was the recognition that their times needed a decision. And with an energy that rose to an extreme ...they thrust the notion of decision to the centre of their thinking”.²⁰⁸ Certainly Maistre did interpret infallibility by repeatedly emphasising the importance of making a judgment or reaching a judicial decision when carrying out of the work of sovereignty.²⁰⁹

Building upon his interpretation, Schmitt identifies the object of the sovereign decision as being a component of the process which is as important as the act itself. In asserting that the “sovereign is he who decides upon the exception”, Schmitt identifies the sovereign decision as a limit concept which can only be understood in the light of an emergency situation occurring when the very existence of the political community is at stake.²¹⁰ Schmitt’s theory of a sovereign decision is a decision taken to determine what constitutes a threat to public safety in situations where the meaning of public safety has become an object for endless argument,²¹¹ and here too, his argument finds its roots in Maistre’s discussion of the nature of sovereignty:

It is not possible for man to create a law which has no need of an exception.

The impossibility on this point results equally from human weakness which

²⁰⁸ Ibid., p. 53.

²⁰⁹ OC V 1 T 2, p. 2: “Infallibility ... and sovereignty express this high power... which judges and is not judged”.

²¹⁰ Schmitt, *Political Theology*, p. 6.

²¹¹ Ibid.: “From a practical or a theoretical perspective, it really does not matter whether an abstract scheme advanced to define sovereignty (namely that sovereignty is the highest power not a derived power) is acceptable.... What is argued about is the concrete application and that means who decides in a situation of conflict what constitutes the public interest or interest of the state, public safety and order, le salut public and so on”.

cannot foresee all and from the nature of things, some of which vary to the power of leaving the circle...with the result that in all legislation, it is necessary to have a dispensing power. For wherever there is no dispensation, there is violation.

But every violation of the law is dangerous or fatal for it, whilst all dispensation strengthens it because one cannot demand to have dispensation from something without paying homage to it and without admitting that has no power against it.²¹²

According to this complex interpretation, in extreme cases, sovereignty effectively decides what is and what is not constitutional, and by performing this feat it shows itself to be sovereign. An act may, according to the sovereign's decision, remain constitutional whilst breaching the bounds of what is strictly normative,²¹³ and in Schmitt's eyes the situations in which this event is likely to occur are like "x-ray flashes which suddenly reveal the antinomies of legal reason".²¹⁴ Maistre, though not specifying the specific circumstances in which this power is to be used, is once again clearly a strong influence on Schmitt.

²¹² OC V 1 T 2, p. 176; see also OC V 2 T 3, p. 341: "Man only knows how to make general laws, and by the same token they are by their nature unjust in part because they can never cover all cases. The exception to the rule is equally as just as the rule itself, and wherever there is no means of dispensation, exception or mitigation there will necessarily be violation.

²¹³ Schmitt, *Political Theology*, p. 12: "In such a situation it remains clear that the state remains, whereas law recedes. Because the exception is different from anarchy and chaos, order in the juristic sense still prevails even if it is not of the ordinary kind".

²¹⁴ Balakrishnan, *The Enemy*, p. 45.

According to Maistre, this faculty is only to be used in times of “extraordinary circumstance” or in case of “necessity”.²¹⁵ The basis for a decision of this type is to be found in the sovereign’s right to give grace, a transportation of the miracle into the realm of the secular. This is a phenomenon that Maistre refers to in his writing,²¹⁶ and of which Schmitt too is fully aware.²¹⁷ To perform this task, the sovereign must sit on the border between the normative and the factual because his dispensation involves reaching out into realms beyond the limits of the positivised law. In this way, sovereignty expresses both the closing and the opening of the political-juridical system. Maistre’s sovereign, here embodied in the figure of the Pope, sits on a demarcation line which divides not only the profane from the sacred but also the juridical from the political.

For Schmitt, the Maistrian sovereign is important because it stands in contrast to modern, liberal positivist theories which seek to eliminate sovereignty as a political force.²¹⁸ In Maistre’s model the state can never be a fully impersonalised, neutral system of norms because it also involves a political relationship between real,

²¹⁵ OC V 1 T 2, pp. 99-100: “Ask the Pope if he intends to govern and to scoff at the Canons, you would horrify him. Ask all the bishops of the catholic world if they understand that extraordinary circumstances may not legitimate abrogations, exceptions, derogations and sovereignty, in the church would become sterile like an old woman, so that it would lose the right, inherent in all power to produce new laws in the measure that new situations demand them. They would think that you are joking”.

²¹⁶ OC V 1 T 1, p. 2: “In the political and moral world, as in the physical world, there is an habitual order and there are exceptions to this order. Commonly we see a sequence of facts produced by the same cause, but at certain times we see actions suspended, causes paralysed and new effects... the miracle is an effect produced by a divine or supernatural cause which suspends or contradicts an ordinary cause. The French Revolution ... is as marvellous in its domain as a tree spontaneously bearing fruit in the month of January”.

²¹⁷ Schmitt, *Political Theology*, p. 36.

²¹⁸ Schmitt, *Political Theology*, p. 7: “All tendencies of modern constitutional development point towards eliminating the sovereign in this sense”.

concrete actors and a sovereign whose decisions have ramifications in both the juridical and political spheres.²¹⁹

Conclusion

There are a number of constitutional antinomies which find their most acute expression in Maistre's conception of sovereignty. However, there is none more important than the dialectic between authority and power, and this dialectic is as complex as the notion of sovereignty which the two values define. Schmitt, who does not grasp this complexity, reduces Maistre's concept of sovereignty to the moment of decision, an act in which the state shrinks to an instant of existential intensity. Whilst Schmitt acknowledges that authority and power are both critical to the early development of Maistre's concept of sovereignty, he misinterprets their subsequent intellectual trajectory. In his book *The Leviathan in the State Theory of Thomas Hobbes*, Schmitt considers Hobbes's famous dictum, *auctoritas non veritas facit legem*, the apogee of a positivised understanding of sovereignty:

Auctoritas (in the sense *summa potestas*), *non veritas*. This sentence, often cited since 1922 as expressed by Hobbes, is anything but a slogan of irrational despotism. Nor should the expression be regarded as a kind of *credo quia absurdum* [impossible belief] as it has so often been

²¹⁹ OC V 1 T 2, p. 7: "It is not only a question of knowing whether a sovereign pontiff is, but if he must be infallible".

misunderstood. What is significant in the statement is Hobbes' conclusion that it is no longer valid to distinguish between *auctoritas* and *potestas*, making the *summa potestas* into *summa auctoritas*.²²⁰

This conclusion, written against the bleak constitutional backdrop of Nazi Germany, focuses the whole weight of sovereignty onto command and will, and leads quite evidently to a totalitarian conclusion. However, a crucial component of Maistre's notion of sovereignty is the distinction that is maintained in his work between *potestas* and *auctoritas*, a dialectic which is clearly expressed in his theory of sovereignty. It is by no means an easy relationship to comprehend. Rudolph Smend comments that: "the norm receives the grounds of validity, the quality of its validity and the content of its validity from life and the sense attributed to it, just as inversely life must be understood only in relation to is assigned and regulated vital sense".²²¹

Similarly, Giorgio Agamben believes that the dialectic of authority and power means that "The norm can be applied to the normal situation and can be suspended without totally annulling the juridical order, because in the form of *auctoritas*, or sovereign decision, it refers immediately to life, it springs from life".²²² These are ways of attempting to comprehend the creative mutuality of power and authority in sovereignty, a relation that certainly exists in Maistre's thought on the matter.

²²⁰ Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes: Meaning and Failure of a Political Symbol*, trans. George Schwab and Erna Hilfstein (London: Greenwood Press, 1996), pp. 44-45.

²²¹ Rudolph Smend, "Intergrationslehre", in *Handwörterbuch der Sozialwissenschaft*, Vol. 5. (Stuttgart: Fisher, 1956), p 300, cited in Giorgio Agamben, *State of Exception*, trans. Kevin Attell (Chicago: Chicago University Press, 2005), p. 85.

²²² Agamben, *State of Exception*, p. 85.

Certainly they describe the morphology of Maistre's idea of sovereignty; it is a composite structure formed by two heterogeneous yet co-ordinated elements (power and authority) which are accommodated in, but not unified by, the figure/function of the sovereign. This is the asymmetric oscillation about which Holmes has commented.²²³ The normative element of sovereignty requires the factual / political so that it may be explicated institutionally, whilst that aspect of sovereignty which comprises authority "can assert itself only in the validation or suspension of *potestas*".²²⁴ An emphasis on sovereign power would result in sovereignty becoming confused with the notion of pure domination, whilst an exclusive focus on sovereign authority would lead to sovereignty's total identification with legitimacy.²²⁵

In Agamben's view, the danger lies not so much in the merging of power and authority into a single concept but in their coincidence in a single person. When this happens "...then the juridico-political system transforms itself into a killing machine".²²⁶ This is a portentous conclusion, which highlights only the extreme pathological case. As long as the two elements remain conceptually, temporally and subjectively distinct, the dialectic between them can function without such an apocalyptic conclusion – and unlike Schmitt's model, Maistre's conception of sovereignty allows for this necessary articulation.

²²³ See above, p.201

²²⁴ Agamben *State of Exception*, p 86.

²²⁵ Raynaud and Rials *Dictionnaire de la Philosophie Politique*, p. 735

²²⁶ Agamben, *State of Exception*, p. 86

The consideration of power and authority in Maistre's view of sovereignty can also help us to carry out a more prosaic, constitutional task: the continued management of tensions in the modern state. The sovereign may decide, in moments of extreme threat to the constitution, on the exception. This is necessary for any constitution to function²²⁷ – Maistre's is, after all, a government of men and not an administration of things – but this power is not performed in existential solitude. Instead, that part of sovereignty which is formed by tradition, political relation and political institutions by the very fact of their *being* contextualises, enriches and controls the sovereign power's actions.

Maistre's work demonstrates that the modern idea of sovereignty is the most appropriate framework for grappling with the tensions between authority and power in the modern constitutional environment. His notion of sovereignty has a super-structure of power, and has foundations that are built upon the nourishment of political authority. Profoundly undemocratic, it nonetheless expresses perfectly the fact that "sovereignty inheres in the authority/power relationship",²²⁸ and helps further to elucidate the fact that the modern state exists as an unresolved tension between two irreconcilable dispositions. His view of sovereignty describes the warp and woof of these two elements; it brings out the complex and creative potential of

²²⁷ Martin Loughlin, "Constitutional Theory", in *The Oxford Journal of Legal Studies*, Vol. 25 (2005), pp.183-202: "The issue of the exception is of pivotal importance in constitutional theory, and it is one for which there can be no legal-institutional solution".

²²⁸ Loughlin, *The Idea of Public Law*, p. 160.

the notion of modern sovereignty and show us how competing juridical and political tensions in the modern constitution may be both envisaged and accommodated.

CHAPTER FIVE: MAISTRE AND FORMS OF GOVERNMENT

Introduction

This chapter deals with Maistre's examination of the act of governing as it is expressed in different constitutional forms. Through these forms, Maistre explores the different modes of association which exist within the modern European state¹ and addresses other, associated questions: how is the character of the act of governing to be conceptualised? What is the nature of the office of government and the object or objects that are governed? How is the authority of the sovereign to be imposed? Is there a 'best' form of government? These questions strike at the heart of one of Maistre's fundamental constitutional concerns – the relationship between the individual and the State.

Maistre describes and analyses a complex relationship between those who govern and those who are governed. In dealing with the relationship between these two groups, Maistre is mindful that, to be effective, sovereignty (in its modern iteration) must be conducted through the use of impersonal forms,² and he recognises the vital

¹ But note also the influence of Aristotle on Maistre, see *The Politics*, trans. T. A. Sinclair (London: Penguin, 1962).

² See Chapter 4.

importance of the relationship between command and obedience for the coherence of the constitutional order;³ and the maintenance of a sense of constitutional unity.⁴

One of the most striking aspects of Maistre's methodology,⁵ is its similarity to the work of Montesquieu, in particular as it is presented in *De l'Esprit des Lois* (*Of the Spirit of the Laws*).⁶ Given Montesquieu's reputation as one of the founding fathers of the Enlightenment, and thus of modern democratic liberalism,⁷ the suggestion of a connection between him and the traditionalist Savoyard must come as a surprise. Nonetheless, a number of similarities exist between them which need to be drawn out in order to establish the nature of the influences acting upon Maistre's views on governing.

In fact, reading Maistre's work on the forms of government in the light of the *De l'Esprit des Lois* presents a challenge to the modern view that there exists a stark Manichean division between the dark (the receding paradigm of the counter-

³ Perhaps the first explicit modern statement of this predicament is to be found in the work of Machiavelli: see, for example, *The Prince*, trans. George Bull (London: Penguin, 1961), pp. 3-4; see also Simone Goyard-Fabre, *Les Principes Philosophiques du Droit Politique Moderne* (Paris: PUF, 1997), pp. 49-58.

⁴ See Chapter 1, p.51 ff.

⁵ See *OC V 1 T 1*, pp. 311-553.

⁶ Charles-Louis de Secondat, Baron de la Brede et de Montesquieu, *De l'Esprit des Lois*, ed. Laurent Versisni, 2 Vols. (Paris: Gallimard, 1995).

⁷ See, for example, Jean Picq, *Histoire et Droit des Etats: La Souveraineté dans le Temps et l'Espace Européens* (Paris: Sciences Po, Les Presses, 2005), p. 265. See also Yoshie Kawade, "Montesquieu", in *Political Thinkers: From Socrates to the Present*, ed. David Boucher and Paul Kelly (Oxford: Oxford University Press, 2003), p. 232: "We are now in a position to assess his contribution to the development of modern political liberalism. In the first instance Montesquieu's contribution to the development of liberalism is through his formulation of some of the essential principles and commitments of liberal politics". See also Maurice Cranston, "French Enlightenment", in *The Blackwell Encyclopaedia of Political Thought* (Oxford: Blackwell Publishing, 1987), p. 166: "The political theorists of the French Enlightenment may be divided into three main competing schools....the parliamentarians led by Montesquieu".

Enlightenment)⁸ and the light (the emerging values of the Enlightenment).⁹ It demonstrates that a range of thinkers – including those considered enemies of progress – drew inspiration from the same sources as those identified with the worldview of the *philosophes*. Consequently, the influence of Montesquieu on Maistre’s work should lead to a recognition that Maistre’s thought is nuanced and complex and – in his recognition of the subtle dynamics of power and authority reflected in the forms of government – thoroughly modern.

Maistre and Montesquieu

Montesquieu’s De l’Esprit des Lois

De l’Esprit des Lois is one of the most brilliant and intellectually challenging contributions to political theory in the eighteenth century.¹⁰ Setting the tone for modern social and political thought by linking history and law, Montesquieu conducts an examination of a range of political structures, often in a startlingly original manner. Instead of enquiring into the foundations of power in terms of God, nature or the social contract, for example, Montesquieu aimed to explore the concrete principles which determine how political societies function. He thus sought

⁸ For an account of the relationship between the concepts of the counter-Enlightenment and those of the Enlightenment, see Graeme Garrard, *Counter-Enlightenments: From the Eighteenth Century to the Present* (London: Routledge, 2006), pp. 1-15.

⁹ As is proposed by Ernst Cassirer in *The Philosophy of the Enlightenment* (Princeton, NJ: Princeton University Press, 1968), p. 209: “Within the era of enlightenment the first decisive attempt at the foundation of a philosophy of history is made by Montesquieu in *De l’Esprit des Lois*. This work ushers in a new epoch”.

¹⁰ See Olivier Nay, *Histoire des Idées Politiques* (Paris: Armand Collin, 2007), p. 207.

to identify the profound causes which explain the diversity of laws, customs, mores and ideas which distinguish one nation from another.¹¹

Montesquieu thus wished to explain the *esprit general* of the people as being the result of a combination of juridical, political, geographical, climatic, social, economic and religious conditions. To this end, in books I-XII of *De l'Esprit des Lois*, Montesquieu embarks upon a detailed description of the main forms of government, arguing that every form of government – be it monarchy, aristocracy, republic or despotism – has both a nature¹² and a principle. Its nature – what makes a government what it is and gives it its structure – is determined by who rules and the manner in which they rule. Its principle is the motivation by which that government is driven – it is that which makes it act.¹³ In monarchies, says Montesquieu, the principle is that of honour.¹⁴ In democracies and aristocracies the

¹¹ Consider certain chapter headings in *De l'Esprit des Lois*: Livre quatorzieme – “Des Lois dans le Rapport qu’elles ont avec la Nature du Climat”; Livre dix-huitieme – “Des Lois dans le Rapport qu’elles ont avec la Nature de Terrain; Livre dix-neuvieme – “Des Lois dans le Rapport qu’elles ont avec les Principes qui Forment l’Esprit General, les Moeurs et les Manieres d’une Nation”.

¹² Montesquieu, *De l'Esprit des Lois*, p. 97: “There are three forms of government: the republican, the monarchic and the despotic. To discover the nature of each it is enough to use an idea which even the least educated man understands. I maintain three definitions, or rather three facts: the republican government is one where the people as a body, or only a part of the people, has sovereign power; the monarchical, that in which one alone governs but by fixed and established laws; whereas in the despotic one alone without law and without regulations dominates all by his will and his whims. This is what I call the nature of each government. It is necessary to see the laws which directly follow from this nature”.

¹³ Ibid., p. 114: “There is this difference between the nature of a government and its principle, its nature is that which makes it what it is and its principle is that which makes it act. One is its particular structure and the other the human passions which move it”.

¹⁴ Montesquieu, *De l'Esprit des Lois*, p. 123.

relevant principle is that of virtue,¹⁵ whilst in the case of despotism the motivating principle is fear.¹⁶

Experience and history have demonstrated that the categories of republic, monarchy and despotism either exist now or have existed in the past; Montesquieu acknowledges this fact, but distances himself from the traditional Aristotelian threefold classification of governments in two ways. First, whereas monarchy is an easy constitutional concept to define – it is essentially “government by one alone” – republican government is complex: it can either be democratic or aristocratic. And despotism, far from being a degenerate species of monarchy, constitutes its own category.¹⁷ Second, Montesquieu makes the bipartite distinction between governments which are moderate and those – the despotic – which are not. This structural overlay sheds new light on the first typology, between the monarchical and the republican.¹⁸

This means that, in contrast to the straightforward uniformity of despotism, moderate governments are complex: “to form a moderate government it is necessary to combine the powers, regulate them, temper them, to make them act, to put one so

¹⁵ Political virtue is distinct from moral and Christian virtue; it is synonymous with love of the republic. See Montesquieu, *De L'Esprit des Lois*, p. 148.

¹⁶ Fear of punishment is the principle of despotism, where obedience to orders will suffer neither delay nor discussion (ibid., p. 125). In such states, submission is obtained by the fact that the least refusal to obey is punished without mercy. Only iron discipline can keep order, which is not a true peace but the silence of captive spirits. The apprehension of immediate punishment inhibits all spontaneous activity, and blind obedience can only be passive. Coercion is incapable of encouraging individual initiative, and so is very beneficial to the state. The despot himself cannot escape fear, because violent insurrection is the only possible solution to effect change in a despotic state (ibid., p. 175).

¹⁷ Montesquieu, *De l'Esprit des Lois*, p. 124: “Honour is absolutely not the principle of despotic states”.

¹⁸ Celine Spector, *Le Vocabulaire de Montesquieu* (Paris: Ellipses 2001), p. 45.

to speak one against the other so that they resist each other”.¹⁹ Moderate regimes are those in which individuals are protected from arbitrary cruelty, because restraint reigns in moderate governments. However, moderation is not to be equated with liberty, it only facilitates liberty – every state is not free by its nature.²⁰ Moreover, the concept of moderation involves the notion of some form of distribution of power in order to prevent abuse.²¹

It is easy to see that the direct contrast that Montesquieu draws between moderate and despotic government is a criticism of absolutists such as Hobbes, thinkers with whom Maistre has a certain affinity. Montesquieu’s view is that the state which concentrates its powers and functions into one place, and where the law is only a command founded upon public force, is not an all-powerful state but is, in all respects, *miserable*.²² This seems to go against Maistre’s natural inclination to clearly define a Bodinian style of sovereign relation, with power concentrated entirely in the hands of the sovereign. How is it possible to imagine a relationship between these two constitutional thinkers that is not simply one of direct contrast? Unravelling this question reveals a layer of complexity in Maistre’s thought which is frequently ignored.

¹⁹ Montesquieu, *De L’Esprit des Lois*, p. 181.

²⁰ Ibid., p. 323 (Book XI: On the laws that form political liberty in its relationship with the constitution)

²¹ Montesquieu, *De l’Esprit des Lois*, p. 181.

²² See Spector, *Le Vocabulaire de Montesquieu*, p. 15.

Maistre and Montesquieu – Enlightenment problematised

Records of Maistre's reading habits reveal notes taken on Montesquieu's work over a period of several decades.²³ Amongst the books in his library were found *De l'Esprit des Lois* and the *Lettres Persanes*. If Maistre explicitly cites Montesquieu less than he does either classical sources or his arch-enemy Rousseau, it is nonetheless quite clear that, throughout his writing on forms of governments and different types of states, Montesquieu's ideas exerted a strong influence upon him.

Among certain contemporary Maistrian commentators, there is a view that Montesquieu's influence on Maistre should not be over-emphasised, and that Maistre's enthusiasm for Montesquieu declined as the effects of the French Revolution came more sharply into focus.²⁴ These commentators point out that Maistre passed from calling Montesquieu "wise" and someone of a "superior talent" to commenting that "he does nothing but evil and does an immense amount of it".²⁵ In Jean-Louis Darcel's view, Maistre's reconsideration of Montesquieu's work occurred for two crucial reasons. First, because the authors of the revolutionary constitutions looked to Montesquieu's analysis of the English government for their model, and so his work became tainted in Maistre's eyes. Second, Maistre became ever-more conscious that Montesquieu had a heavy responsibility for (in Gauchet's

²³ There are in his register of reading, notes taken in 1800, 1806 and 1817 – see Archives Cote 2J 22 BIS (CD 19; CD47/NB 121)

²⁴ See, for example, Jean-Louis Darcel, in *Joseph de Maistre: Oeuvres*, ed. Pierre Glaudes (Paris: Robert Laffont, 2007), p. 1228; see also Pranchère, *L'Autorité contre les Lumières*, p. 49.

²⁵ Pranchère, *L'Autorité contre les Lumières*, Ibid.

words) “the disenchantment of the world”,²⁶ which is to say the de-sacralisation of the concept of monarchy and its related institutions. According to Darcel, Maistre believed that Montesquieu created a culture of contempt for traditional institutions, customs and observances. Moreover, because in Montesquieu’s work there was a subtle confusion between oriental despotism and absolute monarchy, this gave rise to a situation where, though he seemed to be providing examples of tyranny from the Orient, Montesquieu was in fact criticising the monarchy of the *ancien regime* in France.

But these arguments seem to have been made without due regard to the substance of Maistre’s work. The *Etude sur la Souveraineté*, although a relatively early work, is still a post-revolutionary one, and is steeped in Montesquieu’s vocabulary and themes to such an extent that it is difficult not to agree with Robert Triomphe when he says that “Maistre owes infinitely more to Montesquieu than he confesses”.²⁷ It is possible that the perspective of these commentators has been limited by a tendency – in the French academy at least – to see Montesquieu purely as the purveyor of explicitly Enlightenment revolutionary ideals.²⁸

In any event, the case is not nearly so clear cut, and the gap between Maistre and Montesquieu not nearly as distinct, as Darcel and others might have us believe. In

²⁶ See Marcel Gauchet, *Le Désenchantement du Monde* (Paris: Gallimard, 1985); see also Charles Taylor, *A Secular Age* (Cambridge MA: Belknap Harvard, 2007), pp. 25–27.

²⁷ Robert Triomphe, *Joseph de Maistre, Etudes sur la Vie et sur la Doctrine d’un Materialiste Mystique* (Geneva: Droz, 1968), p. 625.

²⁸ Olivier Nay, *Histoire des Idées Politiques*, p. 207; see also Simone Goyard-Fabre, *Philosophie Politique XV-XX Siecle* (Paris: PUF, 1987), p. 318.

terms of intellectual substance as well as pure semantics, the two thinkers are closer together than those who participate in the discourse of revolutionary republicanism maintain. Enlightenment influenced post-revolutionary discourse ignores that strong aspect of Montesquieu's work which accommodates and promotes the corporatist and hierarchical in government. This is a register in which "A division of functions of government is thus characteristic of Montesquieu: it is only a secondary consideration that the division is many different classes".²⁹ This viewpoint ignores different readings of *De l'Esprit des Lois*, such as that expressed by Emile Faguet: "The central point and vital knot of Montesquieu's political conception is his idea of hierarchical corporatist society made up of *corps intermediaires*".³⁰

It has already been noted that the originality of Montesquieu's constitutional theory lies in his abandonment of the language of the unlimited right of the sovereign advanced by early modern theorists such as Hobbes. Certainly, Montesquieu pursues the same political objective as Hobbes – that is, the *salus* or well-being of the population – but in his work the need for security no longer constitutes the foundation of political legitimacy.³¹ Whilst Hobbes and Locke speak of absolute rights, Montesquieu abandons this language and re-establishes the flexibility of classical politics on new foundations, using the language of comparison.³² For

²⁹ E. Barker, *Political Thought of Plato and Aristotle* (New York: Dover, 1959), p. 484.

³⁰ Faguet, *La Politique Comparée de Montesquieu, Rousseau et Voltaire* (Geneva : Slatkine (reprint), 1970), p. 46.

³¹ Pierre Manent, *Histoire Intellectuelle du Liberalisme* (Paris: Hachette, 1997), p. 119.

³² See Melvin Richter, "The Comparative Study of Regimes and Societies", in *The Cambridge History of Eighteenth Century Political Thought* (Cambridge: Cambridge University Press, 2006), pp. 151-159, p. 158: "What is remarkable is the way in which he ranged freely through space and time in search of evidence for his comparative analysis. He contrasted the politics of classical

Montesquieu, the doctrine of sovereignty was both the mainstay and the failing of early modern political philosophy. It was its mainstay because it allowed the conception of a neutral power superior to all political and religious interests, which divide men and lead them to wage war amongst themselves.³³ Yet it was a failing because although it is capable of imposing a permanent peace, it is also capable of making war on its own subjects.

Crucially, Montesquieu's doctrine is not founded upon an analysis of man's original condition, but on an interpretation of a political experience, and yet this does not prevent him from reaching traditionalist conclusions – indeed, it enables him to reach them.³⁴ Whereas Locke, for example, considered absolute monarchy to be not just a bad regime, politically speaking, but no regime at all, because it left men in a state of nature worse than their original state,³⁵ Montesquieu considers with equanimity the faults and qualities of the French monarchy, believing that although its principle of legitimacy is illiberal, its effective functioning assures a reasonable standard of liberty.³⁶

Clearly, this analysis emphasises a particular aspect of his thought – an aspect that deals in very different values to those which constitute the revolutionary narrative.

Nevertheless, these ideas represent values fundamental to a full understanding of

antiquity with the altogether novel type of society subsequently created by developments in commerce, government and society”.

³³ Manent, *Histoire Intellectuelle*, p. 120.

³⁴ Ibid., p. 122; see also Richter, “The Comparative Study of Regimes and Societies”, p. 152: “On occasion he discovered the hidden wisdom of custom and could refer to the generally beneficent, if unintended consequences of religious faith”.

³⁵ John Locke, “Second Treatise on Government” in *Two Treatises of Government*, p. 326.

³⁶ Montesquieu, *De l'Esprit des Lois*, p. 342-343.

Montesquieu's relationship not only with Enlightenment thought but also with more traditional conceptions, and this latter relationship has for the most part been suppressed in modern liberal readings of his work. And it is precisely this 'alternative set' of values that contain a large number of similarities with Maistre's understanding of the political world. If Raymond Aron sees only the modern democratic values of tolerance and pluralism at work in Montesquieu's political philosophy,³⁷ we must also recognise Althusser's belief that Montesquieu's project was a conservative one.³⁸

It is in this very ambivalence that we can begin to see the significance of Montesquieu's influence upon Maistre. According to Michael A. Mosher, Montesquieu, like Maistre, sought to describe a polity suitable to the circumstances of complex and highly differentiated societies.³⁹ Maistre enquires, like Montesquieu before him, into the nature of governance and the political system in its plurality, according to the individual characteristics of each *polis* or political organisation. The duality of Montesquieu's distinction between nature and principle is then taken up by Maistre, and it allows him to characterise the way in which each type of government constitutes its own distinctive unity.

Montesquieu's thought possesses a quality of moral and social relativism in which he is concerned with determining the causes and motives of particular developments,

³⁷ See Raymond Aron, *Les Etapes de la Pensée Sociologique* (Paris: Gallimard, 1967).

³⁸ See Louis Althusser, *Montesquieu, la Politique et l'Histoire* (Paris: Quadrige, 2003).

³⁹ Michael A. Mosher, "The Particulars of a Universal Politics: Hegel's Adaptation of Montesquieu's Typology", in *American Political Science Review* Vol. 78 no.1 (March 1984), pp. 179-188, p. 179.

and assessing what adjustments might be more or less suitable to particular constitutional forms, rather than on deciding what is best in general. Such an approach contradicts the uniform and universalising tendency of both Enlightenment and revolutionary thought: neither movement could ever accept Montesquieu's claim that every state is better off adhering to forms, traditions and attitudes for which it is suited by climate, geography and history. This factor alone is decisive in ensuring that "Montesquieu's relationship to radical and republican thought remained...complex and deeply ambivalent".⁴⁰ And yet for Maistre, this aspect of Montesquieu's thought provided a distinctly serviceable basis upon which to propound a thesis.⁴¹

Montesquieu's view was that constitutions are the outcome of a complex arrangement of diverse factors ranging from climate and religion to social hierarchy and judicial practices. In these circumstances, any change in a constitution would necessarily be difficult, dangerous and generally unadvisable. This makes a striking parallel with Maistre's own thought on the constitutional environment. In fact, it becomes evident on reading the *De l'Esprit des Lois* that, like Maistre, Montesquieu disliked the values of democracy and equality.⁴² His preference was for hierarchy – in particular, for mixed monarchy and nobility – and this led him to promote honour as something morally and philosophically commensurate with virtue. This

⁴⁰ Jonathan Israel, *Enlightenment Contested* (Oxford: Oxford University Press, 2006), p. 288.

⁴¹ See *OC V 1 T 1*, p. 329, in which he argues that there are as many different governments as there are peoples; see also *Ibid.*, which contains the argument that despotism for one nation is as natural and as legitimate as democracy for another.

⁴² Montesquieu, *Esprit de Lois*, pp. 154: the quest for equality in a republic "creates such striking differences between citizens that they hate this equality that one is attempting to introduce".

juxtaposition created a systemic conflict between different orders of value, the absolute of virtue (as an end in itself) and the instrumental value of honour, which upholds a particular hierarchical, social and political system.⁴³ The incommensurability of these two concepts has the effect of restricting questions of morality to particular contexts rather than relating them to any wider moral or political theoretical framework.⁴⁴

To further reinforce the difference between Montesquieu and the stereotype of Enlightenment thinkers, Jonathan Israel argues that the particularist quality manifested in his work subverts Montesquieu's 'key concept' of liberty. The relativism of the *De l'Esprit des Lois* actually renders a stable, universal concept of liberty impossible to attain. Thus liberty, for Montesquieu,

is not freedom to do what one wants in some generalised sense but a tranquillity of spirit resulting from confidence that everyone is safe in his own possessions and security under the law in a particular polity. The difficulty for his later republican and revolutionary interpreters was that this precluded any absolute standard of liberty or justice and indeed, any possibility of revolution. For Montesquieu, liberty is to be found within the law, not in its absence.⁴⁵

⁴³ See Israel, *Enlightenment Contested*, p. 291.

⁴⁴ Ibid., p. 293.

⁴⁵ See Nay, *Histoire des Idées Politiques*, p. 208.

Montesquieu's comparative methodology is mirrored in Maistre's balanced treatment of the different types of governmental form.⁴⁶ Maistre's aim, particularly in *Etude sur la Souveraineté*, is to show that all governments possess advantages as well as disadvantages. For Maistre, the best regime for a country is not the product of a system imposed on ideological grounds,⁴⁷ but one that emerges through gradual evolution over an extended period of time.⁴⁸ So Maistre does not seek to hide the benefits of democracy and aristocracy as forms of government.⁴⁹ On the other hand, it cannot be denied that the qualities of a certain type of government – monarchy – do appear more attractive to him. Francis Bayle's view is that this bias is the result of Maistre's desire to re-balance the debate after the excess of propaganda in favour of revolutionary republican and democratic regimes.⁵⁰ It is in reaction to this that Maistre wishes to demonstrate "the excellence of this government" to those who belong to surviving monarchical regimes, illustrating that the subjects of a monarchy "have nothing to envy other governments".⁵¹

⁴⁶ OC V 1 T 1, pp. 45-46: "It must be said that men in general are governed by kings. However we see nations where sovereignty belongs to several persons and such governments can be called aristocracy or democracy according to the number of persons who form the sovereign".

⁴⁷ OC V 1 T 1, p. 423: "One will find that it is just the same to be subject to one sovereign as to another".

⁴⁸ Ibid., p. 547: "No nation owes its character to its government..."; *ibid.*: "the character of nations has deeper roots".

⁴⁹ On aristocracy, see OC V 1 T 1, p. 463: "It is proven by theory and even more by experience that hereditary aristocratic government is the most favourable to the people, that it has much consistency, wisdom stability and that it adapts itself to countries of very different sizes". On democracy, see *Ibid.*, p. 485: "It is certain that, in the times of its vigour, it must by the very nature of things breed an impressive group of great men whose high achievements give to history an inexpressible charm and interest. There are besides, in popular governments, more activity, more movement and movement is the life of history".

⁵⁰ Francis Bayle, *Les Idées Politiques de Joseph de Maistre* (Paris: Domat Montchrestien, 1945).

⁵¹ OC V 1 T 1, p. 427: "But the subjects of monarchies are by no means reduced to saving themselves from despair by philosophical meditations; they have something better to do, which is to impress on their minds the excellence of their government and to learn to envy nothing of others".

His endorsement of monarchical government leads him to embrace a variation of the strict Aristotelian differentiation between three types of government. That tripartite division, believes Maistre, was the result of an historical anomaly, because although these three forms of government were known of and represented in Ancient Greece, constitutionally speaking this was highly unusual:⁵² in fact, Maistre suggests, other than the classical Hellenes nearly all pre-revolutionary states had been governed monarchically.⁵³ And within this typology Maistre then seeks to draw another conceptual distinction, this time between monarchy on the one hand and aristocracy and democracy on the other (both of which are really aristocratic regimes). For Maistre, monarchy is the rule and aristocracy the exception, and this being so, it is quite natural that the *Etude sur la Souveraineté*, Maistre's most complete analysis of the different forms, should begin with a study of the characteristics of this form of government.

Monarchy

In contrast to Rousseau, who believed that, "the first societies governed themselves autocratically",⁵⁴ Maistre believed that monarchy is the oldest and most frequently

⁵² OC V 1 T 1, p. 425: "On this subject, I will observe that the common division of government into three kinds, monarchy, aristocracy and democracy rests entirely upon a Greek prejudice that took hold of the schools during the Renaissance and which we do not know how to undo".

⁵³ Ibid., : "The Greeks always saw the whole world in Greece; and as the three kinds of government were well enough balanced in that small country, the statesmen of that nation imagined the general division I have just mentioned. However, if we want to be accurate, logical rigour will not permit us to establish a genre on an exception and, to be accurate, we must say "men in general are governed by kings"".

⁵⁴ Rousseau, *Du Contrat Social*, Bk. III, Chap. V, quoted in Maistre, OC V 1 T 1, p. 452.

encountered form of government and the one most natural to man.⁵⁵ The inhabitants of a country have a psychological need to see a physical representation of sovereign authority, and monarchy is the perfect embodiment of this unificatory idea:

“Undoubtedly, the king is there, in the middle of all the powers, like the sun in the middle of planets; he rules and he animates”.⁵⁶ It is difficult to overstate the importance of unity as a political and constitutional theme throughout Maistre’s oeuvre, and it runs through his work on forms of government: “In the government of several, the sovereign is not at all A UNITY, and although the parts that make it up form a theoretical UNITY, they are far from making the same impression on the mind” (emphasis in the original).⁵⁷ The human imagination is not impressed by a collectivity which, when taken together, constitutes the sovereign. This type of sovereignty is ultimately “Nothing but a metaphysical being”⁵⁸ and so does not match the intensity or moral force of a sole unitary sovereign.⁵⁹

Unitary sovereignty alone permits the most vigorous governmental activity.⁶⁰

Quoting Rousseau, who likens the monarch governing his state to Archimedes lifting Herion’s galley with ease, Maistre argues that the monarchy is composed of a political apparatus which is as simple as that of a republic is complicated.⁶¹

⁵⁵ OC V 1 T 1, p. 426: “If one asks what is the government the most natural to man, history is there to respond: it is monarchy”.

⁵⁶ Ibid., p. 430.

⁵⁷ Ibid., p. 435.

⁵⁸ Ibid.

⁵⁹ Ibid., p. 436.

⁶⁰ Ibid., p. 438: “This word KING is a talisman, a magical power that gives central direction to all forces and talents” (emphasis in the original).

⁶¹ Ibid., p. 437, quoting *Du Contrat Social*, Bk III, Chap VI: ““All respond to the same motivation”, he says, “all the mechanisms of the machine are in the same hands; everything moves towards the same goal; there are no opposing movements that are mutually destructive and there is no constitution

Nonetheless, when using Rousseau's analogy Maistre is careful not to confuse the person of the monarch with the office of the sovereign, saying: "It is a good thing without doubt but in place of the person, his name will suffice".⁶² Because of the de-personalisation of the office of sovereign, even a mediocre administrator is capable of performing great tasks under the monarchical system. "The word skilful is superfluous in this piece", Maistre states, "Monarchical government is precisely the one that best does without the skill of the sovereign".⁶³ The unified vigour of monarchical government is necessary, particularly (Maistre believed) in the case of large states. For once, history is in accord with theory: history provides no evidence for the existence of great republics.

From this identification of the monarch with strong and vigorous government flow two further consequences, which reflect Maistre's concerns with the actual processes of governing and the nature of the relationship between the individual and the state. The first is the fact that the respect and admiration in which the monarch is held is transposed to his agents and functionaries.⁶⁴ The second is that the attachment of the

imaginable in which a lesser effort produces a greater action. Archimedes sitting tranquilly on the shore and effortlessly pulling a huge Vessel over the waves is my image of a skillful monarch governing his vast States from his study and setting everything in motion whilst appearing immobile himself".

⁶² Ibid., p. 438.

⁶³ Ibid., p. 437.

⁶⁴ Ibid., p. 436: "Power delegated by the sovereign gives the government of one an extraordinary consideration that is quite specific to monarchies. In a government of several persons, the offices occupied by the members of the sovereign enjoy the consideration attached to this quality. It is the man who honours the office; but among the subjects of these governments, offices elevate those who occupy them very little above their fellows...in monarchy offices reflecting a brighter light on the people are more dazzling; they furnish an immense career open to all kinds of talents and fill up the void that without them would be opened between the nobility and the people in general".

people to the person of the sovereign creates a strong base upon which constitutional institutions can rest and function.⁶⁵

To reinforce the value and efficacy of the monarchical principle, Maistre calls on the philosophical and political observations that have already been discussed in some detail in Chapter 2, regarding the origins of society and sovereignty. As we have seen, the morally perfect man of Rousseau's imagination is not compatible with belief in original sin and Maistre's consequent views of humanity as being "right in its intelligence and perverse in its will". However, Maistre argues that this capacity for perversity may be ameliorated or even avoided in situations where personal interests are not affected. In the case of the sovereign who is physically, as well as politically, unitary, those occasions when the personal interests of he who governs are affected are significantly reduced.⁶⁶ Only in a monarchy may governors avoid a situation in which the general interest of the country is sacrificed to the personal interest of the governors. This is because, even if they are not endowed with exceptional qualities, kings will naturally be led to act for the common good, because their personal interest will only very rarely be in conflict with the general interest.

Maistre's insistence on the necessity to avoid reliance on moral qualities as a criterion for good government is emphasised in his citation of a speech given on 31

⁶⁵ See above Chapter 4, p. 201.

⁶⁶ *OC V 1 T 1*, p. 431: "One can be certain that the government of a single person is that in which the vices of the sovereign have the least influence on the governed peoples".

December, 1794 by La Harpe, on the occasion of the opening of one of the new Republican *Lycees*:

In absolute governments the faults of the master can scarcely ruin everything at once, because his single will cannot do everything; but a republican government is obliged to be essentially reasonable and just, because once it goes astray the general will carry everything away with it.⁶⁷

Typically, Maistre interprets a panegyric on the virtues of republican solidarity as an exposition of its worst failing. A reliance on the underlying principle of republican government – virtue – is, given man’s nature, an unsustainable ideal which will lead to mismanagement, corruption and worse. Moreover, the general will sweeps all before it, irrespective of good sense or true virtue. In contrast, the king can certainly not exercise his personal will to do whatever he pleases.

Indeed, in a monarchy – and Maistre is always careful to make the distinction between monarchy and despotism⁶⁸ – the king is prevented from doing everything he wishes; this, for Maistre, is the great advantage of this type of government. In stark contrast to the need for overwhelmingly virtuous behaviour in the republic, there exists a long list of constraints on the king’s behaviour that prevent him from abusing his power. “It is far from true that the king’s will does everything in a

⁶⁷ Ibid.

⁶⁸ Ibid., p. 417 Maistre believed that all governments are despotic in some way: “there will always be in the last analysis an absolute power which will be able to do wrong with impunity, which will thus be despotic according to this point of view, in the whole force of the term and against which there will be no other protection than that of insurrection”.

monarchy”, Maistre says, “It is *supposed* to do everything, and this is the great advantage of this government; but in fact it only serves to centralise counsel and enlightenment”.⁶⁹ Maistre here shows a nuanced perception of the sophisticated interplay between authority and consent vital to conceptions of sovereignty. Religion, laws, customs, opinion and class and corporate privileges all “restrain the sovereign and prevent him from abusing his power”.⁷⁰

The difference between a republic and a monarchy is that governors in the latter are bound by some form of fundamental normative standard, however it is expressed. These limitations permit the monarchical state to accommodate the inefficient and possibly even unvirtuous king, whereas the proper functioning of the republic demands total competence and propriety from its omniscient governors. Democracy demands governors who are virtuous and competent because it vastly increases the cases where the interests of the governors are implicated – and man by his nature is never virtuous and rarely entirely competent.

The Maistrian monarchical state contains a second important constitutional feature, one which further distinguishes it from its despotic caricature. This is the notion of hierarchy which is an essential feature of all monarchical governments. Maistre understands its shape to be pyramidal,⁷¹ an image which Hannah Arendt also employs in making a distinction between despotic (or tyrannical) regimes and those

⁶⁹ Ibid., p. 432.

⁷⁰ Ibid.

⁷¹ Ibid., p. 432: “But the pyramidal aristocracy that administers the state in monarchies has particular characteristics that deserve our attention”.

which are authoritarian; her analysis seems close to the Maistrian model: “As an image for authoritarian government, I propose the shape of the pyramid, which is well known in traditional political thought. The pyramid is indeed a particularly fitting image for a governmental structure whose source of authority lies outside itself, but whose seat of power is located at the top, from which authority and power is filtered down to the base in such a way that each successive layer possesses some authority”.⁷²

For Maistre, hierarchy is vital to the functioning of the monarchical form, and to facilitate the maintenance of this structure (which is situated between monarch and people) there is the aristocracy, a *corps* which performs a role of the utmost constitutional importance.⁷³ Their task is so important that Maistre goes so far as to say that monarchy is only really a species of “centralised aristocracy”.⁷⁴ In every country and in every type of government the most important role will be taken by

⁷² Hannah Arendt, “What is Authority?” in *The Portable Hannah Arendt*, pp. 467-468.

⁷³ The destinies of monarchy and aristocracy are closely interwoven in Maistre’s work, and it is perhaps because of this that, although he devotes a separate chapter to it as a distinct form of government, his treatment of aristocracy in this sense involves a considerably shorter analysis. It is also the case that Maistre believes that the aristocratic form of government has historically been of less importance

(see *OC V 1 T 1*, p.452 “Antiquity has not left us with a model for this type of government. In Rome and Sparta aristocracy played – without doubt – a very big role in all governments, but it never reigned alone”). There are, however, a number of features of aristocratic regimes which Maistre believes are relevant both to the subject of governing and the relationship of the individual to the state. Compared to a monarchy, an aristocracy has less need of splendour and ostentation. In Maistre’s view, an aristocracy is numerically concentrated enough to impose itself upon the people, but it demands less of them than does a monarchy. However, although it lacks something in vigour, it is never imprudent (*OC V 1 T 1*, p. 456). Maistre refutes Rousseau’s suggestion that the aristocratic republics of Venice and Berne were “the worst of all” (“la pire de toutes”) – in fact, aristocracy is possibly the most favourable form of government to the people (*OC V 1 T 1*, p. 456.)

⁷⁴ *Ibid.*, p. 430.

the aristocrat, who acts as a conduit of constitutional authority.⁷⁵ For its part, the existence of the monarchy makes the institution of the aristocracy more palatable to the masses,⁷⁶ lessening the impact upon the people of the essential gap that must be maintained between the people and their rulers, because, in comparison with the grandeur of the monarch, both classes seem insignificant.⁷⁷ It is Maistre's view that the monarch's presence allays any resentful feelings of inequality or injustice. In republics, on the other hand, where the distinction between aristocrats and people still exist, the people will develop a sense of grievance against the nobility.⁷⁸

Thus under a monarchy the aristocracy has 'legal status': it is an integral part of government.⁷⁹ By introducing the notion of law, Maistre wishes to express the existence of a fundamental normative underpinning to his hierarchical structure. A monarchy that is "seated on good laws" is one in which the aristocracy does not become an entirely closed caste. Instead it is ever-revolving, always being renewed,

⁷⁵ Ibid., p. 431: "In a monarchy the king is the centre of this aristocracy...it rules in the king's name, or, if you will, the king is guided by the knowledge of the aristocracy".

⁷⁶ Ibid., p. 433: "Now it is one of the great advantages of monarchical government that in it the aristocracy loses, as much as the nature of things permits, all that can be offensive to the lower classes".

⁷⁷ Ibid., p. 435: "The man of the people, who feels insignificant when he measures himself against a great Lord, measures himself against the sovereign, and the title of *subject*, which submits both to the same power and the same justice, is a kind of equality that quiets the inevitable pangs of self-esteem".

⁷⁸ Ibid., p. 434: "The best thing to deprive this influence of whatever makes it too tiresome for the pride of the lower classes is to remove all insurmountable barriers between families in the state, and to allow none to be humiliated by a distinction they can never enjoy". And again at p.435: "Aristocratic government cedes to monarchy. In the latter a unique family is separated from all others by opinion, and is considered, or can be so considered, as belonging to another nature. The greatness of this family humiliates no-one because none can be compared to it. In the first case, on the contrary, sovereignty residing on the heads of several men does not make the same impression on minds, and individuals that chance has made members of the sovereignty are great enough to excite envy, but not great enough to stifle it".

⁷⁹ Ibid., p. 433: "This kind of aristocracy is legal; it is an integral part of the government – everyone knows this and it does not awaken in anyone's mind the idea of usurpation and injustice. In republics, on the other hand, distinctions between persons exist, as in monarchies, but they are harsher and more insulting because they are not the work of law, and because popular opinion regards them as a habitual insurrection against the principle of equality recognised by the Constitution".

always remaining open to new entrants.⁸⁰ In this way it encourages the principle of honour, and at the same time “drives all individual ambitions towards the good of the state”.⁸¹

Thus Maistre’s monarch performs a range of crucial constitutional functions. The regime effectively and naturally maintains the vital gap between the notion of governors and the governed; in doing so, it relies on the values of honour and brilliance rather than virtue. But honour and brilliance are not to be confused with the inconsistency or arbitrariness that are characteristics of despotism. In fact, honour and brilliance position the Maistrian monarchical model between the extremes of democracy and despotism. Maistre’s notion of monarchy is bound up with that of normativity – of regulation and of fundamental law. Consequently, Maistre propounds a juridical basis of governance that is necessary within a monarchical schema: in other words, a system of public law. Ultimately, the idea of monarchy for Maistre is bound up with unity, which perfects hierarchy and presents a strong and vigorous expression of a nation’s sovereignty.

⁸⁰ Ibid., p. 434: “Now this is precisely the case in a monarchy founded on good laws. There is no family whose head’s merit cannot raise it from the second to the first rank and even independently of this flattering achievement, and before the family acquires through time the influence that is its due, all the posts in the state, or at least many of them, are open to merit”.

⁸¹ Ibid.: “This movement of general ascension that pushes all families towards the sovereign, and which constantly replenishes all the voids that are left by those that die out – this movement, I say, involves a salutary emulation, animates the flame of honour and turns all individual ambitions toward the good of the State”.

Democracy

Maistre begins his examination of democracy by adopting Rousseau's view that, "in the strict sense of the term, a genuine Democracy has never existed and never will exist. It is contrary to the natural order that the majority govern and the minority be governed"⁸² – and he develops this theme with some force. The idea of a people being at the same time sovereign and legislator, he believed, "so strongly shocks good sense that Greek political writers, who must have understood something about freedom, never spoke of democracy as a legitimate form of government".⁸³

Aristotle, says Maistre, defined democracy as the excess of republicanism, just as he defined despotism as the excess of monarchy.⁸⁴ Just as it is impossible to conceive of an individual possessing coercive power over him or her self, so, by analogy, it is impossible to envisage a people who are at the same time both subject and sovereign.⁸⁵ From this Maistre deduces that sovereignty necessarily presupposes an exterior governing power, and thus cannot, under any circumstances, be reconciled with a theory of pure democracy.⁸⁶ For Maistre, to speak of pure democracy is to speak of an association of men without sovereignty.⁸⁷

⁸² Rousseau, *Du Contrat Social*, Bk III, Chap. IV.

⁸³ *OC V 1 T 1*, p. 464.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*, p. 466: "Since no nation, any more than any individual, can possess a coercive power over itself, if there exists a democracy in theoretical purity clearly there would be no sovereignty at all in this state".

⁸⁶ *Ibid.*: "It is impossible to understand this word [i.e. sovereignty] in any other sense than of a restraining power that acts on the subject and that is placed outside the subject".

⁸⁷ *Ibid.*, pp. 465-466: "I believe that I can define democracy in the strict sense as an association of men without sovereignty..."

And it is here that Maistre reiterates the central importance of normativity in the construction of a truly constitutional environment – a notion which we saw explored in his treatment of monarchy – and applies it to his understanding of the purely democratic state, comparing it to a figure from private law, the unincorporated voluntary society.⁸⁸ In such societies, men agree to abide by statutes whose enforcement relies on nothing but the will of those who have drafted and accepted them.⁸⁹ Maistre does not recognise these ordinances as law in any way at all,⁹⁰ reserving the term ‘law’ for those ordinances which are the product of a superior and unitary will.⁹¹ If an ordinance is the work of all, or the result of an agreement of individual wills – in other words, the will of all – then “the less it is the law”.⁹²

Lacking the guiding structure of normativity democracy, unlike monarchy, must operate according to the shared goals of the members of the association;⁹³ there can be no deviation from the agreed purpose.⁹⁴ And also unlike monarchy, which benefits from inherent regulating norms which allow for behaviour to deviate from acceptable civic standards without a collapse of regime, democracy must stand or

⁸⁸ Ibid., p. 467: “In all the countries of the world there are voluntary associations of men who come together because of common interests or through benevolence”.

⁸⁹ Ibid.: “These men voluntarily submit themselves to certain rules that they observe in so far as they find them good; they even submit themselves to certain rules that they observe in so far as they find them good – they even submit themselves to certain penalties that they incur when they have contravened the statutes of the association”.

⁹⁰ Ibid.: “However, these statutes have no other sanction than the will of those who adopted them, and once they find themselves in disagreement, no one among them has coercive force to constrain them”.

⁹¹ Ibid.: “The ordinances that emanate from the people constituted in this way are regulations and not laws”.

⁹² Ibid., : “The law is so little the will of all that the more it is the will of all, the less it is the law, so that it would cease to be the law if it was without exception the work of all those who would have to obey it”.

⁹³ Ibid. “This spirit of voluntary association is the constitutive principle of republics”.

⁹⁴ Ibid., p. 468: “Order and agreement are apparent everywhere; communal property is respected even by the poor and everything – even the general propriety – gives the observer food for thought”.

fall by its commitment to the common purpose.⁹⁵ Furthermore, the reality of all government is that the state-making project is imposed from above, by the governors, and this is as true for a republic as for a democracy: the revolutionary discourse of consensual, popular constitution-making is just that: a rhetorical device.⁹⁶

And yet, even as Maistre dismisses pure democracy as a merely hypothetical construct, something which only exists as a definition for an excess of republic, he nevertheless has to admit that in practice certain states do function in a way which, no matter how imperfect and crude, implement seemingly democratic tenets, and these are of two sorts: direct democracy, which exists only in the case of small states, and representative democracy, which functions as an attempt to reconcile the practice of democracy with the governance of large states.

Concerning the direct democracy of small states, Maistre sees an inherent contradiction in the way that the democratic association functions, a contradiction which he identifies as being a consequence of two conflicting principles – the principle of sovereignty, which is the shared basis of all governments: an institution which judges and is not judged, and which acts as a strong, uniting force;⁹⁷ and the spirit of community, which is necessary because law and democracy are mutually

⁹⁵ Ibid.: “Because a republican people is therefore a people less governed than any other, we can see that the activity of sovereignty must be supplemented by public spirit”.

⁹⁶ See, for example, Roger M. Smith, *Stories of Peoplehood: The Politics and Morals of Political Membership* (Cambridge: Cambridge University Press, 2003).

⁹⁷ OC V 1 T 1, p. 467: “Just as pure democracy does not exist, neither does a purely voluntary state of association. One starts from this theoretical power only for the sake of understanding; and it is in this sense that one can affirm that sovereignty is born at the moment it begins not to be the whole people, that it strengthens itself to the degree that it becomes less the whole people”.

exclusive concepts, and so the democratic state must possess a form of voluntary association as part of its physiognomy.⁹⁸ Because of this latter characteristic, republics are always states which are less governed than others,⁹⁹ and public power acts less and shows itself less than in a monarchy.¹⁰⁰ Maistre ascribes this to, “a certain family spirit which is easier to sense than to describe”.¹⁰¹ It is a feature which prevents sovereignty from acting in a number of circumstances in which it would ‘otherwise’ intervene.¹⁰²

This lack of recourse to sovereignty in the full sense of the term means that the democratic nation must demonstrate distinctive qualities. The missing, normative, unificatory aspect of the sovereign “must be supplied by the public spirit”.¹⁰³ For a democracy to function, the members of the association must have both wisdom and that Montesquian requirement of virtue. The less they have of these characteristics, the less suited they are to form a republic¹⁰⁴. The functioning of such a form of government implies an intensity of community spirit and a commonality of purpose that this exists only in very small states.¹⁰⁵ As Maistre comments: “in its great days it eclipses all, and the marvels which it produces seduce everyone, including the

⁹⁸ Ibid., pp. 467-468 [Talking of the spirit of voluntary association]: “Mixed in more-or-less with sovereignty, the common base of all governments, its greater or lesser presence forms the different physiognomies of non-monarchical governments”.

⁹⁹ Ibid., p. 468: “The observer...can distinguish the effects of these two principles very well. Sometimes he senses sovereignty and sometimes the community spirit that serves to supplement it”.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.: “The less a people has wisdom to perceive what is good and the virtue to hold themselves to it, the less they are suited for a republic”.

¹⁰⁵ Ibid.: “But, firstly, it is suitable only for very small peoples”.

cold-blooded observer”.¹⁰⁶ But he notes that the formation and duration of this type of association becomes more and more difficult to inculcate as the size of the state increases.¹⁰⁷

The second type of democratic model that functions in practice, and which is designed to be used in the case of larger countries, is representative democracy, a concept which attracts the full force of Maistre’s opprobrium.¹⁰⁸ Representative democracy was essentially proposed by Enlightenment and revolutionary theorists as a way of surmounting the problem of instituting a direct democracy in a complex and geographically and demographically large state, and it was anathema to Maistre.¹⁰⁹

To set Maistre’s opposition to representative democracy in context, it is worth recalling that the concept was, at the time when he was writing, a distinctly innovatory phenomenon.¹¹⁰ And it remains, as Loughlin remarks, “a thoroughly ambiguous, incoherent notion”.¹¹¹ To Maistre, the effort to render the political

¹⁰⁶ Ibid.

¹⁰⁷ Ibid., pp. 468-469: “The formation and maintenance of the spirit of association becomes more difficult in direct proportion to the number of associates, something which needs not be proved”.

¹⁰⁸ For an overview of representative government, see Bernard Manin, *Principes du Gouvernement Représentatif* (Paris: Flammarion, 1995); see also Lucien Jaume, “Representation”, in *Dictionnaire de Philosophie Politique* (Paris: PUF, 1996), pp. 651-657.

¹⁰⁹ OC V 1 T 1, p. 41: “It would be better to pose another question: *Can the Republic exist?* One supposes so. But this is accepted too quickly and the initial question seems a well-founded one, for nature and history unite to establish that a great and indivisible republic is an impossible thing”.

¹¹⁰ See John Dunn, *Setting the People Free: The Story of Democracy* (London: Atlantic Books, 2005), p. 179: “You can track the progress of representative democracy as a form of government from the 1780s until today, sticking pins into the map to record its advance and noting not merely the growing homogenization of its institutional formats as the decades go by but also the cumulative discrediting of the rich variety of other state forms which have competed against it throughout...” See also Jean-Marc Piotte, *Les Neuf Clés de la Modernité* (Québec: Québec Amérique, 2007), pp. 153-167.

¹¹¹ See Loughlin, *The Idea of Public Law*, p. 53.

system subject to representation has been achieved at the expense of clarity and internal coherence, but his analysis of it occurred during a period in history when representation was becoming democracy's dominant form; his work provides a clear critique of the efficacy of this crucial modern constitutional concept, in part because it had become such an integral part of the republican project.

For Maistre, the difficulty with the notion of representation, briefly put, is that if the government is held to be representing the people then its actions must be considered to be authorised by those very same people. Consequently, when the government orders a citizen to obey it is because that citizen has authorised the government to issue that command – the citizen has ordered himself to obey through the intermediary of the government. Thus, he obeys himself. The distinction made between represented and representative is one way in which the European polity, having rejected all notions of transcendental authority, attempts to escape having to confront the existence of the essential political relation of command and obedience.¹¹² It is a denial of the essential nature of governing, as Maistre sees it – representation is thus a mask hiding the true nature of the relationship between governor and governed.

The ambiguous nature of the concept is demonstrated by the fact that representation has justified some of the worst political oppression and violence in history.

According to Pierre Manent, it was because they were convinced that they were representing the people that the Jacobins conducted their campaign of terror on those

¹¹² Pierre Manent, *Cours Familier de Philosophie Politique* (Paris: Gallimard, 2001), p. 29.

whom they represented.¹¹³ It was with such events in mind that Maistre examined the subject of representation, structuring his analysis into two strands. First, he took an historical, contextual view; second (and more significantly for the development of constitutional thought), he engaged in a discussion of its political attributes and implications.

Maistre searched first of all for the origin of representative government, believing that it was by no means a new concept,¹¹⁴ but acknowledging that it only recently began to operate naturally as part of the English political settlement.¹¹⁵ For Maistre, then, representation was first and foremost a particularised concept. The system of representation which existed in England at the time was not the result of the people discovering their universal rights, but the result of the monarch conceding certain rights as a consequence of a number of historical circumstances¹¹⁶ Thus, says Maistre, if by national representation one means “certain number of representatives sent by certain men taken from certain towns or boroughs by virtue of old

¹¹³ Ibid., p. 30.

¹¹⁴ *OC V 1 T 1*, p. 44: “We begin by remarking that this system is not at all a modern discovery, but a product, or – to put it better – a piece of feudal government”.

¹¹⁵ Ibid., p. 45: “Representation... is found in all European monarchies but it lives in Great Britain; elsewhere it is dead or it sleeps”.

¹¹⁶ Ibid., pp. 45-46: “It is sufficient to point out from history (1) that in England, where national representation has gained and retained more power than anywhere else, there is no mention of it before the middle of the thirteenth century; (2) that it was not an invention or the product of deliberation or the result of the action of the people making use of its ancient rights, but that in reality an ambitious soldier, to satisfy his own designs, created the balance of the three powers after the Battle of Lewes without knowing what he was doing, as always happens; (3) that not only was the calling of the commons to the national council a concession of the monarch, but that in the beginning the king names the representatives of the counties, cities and boroughs; (4) that even after the local communities had assumed the right of naming their representatives in parliament during Edward I’s journey to Palestine, they had there only a consultative voice – that they presented their grievances like the estates-general in France and that concessions by the Crown following from their petitions were always Granted by the king and his spiritual and temporal Lords on the humble prayers of the Commons; finally, that the co-legislative power attributed to the House of Commons is still very new, since it goes back at most to the mid-fifteenth century”.

concession by sovereign”, then one cannot dispute that “this government exists and it is that of England”.¹¹⁷ However, if one means that all the people can be represented by virtue of a mandate and that, in combination with this, there can be an abolition of all hereditary function and distinction, then this type of representation “is something that has never been seen and that will never be successful”.¹¹⁸ For Maistre, the representative system “is a piece of feudal government”¹¹⁹ that is solely appropriate to the English context, and which is incapable of being transposed elsewhere in order to serve as an effective political system. It is categorically not the cosmopolitan panacea of the revolutionary imagination.¹²⁰

This leads him to a more abstract consideration of the problem. The “heart of the problem”¹²¹ for the revolutionaries was not, Maistre believed, the need to prove that a perfect system of representation is possible, but rather to decide whether the people can by such means retain their sovereignty and form as a whole, i.e. remain defined as a republic. For if the republic resides in the capital, and the rest of France is subject to it, it [the republic] is not accountable to the sovereign people.¹²² And here Maistre asserts his great objection to representative democracy – that what is purportedly representation is in fact the monopolisation of sovereignty by a few:¹²³ “A small number of republicans enclosed within the walls of a town may, without

¹¹⁷ Ibid., p. 46.

¹¹⁸ Ibid., p. 47: Maistre continues by commenting on the situation in the USA: “America is often cited to us: I know nothing so provoking as the praise showered on this babe-in-arms: let it grow”.

¹¹⁹ Ibid., p. 44.

¹²⁰ Ibid.

¹²¹ Ibid., p. 47.

¹²² Ibid.

¹²³ Jaume, “Representation”, p. 652.

doubt, rule millions of subjects – this was the case with Rome, after all – but there cannot exist a great free nation under a republican government.”¹²⁴

For Maistre, the representative system quite simply excludes the exercise of sovereignty by the people, and this is particularly the case in the French system in which the rights of the people are limited to nominating those who actually take part in the process of choosing the sovereign.¹²⁵ This is a situation in which the new constitutional laws are careful to break all relations between representatives and those whom they represent, telling them that, “they [i.e. the representatives] are not sent by those who sent them [i.e. their constituents] but by the nation”.¹²⁶ In short, Maistre believed that it is not possible to imagine a system better calculated to deny the rights of the people than a representative government, nor one that is better able to alienate them from the structure of the state.¹²⁷

But, Maistre continues, “it has been said in response, what does it matter to the nation that representation is a vain honour, if this system establishes public liberty?”¹²⁸ The question, Maistre insists, cannot be side-stepped by introducing the concept of liberty into the argument. The question should remain focussed not on

¹²⁴ *OC V 1 T 1*, p. 41.

¹²⁵ *Ibid.*, p. 48: “What is certain is that the representative system is completely incompatible with the exercise of sovereignty, particularly under the French system, in which popular rights are limited to electing electors”.

¹²⁶ *Ibid.*: “Not only can the people not impose special mandates on their representatives, but also the law takes care to break any relationship between representatives and their respective constituencies by warning them that they are by no means representatives of those who have elected them, but of the nation, a splendid and extremely convenient word since one can make of it whatever one wishes”.

¹²⁷ *Ibid.*, p. 49.: “What does this empty benefit of representation mean for the nation when it is involved so indirectly and when millions of individuals will never participate in it? Are sovereignty and government any less alien to them?”

¹²⁸ *Ibid.*

knowing whether the French people may be free because of the constitution, but on knowing whether they may be sovereign in themselves.¹²⁹ Within the system of representation people remain “perfectly estranged” from government. They are more subject than in a monarchy.¹³⁰ Maistre believes that the question is reduced “to deciding if it is in the interest of the French people to be subject to an executive directory and two councils instituted according to the 1795 constitution, rather than to a king ruling according to the ancient forms”.¹³¹ Democratic representation is nothing but an illusion, an ideology. In reality, the post-revolutionary French citizen obeys a despotic government, and the charade of representation merely masks its true extremism.¹³² In order to support this proposition, Maistre cites, with relish, an extract from Babeuf’s interrogation:¹³³

I believe the present government to be a usurper of authority and violator of all the rights of the people, whom it has reduced to the most deplorable slavery. It is an awful system aimed at the happiness of the few and founded upon the oppression of the masses. The people are surrounded by the chains of this aristocratic government so that it is becoming ever more difficult to break them.¹³⁴

¹²⁹ Ibid.

¹³⁰ Ibid., pp. 49-50.

¹³¹ Ibid., p. 50

¹³² Ibid.: “What distinguishes the French Revolution, and what makes it an event unique in history, is that it is radically evil; no element of good relieves the picture it presents; it reaches the highest point of corruption ever known; it is pure impurity”.

¹³³ Francois Noel Babeuf, known as ‘Gracchus’; born 1760, guillotined in 1797.

¹³⁴ OC V 1 T 1, p. 49.

As Babeuf points out, then, far from enhancing democracy, the constitutional principles of 1791 turn the French representative system into an aristocratic regime. Post-revolutionary suffrage does not aim to represent of the will of the people, but is used as a form of selection through which to choose an elite of governors.¹³⁵ By the very nature of the election, the deputies are independent: they do not govern as representatives of the electors but as individuals invested with a public function but who are acting in their own interest. Maistre then moves from questioning whether or not representation allows people to retain sovereignty (which it does not) to considering whether or not representative elections provide an effective form of selection for an elite class that is fit to rule a nation. “Some political writers have claimed that one of the positive aspects of republican government is the wisdom the people possess in confiding the exercise of authority only to worthy people”,¹³⁶ he notes; according to this view, no one chooses better than the people when it is a question of their own interests – in this case nothing can seduce them, and merit alone decides the issue.¹³⁷

Maistre’s response is to emphasise the importance of aristocracy to the act of governing. For Maistre, democracy could not exist for an instant if it were not tempered by aristocracy,¹³⁸ because the masses influence elections very little: it is really the aristocracy which chooses, and chooses well.¹³⁹ Maistre comments that the only time the multitude usefully become involved in political affairs is through a

¹³⁵ See Pierre Manent, *Cours Familier*, p. 29.

¹³⁶ *OC V 1 T 1*, p. 472.

¹³⁷ *Ibid.*, pp. 472-473.

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*, p. 474.

“form” of insurrection which is sometimes necessary to stop the “too rapid” activity of aristocracy.¹⁴⁰ But this is always extremely dangerous and produces the most terrible side-effects.¹⁴¹ He refuses to accept that the people are able to make an informed and appropriate choice regarding the political system in which they live. Decisions regarding the state and its formation are made by the governors, and the governors are always distinct from the people.

Democracy and Justice

The theme of the oppressive nature of democratic governments raised in Maistre’s examination of the representative system is pursued in more depth in his analysis of a different but equally flawed aspect of all democratic states: the administration of justice.¹⁴² In criticising this facet of post-revolutionary democracies, Maistre raises a profound objection to a general implication of the Enlightenment project,¹⁴³ a critique which centres on a paradox: that the Enlightenment’s promotion of the idea of universal reason in practice creates a parochial exclusivity, in which those who do not conform to the standard of reason are treated differently and to their own

¹⁴⁰ Ibid.

¹⁴¹ Ibid.: ““Yet the difficulties sometimes caused by the multitude”, Rousseau says, “can be judged by what happened in the time of the Gracchi, when part of the citizenry voted from the rooftops”. He ought also to have noted that when they voted from the rooftops they also slaughtered in the streets”.

¹⁴² Ibid., p. 469: “Justice here does not have that calm and undisturbed activity that we commonly see in monarchies”.

¹⁴³ For a full discussion of this, see Anne Barron, “Legal Reason and its Others: Recent Developments in Legal Theory”, in *Jurisprudence and Legal Theory: Commentary and Materials*, eds. Penner, Schiff and Nobles, pp. 1072-1075 (London: Butterworths, 2002).

detriment.¹⁴⁴ And this is demonstrated, according to Maistre, by the exercising of the magistrate's function in a democracy.

According to Maistre, the magistrate in a democracy is not at sufficient remove from his fellow citizens¹⁴⁵ because there is no true sovereign power to enforce his decisions, given that democracy is effectively an association that lacks a truly normative basis. Consequently, the magistrate's function is more akin to that of a referee or arbitrator than to a judge¹⁴⁶ and his power depends upon the voluntary adhesion of his co-citizens in the communal project of democratic justice.¹⁴⁷ Thus: "In republics nothing equals the inequity, or if you wish, the powerlessness, of courts when it is a question of deciding between the stranger and the citizen".¹⁴⁸ And the more democratic the republic, the more striking is this inequality in the administration of justice,¹⁴⁹ because the less that sovereignty is separated from the people, the less it exists as an independent arbiter.¹⁵⁰

¹⁴⁴ See Douzinas and Warrington, *Justice Miscarried: Ethics, Aesthetics and the Law* (London: Harvester, 1995), pp. 149-150: "In the universal community of reason, which acts as the horizon for the realisation of the law, the other...is turned into the same, the critical distance between self and other is reduced and the experience or value of moral conscience is grounded solely on the representation of the other by the knowing and willing ego. The alternative is the other's exclusion, banning or forgetting. But the other who approaches me is singular and unique; she cannot be reduced to being solely an instance of the universal concept of the ego, nor can she be subsumed as a case or example under a general rule or norm. The law of modernity based on the self's right and the subject's empire is strangely impartial as it tries either to assimilate or to exclude the other.

¹⁴⁵ OC V 1 T 1, p. 471: "The magistrate is not sufficiently superior to the citizen".

¹⁴⁶ Ibid.: "He has the air of being an arbitrator rather than a judge".

¹⁴⁷ Ibid.: "We see that he does not believe in his own power; his strength comes only from the adhesion of his equals because there is no sovereign or the sovereign is insufficiently so".

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

The more that people identify with democracy, the more they are keen to be defined as citizens and so demonstrate that they exercise the faculty of a fully cosmopolitanised reason. But this sense of impartial, abstract justice does not extend to those who do not belong to the political community: the foreigner cannot demand justice from the sovereign who does not exist.¹⁵¹ In contrast with this, Monarchy is the only government under which a person who does not belong to the democratic polity, is the equal of the citizens in the courts – republics cannot be this even-handed because there is too little distinction between the governors and the governed.¹⁵² Cosmopolitan, universalising values, combined with the lack of a deep, structured legal foundation, lead to discrimination: “In general, justice is always weak in a democracy when it acts alone, and always cruel and thoughtless when it relies on the people”.¹⁵³

The lack of any sense of true normativity – a consequence of their being no real sovereign set apart from the people – gives rise to a second failing in the democratic administration of justice. A magistrate who is not a representative of a sovereign cannot demonstrate justice, but only arbitrariness. The strength of popular opinion – that public spirit which is necessary to bind the associates in a democracy – will influence his decisions, and he will favour the masses rather than the elites.¹⁵⁴ This, Maistre argues, has the effect of granting a form of immunity to a large number of

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Ibid., p. 472.

¹⁵⁴ Ibid., p. 469: “In democracies justice is sometimes weak and sometimes impassioned; it is said in these governments no one can brave the power of the law. This means that the punishment of famous guilty persons or accused men of power will be a veritable entertainment for the common people”

people, whereas in a monarchy immunity is differently graduated for a small number.¹⁵⁵

The injustices of democracy are frequently obscured by the fact that the science of police is mistaken for the administration of justice. “One must not be the dupe of a certain rule-bound pedantry with which the people is obsessed just because it seems to disrupt the rich”,¹⁵⁶ Maistre states, and, in a pithy comment on the discrepancy between pettifogging bureaucracy of the post-revolutionary republic and true justice, he notes: “In a city where one is fined for having led a horse at the trot, one can kill a man with impunity provided the murderer was born in a shop”.¹⁵⁷

Whilst monarchs have strong normative limits imposed upon their course of action, Maistre asserts that the governing elite in a republic is all-powerful. The adoption of a system of democracy, and the distortion of the concept of representation, ensures that the liberty of the few is founded upon the enslavement of the many.¹⁵⁸ Republics have really only ever been sovereignties comprising “several heads”, whose despotism is always harder and more capricious than the single rule of monarchies.¹⁵⁹ And this despotism increases in intensity as the number of subjects

¹⁵⁵ Ibid., p. 470: In a monarchy, immunity, differently graduated, is for the few; in a democracy it is for a large number.

¹⁵⁶ Ibid., p. 471.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid., p. 502: “History testifies to this great truth, that the liberty of the minority is founded only on the slavery of the multitude”.

¹⁵⁹ Ibid.

multiplies. “Of all the monarchs”, concludes Maistre, “the most despotic is the monarch people”.¹⁶⁰

Maistre, Montesquieu, Oakeshott and Moderation

Michael Oakeshott maintains that the central themes of *De l’Esprit des Lois* are the character of the modern European state and the office of government, which constitute two of the most important issues for all constitutional theory.¹⁶¹

Oakeshott argues that we can see that Montesquieu’s work concerns these factors because of his concentration on the *principe* and *but* of the respective forms of government.¹⁶² These ideal figures are, in Oakeshott’s words, “offered as aids to reflection” in the investigation of the identity of a modern European state:¹⁶³ this may be true of Montesquieu’s work; it is certainly true of Maistre’s writing on the subject.

The significance to Maistre of the republic’s reliance on virtue and monarchy’s on honour now becomes apparent. The process of attaining Republican virtue involves the renouncement of self and a commitment to the public good.¹⁶⁴ It is a substantive condition in which the associates must learn to “*goûter les mêmes plaisirs et former*

¹⁶⁰ Ibid.

¹⁶¹ Michael Oakeshott, “On the Character of the Modern European State”, in *On Human Conduct* (Oxford: Oxford University Press, 1975), pp. 245-251.

¹⁶² Ibid., p. 246.

¹⁶³ Ibid.

¹⁶⁴ Ibid., p. 247.

les mêmes espérances".¹⁶⁵ According to Oakeshott, this amounts to their lacking private personae: they are bound in devotion to a common purpose. Laws may exist, Oakeshott continues, but they will be "prudential contrivances for promoting the common substantive interest",¹⁶⁶ a sentiment which is closely aligned with Maistre's understanding of democracy as something lacking fundamental normativity, a lack compensated for by a sense of directed collectivity. The republic is managed by an elite, and the act of ruling is "authoritative tutoring".¹⁶⁷

As for monarchy, Oakeshott suggests that its defining characteristic as a mode of association is that its members are formed in terms of conduct – i.e. in adherence to the law, saying that: "The associates here are not related to one another as seekers of the satisfaction of individual wants or in terms of the common want, but in respect of a system of law".¹⁶⁸ The republican system is not free of laws, but these laws are only really collective – and ultimately unenforceable – agreements, "instruments designed for promoting the pursuit of a common purpose of conduct".¹⁶⁹ The monarchical system, on the other hand, is seated upon normative foundations, and law here is "a system of conditions, indifferent to the satisfaction of wants and reflecting no common purpose".¹⁷⁰ In place of a common substantive interest, the subjects of a monarchy have a common concern that the obligations as prescribed in the law should be respected. Even the principle of honour, the motivating principle

¹⁶⁵ Ibid. ("taste the same pleasures and desire the same things").

¹⁶⁶ Ibid., p. 248.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid., p. 249.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

of monarchy, means that it is an association “in respect of fidelity to one another in terms of a system of rules of conduct”.¹⁷¹

In Maistre’s models of monarchy and democracy we find a clear indication of these impulses that exist within the modern European state. Maistre’s models are more pertinent to Oakeshott’s argument than are Montesquieu’s,¹⁷² assisting us to see more clearly the nature of government in the modern constitutional environment, not least because Maistre is writing in post-revolutionary conditions. His comparative study of forms of government highlights the importance of a number of factors to do with government, public law and sovereignty, which together represent a normative basis for all constitutional settlements. But Maistre explores the internal workings of government still further, and examines the fundamental relationship of the individual to the state. To do this he turns away from classically inspired distinctions in order to embrace the modern, Montesquiean examination of the concept of moderation in government and answer a series of questions: admitting the gap between governors and governed, how do the two effectively communicate? What is the nature of this relationship?

¹⁷¹ Ibid., p. 250.

¹⁷² OC V 1 T 1, p. 438: “Tacitus said in speaking of republican governments: “A few communities...after a surfeit of kings, decided for government by laws”. He thus opposed the rule of laws to the rule of a man, as if the one excluded the other”. See also p. 422: “The Roman jurisconsults have been greatly criticised for saying that the prince is above the laws (*princeps solutus est legibus*). The critics would have been much more indulgent towards them if they had observed that the jurisconsults only meant to speak of civil laws or, to put it better, of the formalities that they established for different civil acts”.

Moderate government

The question of how to reconcile a system of order with the retention of liberty (where appropriate) is an abiding concern of Maistre's, because of his urge to demonstrate that traditionalist monarchy does not mean despotic government.¹⁷³

Whilst in a technical sense he could claim that "we are all born despots, from the most absolute monarch in Asia to the child who suffocates a bird in his hand for the pleasure of seeing if there exists in the universe a being weaker than he",¹⁷⁴ he also understood perfectly well that in its practical application, through the process of governing, this assertion of despotism is unsustainable.¹⁷⁵ He is in effect, concerned with that quintessential Enlightenment concept of moderation¹⁷⁶ and how it is to be applied to government, and the practical implications of this notion for constitutional thought are explored in two ways: first, by considering the efficacy of the separation

¹⁷³ See Cara Camcastle, *The More Moderate Side of Joseph de Maistre: Views on Political Liberty and Political Economy* (Montreal: McGill/Queens University Press, 2005), p. 40.

¹⁷⁴ OC V 1 T 1, p. 449.

¹⁷⁵ OC V 1 T 2, p.139. "It is in vain that one complains of despotism. Despotism and moderate monarchy – are they really the same thing?"

¹⁷⁶ It is interesting to note that moderation is an archetypal Enlightenment value: See Walter Kuhfuss, "Moderation", in *Dictionnaire Européen des Lumières* (Paris: PUF, 2007), pp. 823-826, where he argues that: "Montesquieu...makes the notion a key of his political theory and of his historical conception of the world...moderation passes to the level of a distinctive characteristic of a certain form of government marked by the liberal idea". Maistre's discourse on moderation also seems to be inspired by Newtonian- flavoured ideals of general scientific laws – see, for example, OC V 1 T 1, p. 450: "But the author of nature has put limits to the abuse of power; he has willed that it destroys itself once it exceeds its natural limits. He has engraved this law everywhere and in the physical world, as in the moral world, it surrounds us and speaks to us at every moment. Look at this firearm: up to a certain point, the more you lengthen it, the more you will increase its effect. But if you pass a certain limit, you will see the effect diminish. Look at this telescope: up to a certain point, the more you increase its dimensions the more it will produce its effect, but beyond that invincible nature will turn against the efforts you made to improve the instrument. This is a natural image of power. To conserve itself it must restrain itself, and it must always avoid the point where its ultimate effort leads to its last moment".

of powers,¹⁷⁷ and second, by examining the less heralded but equally

Montesquieuian notion of *corps intermédiares*.¹⁷⁸

The separation of powers

Whilst Maistre does not make a lengthy study of the separation of powers in his work, he does devote several significant passages to exploring the idea. Clearly uncomfortable with the potential for the fragmentation of sovereignty implied by this idea, Maistre is careful to circumscribe its ambit in a number of ways. First, he grounds it in tradition. Drawing the sting of Enlightenment innovation, he states that the essences of institutions are always the same, even if the forms change, and that this also goes for the separation of powers;¹⁷⁹ in support of this contention he cites the example of the British constitution, whose three powers had a precedent that went back as far as the Spartan constitution.¹⁸⁰ “The three powers, considered in an abstract manner, are founded everywhere where wise and durable liberty is to be found”,¹⁸¹ he suggests. According to Plutarch, Lycurgus created a senate which on occasion supported the king and on occasion the people, according to prevailing political circumstances.¹⁸² The division of the powers of sovereignty into parts, is certainly not an idea thought up by the *philosophes*.

¹⁷⁷ See Montesquieu *De l'Esprit des Lois*, p. 327.

¹⁷⁸ See Montesquieu, *De l'Esprit des Lois*, p. 108.

¹⁷⁹ *OC V 1 T 1*, p. 42.

¹⁸⁰ *Ibid.*, p. 43.

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*: “The government before Lycurgus was unstable, at one moment inclining towards the king and virtual tyranny when the kings had too much power, and at another surrendering to popular

Second, Maistre emphasises that the process is a balanced division of power rather than a dispersal of power. His analysis of the apportioning of power in the Roman constitution confirm this belief that the Roman constitution would have endured for far longer after the expulsion of the Tarquins if the Tarquins had been replaced, not by annual consuls, but by a hereditary monarch.¹⁸³ In pursuing this argument, Maistre insists upon the necessity for a power strong enough to judge conflicts between the senate and people in a Lycurgan fashion,¹⁸⁴ and in so doing he comes close to formulating a conception of what Constant terms “neutral power”.¹⁸⁵

Third, what Maistre sees occurring in the British constitution, far from being a disassociation of powers, is in fact an expression of unity: “The powers which seem to possess a portion of sovereignty are only really counter-balances which regulate and slow up the march of the true sovereign. Perhaps one would not inaccurately define the English parliament as the necessary counsel to the king, Perhaps it is something more, perhaps it is enough that one believes it”.¹⁸⁶ Maistre has grasped, rather more successfully than Montesquieu, the essentially unitary nature of the

confusion, when the common people came to usurp too much authority. But Lycurgus put between them the senate, “which was”, said Plato, “a salutary counter-balance...and a strong barricade, striking a balance between the two extremes”.

¹⁸³ Ibid., p. 511.

¹⁸⁴ Ibid. – Maistre notes that the emperor’s power was one of fact more than law: see also p. 422: “In certain aristocratic governments or mixtures of aristocracy and democracy, the nature of these governments is such that sovereignty belongs by right to a certain body and by fact to another; and the equilibrium consists in the fear or the habitual uneasiness that the first inspires in the second”.

¹⁸⁵ Benjamin Constant, *Political Writings* trans. Biancamaria Fontana (Cambridge: Cambridge University Press 1988), p.184.: “Royal power (I mean the power of the head of state, whatever title he happens to have) is a neutral power...Constitutional monarchy creates this neutral power in the person of the head of state. The true interest of the head of state is not that any of these powers should overthrow the others, but that all of them should support and understand one another and act in concert.”

¹⁸⁶ OC V 1 T 1, p. 421.

British system: “Let us take the English government, for example. The type of political trinity that makes it up does not prevent the sovereignty from being one”.¹⁸⁷

Having outlined this conception of the separation, or rather the *balance*, of powers, Maistre assesses these powers. At first glance, his judgement appears self-contradictory. First he writes in almost identical fashion about the constitutions of Sparta and royal Rome, saying that “There are three powers which are found where there is wise and lasting liberty”;¹⁸⁸ in the same way he refers to the English constitution as “what appears to be and what can be imagined to be the most perfect [constitution], at least for a great people”.¹⁸⁹ Yet he also puts great store on a comment made by Tacitus, to the effect that “The best of all governments would be the one which would result in a mix of three powers balanced reciprocally. But this government will never exist. Wherever it appears, it never lasts”.¹⁹⁰ And so, Maistre admits, the British have paid for their constitution with “torrents of blood”;¹⁹¹ furthermore, “we have strong reasons to fear that “this beautiful creation is not durable”.¹⁹² After all, it had only been in existence since 1688.¹⁹³

This apparent contradiction in Maistre’s thought – imagining the perfect state on the one hand and then accepting its limitations on the other – can be explained by

¹⁸⁷ Ibid., p. 418.

¹⁸⁸ Ibid., p. 43.

¹⁸⁹ Ibid., p. 497.

¹⁹⁰ Ibid., pp.497-498: ““Every nation or city”, says Tacitus, “is governed by the people, by the nobility or by individuals: a constitution selected and blended from these types is easier to commend than to create, or, if created, its tenure of life is brief” (*Annals* 4.33). Here is the English constitution condemned in advance, in express terms and by an excellent judge”.

¹⁹¹ Ibid., p. 500.

¹⁹² Ibid., p. 497.

¹⁹³ Ibid.

considering the issue in the light of a more general principle of Maistre's philosophy: Maistre's interpretation of Montesquieu's mechanism of moderate government. A moderate government arises in suitable conditions: when a balance of powers effects a limitation on government, but only on the condition that this balance is the product of history, tradition and culture, as is the case with Sparta, Rome and England. Such a government is decidedly not a man-made model to be imposed upon other states in a uniform manner.¹⁹⁴

Particularised unity, rather than universalised uniformity, is essential to this constitutional view, and Maistre's opinion in respect of the 1791 Constitution particularly emphasises this aspect of his thinking.¹⁹⁵ The constitutional texts composed by the constituent assembly took English principles and transformed them from cohesive and unificatory living conventions into dry, inflexible codified tenets all done in a quasi-scientific attempt to isolate each organ of government and its function. In Britain, Maistre insists, the balance of power works because there is mutual resistance between each power.¹⁹⁶ In contrast, the texts of 1791 confirm the inferiority of royal power. They give the assembly the right to decree the situation in which the king is supposed to abdicate, but they refuse the king the same right in relation to his representatives. "All the work of the legislators only really ends up creating a unique power without counterbalance, which is to say a tyranny".¹⁹⁷

¹⁹⁴ Ibid., p. 421: "What is, is good, what is believed, is good, except the supposed creations of man".

¹⁹⁵ Ibid., p. 420: "This famous division of powers, which has so greatly agitated French heads, does not really exist in the French Consitution of 1791".

¹⁹⁶ Ibid.: "In order for there to be a real division of powers, the king would have had to be invested with a power capable of balancing that of the Assembly and even of judging the representatives in certain cases".

¹⁹⁷ Ibid., pp. 420-421.

In his observations on the English constitution, Maistre identifies a constitutional trinity in which is grouped the executive, the legislature and the judiciary. But a second trinity also exists, and one that is more vital to his constitutional thought: that of king, intermediaries and people. Whilst the first allows Maistre to express that aspect of his constitutional thought which is most closely aligned with more contemporary conceptions of liberty and reciprocal limitation, the second allows him to explore the notion of moderation within a far more traditional, hierarchical context. For countries such as France and Russia – countries that he styles ‘European monarchies’, and which he believes to be eminently unsuited to the English model of the separation of powers – Maistre advances a solution that encourages moderation in a way that is in keeping with their constitutional traditions, one which is a guarantee against arbitrariness and which is more appropriate to the natural conditions and temperament of these countries.

The European Monarchy

By European monarchies Maistre means those that were formed in Europe after the fall of the Roman Empire,¹⁹⁸ and, following Montesquieu, he contrasts their temperament with those of Asiatic or Oriental monarchies. According to Maistre,

¹⁹⁸ See Montesquieu, *De l'Esprit des Lois*, p. 343. Maistre, *OC V 1 T 1*, p. 439: “All monarchies formed in Europe after the fall of the Roman Empire have a particular character that distinguishes them from the monarchies outside of Europe”.

the subjects of Oriental rulers are excluded from the business of governing.¹⁹⁹ And in a striking image, Maistre demonstrates that his conception of the state is not a theocratic one, unlike the relation between the Oriental subject and his ruler: “His master is a god to him and he has no other relation with this superior being than that of prayer”,²⁰⁰ Maistre asserts. On the other hand, the right to depose the sovereign in a violent manner is regarded as an acceptable corollary to the power of life and death that the monarch exercises directly over his people.²⁰¹

European regimes, in contrast, fell under the influence of Christianity and, as a result of the Germanic invasions, came to dispense with the servile habits which were the result of Roman despotism.²⁰² In their place, the peoples of Europe acquired the taste for liberty, an aspiration common to all countries on the continent of Europe.²⁰³ This aspiration has given European monarchies two characteristics which stand in direct opposition to those possessed by Oriental potentates and, by implication, despotic revolutionary governments.

¹⁹⁹ Ibid., p. 442: “The inhabitant of Asia does not seek to penetrate the dark cloud that envelopes or forms the majesty of the monarch. His master is a god to him and he has no other relation with this superior being than that of prayer”.

²⁰⁰ Ibid., pp. 442-443: the passage continues: “The laws of the monarch are oracles. His graces are celestial gifts, and his anger is a calamity of invincible nature. The subject who prides himself in being called a slave receives benefit from him like dew and the whip like a thunder clap”.

²⁰¹ Ibid., p. 443: “This absolute monarch can be deposed; his right to demand the head of anyone who displeases him is not disputed, but often his own is demanded. Sometimes the laws deprive him of the sceptre and of his life; sometimes sedition comes to seize him on his elevated throne and throw him into the dust”.

²⁰² Maistre quotes Hume to this effect at *OC V 1 T 1*, p. 440-441: ““The government of the Germans”, Hume has rightly said, “and that of all the northern nations who established themselves on the ruins of Rome was always extremely free””.

²⁰³ Ibid., p. 441: “These reflections contain a striking truth. It is in the midsts of the forests and the ice of the north that our governments were born ... we are still all brothers, *durum genus*”.

First, European public opinion refuses to accept the personal right of the sovereign to exercise judicial power,²⁰⁴ and in exchange it recognises the inviolability of the Sovereign.²⁰⁵ Second, it demands that intermediary bodies form a link between the people and the sovereign because, unlike the subjects of Oriental despots, Europeans will not accept their total exclusion from the process of government.²⁰⁶ In these traditional principles, rooted in the public spirit and opinion of Europe, European governments discovered a way of limiting both arbitrary government and the destructive egotistical individualism of the *philosophes*.

In accordance with the fact that Europeans will not accept the direct intervention of the sovereign in matters of justice, Maistre enunciates a principle of delegated justice according to which there should be specialist and permanent functionaries invested with judicial power by the king.²⁰⁷ David Lieberman identifies this ‘power of judging’ in relation to Montesquieu’s work, and notes that its existence allows a level of constitutional freedom unknown in despotisms, where the three powers are united in the actual person of a single prince.²⁰⁸

²⁰⁴ Ibid., p. 443: “Providence has said to all the sovereigns of Europe: You will not be judged, but it immediately adds: You will not judge. That is the price of this inestimable privilege”.

²⁰⁵ Ibid.: “The wisest of the nations of Europe, in making the inviolability of sovereigns a fundamental law, have only sanctioned general opinion in this part of the world. We do not want sovereigns to be judged. We do not want to judge them”.

²⁰⁶ Ibid., p. 444: “Always uneasy, always alarmed, the veil that hides them the activities of governments vexes them. Submissive subjects, rebel slaves, they want to ennoble obedience and, as the price of their submission, they ask the right to complain and to enlighten power”.

²⁰⁷ Ibid., p. 445: “He does not have the right to condemn to death, nor even to sentence any corporal punishment. The power that punishes derives from him and that is enough”. The same applies to civil matters – see OC V 1 T 1, p. 446: “The king cannot judge in civil cases; the magistrates alone, in the name of the sovereign, can pronounce on property and contracts”.

²⁰⁸ David Lieberman, “The Mixed Constitution and the Common Law”, in *The Cambridge History of Eighteenth Century Political Thought* (Cambridge: Cambridge University Press, 2007), p. 332.

But once again, Maistre's insistence on unity as an overriding constitutional concern leads him to imagine the creation of an independent judiciary in terms of specialisation rather than a separation of function. However, this is a specialisation that brings more than just a guarantee of correctly administered justice: it is also a guarantee against political arbitrariness. Rather than simply outline the separation of powers, this first principle also emphasises the importance of mediation in a constitutional structure, as a means of emphasising the necessary distinctions between person and office so vital to modern conceptions of sovereignty.

The second defining principle of European monarchy develops the mediatory aspect of moderate government, but also emphasises a distinctive feature of Maistre's notion of governing. Maistre calls this "The paternal way of communicating between a prince and his subjects".²⁰⁹ and to this end he enshrines the idea that people's voices should be heard as a fundamental dogma of European monarchy. "What generally displeases us, what does not accord with our character and our ancient, incontestable, and universal usages, is a ministerial government or vizierate",²¹⁰ Maistre suggests, stating his belief in the principle of relation.

Inevitably, then, communication between governors and governed is vital to the constitutional order. If no structures for national communication exist, the consequences will be dire: "Once the nation is condemned to silence, once only single individuals can speak, it is clear that each individual by himself is weaker

²⁰⁹ *OC V 1 T 1*, p. 446.

²¹⁰ *Ibid.*, p. 447.

than those in power”. And as the prime ambition of man is to obtain power, and his great fault is to abuse it, it follows that all those who enjoy some measure of delegated power, but who are not constrained by anything and do not react directly to opinion, “seize the sceptre for themselves and divide it into small fragments proportional to the importance of their offices so that everyone is king except the king”.²¹¹ When subjects complain of their sovereign’s despotism, Maistre argues that they are in reality complaining of his weakness, and in particular they are misinterpreting the lack of communication between the sovereign and the people, a lack which permits local agents to exercise their power arbitrarily.²¹²

The remedy is thus – seemingly paradoxically – to reinforce the authority of the king and so restore to him his quality as a father, by re-establishing the old and legitimate communications between him and the large family of the nation.²¹³ Maistre here recalls that all European peoples have always been able to inform the king of their grievances through the intermediary of different assemblies or bodies, be they parliaments, *cortes*, *diets*, senates or councils:²¹⁴ “By means of differently composed bodies, councils or assemblies subjects have the right to instruct the king about their needs, to denounce abuses to him and legally to communicate to him their grievances and their very humble remonstrances”.²¹⁵ Crucial to this principle is Maistre’s view of the divergence of customs between different nations and the

²¹¹ Ibid., p. 448.

²¹² Ibid.

²¹³ Ibid.

²¹⁴ Ibid., p. 444: “Under the names of the Fields of March or of May, of Parliaments, of Estates, of Cortes, of establishments, of diets, of Senates, of Councils etc all the peoples of modern Europe have involved themselves more or less in administration under the rule of their kings”.

²¹⁵ Ibid., p. 446.

evolution of institutions themselves. The way in which participants are recruited, the ways in which assemblies are organised and the conditions of representation, all depend on the evolutionary stage reached by each nation in its political history.²¹⁶

Whilst his theory of the formation of constitutions, entrenched as it is in particularism, prevents him from determining general rules regarding the precise role, power or method of recruitment of these assemblies, Maistre remains closed to one thing: the possibility of them having the ultimate power to decide. His theory is, therefore – in a liberal, democratic sense – a narrow conception of national representation. Assemblies may deliberate and submit ideas, but they may never deliver definitive decisions.

An aid to understanding Maistre's view of the relationship between governors and governed may be found in an image which he uses to express the unique quality of the constitutional bond between sovereign and subjects. In his criticism of the French monarchy's failure to convene the Estates General from 1614 to 1789, he makes two clear pronouncements. First, it is necessary to inculcate customs and traditions before any attempt to re-establish "the ancient relationship between the king and the great family".²¹⁷ Second, opportunities for the people to petition the king by way of intermediary assemblies (and the delegation of justice) are,

²¹⁶ Ibid.: "One understands, for example, that the men charged with carrying the representations or the grievances of subjects to the foot of the throne can form bodies or assemblies, and that the members who compose these assemblies can vary in number and rank as well as in the nature and extent of their powers, so that the method of election and the frequency and duration of sessions etc. also vary in the number of the combinations *facies non omnibus una*".

²¹⁷ Ibid., p. 448: "It is only a question of reinforcing the authority of the king and recognising in him his role of father in reestablishing the ancient and legitimate relationship between him and the extended family".

according to Maistre, “Sacred laws more truly constitutional in the measure that they are written down nowhere except in the heart”.²¹⁸

The key to this conception thus lies in these two elements – a perception of the fundamental law which underlies the practice of governing, and a constitutional intimacy that goes beyond the legal sphere. This is expressed by Maistre when he says that the council consists of “chosen men always legally carrying to the father the complaints and wishes of the family”.²¹⁹ Assemblies are the means by which members of the national family can bring their grievances to the *paterfamilias*. Maistre, steeped in classical learning, was surely also aware of the conceptual ambiguity of this structure, for the Roman family was not only an organisational and social entity, but also a legal unit where sons could vote and hold public office, and yet, at least technically, remained indistinguishable from slaves.²²⁰ It is this image of the *paterfamilias* which unifies the disparate elements of normativity on the one hand and national and constitutional emotion on the others, all of which needed to be present in order to govern successfully.

Montesquieu’s political theory is bound up with the idea of a hierarchical society made up of *corps intermédiaires* and this also applies to Maistre. In the face of revolutionary demands for a levelling of society, Maistre maintained a belief in the necessity of a hierarchal structure and the need for intermediaries to come between

²¹⁸ *Ibid.*, p. 446.

²¹⁹ *Ibid.*, p. 447.

²²⁰ See Barry Nicholas, *Introduction to Roman Law* (Oxford: Oxford University Press, 1962), pp. 65–68.

monarch and people – this is the pyramidal structure of the traditionalist authoritarian state that we have noted above; the subordinate, intermediate power which is most natural to it is that of aristocracy,²²¹ which opens channels of communication between people and ruler whilst at the same time maintaining the necessary division between them.

The link between the monarchy and aristocracy is emphasised in Maistre's description of a governing aristocracy as being "a monarchy whose throne is vacant".²²² They also share the characteristic of being apart from the people – there is no question of self-authorisation taking place.²²³ Their task being so vital, Maistre demands much of the nobility, and he confers upon them an eminent role in the state. For him, aristocracy acts as the "conscience of the nation" – they are not simply governors, but almost also represent a form of civic priesthood, a vital species of constitutional intermediary. They must remain faithful to the national dogma, the figure of the king must be sacred for them and they must passionately love royalty. If these circumstances are fulfilled, the state will remain inviolable.²²⁴

²²¹ *OC V 1 T 1*, p. 432: "In all countries, and under all possible governments, the highest posts will always (with certain exceptions) belong to the aristocracy – that is to say to nobility and wealth, most often united".

²²² *Ibid.*, p 452: "Aristocratic government is a monarchy whose throne is vacant. Sovereignty there is in regency".

²²³ *Ibid.*: "The regents who administer sovereignty are supplied entirely by the people, because the post is hereditary, and in this aristocratic government approaches monarchy".

²²⁴ *Ibid.*, p. 438: "As long as the name of the sovereign is sacred to it [the aristocracy] and it loves the monarchy passionately, the state is unshakeable, whatever the qualities of the king. But once it loses its greatness, its pride, its energy and its faith, the spirit withdraws, the monarchy is dead and its cadaver is left to the worms".

A System of Public Law

Maistre believes that by destroying all notion of corporatist group life – that is, the sense of nation as family and the mediated normative relationship between a sovereign and his people – then a revolution such as the French Revolution will produce isolated individuals who strive after unattainable equality. It also produces a tendency on the part of those who govern to gravitate to despotism. The Maistrian constitutional regime, in contrast to despotism or tyranny (whether revolutionary or otherwise), produces no such extremism: in his constitution, sovereign power is not applied immediately but is tempered in its application. Communication between sovereign and people is effected through the use of fundamental constitutional laws. Seated on a fundamental normativity which goes beyond the merely positivist, sovereign authority is generated and established through custom and practice. This both produces and is the product of moderate government, and is, in effect, the outline of a structure of public law – the juridical expression of the process of governing.

The issue is one of moderation and balance: for Maistre, the fundamental cause of the rise of the all-powerful, despotic-democratic government is the imbalances caused by revolution, which create a pulverised society in which individuals, herded into inhuman structures, abdicate their responsibilities or are cut off from them and

leave all to the state, which, in time, becomes an oppressive administrative bureaucracy.²²⁵ In these circumstances, the aristocracy and other secondary bodies wither, and along with them withers the possibility of creating an effective system of public law (understood in its fullest sense). In their place the uniform, ideological values of the Enlightenment are imposed. Modern democratic states allow no intermediaries between themselves and their subjects, but instead rely on the mechanism of representation, and in this way the state wishes to be both unique agent and sole arbiter.²²⁶

Maistre's cure for these ills was to acknowledge and encourage the existence of social forms capable of resisting this form of despotism. He believed that it is impossible to reconcile any form of political liberty with a revolutionary society, because the constitutional good of moderation cannot be found within a society polarised around the individual and the state. There must therefore be 'pouvoirs secondaires' – in other words, deliberative assemblies – along with local and secondary powers which can provide a mode of mediation for the sovereign power whilst allowing the constitutional system to retain its unity. Here, the analogy with the paterfamilias and the family is particularly appropriate, as the constitution is made up of relations between different members which together form an identifiable legal entity.

²²⁵ See William Henry George, "Montesquieu, De Tocqueville and Corporative Individualism", in *The American Political Science Review* Vol 16, No. 1 (Feb 1922), pp 10–21.

²²⁶ *Ibid.*

Maistre's constitution thus demonstrates the fundamental traits of a constitutional order, whereas despotism is – using Alan Brudner's definition – an unmediated relation between ruler and ruled.²²⁷ Maistre understood the contrast between the two types of rule as being between a ruler who directs everything by personal will and one who governs according to fixed and established laws, a distinction also made by other constitutional thinkers.²²⁸ Maistre understood and emphasised the necessity for rule through law, which contains important implications for the practice of governing.

The moment that the one who governs places a layer of legality between his will and those of his subjects, that governor “acknowledges an independent agency in the subject from which the confirmation of his claim [to rule] can issue”.²²⁹ No longer are commands a peremptory *fiat*, followed by immediate implementation. Instead, the constitutional order makes room for the involvement of the citizenry in the execution of a command: “It is they who must decide in the first instance whether the law applies in a particular situation and what they must do to comply with it”.²³⁰ In this way Maistre understood that the subject participates in the act of ruling: “not in rule making but in rule executing”.²³¹ This in turn reinforces the rulership of the sovereign: “in yielding space for self-application to the subject, the ruler attains a more satisfying confirmation of his claim to rule than was possible of a self-directed

²²⁷ See Alan Brudner, *Constitutional Goods* (Oxford: Oxford University Press, 2004), p. 38.

²²⁸ *Ibid.*

²²⁹ *Ibid.*, p. 40.

²³⁰ *Ibid.*

²³¹ *Ibid.*

agent, rather than the mechanical one of a cipher whose actions are validated solely by the ruler”.²³²

In Brudner’s analysis, Maistre’s state is neither a despotic one in which the power of the sovereign has no limit, nor is it the absolute regime of Bossuet’s imagination, in which the power of the king is unlimited save for the restrictions imposed by theological and religious boundaries.²³³ Maistre’s state is in fact more accurately expressed as one in which the people do not have a purely passive role, but in which their participation does not extend to the actual exercise of power. The same could also be said of the system of representation, when stripped bare of its ideological rhetoric, the difference being that Maistre’s system can, without obfuscation or illogicality, explain the gap between those who govern and those who are governed, whilst at the same time allowing for a measure of participation in the process of ruling.

The Best Form of Government?

At the conclusion of his analysis of the various forms of government detailed in *L’Etude sur la Souveraineté*, Maistre considers Rousseau’s question as to which form of government is the best, and provides two diametrically opposed answers. How this ambivalence might be resolved, and what the implications are for the

²³² Ibid.

²³³ Jean-Yves Pranchère, *Qu’est-ce que la Royauté?* (Paris: Vrin 1992), p. 11.

resolution of this dialectic, are vitally important to Maistre's – and indeed modern public law's – understanding of the objectives of government. Maistre's examination of this topic leads him to draw together the themes explored in the *Etude*, and leaves us with a final picture of the practice of government in Maistre's work.

His first answer begins with a quotation from the *Du Contrat Social*: “When one asks which is the best government, one poses a question as unsolvable as it is indeterminate...there are as many good solutions as there are possible combinations in the absolute and relative situations of peoples”.²³⁴ In other words, Maistre's view is that one cannot answer the general question as to which is the best type of government, because the government which suits all people does not exist.²³⁵ “Each nation has its own government, just as it has its own language and character, and this government is the best for it”.²³⁶ Consequently, “the whole theory of the social contract – of a universalised ideal “is a schoolboy's dream”.²³⁷ There are as many good governments as there are possible combinations of the absolute and relative positions of peoples.²³⁸

This is a clear, relativistic, historicist position, and is in accord with Maistre's views on constitutions in general. For Maistre, the political structure is not the cause of the

²³⁴ Rousseau, *Du Contrat Social*, Bk. III, Chap. IX.

²³⁵ *OC V 1 T 1*, p. 489. “He saw very well that it is never necessary to ask what is the best government in general, since there is none that is suited to all peoples”.

²³⁶ *Ibid.*

²³⁷ *Ibid.*

²³⁸ *Ibid.*, p. 490: “And since none of these combinations depend on men, it follows that the consent of peoples counts for nothing in the formation of governments”.

nation's history, but is only one consequence among many physical and moral characteristics: "No nation owes its character to its government, any more than to its language; on the contrary it owes its government to its character, which in truth is always subsequently reinforced and perfected by its political institutions".²³⁹ If a nation languishes, it is not because of bad government, it is because this government has fallen into decline like everything human".²⁴⁰

Constitutions are the work of history, and this slow evolution adapts institutions to the specific character of nations. From this basic principle flows a series of consequences which, in effect, build upon Montesquieu's observations regarding the adaptation of laws to the character of nations. But this is combined with a uniquely authoritarian constitutional perceptive, allowing Maistre to write: "All governments are good".²⁴¹ This affirmation seems to negate any attempt at qualitative analysis, and is a reinforcement of his view that constitutions are absolutely not the work of man and cannot therefore be changed by him.²⁴²

However, having stated the impossibility of choosing a best form of government outright, Maistre considers another question: how one can tell whether a people are governed well or badly.²⁴³ Which are the best governed, in terms of the principles of their government?²⁴⁴ In order to provide a structure for his answer, Maistre first

²³⁹ Ibid., p. 547.

²⁴⁰ Ibid.

²⁴¹ Ibid., p. 553.

²⁴² Ibid., p. 550: "It would be the height of folly to maintain that the character of peoples is their own work: but when we say that they have made their government, this is the same folly in other terms".

²⁴³ Ibid., p. 490, quoting *Du Contrat Social*, Bk. III, Ch. IX.

²⁴⁴ Ibid.

of all analyses the one given by Rousseau in the *Du Contrat Social*, and immediately dismisses Rousseau's argument that a flourishing demographic²⁴⁵ proves that a country is well governed, and that this is characteristic of a republican regime.²⁴⁶ Likewise, Maistre refutes – using historical examples – the argument that the ability to wage war or sustain a flourishing cultural life are evidence that one form of regime is pre-eminent.²⁴⁷

Just as Maistre believed that we cannot ask what is the best form of government, he also believed that there was no answer to the question: “What government creates the most populous, the strongest, and the happiest people, and for the longest period of time?”²⁴⁸ To answer this question at all would first involve finding a commensurable value, but Maistre has already rejected cultural, martial or demographic achievement as a means of determination. He turns instead to a concept used in the new Enlightenment subject of science, a term used in the study of variable forces – the mean. It is necessary to judge a government not by the consequences that it may bring about at any given moment, but by those which accrue during the total course of its existence.²⁴⁹

²⁴⁵ *Du Contrat Social*, Bk. III, Ch. IX: “What is the surest sign that they – the members of the body politic – are preserved and prosperous? It is their number and their population...the government under which...the citizens increase and multiply most is infallibly the best”.

²⁴⁶ *OC V 1 T 1*, p. 533: “Let us again consider governments with respect to population. “The best”, Rousseau says, “is that which peoples the most.”...However the highest point possible depends in no way on such and such a form of government”.

²⁴⁷ *Ibid.*, p. 528: “The most beautiful monuments of Athens belong to the century of Pericles. In Rome, what writers were produced under the Republic? Only Plautus and Terence. Lucretius, Sallust and Cicero saw it die. Then came the century of Augustus where the nation was all that it could be in the way of talents. The arts in general need a king: they only shine under the influence of the sceptre”.

²⁴⁸ *Ibid.*, p. 494.

²⁴⁹ *Ibid.*, pp.494-495: “How peculiar that in the study of politics we do not want to use the same method of reasoning and the same general analogies that guide us in our study of other sciences. In

Thus Maistre formulates his answer in the following manner: “The best government for each nation is that which in the territory allotted to it...is capable of procuring the greatest sum of happiness and strength possible for the greatest number of men possible, during the longest period of time possible”.²⁵⁰ This utilitarian-sounding formula is Maistre’s attempt to address that crucial constitutional issue, and one that is central to his thinking on government: how the State is to ensure the *salus* of the people,²⁵¹ where the *salus* has a dual meaning, referring both to the people’s happiness and to the stability that a certain form of State can provide.²⁵² With regard to people’s happiness, Maistre believes that democracy only ensures the well-being of a minority. In democracies over a certain size, “that which one calls liberty is only the absolute sacrifice of the many made for the independence and the pride of the few.”²⁵³ The larger the state, the more despotic it becomes, and only the modern European monarchical principle is capable of giving liberty to the whole of the nation.²⁵⁴

As we have seen, Maistre attaches great significance to the question of longevity and stability in his understanding of the objectives of government. “As all political

physical research, every time that it is a question of estimating variable force, we take the average quantity. In astronomy in particular we always speak of average distance and of average time. To judge the merit of a government we must use the same method”.

²⁵⁰ Ibid., p.494.

²⁵¹ See Thomas Hobbes, *On the Citizen*, ed. Richard Tuck and Michael Silverthorne (Cambridge Cambridge University Press, 1999), Bk. II.11.3; see also Cicero, *De Legibus*, trans. Niall Rudd (Oxford: Oxford University Press, 1998).

²⁵² OC V 1 T 1, p. 490, quoting Rousseau: “What is”, he [Rousseau] says, “the goal of political association? – It is the preservation and prosperity of its members – up until that point – very good.”.

²⁵³ Ibid., p. 501.

²⁵⁴ Ibid., p. 437: “All things considered, it can be said without exaggeration that monarchy allows as much and perhaps more equality and freedom than any other government”.

revolutions necessarily involve very great evil, the great interest of the people is the stability of governments”,²⁵⁵ he says; democracy has one brilliant moment, “But it is one moment and it is necessary to pay dear for it”.²⁵⁶ Democratic government are “only passing meteors whose brilliance excludes duration”.²⁵⁷ Aristocratic governments have more consistency, but this is because they are similar to monarchy, and because the gap between governors and governed is maintained.²⁵⁸ But it is monarchy that provides the most stable government, and is the type of regime most capable of assuring liberty for the greatest number of people.

According to Maistre, strictly speaking all governments are effectively monarchies that differ “only in whether the monarch is for life or for a term, hereditary or elective, individual or corporate”.²⁵⁹ To put it another way, all government is aristocratic, and composed of “more or fewer ruling heads”. The model of the pyramid is useful again here: a structure with democracy at its base and where the aristocracy is “composed of as many heads as the nature of things permits”, with monarchy at its apex, so that the aristocracy (which is “inevitable in every government”) is dominated by “a single head topping the pyramid”, and undoubtedly “forms the government most natural to man”.²⁶⁰

²⁵⁵ Ibid., p. 501.

²⁵⁶ Ibid., p. 495.

²⁵⁷ Ibid.

²⁵⁸ Ibid.

²⁵⁹ Ibid., p. 501.

²⁶⁰ Ibid., pp. 501-502.

Conclusions

If we agree that modern constitutional government has a normative basis, and accept that it is founded upon the existence of a separation between governors and the governed; likewise, if we accept that sovereignty is based upon self-limitation and the presence of communication between those who govern and those who are governed; and finally, if we understand that representative democracy still entails government by an elite – all tenets of political belief that can easily be held in the contemporary European political environment – then Maistre's understanding of monarchy need not seem so very strange to us.

These answers leave us with a difficulty. It is clear that, as in Montesquieu, there is a tension between Maistre's concept of public law and his constitutional thought, built around a question as to how it is possible to hold a relativist position in relation to the merits of the various governmental forms whilst at the same time drawing out absolute judgments in relation to them – a position that seems to be incoherent. It is only when Maistre's position is viewed from the overall perspective of his constitutional thought, and in particular its juridical expression as *droit publique*, that this juxtaposition can be understood as nuanced and sustainable.

Just as Montesquieu's skill was to combine the idea of a collective logic of societies and institutions with the notion of divergent variants, each with its own distinct spirit,

so Maistre's approach to the subject of governing enables him to mix an overall unity of approach with respect for tradition, diversity and difference. Whilst Maistre is extremely concerned that the citizens of a state should recognise the great value of unity and order, he was equally of the view that the constitutional structure of a country cannot be immutable.²⁶¹ But any changes in constitutional practice should be made with real prudence, not as sweeping ideological denials of the past. For Maistre, the process of governing is a complex practice that has gradually evolved, and continues to exist as a living tradition in European thought.²⁶²

It is the fact that it is prudential, a practice distinct from other intellectual endeavours, which gives governing its unique and complex quality. Although it is certainly suffused with religiosity, Maistre's work distances the conception of the state in the modern age from the conceptions held by theocratic thinkers such as Bossuet. It is not possible, once one has considered Maistre's constitutional thought, to claim that he is an absolutist in the sense of Bossuet or de Bonald. Neither though does he see man-made perfection as either possible or desirable. The state is not a scientific construction, nor an end in itself. Because he does not identify the state with the divine order or see it as the ultimate triumph of man's subjectivity, Maistre understands that its governance is not ordained by God, nor is it an exercise in human rationality. Whilst his conception of order and authority presumes a relationship between command and obedience, his conception of governing eschews totalitarianism.

²⁶¹ See above, Chapter 3, p. 150.

²⁶² See Loughlin, *The Idea of Public Law*, p. 29.

Assisted by the ambiguity in his work between that which is positivist and that which is natural or supernatural in origin in the constitutional order, Maistre's understanding of the realm of politics – and of *droit publique*, its juridical expression – is a modern one, which approaches an understanding of the constitution as an autonomous zone of endeavour. Comprehending that government is neither fixed nor ever completed,²⁶³ Maistre sees the process of governing, and the function of public law, as “an assemblage of rules, principles, canons, maxims, customs and usages that condition and sustain the activity of governing”.²⁶⁴

Marked by the imperfection attributable to human constructs, this is a position in which, whilst certain standards are expected and norms of right conduct exist, there is no ultimate, uniform standard by which to measure the art of governing.²⁶⁵ The tensions which exist in the state must be dealt with, not according to some universally applicable blueprint, but with reference to the traditions, customs and nuances which exist and which have developed in the fullness of time, forming the unique character of each constitutional arrangement.

²⁶³ Ibid.

²⁶⁴ Ibid., p. 130, and see Michael Oakeshott, “On the Theoretical Understanding of Human Conduct”, in *On Human Conduct*, p. 56.

²⁶⁵ See Loughlin, *The Idea of Public Law*, p. 29.

CHAPTER SIX: CONCLUSIONS

This object of this thesis has been to examine central elements of Joseph de Maistre's constitutional thought. Maistre's work emphasises a core set of values that stand in opposition to those of the Enlightenment. But his work is not merely a negative critique of modernity: it is a positive demonstration of his commitment to a set of values that he believed to be a condition of effective government. In particular, Maistre emphasizes the importance of unity in the constitutional order, and promotes its associated qualities of hierarchy, authority and communality. Having described and analysed constituent power, constitutions, sovereignty and forms of government in turn, it is necessary to conclude by examining what underlying, unifying themes emerge from this analysis and what Maistre's impact on constitutional thought has been.

Unity in opposition to the Enlightenment

This concept of unity is the driving theme of Maistre's constitutional thought. In Chapter 2, which dealt with Maistre's concept of constituent power, it was explained how he provides a trenchant critique of the Enlightenment theories of the state of nature and of the social contract, and in their place puts forward an Aristotelian-influenced conception of the composition of political society, one which is highly critical of Rousseau's theories on this matter. Chapter 3 contains an analysis of Maistre's understanding of the constitution, a formulation that is contrary to the

constitutional theories of Enlightenment thinkers such as Thomas Paine, who view the constitution as a text capable of being written by men. Instead, Maistre espouses a Burkean conception of the constitutional order: a theory which suggests that the origins of the constitution are lost in the mists of time, and that consequently the constitutional order depends upon tradition and authority. In Chapter 4 I examined Maistre's views on sovereignty, demonstrating that Maistre privileges traditionalist values of unity, absoluteness and authority and follows the Bodinian model of sovereignty as command. And in the discussion of different forms of government in Chapter 5, it was seen that Maistre upholds monarchy as being the most advantageous form of government, and rejects both the democratic form in general and representative democracy in particular. Above all, Maistre contends that adopting the democratic system will inevitably lead to despotism – in contrast to the old hierarchical ways of governing, which have an inherent legality about them.

The traditionalism of Maistre's thought gives a distinctive cast to his constitutional ideas, which stand in opposition to the Enlightenment ideals of abstraction, reason and uniformity: these latter ideals – in Maistre's view – have the double effect of de-contextualizing, and therefore de-humanising, the person, and, in the process damaging the State. Throughout this thesis it has been seen how Maistre argues that the Enlightenment introduced a spirit of insurrection which attacked foundational constitutional values, and so it must be opposed by rehabilitating the principle of authority in all its different guises: hierarchy, unity, tradition.

Traditionalism and the rejection of new ideas: this summary analysis of Maistre's constitutional thought would seem to confirm the opinion of those scholars who regard Maistre as a doctrinaire promoter of theocracy and repressive authoritarianism. But this dissertation has also revealed other important facets to Maistre's work – facets which must not be ignored and which run *alongside* his strong criticisms of Enlightenment thinking.

The re-expression of anti-Enlightenment values for a modern age

The introduction to this thesis raised the question of how successful Maistre was in advancing anti-Enlightenment ideas and re-conceptualising them for a modern age. The answer to this must be a qualified one. This thesis has shown Maistre's work to be of its time, which is to say that it is the work of a jurist and a political thinker writing on the cusp of the nineteenth century. Despite Maistre's opposition to Enlightenment and revolutionary thought, it has been argued that he was part of the same modern impulse to which the *philosophes* and the revolutionaries belonged.

When Maistre criticises democracy, liberalism or any of the other values that he despises so much, he does so using the terminology that his contemporary enemies used to promote them. In basing his philosophy on notions of authority, Maistre uses the same vocabulary as his adversaries. The fact that Maistre could engage at all with Paine, Locke and Rousseau, and the very acuity of his critique of the

negative possibilities of Enlightenment thought (namely alienation, fragmentation, despotism and machine-like uniformity) emphasises his own modernity. Maistre had no choice but to frame his ideas using the newly developed language of secular rationalism. This sense of modern relevance is reinforced by the fact that, in this thesis, Maistre's arguments have been used to examine, analyse and criticise a number of contemporary attitudes towards constitutionalism, sovereignty and the democratic form. But what are the constituent elements of this modern way of thinking? What is it in Maistre's writing that gives him this relevance?

Maistre's political modernity shows itself in two defining features of his constitutional thought: ambiguity and the use of the dialectic. So in Chapter 2 we saw how Maistre's relationship with Enlightenment thought is not straightforwardly antagonistic, but remains delicately ambiguous. The interaction of his thought with that of Rousseau shows us that, as although he disparages the *philosophes*, he both drew upon and was influenced by at least some of their work. Chapter 2 also revealed a fundamental ambiguity in Maistre's writing, between the relative roles of the divine and the human in the formation of constitutions – as embodied in his treatment of the figure of the legislator, a potent constituent force in his work. And a series of conceptual tensions in his thought were also examined in this chapter – democracy versus the law, the divine against the human, the sovereignty of the people versus the will of the legislator.

These themes – and these tensions – are further examined in Chapter 3, on constitutions. Whilst a superficial reading of Maistre's views on constitutions might lead us to believe that he adopted a simplistic, unequivocal opposition to all modern conceptions of the constitution, in fact his work brings out the interplay between a number of tensions, the main one being the irresolvable conflict between the Burkean view of constitutions as lacking an ultimate origin, swathed in tradition, and the creator-centred belief that the constitution must have a distinct and decisive commencement brought about by a source external to the constitutional order. Once again, Maistre treats the tension between the two models of the constitution as dialectical, seeking to explore the relationship between them rather than establish which one is right.

In Chapter 4, the ambiguity between the divine and the political, which can be applied to certain similarities that exist between Hobbes and Maistre in their view of constitutional order, is made very clear; whilst the implications of considering the sovereignty as a function of power on the one hand, and authority on the other, is explored in some detail. The discussion of *potestas* and *auctoritas* in Chapter 4 draws out the constitutional tensions developed in the previous chapters of the thesis and identifies them as belonging to one of two antithetical strains: norm, power, law, decision and command on the one hand and fact, authority, tradition and relation on the other. The existence of, and interplay between, these two sets of values informs not only Maistre's view of sovereignty, but also the notion of modern sovereignty in general.

Finally, Chapter 5, which examined Maistre's thought regarding the forms of government, highlights yet another aspect of the complex relationship that exists between Maistre and Enlightenment thought: for Maistre draws deeply upon the insights provided by Montesquieu in *De l'Esprit des Lois*, one of the classic texts of liberal political and constitutional thought. The 'prophet of the past' advocates moderate government: constitutional self-limitation in order to increase governing authority and the mediation of sovereign powers through the impersonal structures of the State to avoid the arbitrariness of despotism. The discussion of the similarities between Maistre's and Montesquieu's work in Chapter 5 showed Maistre adopting a comparative methodology regarding the forms of government, even as he privileged monarchy above all other forms. The resolution to this apparent paradox lies in understanding Maistre primarily as a constitutional thinker and a public lawyer in the wide sense of the term, and it highlights once more his subtlety and creativity as a constitutional thinker. His use of ambiguity and the juxtaposition of irresolvable tensions for a creative purpose add to our understanding of the complexities of the activity of governing in the modern European state.

Theology and politics

One particular strain of thought runs through all of Maistre's work, which is perhaps the most difficult for modern audiences to comprehend: the complex

relationship between the political and the divine in Maistre's constitutional thought. As we have seen, Maistre attacks liberal constitutionalism in general and the *philosophes* in particular for the circularity of their argument in insisting upon the sovereignty of the people – circular because of the impossibility of generating true constitutional authority without an external guarantor of that authority. He asserts the need for a transcendental origin for authority in the constitutional order, in order to break that circularity and ensure that a gap between governor and governed can be maintained, and guarantee that the endless cycle of self-authorisation is avoided. As we have seen, from this argument flow important consequences for constituent power, sovereignty and authority; and from it emerge his arguments about the legislator, the figure of the Pope and of the need for Divine influence in the generative principle of constitutions.

Whilst this appears to be a standard, traditionalist point of view, we should not ignore the fact that, throughout this thesis, there are also numerous examples of Maistre's non-conformity with the orthodox, theologically oriented perspective. For one of the interesting features of Maistre's constitutional thought is his capacity to understand political authority as being conceptually distinct from theological considerations; it operates on a number of occasions without reference to the transcendent, and establishes an autonomous system whose origins, whilst never democratic, are either man-made or obscured in the mists of time. On the one hand, then, Maistre's work presents us with a set of values that are resolutely in the tradition of French Orthodox Catholic political thought, based on tradition, unity and

a radical openness to transcendent influence. But on the other he exhibits the influences of modern and early modern secular political thought in his understanding of a politics marked by brokenness and systemic closure.

This dualism is so prevalent in his thought, and occurs so often at the most critical of junctures in his writing that it is unclear which – the political or the religious – is the most significant for him. The dilemma with which the reader of Maistre is left is to decide whether religious concepts are being used merely to reinforce a political message, or whether Maistre is employing political terminology to emphasise the applicability of genuine theological concerns to the constitutional order.

One possible answer is, of course, that there is simply incoherence: that Maistre's love of the polemical has led him into stylistic flourishes which cannot be reconciled in any meaningful way. Certainly commentators such as Stephen Holmes believe this to be the case.¹ But it is the argument of this thesis that there is far more to Maistre's work than mere propagandist rhetoric, and that he was consciously using this conceptual ambiguity as an intellectual technique. One example is provided by his letter to the Vatican regarding the possible papal endorsement of *Du Pape*. Even after trenchant demands for clarification, Maistre refused to amend the ambiguity of his language,² and this suggests both his awareness of that ambiguity and his desire to preserve it for philosophical, rather than merely rhetorical, ends. Thus, it can be argued that this use of an ambiguous vocabulary is an astute manoeuvre by a public

¹ See e.g. Stephen Holmes, *The Anatomy of Antiliberalism*, pp 13- 36

² See above, Chapter 4, p. 224, footnote 201.

lawyer writing within a particular intellectual tradition, but for a post-revolutionary age, and it is with reference to this tradition that the full import of this ambiguity must be understood.

Maistre and public law

Maistre's work, then, may be compared with those archetypes of eighteenth century traditionalist orthodoxy, Bossuet and Bonald. But in terms of constitutional thought it is argued that it resonates more deeply with political and constitutional thinkers of modernity such as Bodin, Hobbes, Pufendorf, Montesquieu and Rousseau. The conceptual focus of these thinkers is, in varying degrees, the autonomous practice of governing, the matter of sovereignty and the State. They were all public lawyers in the sense that they constantly explored the relationship between juridical form and political substance, and Maistre's writing forms a bridge over which this notion of public law enters post-revolutionary constitutional thought.

Maistre's achievement was to develop the notions of philosophers such as Pufendorf and Hobbes, who, although they did seek to autonomise the political, still belonged to an intellectual climate in which the reality of transcendental externalities was accepted. In contrast, although Maistre frequently employed transcendental images, the effect of the lack of distinction between religious and political concepts in his work was to detach the language of the transcendental from its original meaning and

situate it within the political milieu of the post-revolutionary age, an age that would no longer support any form of political theorising that referred to truly cosmological concerns.

Speaking of this political technique of linguistic ambiguity (although not in relation to Maistre), Michael Oakeshott comments that, “the political vocabulary in which we speak of the activity of government and make it intelligible to ourselves is hybrid. It is a modern language and like all modern languages, it is an amalgam of words and expressions...each of which is in turn a complex world of diverse meanings”. Politics, unlike science, has no language in which each expression has a fixed, simple and universally recognised meaning. Rather, in political language each expression is susceptible to many interpretations, none of which is without force and significance. The mixtures which constitute our political habits and our political language are saved from disintegration by the tensions and stresses which have established themselves between their parts.³

The result of this ambiguity of language in Maistre’s work is to endow public and constitutional law with a measure of autonomy, because neither politics nor theology can fully explain the effects created by this imprecision: the mix of fact and law, of the normative and the political, the theological and the temporal creates, by not being fully attributable to either of the traditional disciplines, its own unique disciplinary space. And by exploiting this imprecision in the meanings of concepts

³ Oakeshott, *The Politics of Faith and the Politics of Scepticism*, ed. Timothy Fuller (New Haven: Yale University Press, 1996).

and terms (by destabilising, for example, the relative meanings of Pontiff and Sovereign, ecclesiastical canons and secular law) Maistre continues, by a different route, a process begun by Bodin and Pufendorf of making the norms of natural law as much a part of the civil relationship as they are products of theology. This is an understanding of the state, government and constitutional order which rests upon foundations that, whilst not entirely transcendent, are nevertheless to be found to be beyond the merely positivist.

Viewed from a juridical perspective, the creation of this zone of indistinction is enabled by the existence of fundamental laws and norms which have a complex constitutional status. In effect, the fundamental laws create an autonomous arena of complexity, subtlety and interaction, whilst at the same time demarcating the boundaries between the constitutional, the political and the theological: they are the juridical expression of a delicately balanced arrangement. It is Maistre's achievement to have used this conception of public law alongside his understanding of the post-revolutionary state as an increasingly self-referential entity. For throughout Maistre's work it is possible to see not only brutal criticism of the post-revolutionary regime, but also an explication of the idea that the growth of constitutionalism comes from an increase in the authority of the State.

Reason of State

This ambiguous understanding of the constitutional provides the context for an aspect of Maistre's thought which, in the twentieth century, Carl Schmitt has made infamous⁴. This is the idea that sovereignty has the ability to make a decision with finality: to go beyond the positive, textualised law and act in accordance with more deeply embedded norms in order to preserve the integrity of the constitution in a more profound sense. The argument is a continuation, in secular terms, of the debate concerning God's ability to bind Himself with his own laws, and can only be fully appreciated by having an understanding of the conceptual creativity created by the confusion of terminology and concept discussed above. The ability of the Sovereign to act in defence of the constitution but against positive laws is a feature which occurs several times in Maistre's constitutional thought.⁵ Often identified in constitutional and political theory as the doctrine of Reason of State, it is an aspect of Maistre's work that assists us in understanding the irrational and anti-democratic tendencies that are present even in the apparently rational, rule-of-law oriented, modern democratic state.

In the most general sense, Reason of State denotes the abstract principle by which, in exceptional situations, power authorises itself in the name of superior ends and takes measures contrary to morality and law. The concept is invoked when either the

⁴ See Schmitt, *Political Theology*.

⁵ OC V 6 T 11, p. 329: "In politics as elsewhere, and more than elsewhere, necessity has no law".

public good or the interest of the state are threatened. The overturning of laws is then doubly justified. First of all there is urgency: the situation demands that exceptional measures be adopted quickly. Second, there is the existence of ethically superior ends: it is in the name of elevated moral imperatives (generally the defence of the public interest) that power authorises itself to turn away from the values which should guide its actions in ordinary times. If Reason of State permits wrongdoing, this is only to avoid an even greater evil.

This doctrine is typically associated with those seventeenth- and eighteenth-century writers who were proponents of power, autonomy and absolutism; modern liberal democracies, it is thought, do not use or have need for Reason of State. Yet political experience clearly demonstrates that democracies are no strangers to this type of thinking, and that the problem of security faces the government of the rule of law just as much as it does an autocratic government. It is one of the enduring themes of European constitutional history, and one which has been stated and re-stated in various guises – indeed, the very existence of the Latin term for the concept, *ratio statis*, reminds us that to employ this terminology is to move within a great tradition of Western rationality.

Maistre's work is important because it argues that there is more to the business of governing than the following of a text, and that there are substantive elements to the constitution that cannot be supplied by textual interpretation, no matter how rigorous it may be. In arguing this, his work encompasses both the Schmittian extremes of the

final decision and the Oakeshottian recognition of the existence of a constitution outside of the black letter law. Maistre's belief in the inadequacy of the written constitution, his faith in the importance of maintaining a gap between governors and governed and his conviction that the sovereign must be able to make a final, infallible decision – all these themes (and others) are expressions of Reason of the State thinking.

Intimately connected to this idea, Maistre's work often draws attention to that part of government which does not give reasons for its decision and actions – the part of political power which must remain unanalysed and obscure.⁶ This aspect is fundamentally linked not only to an authoritarian understanding of tradition and hierarchy, but also to the 'art of governing', a process of political decision making in certain political situations.⁷ Whilst on the one hand this art of governing may be considered simply as a technique only open to the few – the secret (*arcanum imperii*) as it was known in the purest form of the doctrine of Reason of State – its existence is also evidence of something more profound, a *prudential* element in Maistre's thought on constitutions and on governing – an understanding that surpasses mere governmental technique. It is an understanding of the constitution and the activity of governing based on tradition, nuance and practical wisdom. Like Reason of State, these are all elements of the constitution and of governing that

⁶ OC V. 1 T. 1 p.264 "I believe that I have read somewhere that there are very few sovereignties which are in a state to justify the legitimacy of their origins...the cloud which more or less envelops the origin of their authority...are an inconvenient and necessary result of a law of the moral world".

⁷ OC V 6 T 12, p. 303: "Just as politics does not hate anyone, neither does it love anyone."

cannot be understood by reading a text: rather they have deeper origins: those of experience, intuition and a sense of shared history.

Maistre understands that the modern in both politics and in constitutional matters – for example the theory of representative democracy – must, by its very construction, contradict itself. Nevertheless, the practice of governing in reality continues.

Reason of State marks his attempt to address, by the use of prudential methods, the deficit between the reality and the ideal of governing.⁸ Maistre's understanding of Reason of State is that of a collection of politico-judicial practices by which the newly self-conscious European state ensures its realisation. As such, when he applies this mode of thinking he does not intend it to mean an entry by the State into a zone of non-law, but rather to function as an elaboration of his understanding of the public law, the system of fundamental, 'truly constitutional' laws which express the competing claims of politics and normativity. Reason of State, in Maistre's constitutional thought, functions as a creative agency that can bridge the gap between the various constitutional and political tensions which exist. And it is in this spirit that Loughlin, echoing Hobbes, identifies Reason of State as *public reason*.⁹ It is a prudential requirement in order to maintain the safety and functioning of the State; it is a "rationality of expedience, of prudence".¹⁰

Hannah Arendt's description of the Roman conception of *lex* enables us to understand the broader implications of this interpretation of Maistrian public law,

⁸ See Jürgen Habermas, *Between Facts and Norms* (Cambridge: Polity Press, 1997), pp. 3-6.

⁹ Loughlin, *The Idea of Public Law*. p. 163.

¹⁰ Ibid.

which fills the space between the various competing dialectical tensions that exist within the modern European constitutional arrangement. According to Arendt, the original meaning of the word reflects an intimate relationship, something which connects two things or two partners whom external circumstances have brought together: the function of *lex* is thus to unite “two altogether different entities”.

Lex, in this sense at least, functions as the limit, the line of demarcation between the two sides of the debate whilst at the same time allowing for the possibility of co-ordination. Its agency allows for “A new unity...the unity of two altogether different entities...which now entered into a partnership”.¹¹ And this formulation furthers our understanding of the creative nature of public law as something dynamic and fruitful, a zone in which the juridical and the political come together and influence one another, rather than the static system that it would at first seem to be.

Accepting that public law is ultimately a constitutional accommodation of contrasting forces also helps to explain the co-existence (and yet continued separation) of a number of the different dialectical elements, all of which exist in Maistre’s work, and all of which constitute vital elements of the modern European State. Amongst these dialectical oppositions are the traditional versus the divinely given constitution and the contrasting notions of *potestas* and *auctoritas* in sovereignty; law versus fact and relation versus command.

¹¹ Hannah Arendt, *On Revolution*, (London: Penguin, 1990), p.187

The dialectic which exists in Maistre's work is not synonymous with the Hegelian conception of the term; there is, in the Maistrian model, no question of a resolution of the two opposing tensions. Instead, Maistre juxtaposes constitutional concepts that have a distinct polarity in order to arrive at a deeper understanding of their nature, but this understanding comes not from synthesis but from the creative interplay of oppositions. The existence of these permanently arrested tensions also expresses the fact that the constitution is not a perfectly formed and co-ordinated, self-contained unit, but is something that constantly shifts, showing different aspects of itself in response to the various questions asked of it: a constitution is the product of tradition, history and the very fact of political existence with all its messy, irresolvable human dilemmas.

Telos and Nomos, throne and altar

It has so far been argued in this conclusion that Maistre's work challenges the assumptions underpinning both traditionally held concepts and those with purely rationalist, positivist foundations. In so doing, Maistre both feeds from and adds to the idea of public law that had been developed by a number of thinkers from early modern times. One of the consequences of the development of this concept was that it enabled the translation of transcendental values into the language of civic relationships. Maistre's view of public law is intimately connected with politics, and it explains and provides a foundation for the growing authority of the state. We have

seen how this aspect of his thought can be interpreted quite narrowly and technically, in terms of the Reason of the State, but it can also be interpreted more generally, as a creative agency, and one that bridges the gap between a range of constitutional tensions – this is a notion encapsulated by Arendt’s definition of *Lex*.

However, even this only gives us a partial picture, albeit an important one. A significant feature of Maistre’s constitutional thought is certainly his understanding of public law and the way he accommodates constitutional tensions, but Maistre’s view of the tensions themselves, the dialectical stresses that form the substantive image of the modern European state, must also be examined, because, in Maistre’s eyes, “nations are, like individuals, an assemblage of contradictions”.¹² And although all of these contradictions have constitutional significance, perhaps the most important that exists is the one between the different notions of the state itself.

We saw in Chapter 4 how Oakeshott believes Maistre’s work to be an example of *universitas*, that term being defined as “an association of intelligent agents who recognise themselves to be engaged upon the joint enterprise of seeking the satisfaction of some common substantive want”.¹³ For Oakeshott, Maistre provides “perhaps the only genuinely theoretical treatment of the idea of a modern European state as a religious corporation in the Catholic idiom”.¹⁴ It is certainly the case that the elements which lead Oakeshott to this conclusion do exist in Maistre’s writing,

¹² *OC* V 6 T 11, p. 322.

¹³ Michael Oakeshott, “On the Character of a Modern European State”, in *On Human Conduct*, p. 205.

¹⁴ *Ibid.*, p. 281.

but Oakeshott either misses or chooses to ignore some of the crucial nuances that are also present in Maistre's political work – nuances that this thesis has, hopefully, revealed.¹⁵

For one thing, Maistre's work also shows us elements of that other strain in constitutional thinking, and one which is opposed to *universitas*, that of *societas*, which Oakeshott defines in the following manner: "the tie which joins [members of the association known as *societas*]...is not that of an engagement in an enterprise to pursue a common substantive purpose or to promote a common interest, but that of loyalty to one another, the conditions of which may achieve the formality denoted by the kindred word 'legality'".¹⁶ *Societas* was understood to be the product of pact or agreement, not to act in concert, but to acknowledge the authority of certain conditions governing their behaviour. We have seen in Chapter 5 how Maistre's view of moderate aristocratic government is presented precisely upon this basis, whilst representative government is presented by him as a form of *universitas*.

More light is shed on the composition of these two notions by examining two other concepts used by Oakeshott, that of teleocratic and nomocratic government.¹⁷ *Telos* is movement directed towards an end or a state of fulfilment which is potential within the thing that moves, as distinct from an end or a fulfilment imposed upon it

¹⁵ Oakeshott does identify one of the crucial issues in Maistre's work – the ruler (who is both priest and king) – but he chooses to interpret this as an indication of the monolithic simplicity, rather than the complex ambiguity, of Maistre's thought. See Oakeshott, "On the Character of a Modern European State", p. 282.

¹⁶ Oakeshott, "On the Character of a Modern European State", p. 201

¹⁷ Michael Oakeshott, *Lectures in the History of Political Thought*, ed. Terry Nardin and Luke O'Sullivan (Exeter: Exeter University Press, 2006).

from outside.¹⁸ In this regard, the cosmos is seen as being in a continuous process of teleological change, and the notion itself is therefore connected with the idea of cosmological unity: the immemorial constitution belongs to the sphere of *Telos*. *Nomos*, on the other hand, is essentially man-made and the product of a legislative process. It is a decision about what shall be required and expected from citizens, and it is made by the making of rules:¹⁹ the legislator belongs to the sphere of *Nomos*.

These two terms expose still further the essence of the irresolvable flux at the heart of the state which is present in Maistre's constitutional thought. At the meeting place between *Telos* and *Nomos*, a dialectical drama is played out: *ought* meets *is*; *fact* meets *value*; the *natural* meets the *positivist*; *unity* meets *dialectic*. This last opposition is a central paradox in the Maistrian oeuvre: the desire to express constitutional unity is matched by the impossibility of doing so in the post-Cartesian, dualist world. Maistre's work is complex because, rather than represent either of the two trends identified by Oakeshott, it accommodates them both. This assertion of the nature of the state gives Maistre's work its modern character, despite the traditionalist elements that exist within it.

More precisely, his work highlights the moment at which the paradigm of religious justification for governing is being superseded by the paradigm of the autonomisation of state sovereignty, and Maistre belongs not to the old paradigm,

¹⁸ Ibid., p. 102.

¹⁹ Ibid., p. 80.

but to the new. He instinctively recognises the post-revolutionary constitutional setting and its flaws and contradictions, and his work acts as a recognisably modern critique of received liberal notions about the pre-eminence of rationalist constitutionalism. Indeed, the very existence of his writings illustrates the fact that an illiberal, authoritarian intellectualism continued to exist in European thought alongside the talk of the rights of man and the possibility of putting a constitution in one's pocket.

Maistre's work reveals the dark heart of the modern European state, its potential for authoritarianism and coerciveness on both sides of the political spectrum. Viewed either approvingly or with horror, Maistre's work is certainly a potent antidote to the liberal ideology that holds that the state is a neutral framework, in which rational discourse unfolds in an orderly manner without reference to powerful political and moral undercurrents.

But Maistre's thought also provides positive guidelines for modern constitutional practice, and offers a profound analysis of the essence of the constitutional relationship between the individual and the State, between governors and the governed and between authority and power. The array of topics that Maistre addresses, and the seams of contentious material that he mines in his work, remain relevant to our understanding of issues such as legitimacy, authority and sovereignty in a Europe, in which the position of many of the participant states is finely balanced between a range of competing political values. Perhaps the lasting importance of

Maistre's constitutional thought is that it leaves us with a series of irreconcilable oppositions and unsolvable ambiguities, expressed at a transitional moment in the development of European constitutional jurisprudence. To continue the task of exploring them will be to elucidate some of the most profound issues that exist in respect of the contemporary constitution.

APPENDIX: FRENCH TEXT OF MAISTRE QUOTATIONS

Introduction

Note 2 – Mais la révolution française, et tout ce qui passe en Europe dans ce moment, est tout aussi merveilleux dans son genre que la fructification instantanée d'un arbre au mois de janvier...

Note 4 – Chaque goutte du sang de Louis XVI en coûtera des torrents à la France; quatre millions de Français, peut-être, payeront de leurs têtes le grand crime national d'une insurrection anti-religieuse et anti-sociale, couronnée par un régicide.

Note 5 – Me permettez-vous, Monsieur, de vous faire une petite chicane grammaticale? La particule *de*, en français, ne peut se joindre à un nom propre commençant par une consonne, à moins qu'elle ne suive un titre: ainsi vous pouvez fort bien dire le Viscomte de Bonald a dit, mais non pas De Bonald a dit; il faut dire Bonald a dit et cependant on disait D'Alembert a dit: ainsi l'ordonne la grammaire. Vous êtes donc obligé, Monsieur de dire "Enfin, Maistre a paru etc..."

Note 65 – Ce qu'il y a de plus admirable dans l'ordre universel des choses, c'est l'action des êtres libres sous la main divine. Librement esclaves, ils opèrent tout

à la fois volontairement et nécessairement: ils font réellement ce qu'ils veulent, mais sans pouvoir déranger les plans généraux.

Note 103 – Le péché original, qui explique tout, et sans lequel on n'explique rien.

Note 104 – Il ne sait ce qu'il veut; il veut ce qu'il ne veut pas; il ne veut pas ce qu'il veut; il *voudrait vouloir*. Il voit dans lui quelque chose qui n'est pas lui est qui est plus fort que lui. Le sage résiste et s'écrie: *Qui me délivrera?* L'insensé obéit, et il appelle sa lâcheté *bonheur*...

Note 105 – Hobbes a parfaitement raison, pourvu qu'on ne donne point trop d'extension à ses principes. La société est réellement un état de guerre: nous trouvons donc ici la nécessité du gouvernement; car puisque l'homme est mauvais, il faut qu'il soit *gouverné* [...] Le gouvernement n'est donc point une affaire de choix; il résulte de la nature même des choses.

Note 107 – Or, cette incapacité de jouir du SOLEIL est, si je ne me trompe, l'unique suite du péché originel....La raison peut, ce me semble, s'élever jusque là; et je crois qu'elle a droit de s'en applaudir sans cesser d'être docile.

Note 109 – a) ...hors de cette supposition [i.e. of innate ideas] il devient impossible de concevoir *l'homme*, c'est à dire *l'unité* ou *l'espèce humaine*.

b) Toute doctrine rationnelle est fondée sur une connaissance antécédente, car l'homme ne peut rien apprendre que par ce qu'il sait. Le syllogisme et l'induction partant donc toujours de principes posés comme déjà connus, il faut avouer qu'avant de parvenir à une vérité particulière nous la connaissons déjà en partie.

c) En effet, l'essence des principes est qu'ils soient antérieurs, évidents, non dérivés, indémonstrables, et *causes* par rapport à la conclusion, autrement ils auraient besoin eux-mêmes d'être démontrés; c'est à dire qu'ils cesseraient d'être principes.

Note 110 – *Oui, Platon, tu dis vrai!* Toutes les vérités sont dans nous; elles sont NOUS, et lorsque l'homme croit les découvrir, il ne fait que regarder dans lui et dire OUI.

Note 111 – ...la révélation, dans le vrai, n'ayant fait que tirer le voile fatal qui ne permettait pas à l'homme de lire dans l'homme.

Note 114 – La raison humaine est manifestement convaincue d'impuissance pour conduire les hommes; car peu sont en état de bien raisonner, et nul ne l'est de bien raisonner sur tout; en sort qu'en général il est bon, quoi qu'on dise, de commencer par l'autorité.

Note 120 – Il faut partir d'ailleurs d'un principe général et incontestable: savoir, *que tout gouvernement est bon lorsqu'il est établi et qu'il subsiste depuis longtemps sans contestation.*

Note 121 – Or, il ne faut jamais oublier que les traditions des peuples, et surtout les traditions générales, sont nécessairement vraies dans un sens, c'est à dire qu'elles admettent l'alteration, l'exagération et autres ingrédients de la faiblesse humaine, mais que leur caractère général est inalterable et nécessairement fondé sur la vérité. En effet, une tradition dont l'objet n'est pas un fait particulier ne peut pas commencer contre la vérité: il n'y a aucun moyen de faire cette hypothèse.

Note 122 – ...plus l'institution est divine dans ses bases, et plus elle est durable. Il est bon même d'observer, pour plus de clarté, que le principe religieux est, par essence, créateur et conservateur, de deux manières. En premier lieu, comme il agit plus fortement que tout autre sur l'esprit humain, il en obtient des efforts prodigieux. ...En second lieu, le principe religieux déjà si fort par ce qu'il opère, l'est encore infiniment par ce qu'il empêche, à raison du respect dont il entoure tout ce qu'il prend sous sa protection....Voulez vous *conserver* tout, *dédiez* tout.

Note 123 – ...les dogmes et même les maximes de haute discipline catholique ne sont, en grand partie, que *des lois du monde* divinisées, et quelquefois aussi, des notions innées ou des traditions venerables sanctionnées par la révélation.

Note 124 – Chaque siècle a ses préjugés et sa manière de voir après laquelle il doit être jugé. C'est un insupportable sophisme du nôtre, de supposer constamment que ce qui serait condamnable de nos jours, l'était de même dans les temps passés...

Note 125 – ...il faut que les dogmes religieux et politiques mêlés et confondus forment ensemble une *raison universelle* ou *nationale* assez forte pour reprimer les aberrations de la raison individuelle qui est, de sa nature, l'ennemie mortelle de toute association quelconque, parce qu'elle ne produit que des opinions divergentes.

Note 126 – J'ai souvent attiré l'attention en exposant l'analogie surprenante de la révolution du XVI^e siècle et celle que nous voyons, qui n'est qu'un calvinisme politique.

Note 127 – Or ces novateurs [du xvie siècle] ...ils substituerent le jugement particulier au jugement *catholique*; ils substituerent follement l'autorité exclusive d'un livre à celle du ministère enseignant, plus ancien que le livre et chargé de nous l'expliquer.

Note 128 – De là vient le caractère particulier de l'hérésie du xvie siècle. Elle n'est point seulement une hérésie religieuse, mais une hérésie civile, parce qu'en affranchissant le peuple du joug de l'obéissance...elle déchaîne l'orgueil général contre l'autorité, et met la discussion à la place de l'obéissance.

Note 129 – Le protestant *est un homme qui n'est pas catholique*: en sort que le protestantisme n'est qu'une négation. Ce qu'il a de réel est catholique.

Note 130 – Le grand ennemi de l'Europe qu'il importe d'étouffer par tous les moyens qui ne sont pas des crimes, l'ulcère funeste qui s'attache à toutes les souverainetés et qui les ronge sans relâche, le fils de l'orgueil, le père de l'anarchie, le dissolvant universel, c'est le protestantisme.

Note 131 – Qu'est – ce que le protestantisme? C'est l'insurrection de la raison individuelle contre la raison générale.

Chapter Two

Note 7 – Le principe de la Souveraineté du peuple est si dangereux que, dans le cas même où il serait vrai, il ne faudrait pas lui permettre de se montrer.

Note 31 – On peut observer, dans tous ses ouvrages, qu'il prend tous les mots abstraits dans leur acception populaire...

Note 33 – Au fond, la gloire d'avoir fait la Revolution n'appartient exclusivement ni à Voltaire ni à Rousseau...l'un a sapé la politique en corrompant la morale, et l'autre a sapé la morale en corrompant la politique.

Note 36 – Il a soufflé de toute part le mépris de l'autorité et l'esprit d'insurrection. C'est lui qui a tracé le code de l'anarchie, et qui... a posé les principes désastreux dont les horreurs que nous avons vues ne sont que les conséquences immédiates.

Note 37 – Il existe un livre intitulé: *De Jean-Jacques Rousseau considéré comme auteur de la Révolution...* Ce livre et la statue de bronze que la Convention nationale a décernée à Rousseau sont peut-être le plus grand opprobre qui ait jamais fletri la mémoire d'aucun écrivain.

Note 49 – a) Quelle analyse! Quelle profondeur! Quelle clarté

b) Rousseau, qui abuse de tous les mots, abuse, plus que de tout autre de celui de *nature*. Il l'emploie, sans le définir, à chaque page du discours sur l'inégalité des conditions; il en fait tout ce qu'il veut; il impatient le bon sens.

Note 50 – a) On peut invoquer ici un principe générale, dont l'illustre Newton a fait une des bases de sa philosophie: c'est qu' "on ne doit point admettre en philosophie plus de causes qu'il n'est nécessaire pour expliquer les phénomènes de la nature."

b) Et Linée, appliquant cette maxime incontestable à l'objet qui nous occupe dans ce chapitre...

Note 52 – On ne peut imaginer que deux manières de connaître la destination de l'homme: l'histoire et l'anatomie. La première montre ce qu'il a toujours été; la seconde montre comment ses organes répondent à sa destination, et la certifient.

Note 53 – en général, ce n'est pas une si mauvaise méthode que celle d'établir le *droit* par le *fait*: pour connaître la nature de l'homme, le moyen le plus court et le plus sage est incontestablement de savoir ce qu'il a toujours été. Depuis quand les théories peuvent-elles être opposées aux faits?

Note 55 – L'homme imaginaire des philosophes est étranger à la politique, qui ne travaille que sur ce qui existe.

Note 56 – L'histoire est la politique expérimentale...

Note 58 – Ici Rousseau pousse la distraction au point de confondre le progrès du genre humain en général, avec le progrès des nations particulières.

Note 59 – Partout où l'homme a pu observer l'homme, il l'a toujours trouvé en société: cet état est donc pour lui *l'état de nature*.

Note 60 – Ovide, en décrivant les froids atroces qu'il éprouvait dans son exil, présente des objets de comparaison très – piquants, et il est aussi bon à citer qu'un historien.

Note 61 – Homère, au deuxième livre de *l'Iliade*, décrit une sédition qui s'éleva parmi les Grecs fatigués du long siège de Troie....Ce n'est point du tout une chose indifférente pour moi de savoir ce que le bon sens antique pensait de la souveraineté...

Note 62 – J'aime entendre cet oracle de Delphes...; oracle que Plutarque nous a transmis d'après le vieux Tyrtée et qui appelle les rois *des hommes divinement revêtus de majesté*.

Note 63 – Il faut savoir gré aux écrivains qui nous aprennent ce que les hommes ont fait et pensé dans tous les temps...Or, si nous demandons à l'histoire ce que c'est quel'homme, l'histoire nous répond que l'homme est un être social, et que toujours on l'a observé en société.

Note 64 – Si des Égyptiens nous passons aux Orientaux bien plus anciens qu'eux...nous trouverons encore des myriades de siècles, et toujours le règne des dieux précédant celui des hommes.

Note 65 – Or, il ne faut jamais oublier que les traditions des peuples, et surtout les traditions générales, sont nécessairement vraies dans un sens, c'est à dire qu'elles admettent l'alteration, l'exagération, et autres ingrédients de la faiblesse humaine, mais que leur caractère général est inalterable et nécessairement fondé sur la vérité.

Note 66 – Je cite ce jurisconsulte célèbre, quoiqu’il n’est plus à la mode, parce qu’il exprime des idées qui sont à peu près dans toutes les têtes, et qu’il s’agit seulement de développer.

Note 67 – a) “L’état de nature pur et simple....n’est pas un état auquel la nature ait destiné l’homme”.

b) “C’est celui où l’on conçoit que chacun se trouve par la naissance, en faisant abstraction de toutes les inventions et de tous les établissements purement humains ou inspirés à l’homme par la divinité,...et sous lesquels nous comprenons non-seulement les diverses sortes d’arts avec toutes les commodités de la vie en général, mais encore les sociétés civiles, dont la formation est la principale source du bel ordre qui se voit parmi les hommes”.

c) En un mot, l’homme dans l’état de nature “est un homme tombé des nues”.

Note 68 – C’est à dire que l’état de nature est contre nature, ou en d’autres termes, que la nature ne veut pas que l’homme vive dans l’état de nature.

Note 69 – ...il est clair que l’homme dans le premier état n’est que l’homme moins tout ce qu’il tient des institutions qui l’environnent dans le second état, c’est-à-dire un homme qui n’est pas homme

Note 70 – En effet, lorsqu'on dit que la *nature* destine ou ne destine pas un tel être à un tel état, ce mot de *nature* réveille nécessairement l'idée d'une intelligence et d'une volonté.

Note 71 – ...l'homme étant un agent dont l'action s'étend sur tout ce qu'il peut atteindre, il a le pouvoir de modifier une foule d'êtres et de se modifier lui-même: il a donc fallu exprimer l'état de ces êtres, avant et après qu'ils ont subi l'action humaine; et sous ce point de vue on oppose, en général, la nature à l'art (qui est la puissance humaine)...

Note 72 – “Ce n'est pas une légère entreprise”... de démêler ce qu'il y a d'originel et d'artificiel dans la nature actuelle de l'homme, et de bien connaître un état qui n'existe plus, qui peut-être n'a jamais existé”.

Note 73 – M. Burke a dit, avec une profondeur qu'il est impossible d'admirer assez, que “l'art est la nature de l'homme”: voilà le grand mot qui renferme plus de vérité et plus de sagesse que les ouvrages de vingt philosophes de ma connaissance.

Note 74 – a) Dès qu'on oppose l'art *humain* à la *nature*, on ne sait plus où s'arrêter: il y a peut-être aussi loin de la caverne à la cabane, que de la cabane à la colonne Corinthienne, et comme tout est *artificiel* dans l'homme en sa qualité d'être intelligent et perfectible, il ensuit qu'en lui ôtant tout ce qui tient à l'*art*, on lui ôte tout.

b) Je suppose donc que cet homme, souffrant de l'intempérie de l'air, s'abrite dans une caverne: jusque-là il est encore *homme naturel*; mais si, la trouvant trop étroite, il s'avise d'en prolonger l'abri en tressant à l'entrée quelques branches soutenues par des pieux, voilà de l'art incontestablement. Cessa-t-il alors d'être *homme naturel*, et ce toit de feuillage, *appartient – il à la volonté divine ou à l'art humain?*

Note 76 – La perfectibilité n'est point une qualité particulière de l'homme; elle est, s'il est permis de s'exprimer ainsi, la qualité de toutes ses qualités.

Note 78 – a) Il est absurde d'imaginer que le Créateur ait donné à un être des facultés qu'il ne doit jamais développer, et encore plus absurde de supposer qu'un être quelconque puisse se donner des facultés, ou se servir de celles qu'il a reçues pour établir un ordre de choses contraire à la volonté du Créateur.

Note 79 – La parole d'ailleurs prouverait seule que l'homme est un être social par essence....si l'homme est fait pour parler, c'est apparemment pour parler à quelqu'un;....

Note 81 – C'est-à-dire que Dieu avait donné à l'*homme* des facultés qui devaient demeurer en *puissance*, mais que des événements fortuits qui *pouvaient ne pas arriver* les ont fait passer à l'acte. Je doute qu'on ait jamais dit une bêtise de cette force.

Note 82 – Concluons donc toujours, comme Marc – Aurèle: *L'homme est social* parce qu'il *est raisonnable*. Ajoutons encore: *mais il est corrompu dans son essence, et par conséquent il lui faut un gouvernement*.

Note 85 – Un de ses [i.e. Socrates'] plus illustres disciples nous a transmis les idées de son maître sur cette étonnante contradiction qui est dans l'homme. La *nature*, disait Socrate, *a réuni dans cet être* les principes de la sociabilité et de la dissension...

Note 86 – ...comment un tel être pourra – t-il vivre avec ses semblables?

Note 87 – ...car puisque l'homme est mauvais, il faut qu'il soit *gouverné*;....

Note 88 – il faut que, *lorsque plusieurs veulent la même chose*, un pouvoir supérieur à tous les prétendants adjuge la chose et les empêche de se battre...

Note 89 – Le gouvernement n'est donc point une affaire de choix; il résulte de la nature même de choses.

Note 91 – Il est impossible que l'homme soit ce qu'il est et qu'il ne soit pas gouverné, car un être social et mauvais doit être sous le joug.

Note 92 – Hobbes a parfaitement raison, pourvu qu'on ne donne point trop d'extension à ses principes.

Note 93 – La société est réellement un état de guerre....il faut un souverain et des lois; et, sous leur empire même, la société n'est – elle pas encore un champ de bataille *en puissance*?

Note 95 – Ne voyons – nous pas que, lorsque des révolutions politiques suspendent cette puissance divine, les nations malheureuses qui subissent ces commotions tombent brusquement dans cet état de guerre, que la force s'empare du sceptre, et que cette nation est tourmentée par un déluge de crimes.

Note 110 – Le principe de la Souveraineté du peuple est si dangereux que, dans le cas même où il serait vrai, il ne faudrait pas lui permettre de se montrer.

Note 111 – C'est la manie éternelle de Rousseau de se moquer des philosophes, sans se douter qu'il était aussi un *philosophe* dans toute la force du sens qu'il attribuait à ce mot: ainsi par exemple le *Contrat social* nie d'un bout à l'autre la nature de l'homme, qui *est* – pour expliquer le *pacte social*, qui n'existe pas. C'est ainsi qu'on raisonne quand on sépare l'homme de la Divinité.

Note 112 – Tout le monde connaît ce vers fameux: *le premier qui fut roi fut un soldat heureux*. On n'a peut être jamais rien dit de plus faux; il faut dire, au contraire que: *le premier soldat fut soldé par un roi*.

Note 113 – Le mot de *peuple* est une terme relatif qui n'a point de sens séparé de l'idée de la souveraineté.

Note 115 – ...la question se réduit donc à savoir si l'homme est devenu *animal politique*, comme disait Aristote, *par* ou *contre* la volonté divine.

Note 116 – ...au lieu de la supposition toute simple qui se présente naturellement à l'esprit, on a prodigué la métaphysique pour bâtir des hypothèses aériennes réprochées par le bon sens et par l'expérience.

Note 117 – On a dit que le consentement de tous les hommes démontre preuve de la vérité! Quelle preuve! Tous les peuples ont cru à la magie, à l'astrologie, aux influences de la Lune!

Note 118 – Il est très-vrai, dans un sens inférieur et grossier, que la souveraineté est fondé sur le consentement humain: car si un peuple quelconque s'accordait tout à coup pour ne pas obéir, la souveraineté disparaîtrait, et il est impossible d'imaginer l'établissement d'une souveraineté sans imaginer un peuple qui consent à obéir.

Note 121 – Les dogmes et mêmes les maximes de haute discipline catholique ne sont, en grande partie, que *des lois du monde* divinisées.

Note 122 – Dieu n'ayant pas jugé à propos d'employer des instruments surnaturels pour l'établissement des empires, il est sûr que tout a dû se faire par des hommes.

Note 123 – les lois viennent donc de Dieu....De même la souveraineté vient de Dieu.

Note 124 –... la souveraineté vient de Dieu, puisqu'il est l'auteur de tout, excepté du mal, et qu'il est en particulier l'auteur de la société qui ne peut subsister sans la souveraineté. Et cependant cette même souveraineté vient aussi des hommes dans un certain sens, c'est-à-dire en tant que tel ou tel mode de gouvernement est établi et déclaré par le consentement humain.

Note 125 – “Je ne viens point pour vous dire que la souveraineté vient de Dieu ou des hommes; examinons seulement ensemble ce qu'il y a de divin et ce qu'il y a d'humain dans la souveraineté.”

Note 127 – Mais dire que la souveraineté ne vient pas de Dieu parce qu'il se sert des hommes pour l'établir, c'est dire qu'il n'est pas le créateur de l'homme parce que nous avons tous un père et une mère.

Note 128 – Il faut toujours que l'origine de la souveraineté se montre hors de la sphère du pouvoir humain, de manière que les hommes mêmes qui paraissent s'en mêler directement ne soient néanmoins que des circonstances.

Note 129 – La société et la souveraineté naquirent donc ensemble; il est impossible de séparer ces deux idées.

Note 130 – ..dès que les familles se touchèrent, il leur fallut un souverain.

Note 131 – ..l'idée de *peuple* réveille celle d'une agrégation autour d'un centre commun...

Note 132 – sans la souveraineté il ne peut y avoir d'ensemble ni d'unité politique.

Note 133 – En observant qu'il ne peut exister d'association humaine sans une domination quelconque, je n'entends point établir de parité exacte entre l'autorité paternelle et l'autorité souveraine...

Note 134 – ...dès que les familles se touchèrent, il leur fallut un souverain, et ce *souverain* en fit un *peuple* en leur donnant des lois, puisqu'il n'y a de société que par le souverain.

Note 136 – Il y a sûrement ici quelque équivoque s'il n'y a pas une erreur, car le peuple qui *commande* n'est pas le peuple qui *obéit*.

Note 142 – De ces différents caractères des nations naissent les différentes modifications des gouvernements. On peut dire que chacun a son caractère...

Note 143 – Les objets généraux de toute bonne institution doivent être modifiés en chaque pays par les rapports qui naissent tant de la situation locale, que du caractère des habitants; et c'est sur ces rapports qu'il faut assigner à chaque peuple un système particulier d'institutions qui soit le meilleur, non peut – être en lui – même, mais pour l'Etat auquel il est destiné.

Note 146 – a) Rejetez loin de vous ces théories absurdes qu'on vous envoie de France comme des vérités éternelles, et qui ne sont que les rêves funestes d'une vanité immorale. Quoi! tous les hommes sont faits pour le même gouvernement, et ce gouvernement est la démocratie pure! Quoi! la royauté est une tyrannie, un gouvernement proscrit par la loi naturelle, et tous les hommes doivent se révolter contre cette espèce de souveraineté! Quoi tous les politiques se sont trompés depuis Aristote jusqu'à Montesquieu!

b) Il ne faut donc pas croire que *“toute forme de gouvernement soit propre à tout pays: la liberté, par exemple, n'étant pas un fruit de tous les climats, n'est pas à la portée de tous les peuples”*. Plus on médite ce principe établi par Montesquieu, plus on en sent la vérité.

Note 148 – ...le contrat sociale est une chimère.

Note 149 – ...si il y a autant de différents gouvernements qu'il y a de différents peuples; si les formes de ces gouvernements sont prescrites impérieusement par la puissance qui a donné à chaque nation telle position morale, physique, géographique, commerciale etc. il n'est plus permis de parler de *pacte*.

Note 150 – a) Le despotisme, pour telle nation, est aussi naturel, aussi légitime que la démocratie pour telle autre.

b) Dira-t-on que, même dans cette hypothèse, il y a toujours un pacte en vertu duquel chaque partie contractante est tenue de maintenir le gouvernement tel

qu'il est? Dans ce cas pour le despotisme ou la monarchie absolue, le pacte sera précisément celui que Rousseau tourne en ridicule à la fin de son pitoyable chapitre de l'esclavage. "Je fais avec toi une convention toute à ta charge et toute à mon profit, que j'observerai tant qu'il me plaira et que tu observeras tant qu'il me plaira".

Note 151 – La démocratie pure n'existe pas plus que le despotisme absolu....

L'idée d'un peuple entier souverain et législateur choque si fort le bon sens, que les politiques grecs..n'ont jamais parlé de la démocratie comme d'un gouvernement légitime...Aristotle surtout défini la démocratie l'*excès de la république....*

Note 153 – Dans ce sens strict, je crois pouvoir définir la démocratie: *une association d'hommes sans souveraineté.*

Note 154 – ...on peut appeler *démocratie* le gouvernement où la masse exerce la souveraineté...

Note 155 – ..je ne saurais vous exprimer, combien il a renforcé mes idées anti-démocrates... je comprends très bien comment les systèmes, en fermentant dans les têtes humaines, se tournent en passions; croyez que l'on ne saurait trop abhorrer cette abominable assemblée

Note 156 – ..un accord n'est point une loi, et n'oblige personne, à moins qu'il n'y ait une autorité supérieure qui le garantisse.

Note 157 – la loi... suppose nécessairement et manifestement une volonté supérieure qui se fait obéir.

Note 159 – La loi n'est proprement *loi*, et ne possède une véritable sanction qu'en la supposant émanée d'une volonté supérieure; en sorte que son caractère essentiel est *de n'être pas la volonté de tous*. Autrement les lois ne seront, comme on vient de le dire, que des règlements; et comme le dit encore l'auteur cité tout à l'heure "ceux qui ont eu la liberté de faire ces conventions, ne se sont pas ôté le pouvoir de les révoquer; et leurs descendants, qui n'y ont eu aucune part, sont encore moins tenus de les observer".

Note 160 – ..qu'il y a d'excellentes *préjugés*, qui sont les plus anciennes et les plus saintes des lois.

Note 163 – L'accord du peuple est impossible; et, quand il en serait autrement, un accord n'est point une loi, et n'oblige personne.

Note 164 – Car la loi n'est qu'une règle générale, établie sans passion, pour réprimer les passions.

Note 167 – ..*l'homme en général...est trop méchant pour être libre.*

Note 168 – Le contraire de cette folle assertion, *l'homme est né libre*, est la vérité.

Note 169 – Si un individu, si un corps réclame ou vante surtout sa *liberté*, il faut qu’il nous indique le joug qui pesait sur lui ou qui pesait sur d’autres, et dont il est exempt.

Note 170 – Il n’y a pas deux mots qui se combattent et s’excluent plus visiblement que ceux de *liberté* et de *droit commun*; car si vous demandez de vivre comme tous les autres, vous ne voulez donc point de *libertés*; et si au contraire vous en demandez, vous s’excluez ouvertement *le droit commun*.

Note 173 – ...elle [la philosophie] a fort bien compris que les plus fortes inclinations de l’homme étant vicieuses au point qu’elles tendent évidemment à la destruction de la société, il n’avait pas de plus grand ennemi que lui même, et que lorsqu’il avait appris à se vaincre, il savait tout.

Note 174 – a) ...les efforts des peuples pour créer ou accroître leur liberté, finissent presque toujours par leur donner des fers.

b) C’est la servitude d’une partie du peuple qui rend cet Etat paisible; si chaque individu y était, maître de ses actions, je ne crois pas que la tranquillité fût possible à l’époque actuelle.

Note 175 - La liberté consiste à n’obéir qu’aux Loix et la souveraineté consiste à pouvoir faire des loix, et à pouvoir les faire observer. Il y a liberté quand on peut n’obéir qu’à la loi;

Note 176 – Ce mot de liberté...ne sera jamais qu'une expression négative qui signifie *absence d'un obstacle*.

Note 177 – a) Les droits du *peuple* proprement dit partent assez souvent de la concession des souverains.

b) Que toute liberté légitime, parmi nous du moins, est un don de Rois.

Note 178 a) Ne croyons point que les hommes, en général, soient faits pour la liberté, ou pour le même degré de liberté, ou qu'ils doivent jouir, par les mêmes moyens, du degré de liberté qui leur convient.

b) ...parmi les innombrables folies du moment et tous les moments...c'est de croire que la liberté est quelque chose d'absolu...

Note 179 – La *liberté* et l'*égalité* sont venues se présenter à vous sous les habits de deux divinités; mais bientôt jetant ces habits trompeurs, et déployant leurs ailes funèbres, elles ont plané sur notre malheureuse terre et montré les haillons sanglants et les serpents des furies.

Note 180 – Qu'est ce que le peuple dans une démocratie? Un nom, un être moral; si vous obtenez de lui une faveur, la reconnaissance se divise; et ce sentiment, comme tous les autres, s'affaiblit en se divisant.

Note 181 – ...elles [i.e. democracies] ne peuvent se soutenir que par l'exaltation...

Note 182 – ...l'exaltation est un état forcé qui n'est pas naturel à l'homme.

Note 183 – Dès que la ferveur démocratique est tombée, le gouvernement n'a plus de centre, plus d'unité: le peuple ne sait plus que faire de son pouvoir, il ne sait plus même où reside se pouvoir.

Page 40, note 184 – ...et notre principe à nous, c'est l'unité.

Note 185 – ...la démocratie ne pourrait subsister un instant si elle n'était tempérée par l'aristocratie...

Note 186 – a) Un léger excès de sévérité, introduit par une terreur légitime vous révoltait il y a quelques mois: comparez maintenant, et jugez. Dans les actes les plus sévères de l'ancien gouvernement, vous avez toujours aperçu une moderation marquee [...]. Le Prince le plus absolu connait une multitude de freins; il est retenu par son caractère particulier, par la religion, par la honte, par la politique , par les conseils salutaires, par l'opinion publique: mais la tyrannie populaire n'a point de pudeur.

b) ...un sourire, un geste innocent peuvent passer pour une conjuration.... Les pensées sont des crimes [...] il faut demeurer et souffrir, c'est la Loi. Les villes ne sont que des grandes prisons dont tous les fonctionnaires publics sont des

geôliers. [...]Et ne croyez pas que ces malheurs ne soient que des souffrances passagères, et, comme l'ignorance l'a répété trop souvent, une espèce de défilé par lequel il faut nécessairement passer pour arriver au bonheur et à la liberté. Les principes de la Legislation qu'on vous prêche sont essentiellement vicieux.

c) ...lorsqu'on opine sur les toits on s'égorge dans les rues.

Note 188 – ...en affranchissant le peuple du joug de l'obéissance et lui accordant la souveraineté religieuse, elle déchaîne l'orgueil général contre l'autorité et met la discussion à la place de l'obéissance.

Note 190 – On trouve dans tous les pays du monde des associations volontaires d'hommes qui se sont réunis pour quelques vues d'intérêt ou de bienfaisance.

Ces hommes se sont soumis volontairement à certaines règles qu'ils observant tant qu'ils le trouvent bon: ils se sont même soumis à certaines peines qu'ils subissent lorsqu'ils ont contrevenu aux statuts de l'association: mais ces statuts n'ont d'autre sanction que la volonté même de ceux qui les ont formé; et dès qu'il se trouve des dissidents, il n'y a point parmi eux de force coercitive pour les contraindre.

Note 191 – On voit d'un coup d'oeil tous les avantages et les désavantages de ce gouvernement; dans ses beaux jours, il éclipse tout, et les merveilles qu'il enfante séduisent jusqu'à l'observateur de sang – froid qui pèse tout. Mais, d'abord, il n'est fait que pour de très- petits peuples, car la formation et la durée de l'esprit d'association sont difficiles....

Note 192 – La démocratie pure n'existe pas plus que le despotisme absolu.

Note 193 – La constitution de 1795, tout comme ses aînées, est faite pour l'*homme*. Or, il n'y a point d'*homme* dans le monde. J'ai vu, dans ma vie, des Français, des Italiens, des Russes, etc., je sais même, grâce à Montesquieu, *qu'on peut être Persan*: mais quant à l'*homme*, je déclare ne l'avoir rencontrer de ma vie; s'il existe, c'est bien à mon insu. [...]Mais une constitution qui est faite pour toutes les nations, n'est faite pour aucune: c'est une pure abstraction, une oeuvre scholastique faite pour exercer l'esprit d'après une hypothèse idéale, et qu'il faut adresser à l'*homme* dans les espaces imaginaires où il habite.

Note 202 – Les législateurs proprement dit sont des hommes extraordinaires qui n'appartiennent peut-être qu'au monde antique et à la jeunesse des nations.

Note 212 – Rousseau a fait un chapitre du *législateur* où toutes les idées sont confondues de la manière la plus intolérable. D'abord ce mot de législateur peut avoir deux significations différentes: l'usage permet de donner ce nom à l'homme extraordinaire qui promulgue des lois constitutives, et à l'homme beaucoup moins admirable qui publie des lois civiles. Il paraît que Rousseau entend le mot dans le premier sens, puisqu'il parle de celui "qui ose entreprendre d'instituer un peuple et qui constitue la République." Mais, bientôt après, il dit que "*le législateur est à tous égards un homme extraordinaire, DANS L'ETAT*". Ici il y a déjà un Etat; le peuple est donc constitué: il ne s'agit donc plus d'*instituer* un peuple mais, tout au plus, de le réformer.

Note 213 – ...une entreprise au dessus de la force humaine, et, pour l'exécuter, une autorité qui n'est rien. Au contraire l'instituteur d'une nation a, pour l'exécution de son entreprise, une autorité qui est tout.

Note 214 – ... il lui communique ce tempérament moral, ce caractère, cette âme générale qui doit, à travers les siècles et un nombre infini de générations, subsister d'une manière sensible et distinguer un peuple de tous les autres...

Note 215 – L'instituteur d'un peuple est précisément cette main habile.

Note 216 – Ces législateurs même avec leur puissance extraordinaire ne font jamais que rassembler des éléments préexistants dans les coutumes et le caractère des peuples...

Note 217 – Pour les rendre propres à ces oeuvres extraordinaires, Dieu les investit d'une puissance extraordinaire...

Note 218 – De savoir ensuite pourquoi et comment un homme *engendre*, au pied de la lettre, une nation...

Note 219 – L'*instituteur d'un peuple* est un homme dont la qualité distinctive est un certain bon sens *praticien* brouillé à mort avec les subtilités métaphysiques.

Note 220 - ...tout germe est nécessairement *un*....

Note 221 – ...c'est toujours d'un seul homme que chaque peuple tient son trait dominant et son caractère distinctif.

Note 222 – ...doué d'une pénétration extraordinaire...

Note 223 – ...il devine ces forces et ces qualités occultes qui forment le caractère de sa nation, les moyens de les féconder, de les mettre en action et d'en tirer le plus grand parti possible.

Note 224 – [ils sont] souvent inconnue de leurs contemporains, et peut-être d'eux mêmes.

Note 225 – ...mais ce rassemblement, cette formation rapide, qui tiennent de la création...

Note 226 – La politique et la religion se fondent ensemble...

Note 227 – a) ...sa manière tient de l'inspiration...

b) ...ils agissent par instinct et par impulsion, plus que par raisonnement...

Note 228 – ...qu'ils n'ont d'autre instrument pour agir qu'une certaine force morale qui plie les volontés comme le vent courbe une moisson.

Note 229 – ...et si quelquefois il prend la plume, ce n'est pas pour dissenter, c'est pour ordonner.

Note 231 – Presque tous les grands législateurs ont été rois et les nations même nées pour la république ont été constituées par des rois...

Note 232 – Le plus fameux législateur de l'univers, Moïse, fut plus qu'un roi...

Chapter 3

Note 46 – a) Pour moi j'en ai été ravi, je ne saurais vous exprimer, combine il a renforcé mes idées anti – démocrates et anti – gallicanes.

b) M. Burke a dit, avec une profondeur qu'il est impossible d'admirer assez que l'art est la nature de l'homme...

c) ...ne seraient-ils point en droit de considérer l'acte du roi comme une abdication volontaire, suivant l'hypothèse que M Burke a si ingénieusement développé à l'égard de Jacques II

d) Sans doute, ce grand patriote, ce grand écrivain, ce prophète célèbre qui devina la Révolution française...

Note 51 – On s'étonnera peut-être qu'une nation constituée n'ait point de système judiciaire; mais il faut bien distinguer dans la République française l'*établissement* de l'*organisation*. L'*établissement* est l'oeuvre de la *Constitution*, et l'*organisation* est celui de *Constituants*.

Note 60 – ...gardons-nous des extrêmes, et surtout des systèmes aériens fondés uniquement sur ce qu'on appelle *la raison*, et qui n'est cependant que le *raisonnement*.

Note 61 – ...je ne conseillerais jamais à une nation, de changer ses institutions antiques, qui sont toujours fondées sur de profondes raisons...

Note 66 – Mais une constitution qui est faite pour toutes les nations, n'est faite pour aucune: c'est une pure abstraction, une oeuvre scolastique faite pour exercer l'esprit d'après une hypothèse idéale, et qu'il faut adresser à l'*homme* dans les espaces imaginaires où il habite.

Note 67 – ...il ne fallait jamais demander quel est le meilleur gouvernement en général, puisqu' il n'y en a pas qui convienne à tous les peuples. Chaque nation a le sien, comme elle a sa langue et son caractère, et ce gouvernement est le meilleur pour elle.

Note 68 – a) Etant données *la population, les moeurs, la religion, la situation géographique, les relations politiques, les richesses, les bonnes et les mauvaises qualités d'une certaine nation, trouver les lois qui lui conviennent*.

b) La peuple qui est la meilleure constituée est ce qui est la meilleure gouvernée.

Note 69 – ...*or, un abus formel, un vice peut-il être constitutionnel?* Oui, sans doute, il peut l'être; car toute constitution politique a des défauts essentiels qui tiennent à sa nature et qu'il est impossible d'en séparer ...

Note 70 – “La constitution de 1795, tout comme ses aînées, est faite pour l'*homme*. Or il n'y a point d'*homme* dans le monde.

Note 71 – a) Dira-t-on que le gouvernement fait les mœurs? Je le nie expressément. Ce sont les mœurs, au contraire, qui font les gouvernements... la première impulsion, le principe générateur part toujours des mœurs et du caractère national.

b) Une des grandes erreurs de ce siècle est de croire que la constitution politique des peuples est une oeuvre purement humaine; qu'on peut faire une constitution comme un horloger fait un montre.

Note 72 – a) Il n'y a jamais eu, il n'y aura jamais, il ne peut y avoir de nation constituée *a priori*. Le raisonnement et l'expérience se réunissent pour établir cette grande vérité. Quel oeil est capable d'embrasser d'un seul coup l'ensemble des circonstances qui doivent rendre une nation propre à telle ou telle constitution?

b) La plus grande folie de ce siècle est celle des constitutions. Les hommes se sont mis en tête qu'ils peuvent faire une constitution comme on fait une machine. Les Français pour leur compte en ont fait sept ou huit en moins de vingt ans....mais tout a fini par un despotisme de fer, à la place de l'admirable et douce monarchie dont ils jouissaient.

Note 73 – Ce que Payne et tant d'autres regardent comme un défaut est donc une loi de la Nature. La constitution *naturelle* des nations est toujours antérieure à la constitution *écrite* et peut s'en passer...

Note 74 – a) ...qu'une constitution, c'est-à-dire, l'ensemble des lois fondamentales qui conviennent à une nation, et qui doivent lui donner telle ou telle forme de gouvernement...

b) Si un homme de bon foi...demande ce que c'était que l'ancienne constitution française, on peut lui répondre hardiment: "C'est ce que vous sentiez, lorsque vous étiez en France; c'est ce mélange de liberté et d'autorité, des lois et d'opinions..

Note 75 – Une constitution dans le sens philosophique n'est donc que le mode d'existence politique attribué à chaque nation par une puissance au dessus d'elle; et, dans un sens inférieur, une constitution n'est que l'ensemble des lois plus ou moins nombreuses qui déclarent ce mode d'existence.

Note 76 – a) ...un code politique est un tout, un système générale de parties correspondantes...

b) De là vient qu'une constitution libre n'est assurée que lorsque les différentes pièces de l'édifice politique sont nées ensemble et...à côté l'une de l'autre.

Note 77 – L'histoire nous montre constamment les hommes réunis en sociétés plus ou moins nombreuses, régies par différentes souverainetés.

Note 78 – a) Alors, il n'y avait que des familles, et ces familles ainsi disséminées n'étaient encore, *individuellement* ou par leur réunion future, que des embryons de peuples.

b) Le premier homme fut roi de ses enfants; chaque famille isolée fut gouvernée de la même manière.

Note 79 – Il y a eu un *peuple*, une civilisation quelconque et un souverain aussitôt que les hommes se sont touchés.

Note 80 – Le mot de *peuple* est un terme relatif qui n'a point de sens séparé de l'idée de la souveraineté...

Note 81 - ...une aggregation autour d'un centre commun, et sans la souveraineté il ne peut y avoir d'ensemble ni d'unité politique.

Note 83 – Les nations ont une *âme* générale et une véritable unité morale qui les constitue ce qu'elles sont.

Note 84 – a) Cette unité est surtout annoncée par la langue.

b) ...les formes de ces gouvernements sont prescrites, impérieusement par la puissance qui a donné à chaque nation telle position morale, physique, géographique, commercial etc...

Note 85 – De ces différents caractères des nations naissent les différentes modifications des gouvernements. On peut dire que chacun a son caractère, car ceux – mêmes qui appartiennent à la même classe et qui portent le même nom présentent des nuances différentes à l'oeil de l'observateur.

Note 86 – ...comme les nations *naissent*, au pied de la lettre, les gouvernements naissent aussi avec elles. Quand on dit qu'un peuple s'est donné un gouvernement, c'est tout comme si l'on disait qu'il s'est donné un caractère et une couleur.

Note 87 – La raison humaine réduite à ses forces individuelles est parfaitement nulle, *non - seulement pour la creation, mais encore pour la conservation de toute association religieuse ou politique.*

Note 89 – Il n'y a de si important pour lui que les *préjugés*... des opinions quelconques adoptées avant tout examen.

Note 90 – a)...qui sont les plus anciennes et les plus saintes des lois.

b)...que tous les gouvernements sont le résultat de la convention tacite des hommes réunis, et l'expression réelle de leur assentiment, fondé sur leur caractère, et sur des circonstances sans nombre qu'il est impossible de connaître toutes...

Note 91 – ...l'homme a besoin de préjugés, de règles pratiques, d'idées sensibles, matérielles, palpables. Vous ne le menerez point avec des syllogismes...

Note 92 – La raison humaine réduite à ses forces individuelles est parfaitement nulle, *non- seulement pour la création, mais encore pour la conservation de toute association religieuse ou politique*, parce qu'elle ne produit que des disputes, et que l'homme pour se conduire n'a pas besoin de problèmes, mais de croyances. Son berceau doit être environné de dogmes; et, lorsque sa raison se réveille, il faut qu'il trouve toutes ses opinions faites, du moins sur tout ce qui a rapport à sa conduite. Il n'y a rien de si important pour lui que les préjugés.

Note 93 – ...assez forte pour réprimer les aberrations de la raison individuelle qui est, de sa nature, l'ennemi mortelle de toute association quelconque, parce- ce qu'elle ne produit que des opinions divergents.

Note 94 – Tous les peuples connus ont été heureux et puissants à mesure qu'ils ont obéi plus fidèlement à cette raison nationale qui n'est autre chose que

l'anéantissement des dogmes individuels et le règne absolu et général des dogmes nationaux, c'est-à-dire des préjugés utiles.

Note 95 – a) Dans toutes les créations politiques ou religieuses, quels que soient leur objet et leur importance, c'est une règle générale qu'il n'y a jamais de proportion entre l'effet et la cause.

b)...car il n'y a pas de véritable patriotisme sans religion...

Note 96 – Le gouvernement est une véritable religion: il a ses dogmes, ses mystères, ses ministres; l'anéantir ou le soumettre à la discussion de chaque individu, c'est la même chose; il ne vit que par la raison nationale, c'est-à-dire par la foi politique, qui est un *symbole*.

Note 97 – Comme dans la religion, il y a un point où la foi doit être aveugle, il a de même dans la politique, un point où l'obéissance doit l'être

Note 99 – La foi et le patriotisme sont les deux grands thaumaturges de ce monde. L'un et l'autre sont divins...ils ne savent que deux mots: *soumission* et *croyance*..

Note 101 – Or, si l'on recherche quelles sont les grandes et solides bases de toutes les institutions possibles du premier ou du second ordre, on trouve toujours la religion et le patriotisme.

Note 102 – La constitution est l'ouvrage de circonstance, et le nombre de ces circonstances est infini.

Note 103 – ...mais vous remarquez que les véritables racines du gouvernement ont toujours existé et qu'il est impossible d'en montrer l'origine, par la raison toute simple qu'elles sont aussi ancienne que les nations, et que, n'étant point le résultat d'un accord, il ne peut rester de trace d'une convention qui n'exista jamais.

Note 104 – Toute institution importante et réellement constitutionnelle n'établit jamais rien de nouveau...

Note 105 – ...ces droits sont les *bonnes coutumes*, bonnes parce qu'elles ne sont pas écrites, et parce qu'on ne peut en assigner ni le commencement, ni l'auteur.

Note 111 – Toute loi constitutionnelle n'est qu'une déclaration d'un droit antérieur ou d'un *dogme politique*.

Note 115 – Lorsque on donne à un enfant un de ses jouets qui exécutent des mouvements, inexplicables pour lui, un moyen d'un mécanisme intérieur, après s'en être amusé un moment, il le brise, *pour voir dedans*. C'est ainsi que les Français ont traité le gouvernement. *Ils ont voulu voir dedans*: ils ont mis à découvert les principes politiques, ils ont ouverts l'oeil de la foule sur des objets qu'elle ne s'était jamais avisée d'examiner, sans réfléchir qu'il y a de choses qu'on détruit en les montrant...

Note 117 – Comme il y a toujours dans la musique quelque chose qu'il n'est pas possible de noter, il y a de même dans tous les gouvernements quelque chose qu'il n'est pas possible d'écrire.

Note 119 – Les rédacteurs des lois romaines ont jété, sans prétention, dans le premier chapitre de leur collection, un fragment de jurisprudence grecque bien remarquable. *Parmi les lois qui nous gouvernent*, dit ce passage, *les unes sont écrites et les autres ne le sont pas*. Rien de plus simple et rien de plus profond.

Note 120 – Connait – on quelque loi turque qui permette expressément au souverain d'envoyer immédiatement un homme à la mort, sans la décision intermédiaire d'un tribunal? Connait – on quelque loi *écrite*, même religieuse, qui le défende aux souverains de l'Europe chrétienne?

Note 121 – ...mais ce serait une grande erreur: de pareilles lois, toujours compromises par des cas inattendus et des exceptions forcées, n'auraient pas duré six mois, ou elles auraient renversé la république.

Note 122 – La constitution est l'ouvrage des circonstances, et le nombre de ces circonstances est infini. Les lois romaines, les lois ecclésiastiques, les lois féodales; les coutumes saxonnes, normandes et danoises; les privilèges, les préjugés et les prétentions de tous les ordres; les guerres, les révoltes, les révolutions, la conquête, les croisades; toutes les vertus, tous les vices, toutes les connaissances, toutes les erreurs, toutes les passions; tous ces éléments, enfin, agissant ensemble et formant par leur mélange et leur action réciproque des

combinaisons multipliées par myriades de millions, ont produit enfin, après plusieurs siècles, l'unité la plus compliquée et le plus bel équilibre de forces politiques qu'on ait jamais vu dans le monde.

Note 123 – Qu'on l'examine avec attention: on verra *qu'elle ne va qu'en n'allant pas* (si ce jeu de mots est permis). Elle ne se soutient que par les exceptions.

Note 124 – L'*habeas corpus* par exemple a été si souvent et si longtemps suspendu, qu'on a pu douter si l'exception n'était pas devenu règle.

Note 125 – Supposons un instant que les auteurs de ce fameux acte eussent eu la prétention de fixer le cas où il pourrait être suspendu, ils l'auraient anéanti par le fait.

Note 126 – Si l'on s'avisait de faire une loi en Angleterre pour donner une existence constitutionnelle au conseil privé, et pour régler ensuite et circonscrire rigoureusement ses privilèges et ses attributions, avec les précautions nécessaires pour limiter son influence et l'empêcher d'en abuser, on renverserait l'Etat.

Note 127 – ...il faudra toujours laisser quelque chose à l'arbitraire; il faudra toujours qu'il ait, indépendamment de la force légale, une force administrative qui soit affranchie des formes et qui puisse agir brusquement dans une foule d'occasions.

Note 129 – Or ce qui est vraiment constitutionnel dans tout gouvernement, ce n'est point ce qui est écrit sur le papier....

Note 130 – les lois fondamentales sont jamais écrites et cependant elles sont le fondement des lois écrites de manière que lorsqu'on touche aux premiers, l'état croule comme un édifice dont on aurait miné les fondements.

Note 131 – ...qu'aucune loi véritablement fondamentale et constitutionnelle ne peut être écrite, et que si elle est écrite, elle est nulle. [...]Je me défie donc de toute loi constitutionnelle *écrite*.

Note 132 – ...ce caractère de sainteté et d'immutabilité qui distingue les lois véritablement constitutionnelles.

Note 136 – On a cru souvent faire une excellente plaisanterie aux Français en leur demandant *dans quel livre était écrite la loi salique?* mais Jérôme Bignon répondait fort à propos....*qu'elle était écrite aux coeurs des Français*.

Note 139 – ...plus les nations ont de sagesse,...plus leur constitution politique est parfaite, et moins elles ont des lois constitutionnelles écrites, car ces lois ne sont que des étais, et un édifice n'a besoin d'étais que lorsqu'il a perdu son aplomb ou qu'il est violemment ébranlé par une force extérieure.

Note 141 – Plus on écrit, et plus l'institution est faible.

Note 143 – ...et comme mille événements peuvent changer les rapports d'un peuple...

Note 145 – ...que nulle institution grande et réelle ne saurait être fondée sur une loi écrite, puisque les hommes mêmes, instruments successifs de l'établissement, ignorent ce qu'il doit devenir.

Note 148 – La parole [...] est à l'écriture ce qu'un homme est à son portrait. Les productions de la peinture se présentent à nos yeux comme vivantes; mais *si on les interroge, elles gardent le silence avec dignité*. Il en est de même de l'écriture, *qui ne sait ce qu'il faut dire à un homme, ni ce qu'il faut cacher à un autre*. Si l'on vient à l'attaquer ou à l'insulter sans raison, elle ne peut se défendre; car *son père n'est jamais là pour la soutenir*. De manière que celui qui s' imagine pouvoir établir par l'écriture seule une doctrine claire et durable, EST UN GRAND SOT.

Note 151 – La plus grande folie, peut-être, du siècle des folies, fut de croire que des lois fondamentales pouvaient être écrites *a priori*; tandis qu'elles sont évidemment l'ouvrage d'une force supérieure à l'homme; et que l'écriture même, très-postérieure, est pour elle le plus grand signe de nullité.

Note 160 – ...toutes ces Constitutions, considérées en elles – mêmes et dans leur but avoué, ne sont que de vains essais, car c'est un axiome capital...que toute nation a le gouvernement qu'elle mérite: ainsi tout ce qu'on fait pour une nation,...ne signifie rien, et n'a point d'effet ou ne produit que du mal. Mais si

l'on considère ces Constitutions comme des mesures politiques propres à calmer, à diriger, à satisfaire, à distraire, à tromper même (car souvent il le faut), l'imagination des peuples, ce sont des pièces qui peuvent mériter toute sorte de louanges.

Note 161 – a) Ce qu'il y a de sûr, c'est que la constitution civile des peuples n'est jamais le résultat d'une délibération.

b) Aucune constitution ne résulte d'une délibération...

Note 162 – Les défauts et les inconvénients d'un code fait par une assemblée deviendront incalculables si la vanité des législateurs excite chaque individu à prendre une part active dans la confection des lois...

Note 163 – Une assemblée quelconque d'hommes ne peut constituer une nation...

Note 165 – Les promesses, les engagements, les serments ne sont que des paroles: il est aussi aisé de rompre ce lien frivole, que de le former..

Note 167 – En effet, supposons qu'une loi de cette importance n'existe que parce qu'elle est écrite, il est certain que l'autorité quelconque qui l'aura écrite, aura le droit de l'effacer; la loi n'aura donc pas ce caractère de sainteté et d'immutabilité qui distingue les lois véritablement constitutionnelles.

Note 169 – a) L'accord du peuple est impossible; .et quand il en serait autrement, un accord n'est point une loi, et n'oblige personne, à moins qu'il n'y ait une autorité supérieure qui le garantisse.

b) Plus on examinera cette question, et plus on se convaincra que la souveraineté, même partielle, ne peut être jugée, déplacée ni punie, en vertu d'une loi: car nul pouvoir ne pouvant posséder une force coercitive sur lui-même, toute puissance *amenable* devant un autre pouvoir est nécessairement sujette de cette pouvoir, puis qu'il fait des lois qui la dominant.

Note 170 – ...laquelle suppose nécessairement et manifestement une volonté supérieure qui se fait obéir.

Note 171 – Dans le système de Hobbes...la force des lois civiles ne porte que sur une convention; mais s'il n'y a point de loi naturelle qui ordonne d'exécuter les lois qu'on a faites, de quoi servent-elles? Les promesses, les engagements, les serments ne sont que des paroles: il est aussi aisé de rompre ce lien frivole, que de le former. Sans le dogme d'un Dieu législateur, toute obligation morale est chimérique. Force d'un côté, impuissance de l'autre, voilà tout le lien des sociétés humaines.

Note 172 – Il faut toujours que l'origine de la souveraineté se montre hors de la sphère du pouvoir humain...

Note 187 – L’auteur de toutes choses n’a que deux manières de donner un Gouvernement à un peuple: presque toujours il s’en reserve plus immédiatement la formation en le faisant, pour ainsi dire, germer insensiblement comme une plante, par le concours d’une l’infinité de circonstances que nous nommons fortuites; mais lorsqu’il veut jeter tout a la fois les fondements d’un édifice politique et montrer à l’univers une création de ce genre, c’est à des hommes rares, c’est à de [sic] véritables élus, qu’il confie ces pouvoirs...

Note 188 – L’erreur de ceux qui ont prétendu que la France n’avait point de constitution, tenait à la grande erreur sur le pouvoir humain, la délibération antérieure et les lois écrites.

Note 189 – Si un homme de bonne foi, n’ayant pour lui que le bon sens et la droiture, demande ce que c’était que l’ancienne constitution française, on peut lui répondre hardiment: “C’est ce que vous sentiez, lorsque vous étiez en France; c’est ce mélange de liberté et d’autorité, de lois et d’opinions, qui faisait croire à l’étranger, sujet d’une monarchie, voyageant en France, qu’il vivait sous un autre gouvernement que le sien.”

Note 191 – Il [le roi] a le droit de rendre justice, et de la faire rendre par ses officiers; de faire grâce, d’accorder des privilèges et des récompenses; de disposer des offices, de conférer la noblesse; de convoquer, de dissoudre les assemblées de la nation, quand sa sagesse le lui indique; de faire la paix et la guerre, et de convoquer les armées.

Note 192 – ...voyons ce que la constitution française a mis dans l'autre bassin de la balance.

Note 193 – Le roi ne règne que par la loi, et *n'a puissance de faire toute chose à son appétit*.

Note 194 – Il est des lois que les rois eux – mêmes se sont avoué...*dans l'heureuse impuissance de violer*; ce sont *les lois du royaume* à la différence des lois de circonstances ou non constitutionnelles, appelées *lois du roi*.

Note 195 – ...la constitution n'est que le recueil des lois fondamentales; et le roi ne peut toucher à ces lois.

Note 197 – ...car nul pouvoir ne pouvant posséder une force coercitive sur lui-même, toute puissance amenable devant un autre pouvoir est nécessairement sujette de ce pouvoir, puisqu'il fait des lois qui la dominent.

Note 198 – a) ...l'art de réformer les gouvernements ne consiste pas de tout à les renverser pour les refaire sur des théories idéales, mais à les rapprocher de ces principes internes et cachés, découverts dans les temps anciens par le bon sens antique...

b) - ...(3) Les droits des peuples proprement dits, partent presque toujours de la concession des souverains, et alors il peut en constater historiquement: mais les droits du souverain et de l'aristocratie n'ont ni date ni auteurs connus. (4) Ces

concessions mêmes ont toujours été précédées par un état de choses qui les a nécessitées et qui ne dépendait pas du souverain. (5) Quoique les lois écrites ne soient jamais que des déclarations de droits intérieurs, il s'en faut de beaucoup cependant que tous ces droits puissent être écrits.

Chapter 4

Note 8 – a) ...puisque l'Eglise, comme tout autre corps moral, ne pouvant exister sans unité, les promesses ne peuvent avoir été faites qu'à l'unité...

b) Oter la *reine* d'un essaim, vous aurez des abeilles tant qu'il vous plaira, mais de *ruche* jamais.

Note 30 – Le principe de la Monarchie, comme de toute espèce de commandement, c'est qu'il n'y a qu'une volonté.

Note 32 – Cette suprématie indispensable ne peut être exercée que par un organe unique: la diviser, c'est de la détruire.

Note 33 – Car il ne s'agit pas de monarchie dans cette question, mais la souveraineté; ce qui est tout différent.

Note 35 – a) Mais le fait est que sans *puissance* dans l'Etat, sans corps, sans société, sans institutions fortes, bien organisées... le Souverain ne peut pas gouverner puisque il n'a qu'une tête et deux bras.

b) Les Souverains légitimes ont sanctionné publiquement la maxime des divisions, morcellements et adjudications de Souverainetés pour de simples raisons de convenance.

Note 36 – Partout où les pouvoirs sont divisés, les combats de ces différents pouvoirs peuvent être considérés comme les délibérations d'un souverain unique, dont la raison balance le *pour* et le *contre*. Mais dès que le parti est pris, l'effet est le même de part et d'autre et la volonté de Souverain quelconque est toujours invincible.

Note 37 – En considérant les gouvernements où les pouvoirs sont divisés, il est plus aisé de croire que le souverain peut être jugé, à cause de l'action de chacun de ces pouvoirs qui agit sur l'autre et qui, forçant son action dans certaines occasions extraordinaires, opère des insurrections du second genre qui ont beaucoup moins d'inconvénients que les insurrections proprement dites, ou populaires. Mais il faut se garder d'un paralogisme où l'on tombe aisément, si l'on ne considère que l'un des pouvoirs. Il faut les envisager dans leur réunion et se demander si la volonté souveraine qui résulte de leurs volontés réunies peut être arrêtée, contrariée ou punie?

Note 39 – Je ne comprendrai jamais ces mots: le roi ne peut pas.

Note 40 – ...toujours il faudra qu'il y en ait un auquel on ne puisse dire: *Vous avez erré.*

Note 41 – L'autorité souveraine ne peut pas plus se modifier que s'aliéner: *la limiter, c'est la déruire.* Il est absurde et contradictoire que le souverain reconnaisse un supérieur...

Note 42– Le souverain ne peut donc être jugé: s'il pouvait l'être, la puissance qui aurait ce droit serait souveraine, et il y aurait deux souverains, ce qui implique contradiction.

Note 45 – Le souverain qui ne vieillit jamais n'est, par conséquent, jamais sujette à perdre la mémoire.

Note 47 – *C'est qu'une souveraineté périodique ou intermittente est une contradiction dans les termes;* car la souveraineté doit toujours vivre, toujours veiller, toujours agir. *Il n'y a pour elle aucune différence entre le sommeil et la mort.*

Note 49 – Je ne conteste nullement sur ce point; je dis seulement que le corps représentatif intermittent, s'il est surtout accidentel et non périodique, est par la nature même des choses, partout et toujours inhabile à gouverner; et que pendant ses sessions même, il n' a d'existence et de légitimité que par son chef.

Note 52– La souveraineté a des formes différentes sans doute. Elle ne parle pas à Constantinople comme à Londres; mais quand elle a parlé de part et d'autre à sa manière, le *bill* est sans appel comme le *Fetfa*.

Note 74 – L'accord du peuple est impossible; et, quand il en serait autrement, un accord n'est point une loi, et n'oblige personne, à moins qu'il n'ait une autorité supérieure qui le garantisse.

Note 75 – Dans l'ordre judiciaire, qui n'est qu'une pièce du gouvernement, ne voit-on pas qu'il faut absolument en venir à une puissance qui juge et n'est pas jugée; précisément parce qu'elle prononce au nom de la puissance suprême...

Note 78 – [Maistre's own index to notebook] Saint Thomas – cite sur les voies de la Providence dans la punition des crimes; - sur les démonstrations; - sur l'optimisme; - sur l'enseignement de la vérité; sur la nécessité d'une Révélation; sur la Foi; - sur la science divine.

Note 81 – a) La politique va nous fournir de nouvelles analogies.

b) L'Eglise ne demande rien de plus que les autres souverainetés....

c) Les Conseils sont les parlements religieux comme les parlements sont les conseils politiques.

d) Mais la révolte n'est que le schisme politique, comme le schisme n'est qu'une révolte religieuse...

e) N'ayons par exemple aucune répugnance à croire et à dire qu'on prie Dieux, comme on prie un souverain...

f) Ainsi les conciles oecuméniques ne sont et ne peuvent être que le *Parlement* ou les *Etats-généraux du christianisme rassemblés par l'autorité et sous la présidence du souverain*.

(g) Quelle différence y a t'il entre l'*Eglise de Dieu, uniquement conduite par sa parole, et la grande république une et indivisible, uniquement gouvernée par les lois et par les députés du peuple souverain*? Aucune.

h) Si quelqu'un s'avisait de proposer *un royaume de France sans roi de France...* on croirait justement qu'il a perdu l'esprit; ce serait cependant rigoureusement la même idée que celle *d'une Eglise universelle sans chef*.

i) Il y a tant d'analogie, tant de fraternité, tant de dépendance entre le pouvoir pontifical et celui des rois, que jamais on n'a ébranlé le premier sans toucher au second...

j) Dans le XVI^e siècle, les révoltés attribuèrent la souveraineté à l'*église...* Le XVIII^e ne fit que transporter ces maximes dans la politique; c'est le même système, la même théorie, jusque dans ses dernières conséquences.

Note 82 – Tout souverain est un être ordonnateur et régulateur; il est né pour l'ordre et il ne comprend que l'ordre.

Note 83 – ..mais heureux l'homme qui pourra lui faire comprendre combien le talent du souverain, qui emploie les hommes et les met à leur place, est suffisant par lui même et indépendant de toute autre qualité.

Note 84 – Aimez le souverain, comme vous devez aimer l'*ordre*: avec toutes les forces de votre intelligence.

Note 96 – L'un et l'autre [l'infalibilité dans l'ordre spirituel et la souveraineté dans l'ordre temporel] exprime cette haute puissance qui les domine toutes, dans toutes les autres dérivent, qui gouverne et n'est pas gouvernée, qui juge et n'est pas jugée.

Note 97 – a) La souveraineté est avant tout, et tout doit lui céder.

b) ...il faut que les grands principes tombent sur le peuple de haut en bas, comme la pluie.

c) On trouvera d'abord que tout souverain est despotique, et qu'il n'y a que deux partis à prendre à son égard: l'obéissance ou l'insurrection.

d) ..la Souveraineté doit être estimée, non par son caractère essentiel, mais par sa puissance physique, contre la maxime antique, universelle, invariable qui demandait toujours à chaque Prince: *Qui est vous?* et non: *Que pouvez vous?*

Note 98 – Tout le monde sait qu’il ya des révolutions heureuses et des usurpations très criminelles dans leurs principes, auxquelles cependant il plaît à la providence d’apposer le sceau de la légitimité par une longue possession.

Note 101 – Je crois avoir lu quelque part *qu’il y a bien peu de souverainetés en état de justifier la légitimité de leur origine.*

Note 102 – ...le souverain agit, l’obéissance est générale, tranquille et constante; l’opposition, s’il y’en a, est particulière, turbulente et passagère; enfin, la souveraineté s’assied, et sur son trône est écrit: *je possède, parce que je possède...*

Note 103 – Jamais souverain n’est obligé de rendre raison à son sujet, ou bien tout société est dissoute.

Note 104 – De quelque manière qu’on définisse et qu’on place la souveraineté, toujours elle est une, inviolable et absolue.

Note 105 – Le roi est souverain ... Sa personne est inviolable; nul n’a le droit de le déposer ni de le juger.

Note 106 – *Donc les souverains sont inviolables et ne peuvent être jugés.*

Note 107 – ...il serait aisé de vous prouver que tout ce qu'ils ont fait contre les *Souverains* tendait à rendre la *Souveraineté* plus inviolable pour les peuples.

Note 108 – ...l'autorité royale ne vient point des hommes, que Dieu en est l'auteur, que le Souverain est inviolable, que personne ne peut le juger pour aucune raison, et que tout homme qui y touche est infâme...

Note 109 – Le grand problème ne serait donc point d'empêcher le souverain *de vouloir invinciblement*, ce qui implique contradiction; mais de l'empêcher *de vouloir injustement*.

Note 110 – a) *Comment on peut restreindre le pouvoir souverain sans le détruire.*

b) Que si le roi trouvait que plusieurs choses auraient été faites *parlémentairement*, c'est-à-dire suivant les véritables principes de la constitution, il pourrait donner la sanction royale à ces différentes dispositions, qui viendraient des lois obligatoires, même pour le roi, qui se trouve, en cela surtout, *image de Dieu sur la terre*; car, suivant la belle pensée de Seneque, *Dieu obéit à des lois, mais c'est lui qui les a faites*.

Note 117 – En terminant cette discussion, je déclare protester également contre toute espèce d'exagération. Que la puissance pontificale soit retenue dans ses justes bornes...

Note 118 – *Une institution* quelconque n'est qu'un édifice politique.

Note 125 – ...le Souverain agit, l'obéissance est générale, tranquille et constante...

Note 126 – Le respect pour l'autorité, par exemple, se trouve partout puisqu'il est nécessaire, obligatoire, fondamental et que sans lui, le monde politique ne pourrait pas tourner...

Note 128 – C'est qu'elleslles [i.e. les races royales] s'avancent comme d'elles mêmes, sans violence d'une part, et sans délibération marquée de l'autre: une espèce de tranquillité magnifique qui n'est pas aisé d'exprimer.

Note 132 – S'il était permit d'établir des degrés d'importance parmi les choses d'institution divine, je placerais la hiérarchie avant le dogme...

Note 133 – Dans un sens Monsieur le Comte, on peut dire que tous les hommes sont les mêmes; mais, dans un sens tout aussi vrai, on peut dire aussi qu'ils sont tous différents.

Note 134 – Les souverains ont plus d'affaires avec l'avenir qu'avec le présent.

Note 136 – Les formes de la souveraineté d'ailleurs, ne sont point les mêmes partout: elles sont fixées par des lois fondamentales, dont les véritables bases ne

sont jamais écrites...Car il ne s'agit pas de monarchie dans cette question, mais de souveraineté; ce qui est tout différent.

Note 137 – La souveraineté politique n'étant de sa nature ni universelle, ni indivisible, ni perpétuelle...

Note 138 – Personne ne pourra raisonnablement douter que les caractères particuliers et distinctifs de ces diverses souverainetés n'eussent des causes très profondes quoique souvent invisibles. Les peuples tiennent à ces formes nationales au point qu'ils se trouvent malheureux et mêmes insultés, lorsque'ils voient détruites ou contrariées.

Note 140 – a) ...la masse du peuple n'entre pour rien dans toutes les créations politiques. Ils ne respectent même le gouvernement que parce qu'il n'est pas son ouvrage.

b) Qu'un bon conseiller doit donc toujours parler aux peuples des droits des souverains et aux souverains de la force des peuples; en d'autres termes, qu'il faut prêcher sans cesse aux peuples les bienfaits de l'autorité et aux rois , les bienfaits de la liberté.

Note 141 – Or ces sortes d'opinions sont le plus grand besoin de l'homme, les véritables elements de son bonheur, et le Palladium des empires. Sans elles, il ne peut y avoir ni culte, ni morale, ni gouvernement.

Note 142 – ...vous ne pouvez asseoir un grand édifice sur des fondements étroits, ni un édifice durable sur une base mouvante ou passagère. Si l'on veut donc, dans l'ordre politique, bâtir en grand et bâtir pour les siècles, il faut s'appuyer sur une opinion, sur une croyance *large* et profonde: car si l'opinion ne se domine pas la majorité des esprits et si elle n'est pas profondément enracinée, elle ne fournira qu'une base *étroite* et passagère.

Note 143 – Il faut que il y ait une religion de l'Etat comme une politique Ede l'état; ou plutôt il faut que les dogmes religieux et politiques mêlés et confondus forment ensemble une *raison universelle* ou *nationale*...

Note 144 – Les grandes institutions politiques sont parfaites et durables à mesure que l'union de la politique et de la religion s'y trouve plus parfaite.

Note 145 – Le gouvernement est une véritable religion...

Note 146 – Numa avait donné à la politique romaine ce caractère religieux qui fut la sève, l'âme, la vie de la République, et qui périt avec elle. C'est un fait constant...que le serment fut le véritable ciment de la constitution romaine: c'est par le serment que le plus turbulent plébéien, baissant la tête devant le conseil qui demandait son nom, portait sous les drapeaux la docilité d'un enfant.

Note 147 – Or si l'on recherche quelles sont les grandes et solides bases de toutes les institutions possibles de premier ou de second ordre, on trouve toujours la religion et le patriotisme.

Note 156 – L'immense posterité de Sem et de Cham, a pris une autre route.

Depuis les temps primitifs, jusqu'à ceux que nous voyons, toujours elle a dit à un homme: *Faites tout ce que vous voudrez, et lorsque nous serons làs, nous vous égorgerons.* Du reste, elle n'a jamais pu ni voulu comprendre que c'est qu'une république; elle n'entend rien à la balance des pouvoirs, à tous ces privilèges, à toutes ces lois fondamentales dont nous sommes si fiers.

Note 157 – *Les rois abdiquent le pouvoir de juger par eux-mêmes, et les peuples en retour déclarent les rois infaillibles et inviolables.*

Note 158 – Cet équilibre miraculeux est tel, qu'il donne au prince toute la puissance qui ne suppose pas la tyrannie proprement dite, et au peuple toute la liberté qui n'exclut pas l'obéissance indispensable.

Note 159 – *...qu'est ce qui arrêtera le Pape?* Je leur répondrai: TOUT; les canons, les lois, les coutumes des nations, les souverainetés, les grands tribunaux, les assemblées nationales, la prescription, les représentations, les négociations, le devoir, la crainte, la prudence, et par dessus tout, l'opinion, *reine du monde.*

Note 160 – Dans les actes les plus sévères de l'ancien gouvernement, vous avez toujours aperçu une modération marquée.[...]Le Prince le plus absolu connaît une multitude de freins; il est retenu par son caractère particulier, par la religion, par la honte, par la politique, par les conseils salutaires, par l'opinion publique...

Note 162 – Je me confirme, tous les jours plus, dans mon opinion que c’est fait de la monarchie absolue, et je penche à croire que le monarque qui voudra sauver sa puissance, fera bien d’en sacrifier une portion; ou pour mieux dire d’en restreindre légalement les abus.

Note 163 – Soyez persuadés que pour *fortifier* la monarchie il faut l’asseoir sur les lois, éviter l’arbitraire, les commissions fréquentes, les mutations continuelles d’emploies et les tripots ministériels.

Note 165 – L’essentiel pour chaque nation est de conserver sa discipline particulière, c’est-à-dire ces sortes d’usages qui, sans tenir au dogme, constituent cependant une partie de son droit public, et se sont amalgamés depuis longtemps avec le caractère et les lois de la nation, de manière qu’on ne saurait y toucher sans la troubler et lui déplaire sensiblement.

Note 168 – Quand je dis que *nulle souveraineté n’est limitée*, j’entends *dans son exercice légitime*, et c’est ce qu’il faut bien soigneusement remarquer.

Note 171 – Car on peut dire également, sous deux points de vue différents, *que toute souveraineté est limitée* et que *nulle souveraineté n’est limitée*. Elle est limitée, en ce que nulle souveraineté ne peut tout; elle ne l’est pas, en ce que, dans son cercle de légitimité, tracé par les lois fondamentales de chaque pays, elle est toujours et partout absolue, sans que personne ait le droit de lui dire qu’elle est injuste ou trompée. La légitimité ne consiste donc pas à se conduire de telle ou telle manière dans son cercle, mais n’en pas sortir.

Note 174 – En second lieu, le maintien des formes, suivant les lois fondamentales, n'altère ni l'essence ni les droits de la souveraineté.

Note 176 – Ce qui doit s'entendre suivant l'explication que j'ai donnée plus haut... c'est-à-dire qu'il y a point de souveraineté qui, pour le bonheur des hommes et pour le sien surtout, ne soit bornée de quelque manière, mais que, dans l'intérieur de ces bornes, placées comme il plaît à Dieu, elle est toujours et partout absolue, et tenue pour l'infailible. Et quand je parle de l'exercice légitime de la souveraineté, je n'entends point ou je ne dis point l'exercice *juste*, ce qui produirait une amphibologie dangereuse, à moins que par ce dernier mot on ne veuille dire que tout ce qu'elle opère dans son cercle est juste ou tenu pour tel: ce qui est la vérité. C'est ainsi qu'un tribunal suprême, tant qu'il ne sort pas de ses attributions, est toujours juste; car c'est la même chose *dans la pratique* d'être infailible, ou de se tromper sans appel.

Note 184 – ...et du moment où l'on peut lui résister sous prétexte d'erreur ou d'injustice, il n'existe plus.

Page 43, note 185 – ...que *l'on peut priver une nation, malgré elle, de son légitime Souverain.*

Note 186 – Lorsque l'autorité commande, il n'y a que trois partis à prendre: l'obéissance, la représentation et la révolte...

Note 187 – J’admire fort ces belles maximes; mais elles ont le défaut de ne fournir aucune lumière à l’esprit, pour se décider dans les occasions difficiles où les théories sont absolument inutiles. Lorsqu’on a décidé (je l’accorde par supposition) qu’on a le droit de résister à la puissance souveraine, et de la faire rentrer dans ses limites, on n’a rien fait encore, puisqu’il reste à savoir *quand* on peut exercer ce droit et *quels* hommes ont celui de l’exercer.

Note 188 – Les plus ardents fauteurs du droit de résistance conviennent (et qui pourrait en douter?) qu’il ne saurait être justifié que par la tyrannie. Mais qu’est – ce que la tyrannie? Un seul acte, s’il est atroce, peut – il porter ce nom? S’il en faut plus d’un, combien en faut – il, et de quel genre?

Note 189 – Nous croyons que la perfection n’appartenant point à l’humanité tous les *souverains* (prenez garde que nous ne disons point tous les *rois*) abusent nécessairement plus ou moins de leur pouvoir; en sorte que si tout abus du pouvoir s’appelait *tyrannie*, et si toute tyrannie légitimait l’insurrection, tous les peuples seraient à tous les instants en état d’insurrection.

Note 190 – Quel pouvoir dans l’état a le droit de décider *que le cas de résistance est arrivé?* Si le tribunal préexiste, il était donc déjà portion de la souveraineté, et en agissant sur l’autre portion il l’anéantit; s’il ne préexiste pas, par quel tribunal ce tribunal serait-il établi?

Note 191 – a) Une assez belle expérience vient de nous apprendre que les plus grands mots résultant de l'obéissance n'égalent pas la millième partie de ce qui résulte de la révolte.

b) L'histoire n'a qu'un cri, pour nous apprendre que les révolutions commencées par les hommes les plus sages, sont toujours terminées par les fous; que les auteurs en sont toujours les victimes et que les efforts de peuple pour créer ou accroître leur liberté, finissent presque toujours par leur donner des fers. On ne voit qu'abîmes de tous côtés.

Note 193 – Presque tous les grands législateurs ont été rois [...] Enfin les plus grands législateurs ont été des souverains.

Note 194 – Mais s'il fallait absolument en venir à poser des bornes légales à la puissance souveraine, j'opinerais de tout mon cœur pour que les intérêts de l'humanité fussent confiés au Souverain Pontiff.

Note 195– a) Ils n'ont jamais prétendu *que le droit de juger les princes qui leur étaient soumis dans l'ordre spirituel, lorsque ces princes s'étaient rendus coupables de certains crimes.*

b) Qu'est ce donc que cette *toute- puissance temporelle qui n'a nulle force temporelle*, qu'il ne demande rien de *temporel* ou de *territorial* chez les autres, qui anathématise tout attentat sur la puissance *temporelle*, et dont la puissance

temporelle est si faible, que les bourgeois de Rome se sont souvent moqués d'elle?

Note 196 – Les peuples, dans le moyen âge n'avaient *chez eux* que des lois nulles ou méprisées *et des mœurs corrompues*. Il fallait donc chercher ce *frein* indispensable *hors de chez eux*. Ce *frein* se trouva et ne pouvait se trouver que dans l'autorité des papes.

Note 197 – Mais si le droit de résister se changeait en droit d'empêcher et qu'au lieu de résider dans le sujet, il appartînt à une puissance d'un autre ordre, l'inconvénient ne serait plus le même, parce que cette hypothèse admet la résistance sans révolution et sans aucune violation de la souveraineté.

Note 198 – De plus, ce droit d'opposition, reposant sur une tête connue et unique, il pourrait être soumis à des règles et exercé avec toute la prudence et avec toutes les nuances imaginables; au lieu que, dans la résistance intérieure, il ne peut être exercé que par les sujets, par la foule, par le peuple en un mot, et par conséquent, par la voie seule d'insurrection.

Note 203 – L'*infaillibilité* dans l'ordre spirituel, et la *souveraineté* dans l'ordre temporel, sont deux mots parfaitement synonymes.

Note 204 – a) La seule mais bien importante différence qu'il y ait entre la société civile et la société religieuse, c'est que, dans la première, le souverain peut se tromper, de manière que l'infaillibilité qu'on lui accorde n'est qu'une

supposition (qui a cependant toutes les forces de la réalité); au lieu que le gouvernement spirituel est nécessairement infallible au pied de la lettre...

b) Puisque la souveraineté est infallible de sa nature, Dieu n'a donc fait que diviniser cette loi en l'apportant dans son église qui est une société soumise à toutes les lois de la souveraineté

c) Quand nous disons que l'*Eglise est infallible*, nous ne demandons pour elle, il est bien essentiel de l'observer, aucun privilège particulier; nous demandons seulement qu'elle jouisse du droit commun à toutes les souverainetés possibles, qui toutes agissent nécessairement comme infallibles; car tout gouvernement est absolu et du moment où l'on peut lui résister sous prétexte d'erreur ou d'injustice il n'existe plus.

d) Ce gouvernement est donc de sa nature infallible, c'est à dire *absolu*, autrement il ne gouvernera plus.

Note 209 – L'infaillibilité ... et la souveraineté... expriment cette haute puissance...qui juge et n'est pas jugée.

Note 212 – a) Il n'est pas au pouvoir de l'homme de créer une loi qui n'ait besoin d'aucune exception. L'impossibilité sur ce point résulte également, et de la faiblesse humaine qui ne saurait tout prévoir, et de la nature même des choses dont les unes varient au point de sortir par leur propre mouvement du cercle de la loi, et dont les autres disposées par gradations insensibles, sous des genres

communs, ne peuvent être saisies par un nom général qui ne soit pas faux dans les nuances. De là résulte, dans toute législation, la nécessité d'une puissance dispensante. Car partout où il n'y a pas dispense, il y a violation. Mais toute violation de la loi est dangereuse ou mortelle pour la loi, au lieu que toute dispense la fortifie: car l'on ne peut demander d'en être dispensé sans lui rendre hommage, et sans avouer que de soi-même on n'a point de force contre elle.

b) Un grand homme seul a pu donner cette définition. L'homme ne saurait faire que des lois générales; et, par là même, elles sont de leur nature injustes en partie, parce qu'elles ne sauraient jamais saisir tous les cas. *L'exception à la règle* est donc précisément aussi juste que la règle même et partout où il n'y aura point de dispense, d'exception, de mitigation, il y aura nécessairement violation...

Note 215 – Demandez au Pape s'il entend gouverner sans règle et se jouer des canons; vous lui ferez horreur. Demandez à tous les Evêques du monde catholique s'ils entendent que des circonstances extraordinaires ne puissent légitimer des abrogations, des exceptions, des dérogations; et la souveraineté, dans l'Eglise, soit devenue stérile comme une vieille femme, de manière qu'elle ait perdu le droit inhérent à toute puissance de produire de nouvelles lois à mesure que de nouveaux besoins les demandent? Ils croiront que vous plaisantez.

Note 216 – Dans le monde politique et moral, comme dans le monde physique, il y a un ordre commun, et il y a des exceptions à cet ordre. Communément nous voyons une suite des faits produits par les mêmes causes; mais à certaines époques nous voyons des actions suspendues, des causes paralysées et des effets

nouveaux. Le miracle est un effet produit par une cause divine ou surhumaine, qui suspend ou contredit une cause ordinaire... La révolution française...est tout aussi merveilleux dans son genre que la fructification instantanée d'un arbre au mois de janvier...

Note 219 – ...il ne s'agit pas seulement de savoir si le Souverain Pontiffe *est*, mais s'il *doit être* infallible.

Chapter 5

Note 41 – a) Quand donc on demande absolument quel est le meilleur gouvernemnt, on fait une question insoluble autant qu' indéterminée; ou, si l'on veut, elle a autant de bonnes solutions qu'il y a de combinaisons possibles dans les positions absolues et relatives des peuples.

b) Le despotismes pour telle nation, est aussi naturel, aussi légitime que la déocratie pour telle autre...

Note 46 – Il faudrait dire les hommes en général sont gouvernés par des rois. On voit cependant des nations où la souveraineté appartient à plusieurs, et ces gouvernements peuvent s'appeller aristocratie ou démocratie, suivant le nombre des personnes qui forment le souverain.

Note 47 – On trouvera en second lieu qu’il est parfaitement égal d’être *sujet* d’un souverain ou d’un autre.

Note 58 – a) Nulle nation ne doit son caractère à son gouvernement...

b) ...le caractère des nations a des racines plus profondes.

Note 49 – a) ...Il est prouvé, par la théorie et encore plus par l’expérience, que le gouvernement aristocratique héréditaire est peut être le plus favorable à la masse du peuple: qu’il a beaucoup de consistance de sagesse et de stabilité et qu’il s’adapte à des pays d’une étendue très- différente.

b) ...il est certain que, dans les temps de sa vigueur, elle doit, par la nature même des choses, enfanter un groupe éblouissant de grands hommes dont les hauts faits donnent à l’histoire un charme et un intérêt inexprimables. Il y a d’ailleurs dans les gouvernements populaires, plus d’action, plus de mouvement et le mouvement et la vie de l’histoire.

Note 51 – Mais les sujets des monarchies n’en sont point réduits à se sauver du désespoir par des méditations philosophiques: ils ont quelque chose de mieux à faire, c’est de se pénétrer de l’excellence de ce gouvernement, et d’apprendre à ne rien envier aux autres.

Note 52 – J’observerai à ce sujet, que la division vulgaire des gouvernements en trois espèces, le monarchique, l’aristocratique et le démocratique, repose

absolument sur un préjugé grec qui s'est emparé des écoles, à la renaissance des lettres, et dont nous n'avons pas su nous défaire.

Note 53 – Les Grecs voyaient toujours l'univers dans la Grèce; et comme les trois espèces de gouvernements se balançaient assez dans ce pays, les politiques de cette nation imaginèrent la division générale dont je parle. Mais si l'on veut être exact, la logique rigoureuse ne permet point d'établir un genre sur une exception: et, pour s'exprimer exactement, il faudrait dire 'les hommes en général sont gouvernés par des rois'.

Note 55 – Si l'on demande quel est le gouvernement le plus naturel à l'homme, l'histoire est là qui répond: *C'est la monarchie.*

Note 56 – Oui, sans doute, le roi est là, au milieu de tous les pouvoirs comme le soleil est là au milieu des planètes: il régit et il anime.

Note 57 – Dans le gouvernement de plusieurs la souveraineté n'est point UNE UNITE; et quoique les fractions qui la composent représentent théoriquement L'UNITE, il s'en faut de beaucoup qu'elles fassent la même impression sur l'esprit.

Note 58 – L'imagination humaine ne saisit point cet ensemble qui n'est qu'un être métaphysique....

Note 59 – De là vient que la souveraineté, dans ces sortes de gouvernements, n’a point la même *intensité*, ni par conséquent la même force morale.

Note 60 – Ce mot de ROI est un talisman, une puissance magique qui donne à toutes les forces et à tous les talents une direction centrale.

Note 61 – “Tout y repond” ,dit – il, “au meêe mobile: tous les ressorts de la machine sont dans la même main; tout marche au même but; il n’y a point de mouvements opposés qui s’entredétruisent, et l’on ne peut imaginer aucune sorte de constitution dans laquelle un moindre effort produise une action pus considérable. Archimède, assis tranquillement sur le rivage et tirant sans peine à flot un grand vaisseau, me représente un monarque habile, gouvernant de son cabinet ses vastes Etats, et faisant tout mouvoir en paraissant immobile”.

Note 62 – ...c’est un bien sans doute; mais à la place de *sa personne*, son *nom* suffit.

Note 63 – Le mot *habile* est de trop dans ce morceau. Le gouvernement monarchique est précisément celui qui se passe le mieux de l’habileté du souverain...

Note 64 – ...le pouvoir délégué par le souverain, obtiennent dans le gouvernement d’un seul une considération extraordinaire et tout à fait particulière à la monarchie. Dans le gouvernemnt de plusieurs, les emplois occupés par les *membres du souverain*, jouissent de la considération attachée à cette qualité.

C'est l'homme qui honore l'emploi; mais parmi les sujets de ces gouvernements, les emplois élèvent très-peu celui qui en est revêtu au-dessus de ses semblables, et ne le rapprochent point des membres du gouvernement. Dans la monarchie, les emplois réfléchissant sur le peuple une lumière plus vive, l'éblouissent davantage: ils fournissent une carrière immense à tous les genres de talents et comblent le vide qui se trouverait sans eux entre la noblesse et le peuple.

Note 66 – ...on peut assurer que le gouvernement d'un seul est celui où les vices du souverain influent le moins sur les peuples gouvernés.

Note 67 – Dans les gouvernements absolus (il fallait dire arbitraires: car tout gouvernement est absolu) les fautes du maître ne peuvent guère tout perdre à la fois, parce que sa volonté seule ne peut pas tout faire; mais un gouvernement républicain est obligé d'être essentiellement raisonnable et juste, parce que la volonté générale, une fois égarée, entraîne tout.

Note 68 - ...il y aura toujours, en dernière analyse, un pouvoir absolu qui pourra faire le mal impunément, qui sera donc *despotique* sous ce point de vue, dans toute la force du terme, et contre lequel il n'y aura d'autre rampart que celui de l'insurrection.

Note 69 – ...il s'en faut infiniment que la volonté du roi fasse tout dans la monarchie. Elle est censée tout faire, et c'est le grand avantage de ce gouvernement; mais dans le fait, elle ne sert guère qu'à centraliser les conseils et les lumières.

Note 70 – La religion, les lois, les coutumes, l’opinion, les privilèges des ordres et des corps contiennent le souverain et l’empêche d’abuser de sa puissance.

Note 71 – Mais l’aristocratie *pyramidale* qui administre l’Etat dans les monarchies a des caractères particuliers qui méritent toute notre attention.

Note 73 – a) “L’antiquité ne nous a point laissé de modèle de ce gouvernement. A Rome, à Sparte, l’aristocratie jouait sans doute un très-grand rôle comme dans tous les gouvernements, mais elle ne régnait point seule.”

b)si quelque fois elle est timide, c’est parce qu’elle n’est jamais imprudente...

c) A tout prendre, le gouvernement aristocratique héréditaire est peut-être le plus avantageux à ce qu’on appelle *le peuple*.

Note 74 – La monarchie est une aristocratie *centralisée*.

Note 75 –...dans la monarchie, le roi est le centre de cette aristocratie; c’est bien elle qui commande comme partout; mais elle commande au nom du roi ou si l’on veut, c’est le roi éclairé par les lumières de l’aristocratie.

Note 76 – Or c’est un des grands avantages du gouvernement monarchique que l’aristocratie y perd, autant que la nature des choses le permet, tout ce qu’elle peut avoir d’offensant pour les classes inférieures.

Note 77 – ...l'homme du peuple, qui se trouve trop petit lorsqu'il se compare à un grand seigneur, se compare lui-même au souverain, et ce titre de *sujet* qui les soumet l'un et l'autre à la même puissance et à la même justice est une espèce d'égalité qui endort les souffrances inévitables de l'amour-propre

Note 78 – a) ...ce qu'on peut imaginer de mieux pour ôter à cette influence ce qu'elle peut avoir de trop fatigant pour l'orgueil des classes inférieures, c'est qu'elle n'établisse point une barrière insurmontable entre les familles de l'état, et qu'aucune d'elles ne soit humiliée par une distinction dont elle ne peut jamais jouir.

b) ...le gouvernement aristocratique le cède au monarchique. Dans celui-ci une famille unique est séparée de toutes les autres par l'opinion, et considérée, ou peut s'en faut, comme appartenant à une autre nature. La grandeur de cette famille n'humilie personne, parce que personne ne se compare à elle. Dans le premier cas au contraire, la souveraineté résidant sur la tête de plusieurs hommes ne fait plus la même impression sur les esprits, et l'individu que le hasard a fait membre du souverain est assez grand pour exciter l'envie, mais pas assez pour l'étouffer.

Note 79 – Cette espèce d'aristocratie est légale; c'est une pièce intégrante du gouvernement, tout le monde le sait, et elle n'éveille dans l'esprit de personne l'idée de l'usurpation et de l'injustice. Dans les républiques au contraire, la distinction des personnes existe comme dans les monarchies; mais elle est plus dure et plus insultante, parce qu'elle n'est point l'ouvrage de la loi, et que

l'opinion du peuple la regarde comme une insurrection habituelle contre le principe de l'égalité admis par la Constitution.

Note 80 – Or c'est précisément le cas d'une monarchie assise sur de bonnes lois.

Il n'y a point de famille que le mérite de son chef ne puisse faire passer du second ordre dans le premier, indépendamment même de cette agrégation flatteuse, où, avant qu'elle n'ait acquis par le temps l'influence qui en fait le prix, tous les emplois de l'Etat, ou du moins une foule d'emplois, sont placés sur la route du mérite....

Note 81 – Ce mouvement d'ascension général qui pousse toutes les familles vers le souverain et qui remplit constamment tous les vides que laissent celles qui s'éteignent; ce mouvement, dis-je, entretient une émulation salubre, anime la flamme de l'honneur, et tourne toutes les ambitions particulières vers le bien de l'Etat.

Note 83 – L'idée d'un peuple entier souverain et législateur choque si fort le bon sens, que les politiques grecs qui devaient s'entendre un peu en liberté, n'ont jamais parlé de la démocratie comme un gouvernement légitime...

Note 84 – Aristote surtout définit la démocratie l'*excès de la république (politia)* comme le despotisme est l'excès de la monarchie.

Note 85 – Nul peuple comme nul individu ne pouvant posséder une puissance coercitive sur lui-même, s’ill existait une démocratie dans sa pureté théorique, il est clair qu’il n’y aurait point de souveraineté dans cet Etat...

Note 86 – ...il est impossible d’entendre par ce mot autre chose q’un pouvoir réprimant qui agit sur le *sujet* et qui, lui, est placé hors de lui.

Note 87 – ...je crois pouvoir définir la démocratie: *une association d’hommes sans souveraineté.*

Note 88 – On trouve dans tous les pays du monde des associations volontaires d’hommes qui se sont réunis pour quelques vues d’intérêt ou de bienfaisance.

Note 89 – Ces hommes se sont soumis volontairement à certaines règles qu’ils observent tant qu’ils le trouvent bon: ils se sont même soumis à certaines peines qu’ils subissent lorsqu’ils ont contrevenu aux statuts de l’association...

Note 90 – ...mais ces status n’ont d’autre sanction que la volonté même de ceux qui les ont formés; et dès qu’il se trouve de dissidents, il n’y a point parmi eux de force coercitive pour les contraindre.

Note 91 – Les ordonnances qui émaneraient d’un peuple constitué de cette manière seraient des règlements, et non des lois.

Note 92 – La loi est si peu la volonté de tous, et moins elle est la loi; en sorte qu'elle cesserait d'être loi, si elle était, sans exception, l'ouvrage de tous ceux qui devraient lui obéir.

Note 93 – Cet esprit d'association volontaire est le principe constitutif des républiques....

Note 94 – ...l'ordre et l'arrangement se montrent de toute part; les propriétés communes sont respectées même par la pauvreté, et jusqu'à la propriété générale, tout donne à penser à l'observateur.

Note 95 – Un peuple républicain étant donc un peuple moins gouverné qu'un autre, on conçoit que l'action de la souveraineté doit être suppléée par l'esprit public....

Note 97 – Mais comme la démocratie pure n'existe pas, l'état d'association purement volontaire n'existe pas non plus. On part seulement de ce pouvoir théorique pour s'entendre; et c'est dans ce sens qu'on peut affirmer que la souveraineté naît au moment où le souverain commence à n'être pas *tout le peuple*, et qu'elle se renforce à mesure qu'elle est moins *tout le peuple*.

Note 98 – Mêlé en plus ou en moins avec la souveraineté, base commune de tous les gouvernements, ce *plus* et ce *moins* forment les différentes physionomies des gouvernements non – monarchiques.

Note 99 – L’observateur...distingue fort bien l’action de ces deux principes.

Tantôt il sent la souveraineté, et tantôt l’esprit de communauté qui lui sert de supplément...

Note 100 – ...la force publique agit moins et surtout se montre moins que dans les monarchies...

Note 101 – Un certain esprit de famille, qu’il est plus aisé de sentir que d’exprimer...

Note 102 – ...dispense la souveraineté d’agir dans une foule de circonstances où elle interviendrait ailleurs....

Note 103 – Un peuple républicain étant donc un peuple moins gouverné qu’un autre, on conçoit que l’action de la souveraineté doit être suppléée par l’esprit public

Note 104 – ..moins un peuple a de sagacité pour apercevoir ce qui est bon, et de vertu pour s’y porter de lui-même, moins il est fait pour la république.

Note 105 – Mais d’abord, il n’est fait que pour de très – petits peuples.

Note 106 – ...dans ses beaux jours, il éclipse tout, et les merveilles qu’il enfante séduisent jusqu’à l’observateur de sang- froid qui pèse tout.

Note 107 – ...la formation et la durée de l'esprit d'association sont difficiles, en raison directe du nombre des associés, ce qui n'a pas besoin de preuve.

Note 109 – Il vaudrait mieux faire cette autre question: *La république peut-elle exister?* On le suppose, mais c'est aller trop vite, et la *question préalable* semble très – fondée; car la nature et l'histoire se réunissent pour établir qu'une grande république indivisible est une chose impossible.

Note 114 – Commençons par remarquer que ce système n'est point du tout une découverte moderne, mais une *production*, ou pour mieux dire une *pièce* du gouvernement féodal.

Note 115 –...la représentation.....se trouve dans toutes les monarchies de L'Europe; mais elle est vivante dans la Grande Bretagne: ailleurs elle est morte où elle dort...

Note 116 – Il suffit d'observer, d'après l'histoire (1) qu'en Angleterre, où la représentation nationale a obtenu et retenu plus de force que partout ailleurs, il n'en est pas question avant le milieu du treizième siècle; (2) qu'elle ne fut point une invention, ni l'effet d'une délibération, ni le résultat de l'action du peuple usant de ses droits antiques; mais qu'un soldat ambitieux, pour satisfaire ses vues particulières, créa réellement la balance des trois pouvoirs après la bataille de Lewes sans savoir ce qu'il faisait, comme il arrive toujours; (3) que non seulement la convocation des communes dans le conseil national fut une concession du monarque, mais que, dans le principe, le roi nommait les

représentants des provinces, cités et bourgs; (4) qu'après même que les communes se furent arrogées le droit de députer au parlement, pendant le voyage d'Edouard Ier en Palestine, elles y eurent seulement voix consultative; qu'elles présentaient leurs *doléances* comme les états- généraux de France, et que la formule des concessions émanant du trône ensuite de leurs pétitions, était constamment *accordée par le roi et les seigneurs spirituels et temporels, aux humbles prières des communes*; enfin que la puissance co – législative attribuée à la chambre des communes, est encore bien jeune puisqu'elle remonte à peine au milieu du quinzième siècle.

Note 117 – Si l'on entend donc par ce mot de représentation nationale, un *certain* nombre de représentants envoyés par certains hommes, pris dans certaines villes ou bourgs, en vertu d'une ancienne concession du souverain, il ne faut pas disputer sur les mots, ce gouvernement existe, et c'est celui d'Angleterre.

Note 118 – On nous cite l'Amérique; je ne connais rien de si impatientant que les louanges décernées à cet enfant au maillot: laissez-le grandir.

Note 119 – ... une pièce du gouvernement féodal....

Note 120 – L'autorité royale, ayant formé les communes, les appella dans les assemblées nationales; elles ne pouvaient y paraître que par leurs mandataires; de là le système représentative.

Note 121 – C'est le noeud de la question...

Note 122 –...car si la république est dans la capitale, et que le reste de la France soit sujet de la république, ce n'est pas le compte du peuple souverain.

Note 124 – Un petit nombre de républicains renfermés dans les murs d'une ville, peuvent sans doute avoir des millions de sujets: ce fut le cas de Rome; mais il ne peut exister une grande nation libre sous un gouvernement républicain.

Note 125 – Mais ce qu'il ya de sur, c'est que le système représentatif exclue directement l'exercice de la souveraineté, surtout dans le système français, où les droits du peuple se bornent à nommer ceux qui nomment....

Note 126 – ...où non seulement il ne peut donner de mandats spéciaux à ces représentants, mais où la loi prend soin de briser toute relation entre eux et leur province respective, en les avertissant qu'*ils ne sont point envoyés par ceux qui les ont envoyés* mais par la *nation*; grand mot infiniment commode parce qu'on a fait ce qu'on veut.

Note 127 – Eh! Qu'importe à la nation le vain bonheur de la représentation dont elle se mêle si indirectement, et auquel des milliards d'individus ne parviendront jamais? La souveraineté et le gouvernement lui sont-ils moins étrangers?

Note 128 – Mais, dira-t'on en rétorquant l'argument, qu'importe à la nation le vain honneur de la représentation, si le système reçu établit la liberté publique?

Note 129 –...la question n'est pas de savoir si le peuple français peut être *libre* par la constitution qu'on lui a donnée, mais s'il peut être *souverain*.

Note 130 – Que le *peuple* demeure parfaitement étranger au gouvernement; qu'il est plus sujet que dans la monarchie...

Note 131 – La question se réduit donc à savoir s'il est de l'intérêt du peuple français d'être sujet d'un directoire exécutif et de deux conseils institués suivant la constitution de 1795, plutôt que d'un roi regnant suivant les formes anciennes.

Note 132 – Or ce qui distingue la révolution française et ce qui en fait un *événement* unique dans l'histoire, c'est qu'elle est *mauvaise* radicalement; aucun élément de bien n'y soulage l'oeil de l'observateur: c'est le plus haut degré de corruption connu; c'est la pure impureté.

Note 134 – *Je crois le gouvernement actuel usurpateur de l'autorité, violateur de tous les droits du peuple qu'il a réduit au plus déplorable esclavage. C'est l'affreux système du bonheur d'un petit nombre, fondé sur l'oppression de la masse. Le peuple est tellement emmuselé, tellement environné de chaînes par ce gouvernement aristocratique, qu'il lui devient plus difficile que jamais de les briser.*

Note 136 – Quelques politiques ont prétendu qu'un des beaux côtés du gouvernement républicain était la sagacité qui possède le peuple pour ne confier l'exercice de son autorité qu'à des hommes qui en sont dignes.

Note 137 – Personne, disent – ils, ne choisit mieux que le peuple: lorsqu’il s’agit de ses intérêts, rien ne peut le séduire, le mérite seul le détermine.

Note 138 – ...la démocratie ne pourrait subsister un instant si elle n’était pas tempérée par l’aristocratie, et surtout par l’aristocratie héréditaire.

Note 139 – La masse du peuple influe donc très-peu sur les élections, comme sur les autres affaires. C’est l’aristocratie qui choisit, et, comme on sait, elle choisit fort bien.

Note 140 – Lorsque la foule se mêlait des affaires, c’était par une espèce d’insurrection, nécessaire quelquefois pour arrêter l’action trop rapide de l’aristocratie...

Note 141 – “Qu’on juge,” dit Rousseau, “de l’embarras que causait quelquefois la foule, par ce qui arriva du temps des Gracques où une partie des citoyens donnait son suffrage de dessus les toits”. Il aurait dû remarquer que, lorsqu’on opine sur les toits, on s’égorge dans les rues...

Note 142 – La justice n’y a point cette marche calme et impassible que nous lui voyons communément dans la monarchie.

Note 145 – Le magistrat n’est pas assez supérieur au citoyen...

Note 146 – ...il a l’air d’un arbitre plutôt que d’un juge.

Note 147 –...on voit qu’il ne croit pas à sa propre puissance; il n’est fort que de l’adhésion de ses égaux, parce qu’il n’y a point de souverain, ou que le souverain ne l’est pas assez.

Note 148 – Dans les républiques rien n’égale l’iniquité ou, si l’on veut, l’impuissance des tribunaux lorsqu’il s’agit de décider entre l’étranger et le citoyen...

Note 149 – ...plus la république est démocratique, plus cette impuissance est frappante.

Note 150 – C’est que moins la souveraineté est séparée du peuple, et moins elle existe...

Note 151 – ...mais ils la [i.e. justice] refusent impunément à l’étranger, celui – ci ne pouvant la demander au souverain qui n’existe pas, ou qui n’existe pas tout entier.

Note 152 - “*Il est impossible d’obtenir justice contre ces gens – là!*”[in a democracy] C’est que moins la souveraineté est séparée du peuple, et moins elle existe...

Note 153 – En général, la justice est toujours faible dans les démocraties lorsqu’elle marche seule, et toujours cruelle ou étourdie lorsqu’elle s’appuie sur le peuple.

Note 154 – La justice, dans les démocraties, est tantôt faible et tantôt passionnée; on dit que dans ces gouvernements, nulle tête ne peut braver le glaive de la loi. Cela signifie que la punition d'un coupable ou d'un accusé illustre étant une véritable jouissance pour la *plèbe*...

Note 155 – Dans la monarchie, l'immunité, différemment graduée, est pour le petit nombre; dans la démocratie, elle est pour le grand.

Note 156 – Il ne faut point être la dupe d'une certaine pédanterie réglementaire dont le peuple est fou, parce qu'elle lui sert à impatienter les riches.

Note 157 – Dans une ville où on est mis à l'amende pour avoir mené un cheval au trot, on peut tuer un homme impunément, pourvu que l'assassin soit né dans une boutique.

Note 158 – L'histoire dépose encore en faveur de cette grande vérité, que la liberté du petit nombre n'est fondée que sur l'esclavage de la multitude...

Note 159 – ...les républiques n'ont jamais été que des souverains à plusieurs têtes, dont le despotisme, toujours plus dur et plus capricieux que celui des monarques, augmentait d'intensité à mesure que le nombre des sujets se multipliait.

Note 160 – Mais de tous les monarques, le plus dur, le plus despotique, le plus intolérable, c'est le monarque *peuple*.

Note 172 – a) Tacite a dit en parlant des gouvernements républicains: *Quelques nations ennuyés des rois leur préférèrent des lois*. Il opposait ainsi le regne des lois à celui d'un homme, et comme si l'un excluait l'autre.

b) On a beaucoup critiqué les jurisconsultes romains pour avoir dit que le prince est *au-dessus des lois* (*princeps solutus est legibus*). On aurait été plus indulgent à leur égard si l'on avait observé qu'ils n'entendaient parler que des lois civiles, ou, pour mieux dire, des formalités qu'elles établissent pour les différents actes civils.

Note 174 – Nous naissons tous despotes, depuis le monarque le plus absolu de l'Asie jusqu'à l'enfant qui étouffe un oiseau dans sa main pour le plaisir de voir qu'il existe dans l'univers un être plus faible que lui.

Note 175 – C'est en vain qu'on crierait au despotisme. Le despotisme et la monarchie tempérée sont-ils donc la même chose?

Note 176 – Mais l'auteur de la nature a mis des bornes à l'abus de la puissance: il a voulu qu'elle se détruise elle-même dès qu'elle passe ces limites naturelles. De tout côté il a gravé cette loi; et dans le monde physique comme dans le monde moral, elle nous environne et nous parle à chaque instant. Voyez cette arme à feu: jusqu'à un certain point, plus vous l'allongerez, et plus vous en augmenterez l'effet: mais si vous passez cette limite d'une ligne, vous le verrez diminuer. Voyez ce télescope: jusqu'à un certain point plus vous en augmenterez les dimensions, et plus produira d'effet; mais au delà, l'invincible nature tourne

contre vous les efforts que vous faites pour perfectionner l'instrument. C'est l'image naïve de la puissance. Pour se conserver elle doit se restreindre, et toujours elle doit se tenir éloignée de se point où son dernier effort amène son dernier moment.

Note 179 – Ne confondons point les essences des choses avec leurs modifications: les premières sont inaltérables et reviennent toujours; les secondes changent et varient un peu le spectacle, du moins pour la multitude; car tout oeil exercé pénètre aisément l'habit variable dont l'éternelle nature s'enveloppe suivant les temps et les lieux.

Note 180 – Qu'y a t il par exemple de particulier et de nouveau dans les trois pouvoirs qui constituent le gouvernement d'Angleterre, les noms de Pairs et celui de Communes, la robe des Lords, etc?

Note 181 – Mais les trois pouvoirs considérés d'une manière abstraite, se trouvent partout où se trouve la liberté sage et durable...

Note 182 – ...le gouvernement avant Lycurgues *estoit toujours en branle, inclinant tantost à tyrannie, quand les roys y avoyent trop de puissance, et tantost a confusion populaire, quand le commun peuple venoit a y usurper trop d'autorité.* Mais Lycurgue mit entre deux le sénat, *qui fut*, ainsi que dit Platon, *un contrepoids salutaire...et une forte barrière tenant les deux extrémités en égale balance...*

Note 183 – Le grand malheur des romains et de la plus grande partie du monde connu qui leur était soumis fut qu'à l'accession d'auguste la révolution ne s'opéra point d'une manière assez complète. Que de larmes et de crimes une monarchie héréditaire eut épargnés au monde!

Note 184 – a) La prérogative des empereurs était plutôt une puissance de fait qu'une puissance de droit...

b) Dans certains gouvernements aristocratiques, ou mêlés d'aristocratie et de démocratie, la nature de ces gouvernements est telle que la souveraineté de droit doit appartenir à un certain corps, et la souveraineté du fait à un autre: et l'équilibre consiste dans la crainte ou l'inquiétude habituelle que le premier inspire au second.

Note 186 – On verra que les pouvoirs qui semblent posséder une portion de la souveraineté ne sont réellement que de contre-poids ou des modérateurs qui règlent et ralentissent la marche du véritable souverain. Peut-être qu'on ne définirait pas mal le Parlement d'Angleterre: "le Conseil nécessaire du Roi"; peut-être est-il quelque chose de plus; peut-être suffit-il qu'on le croie.

Note 187 – Prenons, par exemple, le gouvernement anglais: l'espèce de trinité politique qui le constitue n'empêche point que la souveraineté ne soit une...

Note 188 – ...les trois pouvoirs considérés d'une manière abstraite, se trouvent partout où se trouve la liberté sage et durable.

Note 189 – ...la constitution d'Angleterre qui est cependant, à ce qu'il paraît, ce qu'on peut imaginer de plus parfait, du moins pour un grand peuple...

Note 190 – “Tout gouvernement”, dit Tacite, “est deéocratique, aristocratique ou monarchique; il serait plus aisé d'admirer que de trouver une constitution formée de ces trois pouvoirs mêlés et tempérés l'un par l'autre; ou, si jamais elle existe, elle ne saurait durer.” Voilà la constitution anglaise condamnée en terme exprès et par un excellent juge.

Note 191 – La formation parfaite, le complément, la consolidation de la constitution anglaise telle qu'elle existe de nos jours, a coûté aux Anglais des torrents de sang...

Note 192 – ...mais il y a de fortes raisons de craindre que ce bel ouvrage ne soit pas durable.

Note 193 – Cette consitution, telle qu'elle existe depuis qu'elle a reçu sa dernière forme, ne date que de l'année 1688...

Note 194 – Ce qui est, est bon; ce qu'on croit, est bon; tout est bon, excepté les prétendues créations de l'homme.

Note 195 – Cette fameuse *division des pouvoirs* qui a si fort agité les têtes françaises, n'existe réellement pas dans la Constitution française de 1791.

Note 196 – Pour qu’il y eût eu réellement division de pouvoirs, il aurait fallu que le roi eût été investi d’une puissance capable de balancer celle de l’Assemblée et de juger même les représentants dans certains cas...

Note 197 – ...tous les travaux des législateurs n’aboutissaient réellement qu’à créer un pouvoir unique et sans contre-poids, c’est – à- dire une *tyrannie*...

Note 198 – ...toutes les monarchies qui se sont formés en Europe après la chute de l’Empire romain ont un caractère particulier qui les distingue des monarchies étrangères à l’Europe.

Note 199 – L’habitant de l’Asie ne cherche point à pénétrer ce nuage sombre qui enveloppe ou qui forme la majesté du monarque. Pour lui son maitre est un dieu, et il n’a avec cet être supérieur d’autre rapport que celui de la prière.

Note 200 – Les lois du monarque sont des oracles. Ses grâces sont des dons célestes, et sa colère est un calmite de l’invincible nature. Le sujet qui s’honore de s’appeler esclave reçoit de lui un bienfait comme un rosée, et le cordon comme un coup de tonnère.

Note 201 – Ce monarque absolu peut-être déposé; on ne lui dispute point le droit de demander la tête qui lui déplaît; mais souvent on lui demande la sienne. Tantôt les lois le privent du sceptre et de la vie; tantôt la sédition va le saisir sur ce trône élevé et le renverse dans la poudre.

Note 202 – “Le gouvernement des Germains”, dit fort bien Hume, “et celui de toutes les nations du Nord qui s’établirent sur les ruines de l’empire romain, fut toujours extrêmement libre.

Note 203 – Ces réflexions sont d’une vérité frappante. C’est au milieu des forêts et de glaces du Nord que nos gouvernements ont pris naissance....nous sommes encore tous frères, *durum genus*.

Note 204 – La Providence a dit à tous les souverains de l’ Europe: “*vous ne serez point jugés*”, mais tout de suite elle ajoute: “*Vous ne jugerez point*”. C’est le prix de ce privilège inestimable.

Note 205 –... la plus sage des nations d’Europe, en faisant une loi fondamentale de l’inviolabilité de ses souverains, n’a fait que sanctionner l’opinion universelle de cette partie du monde. Nous ne voulons point qu’on juge les souverains, nous ne voulons point les juger.

Note 206 – Toujours inquiets, toujours alarmés, le voile qui leur cache les ressorts du gouvernement les dépite; sujets soumis, esclaves rebelles, ils veulent anoblir l’obéissance et, pour prix de leur soumission, ils demandent le droit de se plaindre et d’éclairer la puissance.

Note 207 – a) Il n’a pas le droit de condamner à mort, ni même à aucune peine corporelle. Le pouvoir qui punit vient de lui, et c’est assez.

b) Le roi ne peut juger au civil; les magistrats seuls, au nom du souverain, peuvent prononcer sur la propriété et sur les conventions.

Note 209 – ...la communication paternelle du prince et des sujets qu'on trouve le véritable caractère de la monarchie européenne.

Note 210 – Ce qui nous déplait généralement, ce qui ne s'accorde nullement avec notre caractère et nos usages anciens, incontestables, universels, c'est le gouvernement ministériel ou le Visirat.

Note 211 – ...il s'ensuit que tous les dépositaires du pouvoir délégué n'étant comprimés par rien, et ne relevant point assez directement de l'opinion, s'emparent du sceptre et se le divisent en petits fragments proportionnels à l'importance de leurs places, de manière que tout le monde est roi excepté le roi.

Note 212 – Le peuple se plaint du despotisme, parce qu'il n'est pas assez fort contre l'action desordonnée du pouvoir délégué....

Note 213 – Le remède a de si grands maux n'est pas difficile à trouver: il ne s'agit que de renforcer l'autorité du roi et de lui rendre sa qualité de père en rétablissant la correspondance antique et légitime entre lui et la grande famille.

Note 214 – Sous le nom de *Champs de Mars* ou de *Mai*, de *Parlements*, d'*Etats*, de *Cortes*, d'*Etablissements*, de *Diètes*, de *Sénats*, de *Conseils*, etc. tous les

peuples de l'Europe moderne se sont mêlés plus ou moins de l'administration sous l'empire de leurs rois.

Note 215 – Les sujets ont le droit, par le moyen de certains corps, conseils, ou assemblées différemment composées, d'instruire le roi de leurs besoins, de lui dénoncer les abus, de lui faire passer légalement leurs *doléances* et leurs *très-humbles* remontrances.

Note 216 – ...on conçoit, par exemple, que les hommes chargés de porter au pied du trône les représentations et les doléances des sujets peuvent former des *corps* ou des *assemblées*; que les membres qui composent ces assemblées ou ces corps peuvent différer par le nombre, par la qualité, par le genre et l'étendue de leurs pouvoirs; que le mode des élections, l'intervalle et la durée des sessions etc. varient encore le nombre des combinaisons: *facies non omnibus una...*

Note 217 – ...il ne s'agit que de renforcer l'autorité du roi et de lui rendre sa qualité de père en rétablissant la correspondance antique et légitime entre lui et la grande famille.

Note 218 – ...lois sacrées d'autant plus véritablement constitutionnelles qu'elles ne sont écrites que dans les coeurs....

Note 219 – ...toujours des hommes choisis, portant légalement au père les plaintes et les vœux de la famille: *nec diversa tamen*.

Note 221 – Dans tous les pays et dans tous les gouvernements possibles, les grands emplois appartiendront toujours (sauf exception) à l'aristocratie, c'est-à-dire à la noblesse et à la richesse le plus souvent réunies.

Note 222 – Le gouvernement aristocratique est une monarchie dont le trône est vacant. *La souveraineté y est en régence.*

Note 223 – Les régents qui administrent la souveraineté étant héréditaires, elle est parfaitement séparée du peuple, et en cela le gouvernement aristocratique se rapproche du monarchique.

Note 224 – Tant que l'aristocratie est saine, que le nom de roi est sacré pour elle, et qu'elle aime la royauté avec passion, l'Etat est inébranlable, quelles que soient les qualités du roi. Mais dès qu'elle perd sa grandeur, sa fierté, son énergie, sa foi, l'esprit s'est retiré, la monarchie est morte, et son cadavre est aux vers.

Note 235 – Il a fort bien vu qu'il ne fallait jamais demander quel est le meilleur gouvernement en général, puisqu'il n'y en a pas qui convienne à tous les peuples.

Note 236 – Chaque nation a le sien, comme elle a sa langue et son caractère et ce gouvernement est le meilleur pour elle..

Note 237 – D'où il suit évidemment que toute la théorie du contrat social est un rêve de collège.

Note 238 – Comme aucune de ces combinaisons ne dépend des hommes, il ensuit que le consentement des peuples n’entre pour rien dans la formation des gouvernements.

Note 239 – Nulle nation ne doit son caractère à son gouvernement, pas plus que sa langue; au contraire, elle doit son gouvernement à son caractère, qui, à la vérité, est toujours renforcé et perfectionné dans la suite par les institutions politiques.

Note 240 – Si vous voyez languir une nation, ce n’est point parce que son gouvernement est mauvais; c’est parce que ce gouvernement, qui est le meilleur pour elle, dépérit comme toutes les choses humaines...

Note 241 – ...tous les gouvernements sont bons.

Note 242 – Le comble de la folie serait de soutenir que le caractère des peuples est leur ouvrage; mais quand nous disons qu’ils ont fait leur gouvernement, c’est la même folie en d’autres termes.

Note 243 – Mais si l’on demandait à quel signe on peut connaître qu’un peuple donné est bien ou mal gouverné, ce serait une autre chose, et la question de fait pourrait se résoudre.

Note 244 – ...la question n'est jamais de savoir quel est le meilleur gouvernement, mais quel est le peuple le mieux gouverné suivant les principes de son gouvernement.

Note 246 – Considerons encore les gouvernements du côté de la population. “Le meilleur”, dit encore Rousseau, “est celui qui peuple le plus”....Mais ce plus haut point possible ne dépend nullement de telle ou telle forme de gouvernement.

Note 247 – Les plus beaux monuments d'Athènes appartiennent au siècle de Périclès. A Rome quels écrivains a produits la République? Plaute et Terence seuls. Lucrèce, Saluste et Cicéron l'ont vue mourir. Vient ensuite le siècle d'Auguste où la nation fut tout ce qu'elle pouvait être en fait des talents. Les arts, en général, ont besoin d'un roi: ils ne brillent que sous l'influence des sceptres.

Note 248 – ...*quel est le peuple relativement le plus nombreux, le plus fort, le plus heureux, depuis plus longtemps, par l'influence du gouvernement qui lui convient.*

Note 249 – Par quelle bizarrerie ne veut-on point employer, dans l'étude de la politique, la même manière de raisonner et les mêmes analogies générales qui nous conduisent dans l'étude des autres sciences? Toutes les fois qu'il s'agit, dans les recherches physiques, d'estimer une force variable, on la ramène à une quantité moyenne. Dans l'astronomie, en particulier, on parle toujours de *distance moyenne* et de *temps moyen*. Pour juger le mérite d'un gouvernement, il faut opérer de meme.

Note 250 – Le meilleur gouvernement pour chaque nation est celui qui, dans l'espace de terrain occupé par cette nation, est capable de procurer la plus grande somme de de bonheur et de force possible, au plus grand nombre d'hommes possible, pendant le plus longtemps possible.

Note 252 – “Quel est”, dit-il, “la fin de l'association politique? – C'est la conservation et la prospérité de ses membres”. Jusque-là, fort bien.

Note 253 – Dans toute république d'une certaine étendue, ce qu'on appelle *liberté* n'est que le sacrifice absolu d'un grand nombre d'hommes fait à l'indépendance et à l'orgueil du petit nombre.

Note 254 – A tout prendre, on peut avancer sans exagération que la monarchie comporte *autant* et peut être *plus de libertéet d'égalité* que tout autre gouvernement.

Note 255 – ...comme toutes les révolutions politiques entraînent nécessairement de grands maux, le plus grand intérêt des peuples est la stabilité des gouvernements.

Note 256 – La démocratie a un moment brillant, mais c'est un moment, et il faut le payer cher.

Note 257 – En général, tous les gouvernements démocratiques ne sont que des météores passagers, dont le brillant exclut la durée.

Note 258 – Les républiques aristocratiques ont plus de consistance parce qu’elles se rapprochent de la monarchie, et que la masse du peuple n’y joue aucun rôle.

Note 259 – A proprement parler, tous les gouvernements sont des monarchies qui ne diffèrent qu’en ce que le monarque est à vie ou à temps, héréditaire ou éligible, individu ou corps...

Note 260 – ...tout gouvernement est aristocratique, composé de plus ou moins de têtes dominatrices, depuis la démocratie, où cette aristocratie est composée d’autant de têtes que le permet la nature des choses, jusqu’à la monarchie, où l’aristocratie, inévitable dans tout gouvernement, est dominée par une tête seule qui termine la pyramide, et forme sans contredit le gouvernement le plus naturel à l’homme.

Chapter 6

Note 5 – ...en politique, comme ailleurs, et plus qu’ailleurs, nécessite n’a point de loi.

Note 6 – Je crois avoir lu quelque part qu’il y a bien *peu de souverainetés en état de justifier la légitimité de leur origine*...le nuage qui envelopperait plus ou moins l’origine de son autorité ne serait qu’un inconvénient, suit nécessaire d’une loi du monde moral

Note 7 – comme la politique ne hait personne, elle n’aime personne.

Note 12 – les nations sont, comme les individus, un assemblage des contradictions.

BIBLIOGRAPHY

The Works of Joseph de Maistre

Archival Sources

Les Archives Départementales de la Savoie, 244, Quai de la Rize, Chambéry:

Sous – série 2J

2J 1 – 6, Ouvrages

2J 7 – 14, Fascicules et Fragments

2J 15 – 25, Notes et Extraits de lecture

2J 26 – 31, Textes Divers

2J 32 – 41, Lettres de Joseph de Maistre

Sous – série 76F

76F 1 – 4, Journal de Joseph de Maistre

76F 5 – 10, Correspondance

Printed Sources

Oeuvres Complètes, 14 volumes, (Lyon: Vitte et Perussel, 1884-86), reprinted by
Georg Olms Verlag, (Hiddelsheim, 1984.)

Les Carnets du Comte Joseph de Maistre : Livre Journal 1790 – 1817, (Lyon: Vitte,
1923)

Correspondance Diplomatique de Joseph de Maistre 1811 - 1817, 2 volumes,
Recueillié et publiéé par Albert Blanc (Paris: M.Levy, frères, 1860)

Mémoires Politiques et Correspondance Diplomatique de Joseph de Maistre, 2
volumes, Recueillié et publiéé par Albert Blanc, (Paris, M. Levy, frères, 1859)

Du Pape, ed. Jacques Lovie and Joannes Chetail, (Geneva: Droz, 1966)

Ecrits Maconniques de Joseph de Maistre, ed. J Redbotton, (Geneva: Droz, 1966)

Joseph de Maistre et Blacas: leur correspondance inédite et l'histoire de leur amitié, ed. E . Daudet, (Paris: Plon-Nourrit, 1908)

Lettres et Opuscules Inédites, 2 Vols, (Paris: Vaton, 1851)

Les Soirées de Saint-Petersbourg 2 volumes, ed. J-L Darcel, (Geneva: Slatkine, 1993)

De la Souveraineté du Peuple, ed. J- L Darcel, (Paris: Presses Universitaires Françaises, 1992)

Considérations sur la France, ed J-L.Darcel, (Geneva: Slatkine, 1980)

Other Works

Aaslef, Hans, 'Joseph de Maistre and Victorian thought on the origin of language and civilisation' in *Studies in the History of Western Linguistics* (Cambridge: Cambridge University Press, 1986)

Adorno T. and Horkheimer, M., *Dialectic of Enlightenment*, John Cumming trans., (Verso: London, 1997)

Allen Fox, Michael, *The Accessible Hegel*, (New York: Humanity Books, 2005)

Alibert, Jacques, *Joseph de Maistre: Etat et Religion* (Paris: Tequi, 1990)

Agamben, Giorgio, *State of Exception*, Kevin Attall trans., (Chicago: Chicago University Press, 2005)

Alexander, Larry ed., *Constitutionalism: Philosophical Foundations*, (Cambridge: Cambridge University Press, 1998)

Althusser, Louis, *Montesquieu, la Politique et l'Histoire*, (Paris: Quadrige, 2003)

Anderson, M., *Conservative Politics in France*, (London: Allen and Unwin, 1974)

Aquinas, Thomas, *Commentary on Aristotle's Politics*, Richard Regan, trans.,
(London: Hackett Publishing, 2007)

Arendt, Hannah, *On Revolution*, (London: Penguin 1990)

- *The Portable Hannah Arendt*, Baehr, Peter ed.,(London: Penguin, 2003)

Aristotle, *The Politics*, T.A Sinclair trans., Trevor J. Saunders, revised trans.,
(London: Penguin, 1992)

- *The Politics and the Constitution of Athens*, Stephen Everson ed.,
Benjamin Jowett and Jonathan Barnes trans., (Cambridge: Cambridge University
Press, 1996)

Armitage, David, *The Declaration of Independence, A Global History*, (Cambridge,
MA: Harvard University Press, 2007)

Aron, Raymond, *Les Etapes de la Pensée Sociologique*, (Paris: Gallimard, 1967)

Artz, F.B, *France under the Bourbon Restoration*, (Cambridge, MA: Harvard
University Press, 1931)

Atkin, Nicholas and Tallet, Frank, *The Right in France: From Revolution to Le Pen*, (London: I.B. Taurus, 2003)

Augustine of Hippo, *City of God against the Pagans*, Henry Bettenson trans., (London: Penguin, 1987)

Baczko, Bronislaw, *Rousseau* (Manchester: Manchester University Press, 1982)

Baker, Keith, *Inventing the French Revolution*, (Cambridge: Cambridge University Press, 1990)

Balakrishnan, Gopal, *The Enemy: an intellectual portrait of Carl Schmitt*, (London: Verso, 2000)

Ball, T., and J.G.A. Pocock, eds. *Conceptual Change and the Constitution* (Kansas: Kansas University Press, 1988)

Balzac, Honore de, *Oeuvres Diverses*, (Paris: Editions Louis Conard, 1956)

Barbey d'Aurevilly, *Les Prophètes du Passé*, (Paris: Calmann Levy, 1899)

Barker, E., *Political Thought of Plato and Aristotle*, (New York: Dover, 1959)

Basch, Linda, ed., *Nations Unbound*, (Amsterdam: Gordon and Breach, 1997)

Bayle, Francois, *Les Idées Politiques de Joseph de Maistre*, (Lyon: Imprimerie des Beaux-Arts, 1944)

Baziou, Jean-Yves, *Les Fondements de l'Autorité*, (Paris: Editions de l'Atelier, 2005)

Beaud, Olivier, *La Puissance de l'Etat*, (Paris: Presses Universitaires de France, 1994)

Beik, Paul, *The French Revolution seen from the Right: Social Theories in Motion 1789-1799*, (Philadelphia PA: American Philosophical Society, 1956)

Benveniste, E., *Le Vocabulaire des Institutions Indo – Européennes, Volume II*, (Paris: Editions de Minuit, 1969)

Berlin, Isaiah, 'Joseph de Maistre and the Origins of Facism' in *The Crooked Timber of Humanity*, Henry Harvey ed., (London: John Murray, 1990)

- *The Magus of the North: J G Hamman and the Origins of Modern Irrationalism*, (London: Fontana, 1993)

'Introduction' to *Considerations on France*, (Cambridge: Cambridge University Press, 1994)

- 'The Counter-Enlightenment' in *Against the Current*, Henry Hardy ed., (London: Pimlico, 1997)

- *Three Critics of the Enlightenment: Vico, Hamann, Herder*, Henry Hardy ed., (London: Pimlico, 2000)

- *The Crooked Timber of Humanity: Chapters in the History of Ideas*, Henry Hardy ed., (London, Pimlico, 2003)

Berman, Harold J., *Law and Revolution: the Formation of the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1983)

Bernardi, Bruno, *La Démocratie*, (Paris: Flammarion, 1999)

Berns, Thomas, *Souverainete, Droit et Gouvernamentalité: Lectures du Politique Moderne à partir de Bodin*, (Paris: Editions Leo Scheer 2005)

Blamires, Cyprian, *Three critiques of the French Revolution: Maistre, Bonald and Saint-Simon*, (Unpublished: Oxford University PhD Thesis, 1986)

Blum, Carol, *Rousseau and the Republic of Virtue: The Language of Politics in the French Revolution* (Ithaca and London: Cornell University Press, 1986)

Bodin, Jean, *The Six Books of the Commonwealth*, R Knowles trans., K.D. McRae ed., (Cambridge MA: Harvard University Press, 1962)

- *Exposé du Droit Universel*, (Paris: Presses Universitaires de France, 1985)

- *On Sovereignty*, Julian H. Franklin ed., (Cambridge: Cambridge University Press, 1992)

- *Les Six Livres de la République*, Gerard Mairet ed. (Paris: Livre de Poche, 1993)

Bohman, J., and Rehg W., eds. *Deliberative Democracy: Essays on Reason and Politics* (Cambridge, MA: MIT Press, 1997)

Bolingbroke, H.J., *Political Writings*, I.Kramnick ed. (Arlington Heights: Harlan Davidson, 1970)

Boncompain, Claude and Vermale, Francois, *Joseph de Maistre*, (Paris: Editions du Felin, 2004)

Bossuet, Jacques – Bénigne, *Politique Tirée des Propres Paroles de l'Ecriture Sainte*, J. Lee Brun ed. (Geneva: Slatkine, 1967)

Boucher, David and Kelly, Paul eds., *Political Thinkers from Socrates to the Present*, (Oxford: Oxford University Press, 2003)

Bourget, Paul, *Pages de Critique et de Critique de Doctrine*, (Paris: Librairie Plon, 1912)

Bradley, Owen, *A Modern Maistre: The Social and Political Thought of Joseph de Maistre*, (Lincoln NA: University of Nebraska Press, 1999)

Brennan, Timothy, *At Home in the World: Cosmopolitanism Now* (Cambridge, MA: Harvard University Press, 1997)

Brudner, Alan, *Constitutional Goods*, (Oxford: Oxford University Press, 2004)

Burdeau, Georges, *L'Etat*, (Paris:Seuil, 1970)

Burke, Edmund, *Reflections on the Revolution in France*, Conor Cruise O'Brien ed., (London: Penguin, 1968)

- *The Works of Edmund Burke*, 8 Volumes (London:Bohn 1854 – 89)

Burns, J.H.,ed., *The Cambridge History of Political Thought, 1450 – 1700*,
(Cambridge: Cambridge University Press, 1991)

Camcastle, Cara, *The More Moderate Side of Joseph de Maistre: Views on Political
Liberty and Political Economy*, (Montreal: McGill-Queen's University Press, 2005)

Campagna, Norbert, *Michel Villey: Le Droit ou Les Droits?*, (Paris: Michalon, 2004)

- *Le Droit, Le Politique et la Guerre: Deux Chapitres sur la Doctrine de
Carl Schmitt*, (Québec: Les Presses de l'Université Laval, 2004)

Camus, Albert, *The Rebel*, Anthony Bower trans., (London: Penguin, 2000)

Canovan, Margaret, *The People*, (Cambridge: Polity Press, 2005)

Canto-Sperber, Monique ed., *Dictionnaire d'Ethique et de Philosophie Morale*,
(Paris: Presses Universitaires de France, 2004)

Caponigri, Aloysius, *Some Aspects of the Philosophy of Joseph de Maistre*,
(Unpublished Doctoral Thesis, Chicago University, 1945)

Carrét, Abbé L., *Finesse et Géometrie dans Joseph de Mastre: Politique, Guerre, Tradition*, (Isere: Imprimerie Paillet, 1938)

Casablanca, Denis, *De l'Esprit des Lois: Montesquieu*, (Paris: Ellipses, 2003)

Ernst Cassirer, *The Myth of the State*, (New Haven: Yale University Press, 1946)

- *The Philosophy of the Enlightenment*, (New Jersey: Princeton University Press, 1951)

Cazzola, Piero, 'Lettres inédits des frères de Maistre conservés a la Bibliotheque Centrale Municipale de Turin' (1779-1830) in *Revue des Etudes Maistriennes* 13, 2001

Chadwick, Owen, *The Securalisation of the European Mind in the 19th Century*, (Cambridge: Cambridge University Press, 1975)

Chartier, Roger, *Les Origines Culturelles de la Revolution Française*, (Paris: Seuil, 1991)

Chevallier, J., *L'Etat Postmoderne*, (Paris: LGDJ, 2004)

Chiappini, Philippe, *L'Esprit du Droit: Droit et le Sacré*, (Paris: Editions Dalloz, 2006)

Chroms – Jacobsen, Morgan, *Jean Bodin et le Dilemme de la Philosophie Politique Moderne*, (Copenhagen: Museum Tusculanum Press, 2000)

Cicero, *The Republic of Laws*, Niall Rudd trans., (Oxford, Oxford University Press, 1998)

Cioran, Emile, *Essai sur la Pensée Réactionnaire*, (Montpelier: Fata Morgana, 1977)

Cogordan, George, *Joseph de Maistre*, (Paris: Librairie Hachette, 1894)

Constant, Benjamin, *De l'Esprit de Conquête et de l'Usurpation* (Paris: G.F. Flammarion, 1986)

- *Political Writings*, Biancamaria Fontana, trans. (Cambridge: Cambridge University Press, 1988)

Copleston, Frederick, *A History of Philosophy: 19th and 20th century French Philosophy* Volume 9, (London: Continuum, 2003)

Cordelier, Jean-Pierre, *La Théorie Constitutionnelle de Joseph de Maistre*, (Doctoral Thesis: University of Paris, 1961)

Cornette, Joel, *La France de la Monarchie Absolue 1610-1715*, (Paris: Seuil, 2007)

Cosandey F. and Descimon, R., *L'Absolutisme en France*, (Paris: Seuil, 2002)

Costa de Beauregard, *Un Homme d'Autrefois*, (Paris: Plon, 1910)

Courtney, C.P., *Montesquieu and Burke*, (Oxford: Blackwell, 1963)

Cranston, Maurice, *In Search of Humanity: The Role of the Enlightenment in Modern History* (New York: George Braziller, 1960)

Darcel, Jean-Louis, 'Les Années d'Apprentissage d'un Contre-Revolutionnaire: Joseph de Maistre à l'1793-1797' in *Revue des Etudes Maistriennes* (10, 1986-87)

- 'Joseph de Maistre et la Revolution Française' in *Revue des Etudes Maistriennes* (10, 1986)

- 'Les Bibliothèques de Joseph de Maistre' 1768-1821, in *Revue des Etudes Maistriennes* (9, 1985)

- 'Régistres de la Correspondence de Joseph de Maistre' in *Revue des Etudes Maistriennes* (7, 1981)

- 'Les Chemins de l'Exile 1792-1817' in *Revue des Etudes Maistriennes* (13, 35-48)

- 'Joseph de Maistre et le Réforme de l'Etat 1788' in *Revue des Etudes Maistriennes* (11, 1990)

- 'Introduction to de l'Etat de Nature' in *Revue des Etudes Maistriennes* (2, 1976)

Davies, Peter, *The Extreme Right in France: 1979 to the Present*, (London: Routledge, 2002)

Delon, Michel, ed., *Dictionnaire Européen des Lumières*, (Paris: Presses Universitaires de France, 2007)

Dent, Nicholas, *Rousseau*, (London: Routledge, 2005)

Derathé, Robert, *Rousseau et la Science Politique de Son Temps*, (Paris: J.Vrin, 1988)

- *Entretiens de Genève*, (Paris: Armand Colin, 1962)

Dermenghem, Emile, *Joseph de Maistre, Mystique: Ses rapports avec le Martinisme, l'Illuminisme et la Maçonnerie: l'influence des doctrines mystiques et occultes sur la pensée religieuse*, (Paris: La Colombe, 1946)

Decostes, François, *Joseph de Maistre avant la Révolution: souvenirs de la société d'autrefois, 1753-1793*, (Paris: Picard, 1893)

- *Joseph de Maistre pendant la Révolution: ses débuts diplomatiques, le Marquis de Sales et les émigrés, 1798-1799*, (Tours: A. Marne et fils, 1895)

- *Joseph de Maistre inconnu: Venise-Cagliari-Rome (1797-1803)*, (Paris: Champion, 1904)

- *Joseph de Maistre, Orateur*, (Chambéry: Perrin, 1886)

Dieckhoff, Alain and Jaffrelot, Christophe, eds., *Répenser le nationalisme: théories et pratiques*, (Paris: Sciences Po Les Presses, 2006)

Dimier, Louis, *Les Maîtres de la Contre-Révolution au XIX^{ème} Siècle*, (Paris: Nouvelles Editions, 1917)

Donnadieu, Aristide, *Les Origines Languedociennes de Joseph de Maistre*,
(Chambery: Dardel, 1942)

Douzinas , C and Warrington R, *Justice Miscarried: Ethics, Aesthetics and the Law*,
London: Harvester, 1995)

Doyle, William, *The Oxford History of the French Revolution*, (Oxford, Oxford
University Press, 2002)

Duffy, Eamon, *Saints and Sinners; a History of the Popes*, (New Haven: Yale
University Press, 1997)

Dumezil, G., *Idées Romaines*, (Paris: Gallimard, 1980)

Dunn, John, *Setting the People Free: The Story of Democracy*, (London: Atlantic
Books, 2005)

Durand, Gilbert, 'Maistre, le Mythe Romantique et le Rit Ecossais Rectifié' in *Revue
des Etudes Maistriennes* (5-6, 1980)

Eatwell and O'Sullivan, *The Nature of the Right: American and European Politics
and Thought since 1789*, (London: Pinter, 1992)

Elster, J., *Ulysses and the Sirens: Studies in Rationality and Irrationality*, (Cambridge: Cambridge University Press, 1984)

Everdell, William, *Christian Apologetics in France 1730-1790*, (New York: Edwin Melton Press, 1987)

Faguet, Emile, 'Joseph de Maistre' in *Revue des Deux Mondes*, (15 December 1888)

- *Politiques et Moralistes du Dix-Neuvième Siècle* (Paris: Boivin Nouvelle Bibliothèque Litteraire 1890)

- *La Politique Comparée de Montesquieu, Rousseau et Voltaire* (Geneva: Slatkine (reprint) , 1970)

Faivre, Antoine, 'Joseph de Maistre et l'illuminisme: Rapports avec Jean-Baptiste Willermoz' in *Revue des Etudes Maistriennes* (5-6, 1980)

Fell A.L., *The Origins of Legislative Sovereignty and the Legislative State, Volume III: Bodin's Humanistic Legal System and the Rejection of Medieval Political Theology*, (Cambridge, MA: Harvard University Press, 1987)

Femia, Joseph V., *Against the Masses: Varieties of Anti-Democratic Thought since the French Revolution*, (Oxford: Oxford University Press, 2001)

Fennessy, R.R., *Burke, Paine and the Rights of Man* (The Hague: Martinus Nijhoff, 1963)

Fevrier, Raymond, *Etude sur Joseph de Maistre, Théocrate Catholique*, (Geneva: Imprimerie Ramboz et Schuchardt, 1877)

Filmer, Robert, *Patriarcha and Other Political Works*, P. Laslett ed. (Oxford: Blackwell, 1949)

Finnis, John, *Natural Law and Natural Rights* (Oxford: Oxford University Press, 1980)

Fishkin, J, *Democracy and Deliberation: New Directions for Democratic Reform* (New Haven: Yale University Press, 1991)

Foisneau, Luc, *Hobbes et la Toute – Puissance de Dieu*, (Paris: Presses Universitaires Francaises, 2000)

Foley, Michael, *The Silence of Constitutions: Gaps, Abeyances and Political Temperament in the Maintenance of Government*, (London: Routledge, 1989)

Foucault, Michel, *Sécurité, Territoire, Population, Cours du Collège de France, 1977-1978*, (Paris: Seuil/Gallimard, 2004)

Fuchs, Michel, 'Edmund Burke et Joseph de Maistre' in *Revue de l'Université d'Ottawa* 54, 1984

Gans, Eric, 'Maistre and Chateaubriand: Counter-Revolution and Anthropology' in *Studies in Romanticism* (28/4, 1989)

Garrard, Graeme, *Maistre, Judge of Jean-Jacques: an examination of the relationship between Jean-Jacques Rousseau, Joseph de Maistre and the French Enlightenment*, (Unpublished: Oxford University, DPhil Thesis, 1995)

- 'Rousseau, de Maistre and the Counter-Enlightenment' in *History of Political Thought*, Vol XV, Issue 1, Spring, 1994

- 'Joseph de Maistre's civilisation and its discontents' in *Journal of the History of Ideas*, (Volume 57, Number 3, 1996)

- *Rousseau's Counter-Enlightenment: A Republican Critique of the Philosophes*, (New York State: State University of New York Press, 2003)

- *Counter-Enlightenments: From the Eighteenth Century to the Present*,

(London: Routledge, 2006)

Gauchet, Marcel, *Le Désenchantement du Monde*, (Paris: Gallimard, 1985)

Gauthier, David, *The Politics of Redemption, Trent Rousseau Papers*, (Ottawa:

University of Ottawa Press, 1980)

Gehlen, Arnold, *Anthropologische Forschung*, (Hamburg: Reinbeck / Rowohlt,

1961)

Gengembre, Gerald, *La Contre Révolution ou l'Histoire d'Espérance*, (Paris: Imago,

1989)

Gianturo, Elio, *Joseph de Maistre and Giambattista Vico: Italian roots of de*

Maistre's political culture, (Columbia University PhD Thesis, 1937)

- 'Juridical culture and politics – historical judgment in Joseph de Maistre'

in *Romantic Review* (27, 1937)

Gierke, Otto, *Political Theories of the Middle Age*, Frederick Maitland, ed.,

(Cambridge: Cambridge University Press, 1922)

Gignoux, G.J., *Joseph de Maistre: Prophète du Passé, Historien de l'Avénir*, (Paris: Nouvelles Editions Latine, 1963)

Giradet, Raoul, *Mythes et Mythologies Politiques*, (Paris: Seuil, 1986)

Glaudes, Pierre, 'Joseph de Maistre et les Figures de l'Histoire: Trois Essais sur un Precurseur du Romantisme Français' in *Cahier Romantique no. 2*, (Clermond Ferrand, 1997)

- 'Joseph de Maistre, essayiste' in *Cahiers de l'Association Internationale des Etudes Francaises*, (No.52, May 2000)

- (ed.), *Joseph de Maistre –Oeuvres*, (Paris: Editions Robert Laffont, 2007)

Godechot, Jacques, *The Counter-Revolution: Doctrine and Action, 1789-1804*, (New York: Howard Fertig, 1971)

Goldstein, Marc. A, *The People in French Counter-Revolutionary Thought*, (New York: Peter Laing, 1988)

Goldie, M. And Wokler, R., eds., *The Cambridge History of Eighteenth Century Political Thought*, (Cambridge: Cambridge University Press, 2006)

Gooch, G.P, *French Profiles: Prophets and Pioneers*, (London: Longmans, 1961)

Gordon, Scott, *Controlling the State: Constitutionalism from Ancient Athens to Today*, (Cambridge, MA: Harvard University Press, 2002)

Gottfried, Paul, 'Utopianism of the Right, Maistre and Schlegel' in *Modern Age* (24/2, 1980)

Gouhier, Henri, *La Jeunesse d'Auguste Comte et la Formation du Positivisme: Auguste Comte et Saint-Simon*, (Paris:Vrin,1941)

Goyard-Fabre, Simone, *Les Principes Philosophiques du Droit Politique Moderne*, (Paris: Presses Universitaires Françaises, 1997)

- *Philosophie politique XV^e-XX^e siècle*, (Paris, Presses Universitaires Françaises, 1987)

Gray, Christopher B. ed.,*The Philosophy of Law: An Encyclopaedia* (New York: Garland Publishing, 1999)

Gray, John, *Enlightenment's Wake: Politics and Culture at the Close of the Modern Age* (London: Routledge, 1995)

Greifer, Elisha, 'Joseph de Maistre and the reaction against the eighteenth century'
in *American Political Science Review* (15, 1961)

Griethuysen, B., *Jean – Jacques Rousseau*, (Paris: Gallimard, 1949)

Guilland, Agnes, 'La rhétorique dans les Soirées de Saint Petersburg: refuter et convaincre' in *Revue des Etudes Maistriennes* (12, 2000)

- 'L'Erudition de Joseph de Maistre dans les Soirées de Saint Petersburg'
in *Revue des Etudes Maistriennes* (13, 2001)

Guyon, Edouard-Felix, 'Joseph de Maistre: Diplomate Sarde, Témoin et Juge de son Temps, 1792-98' in *Revue d'Histoire Diplomatique* (97, 1983)

Habermas, Jurgen, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, William Rehg trans., (Cambridge: Polity Press, 2004)

Hainsworth, P., ed., *The Extreme Right in Europe and the USA*, (London: Pinter, 1994)

Hampson, N., *The Enlightenment: An Evaluation of its Assumptions, Attitudes and Values*, (London: Penguin, 1990)

Hart, H.L.A, *The Concept of Law*, (Oxford: Clarendon Press, 1961)

Hayward, Jack, *After the French Revolution: Six Critics of Democracy and Nationalism*, (Hertfordshire: Harvester Wheatsheaf, 1991)

Hegel, G.W.F, *Hegel: Selections*, J.Lowenberg ed., (New York: Charles Scribner, 1929)

- *Elements of the Philosophy of Right*, Allen W. Wood ed., H.B.Nisbet, trans.,(Cambridge: Cambridge University Press, 1975)

Hobbes, Thomas, *Leviathan*, R. Tuck ed., (Cambridge: Cambridge University Press, 1998)

- *On the Citizen*, Richard Tuck and Michael Silverthorne, eds., (Cambridge: Cambridge University Press, 1999)

Hobsbawm, Eric, *The Age of Revolution*, (London: Abacus, 1997)

Hochstrasser, T., *Natural Law Theories in the Early Enlightenment*, (Cambridge: Cambridge University Press, 2000)

Holdsworth, Frederick, *Joseph de Maistre et l'Angleterre*, (Paris: Campion, 1935)

Holmes, Stephen, 'The Lion of Illiberalism' in *The New Republic*, (30 October 1989)

- *The Anatomy of Anti-Illiberalism*, (Cambridge, MA: Harvard University Press, 1996)

- *Passions and Constraint: On the theory of liberal democracy*, (Chicago: University of Chicago Press, 1995)

Horkheimer, M., *The Eclipse of Reason*, J. Cumming, ed., (New York: Seabury, 1974)

Huber, Max, *Die Staatsphilosophie von Joseph de Maistre im Lichte den Thomismus*, (Basel: Helbing und Lichtenhahn, 1958)

Hume, David, *David Hume's Political Essays*, Charles W. Hendel, ed., (New York: Liberal Arts Press, 1953)

Hummel, Jacky, *Carl Schmitt: L'Irreductible Réalité du Politique*, (Paris: Editions Michalon, 2005)

Israel, Jonathan, *Radical Enlightenment: Philosophy and the Making of Modernity 1650-1750*, (Oxford: Oxford University Press, 2002)

- *Enlightenment Contested*, (Oxford: Oxford University Press, 2006)

Jacqueline, Bernard, 'Le Saint-Siège et la publication de Du Pape' in *Revue des Etudes Maistriennes* (8, 1983)

Jaume, Lucien, *Hobbes et l'Etat Représentatif Moderne*, (Paris: Presses Universitaires Françaises, 1986)

Jehasse, J. And McKenna, A., eds., *Religion et Politique: Les Avatars de l'Augustinisme*, (Saint Etienne: Publications de l'Université de Saint – Etienne, 1998)

Jouvenel, Bertrand de, *Du Pouvoir: Histoire Naturelle de sa Croissance*, (Paris: Hachettes Litteratures, 1998)

- *Sovereignty: An Inquiry into the Political Good*, J.F. Huntingdon trans. (Indianapolis: Liberty Fund, 1998)

Keating, Michael, *Plurinational Democracy: Stateless Nations of the United Kingdom, Spain, Canada and Belgium in a Post – Sovereign World*, (Oxford: Oxford University Press, 2001)

Kelly, Paul, *Liberalism*, (Cambridge: Polity Press, 2005)

Kennedy, Ellen, *Constitutional Failure: Carl Schmitt in Weimar*, (Durham: Duke University Press, 2004)

Klein, Claude, *Théorie et Pratique du Pouvoir Constituant* (Paris: Presses Universitaires Françaises, 1996)

Kuhn, Thomas, *The Structure of Scientific Revolutions*, (Chicago: University of Chicago Press, 1962)

Lafage, Franck, *Le Compte Joseph de Maistre: Itineraire Intellectuel d'un Theologien de la Politique*, (Paris: L'Harmattan, 1998)

Lamartine, Alphonse, *Cours Familier de Litterature*, (Paris: Calmann Levy 1859)

Laski, Harold, *Studies in the Problem of Sovereignty*, (New Haven: Yale University Press, 1977)

Latreille, Camille, *Joseph de Maistre et la Papauté*, (Paris: Hachette, 1906)

- Les Derniers Jours de Joseph de Maistre raconté par sa fille, Constance de Maistre, *Quinzaine*, (16 July, 1905)

Le Borgne, Jean-Yves, *Joseph de Maistre et la Révolution*, (Brest: Publication de l'Université de Bretagne Occidentale, 1976)

Lebrun, Richard A., 'L'Epistémologie Maistrienne: Rationalité et Connaissance Transcendente' in *Revue des Etudes Maistriennes*, (5-6, 1980)

- 'Joseph de Maistre and Rousseau' in *Studies on Voltaire and the Eighteenth Century*, (88, 1972)

- 'Joseph de Maistre, Cassandra of Science' in *French Historical Studies*, (6, 1969)

- 'Joseph de Maistre's critique of Francis Bacon' in *Joseph de Maistre, Tra Illuminismo e Restaurazione*, Luigi Marino ed., (Turin: Centro Studi Piemontesi, 1975)

- (ed.), *Joseph de Maistre's Life, Thought and Influence: Selected Studies*, (Montreal: McGill-Queen's University Press, 2001)

- 'Joseph de Maistre dans le Monde Anglophone' in *Revue des Etudes Maistriennes* (13

- 'Joseph de Maistre et la Loi Naturelle' in *Revue des Etudes Maistriennes* (8, 1983)
- 'Joseph de Maistre et Malebranche' in *Revue des Etudes Maistriennes* (11, 1990)
- 'Joseph de Maistre: How Catholic a Reaction?' in *Canadian Catholic Historical Association Study Sessions*, (1967)
- 'Joseph de Maistre's 'philosophic view of war' in *Proceedings of the Annual Meeting of the Western Society for French History*, (7, 1979)
- 'Les Lectures de Joseph de Maistre d'Après ses Régistres Inédits' in *Revue des Etudes Maistriennes* (9, 1985)
- 'The Satanic Revolution: Joseph de Maistre's Religious Judgment of the French Revolution' in *Proceedings of the Annual Meeting of the Western Society for French History*, (16, 1989)
- *Joseph de Maistre: An Intellectual Militant*, (Montreal: McGill-Queens University Press, 1988)

- *Throne and Altar: The Political and Religious Thought of Joseph de Maistre*, (Ottawa: University of Ottawa Press, 1988)

Le Guillou, Louis, 'Joseph de Maistre et Lammenais, 1820-1821' in *Revue des Etudes Maistriennes* (8, 1983)

Lessay, F., *Souveraineté et Legitimé chez Hobbes*, (Paris: Presses Universitaires Françaises, 1988)

Lichtheim, George, 'Rousseau and De Maistre' in *New Statesman*, (16 September 1966)

Lively, Jack, *The Works of Joseph de Maistre*, (New York: Macmillan, 1965)

Locke, John, *Two Treatises on Government*, P.Laslett ed., (Cambridge: Cambridge University Press, 1998)

Lombard, Charles, M., *Joseph de Maistre*, (New York: Twayne, 1976)

Loughlin, Martin, *The Idea of Public Law*, (Oxford: Oxford University Press, 2004)

- *Sword and Scales: An Examination of the Relationship between Law and Politics*, (Oxford: Hart, 2000)

Lovie, Jacques, 'Les Dernières Années de Joseph de Maistre (1817-1821)' in *Revue des Etudes Maistriennes* (10, 1986-7)

Lowe, E.J, *Locke*, (London: Routledge, 2004)

McIlwain, C.H., *Constitutionalism Ancient and Modern* (Ithaca: Cornell University Press, 1940)

McLelland, J.S. ed., *The French Right: from de Maistre to Maurras*, (London: Jonathan Cape, 1971)

McMahon, Darrin M., *Enemies of the Enlightenment: The French Counter-Enlightenment and the Making of Modernity*, (New York: Oxford University Press, 2002)

MacIntyre, Alasdair, *The MacIntyre Reader*, K.Knight, ed. (Cambridge: Polity Press, 1998)

Machiavelli, Niccolo, *The Prince*, George Bull trans., (London: Penguin, 1999)

- *The Discourses*, Leslie J. Walker trans. (London: Penguin 2003)

Mairet, Gerard, *Le Principe de Souveraineté: Histoires et Fondements du Pouvoir Moderne*, (Paris: Gallimard, 1997)

Maistre, Henri de, *Joseph de Maistre*, (Paris: Perrin, 1990)

Malherbe, M., *Hobbes* (Paris: Vrin, 1984)

Manent, Pierre, *Cours Familier de Philosophie Politique*, (Paris: Gallimard, 2001)

- *Naissances de la Politique Moderne*, (Paris: Gallimard, 2007)

- *La Raison des Nations: Réflexions sur la Démocratie en Europe*, (Paris: Gallimard 2006)

- *Enquête sur la Démocratie*, (Paris: Gallimard, 2007)

- *La Cité de l'Homme*, (Paris: Flammarion, 1997)

- *Histoire Intellectuelle du Liberalisme*, (Paris: Hachette, 1997)

Mandoul, J., *Joseph de Maistre et la Politique de la Maison de Savoie*, (Paris: Alcan, 1899)

Manin, Bernard, *Principes du Gouvernement Représentatif*, (Paris:Flammairion, 1996)

Margerie, Amedee de, *Le Comte Joseph de Maistre: sa vie, ses écrits, ses doctrines, avec des documents inédites*, (Paris: Librairies de la Societé Bibliographique, 1882)

Martin, Jean-Clement, *Contre Révolution et Nation 1789-1799*, (Paris: Seuil, 1998)

Martinich, A.P., *Hobbes*, (London:Routledge, 2005)

Marx, Jacques, 'Les Sources Oriéntales de Joseph de Maistre' in *Bullétin de l'Association Guillaume Bude*, (4, 1970)

- 'Joseph de Maistre contre Voltaire, in *Studies on Voltaire and the Eighteenth Century*, (89, 1972)

Matyaszewski, Pawel, *La Philosophie de la Sociéée ou l'Idée de l'Unité Humaine selon Joseph de Maistre*, (Lublin: Catholic University of Lublin, 2002)

Meier, Heinrich, *The Lesson of Carl Schmitt: Four Chapters on the Distinction Between Political Theology and Political Philosophy*, Marcus Brainard trans., (Chicago: University of Chicago Press, 1998)

Meinecke, Friedrich, *Machiavellism: The Doctrine of Raison d'Etat and its Place in Modern History*, (London: Routledge, 1984)

Menczer, Bela, *Tensions of Order and Freedom: Catholic Political Thought, 1789-1848*, (London: Transaction, 1994)

Menissier, Thierry, *Eléments de la Philosophie Politique*, (Paris: Ellipses, 2005)

Michaud, Baron, 'En Relisant Joseph de Maistre' in *Revue des Deux Mondes*, (September 1943)

Miller, David, Coleman, Janet, Connolly, William and Ryan, Alan, eds., *The Blackwell Encyclopaedia of Political Thought*, (Oxford: Blackwell, 1991)

Miltchina, Vera, 'Joseph de Maistre en Russie: Aperçu de la Réception de son Oeuvre' in *Revue des Etudes Maistriennes* (13, 2001)

Montmasson, J.M., *L'Idee de Providence d'Après Joseph de Maistre*, (Lyon: Vitte, 1928)

Montesquieu, C.L., Baron de, *De l'Esprit des Lois*, 2 vols. (Paris: Gallimard, 1995)

Moreau – Reibel, J., *Bodin et le Droit Public Comparé dans ses Rapports avec la Philosophie de l'Histoire*, (Paris: Vrin, 1933)

Morley, Viscount John, *Critical Miscellanies*, (London: 1871) reprinted (London: MacMillan, 1923)

Muller, Jerry, Z., *Conservatism: An anthology of social and political thought from David Hume to the present*, (New Jersey: Princeton University Press, 1997)

Murray, John Courtney, 'Political Thought of Joseph de Maistre' in *Review of Politics*, (11, 1949)

Nay, Olivier, *Histoire des Idées Politiques*, (Paris: Armand Colin, 2007)

Negri, Antonio, *Insurgencies: Constituent Power and the Modern State* (Minneapolis: University of Minnesota Press, 1999)

Nichols, Aiden, *Catholic Thought Since the Enlightenment*, (Pretoria: Unisa Press, 1998)

Nicholas, Barry, *An Introduction to Roman Law*, (Oxford: Clarendon Press, 1962)

Nisbet, Robert, *Conservatism and Sociology, Tradition and Revolt*, (New York: Vintage Books, 1970)

Norman, Edward, *The Roman Catholic Church*, (London: Thames and Hudson, 2007)

Oakeshott, Michael, *On Human Conduct*, (Oxford: Clarendon Press, 1990)

- *Rationalism in Politics*, (Indianapolis: Liberty Fund 1991)

- *Lectures in the History of Political Thought*, Nardin, Terry and O'Sullivan, Luke, eds., (Exeter and Charlottesville: Imprint Academic, 2006)

- *Hobbes on Civil Association*, (Indianapolis: Liberty Fund, 1975)

- *The Politics of Faith and the Politics of Scepticism*, Timothy Fuller ed. (New Haven: Yale University Press, 1996)

O'Sullivan, Noel, *Conservatism*, (New York: Saint Martin's Press, 1976)

Osgood, S.M., *The Fall of France 1940: Causes and Responsibilities*, (Boston, MA: Heath and Company, 1965)

Ozer, Atila, *L'Etat*, (Paris: Flammarion, 1998)

Paine, Thomas, *Rights of Man, Common Sense and Other Writings*, Mark Philip, ed.,
(Oxford: Oxford University Press, 1995)

Palmer, R.R., *Catholics and Unbelievers in Eighteenth Century France*, (Princeton,
NJ: Princeton University Press, 1939)

Pellegrin, Marie-Frederique, *Le système de la Loi de Nicholas Malebranche*, (Paris:
Vrin, 2006)

Penner, J., Schiff. R and Nobles, D., *Jurisprudence and Legal Theory: Commentary
and Materials*, (London: Butterworths, 2002)

Peronnet, Michel, *Le Cinquante Mots Clés de la Revolution Française*, (Paris:
Editions Privat, 1983)

Petitfils, J-C., *L'Extrême Droite en France*, (Paris: Presses Universitaires Françaises,
1983)

Piotte, Jean-Marc, *Les Neuf Clés de la Modernité*, (Montreal: Québec Amérique,
2007)

Picq, Jean, *Histoire et Droit des Etats: la Souveraineté dans le Temps et l'Espace Européens*, (Paris: Sciences Po Les Presses, 2005)

Plato, *The Republic*, Desmond Lee, trans., (London:Penguin, 1987)

- *The Laws*, Trevor J. Saunders trans., (London: Penguin 1970)

Plutarch, *On Sparta*, Richard J.A. Talbert, trans., (London: Penguin, 2005)

Polin R., *Politique et Philosophie chez Thomas Hobbes*, (Paris:Vrin, 1977)

Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church*, (London: Continuum, 2005)

Pranchère, Jean-Yves, *L'Autorité contre les Lumières: la Philosophie de Joseph de Maistre*,(Geneva: Droz, 2004)

- 'La Philosophie de Joseph de Maistre' in *Revue des Etudes Maistriennes* (13, 2001)

- Qu'est-ce que la Royauté? Joseph de Maistre, (Paris: Vrin, 1992)

- 'Dans le dialectique des Lumières' in *Cahiers de l'Association*

Internationale des Etudes Francaises, (Paris: Societé d'Edition "les Belles Lettres", May 2000)

Pufendorf, Samuel, *On the Duty of Man and Citizen*, James Tully ed., Michael Silverthorne trans., (Cambridge: Cambridge University Press, 1991)

- Simone Zurbuchen, ed.,Dorrington T., trans, *The Divine Feudal Law: Or, Covenants with Mankind, Represented* (Indianapolis: The Liberty Fund, 2002)

Radica, Gabrielle, *La Loi*, (Paris: GF Flammarion, 2000)

Rahner D., *Euchyrridion Symbolorum* (Rome: Henrici Denzigwe, 1957)

Raphael, D.D., *Hobbes: Morals and Politics*, Political Thinkers Vol. VI, Geraint Parry ed., (London, Routledge, 2004)

Rawls, John, *A Theory of Justice*, (Oxford: Oxford University Press, 1972)

Raynaud, Philippe and Rials, Stephane, eds., *Dictionnaire de Philosophie Politique*, (Paris: Presses Universitaires Francaises, 1996)

Reardon, Bernard, *Liberalism and Tradition: Aspects of Catholic Thought in Nineteenth Century France*, (Cambridge: Cambridge University Press, 1975)

Rebottton, Jean, *Etudes Maistriennes: Nouveau Aperçu sur la Famille de Maistre et sur les Rapports de Joseph de Maistre avec M de Steding*, (Aosta: Bibliothèque de l'Archivum Augustanum, 1974)

- 'Les Frères de Maistre et le Berceau Savoyard' in *Revue des Etudes Maistriennes* (13, 2001)

- 'Lamartine et la Famille de Maistre' in *Revue des Etudes Maistriennes* (4, 1978)

- 'Maistre, alias Josephus a Floribus, pendant la revolution: Répères et Conjectures' in *Revue des Etudes Maistriennes* (5-6, 1980)

- 'Nouveaux Aperçus sur l'Education et l'Attitude Religieuse du Jeune Maistre' in *Revue des Etudes Maistriennes* (3, 1977)

Remond, R., *The Right Wing in France*, (Philadelphia, PA: University of Pennsylvania Press, 1971)

- *L'Ancien Régime et la Révolution 1750-1815*, (Paris: Seuil, 1974)

Remusat, Charles de., 'Du Traditionalisme' in *Revue des Deux Mondes* (9, 15 May 1857)

Renan, Ernest, *L'Avenir de la Science*, (Paris: G F Flammarion, 1999)

Renaut, Alain ed., *Histoire de la Philosophie Politique: Naissances de la Modernité*, (Paris: Calmann-Levy, 1999)

- (ed.), *Histoire de la Philosophie Politique: Lumières et Romantisme*, (Paris: Calmann-Levy, 1999)

Rials, Stephane, *Revolution et Contre-Revolution au XIXème siècle*, (Paris: DVC/Albatross, 1987)

- *le Legitisme*, (Paris: Presses Universitaires Françaises, 1983)

Riley, Patrick ed., *The Cambridge Companion to Rousseau*, (Cambridge: Cambridge University Press, 2001)

Riquet, Michel, 'Joseph de Maistre et le Pere Barruel' in *Revue des Etudes Maistriennes* (5-6, 1980)

Roberts, J-M, *The French Revolution*, (Oxford: Oxford University Press, 1978)

Rommen, Heinrich R., *The State in Catholic Thought: A Treatise in Political Philosophy*, (New York: Greenwood Press, 1969)

Rousseau, Jean-Jacques, *The Social Contract*, Maurice Cranston trans., (London: Penguin, 1968)

- *Du Contrat Social*, (Paris: GF Flammarion, 2001)

- *Discourse on Inequality*, Franklin Philip trans., (Oxford: Oxford University Press, 1999)

- *Discours sur l'Origine et les Fondements de l'Inégalité parmi les Hommes et Discours sur les Sciences et les Arts*, (Paris: Flammarion, 1992)

- *Les Confessions*, (Paris: Flammarion, 2002)

- *Lettres Philosophiques* (Paris: Flammarion 2002)

Rouvillois, Frederic, *Le Droit*, (Paris: Flammarion, 1999)

Saint-Beuve, Charles A., *Les Grands Ecrivains Français: XIXème Philosophes et Essayistes*, (Paris: Garnier, 1930)

- 'Correspondance Diplomatique du Comte Joseph de Maistre' in *Causeries du Lundi*, 15 vols, (Paris, Garnier, 1930)

- 'Joseph de Maistre' in *Portraits Littéraires*, (Paris: Robert Laffont, 1993)

Rowe, Christopher and Schofield, Malcolm, eds., *The Cambridge History of Greek and Roman Political Thought* (Cambridge: Cambridge University Press, 2000)

Scherer, Edmond, *Mélanges de Critiques Religieuses*, (Paris: Cherbouliez, 1860)

Schmitt, Carl, *The Concept of the Political*, George Schwab trans., (Chicago: University of Chicago Press, 1996)

- *Political Theology: Four Chapters on the Concept of Sovereignty*, George Schwab trans., (Chicago: University of Chicago Press, 2005)

- *The Leviathan in the State Theory of Thomas Hobbes: Meaning and Failure of a Political Symbol*, George Schwab and Erna Hilfstein trans., (Westport: Greenwood Press, 1996)

- *Théorie de la Constitution (Verfassungslehre)*, Lilyane Deroche trans.,

(Paris: Presses Universitaires Françaises, 1993)

- *Die Diktatur*, (Berlin: Dunker and Humbolt, 1989)

Secret, Bernard, *Joseph de Maistre: Substitut et Sénateur*, (Chambery: Dardel, 1927)

Seilliére, Ernest, 'Joseph de Maistre et Rousseau' in *Comptes Rendues des Scéances de l'Academie des Sciences Morales et Politiques*, (194, 1920)

Siedentop, Larry Alan, *The Limits of the Enlightenment: a study of Conservative Political Thought in Early Nineteenth Century France with special reference to Maine de Biran and Joseph de Maistre*, (Oxford University: D.Phil Thesis, 1966)

Seidman, Steven, *Liberalism and the Origins of European Social Theory*, (Berkeley, CA: University of Berkeley Press, 1983)

Siéyes, Joseph Emmanuel, *Political Writings*, Michael Sonenscher ed., (Indianapolis: Hackett Publishing Company, 2003)

Skinner, Quentin, *Visions of Politics: Volume I Regarding Method*, (Cambridge: Cambridge University Press, 2002)

- and Strath, Bo, eds., *States and Citizens*, (Cambridge: Cambridge University Press, 2003)

Slama, Alain Gerard, *Les Chasseurs d'Absolu: Genèse de la Gauche et de la Droite*, (Paris: Bernard, 1980)

Smith, Rogers M., *Stories of Peoplehood: The Politics and Morals of Political Membership*, (Cambridge: Cambridge University Press, 2003)

Soltner, Jean-Louis, 'Le Christianisme de Joseph de Maistre' in *Revue des Etudes Maistriennes* (5-6, 1980)

Spector, Celine, *Le Vocabulaire de Montesquieu*, (Paris: Ellipses, 2001)

- *Le Pouvoir*, (Paris: Flammarion, 1997)

Spinoza, Benedict, *Traité Théologico – Politique* (Paris: G F Flammarion, 1965)

Spitz, Jean-Fabien, *Bodin et la Souveraineté*, (Paris: Presses Universitaires Françaises, 1998)

Stael, Germaine de, *Oeuvres Complètes*, Paul Gautier, ed. (Paris: Plon – Nourrit, 1904)

Steiner George, *Aspects of Counter-Revolution: the French Revolution and its Legacy 1789-1989*, G.Best ed., (London: Fontana, 1988)

Sternhell Zeev, *Les Anti-Lumières: du XVIIIème Siècle a la Guerre Froide*, (Paris: Librairie Arthème Fayard, 2006)

Strauss, Leo and Cropsey Joseph, eds., *A History of Political Philosophy*, (Chicago: University of Chicago Press, 1987)

Strickland, Geoffery ed., *Selected Journalism from the English Reviews by Stendahl* (New York: Grove Press, 1959)

Stump E. and Kretzmann N. eds., *The Cambridge Companion to Saint Augustine*, (Cambridge, Cambridge University Press, 2001)

Tacitus, *The Annals of Imperial Rome*, Michael Grant trans., (Paris: Penguin, 1996)

Taylor, Charles, *Sources of the Self: the Making of Modern Identity*, (Cambridge: Cambridge University Press, 1989)

Thurston, Benjamin, *Joseph de Maistre: Logos and Logomachy*, (Oxford University, D.Phil Thesis, 2001)

Tocqueville, Alexis de, *L'Ancien Régime et la Révolution*, (Paris: Gallimard, 1967)

- *De la Démocratie en Amérique Vols I and II*, (Paris: Gallimard, 1961)

- *Democracy in America*, Gerald E. Bevan trans., (Paris: Penguin 2003)

Trenard, Louis, 'Joseph de Maistre et ses Amis Lyonnais' in *Revue des Etudes Maistriennes* (8, 1983)

Triomphe, Robert, *Joseph de Maistre: Etude sur la Vie et sur la Doctrine d'un Matérialiste Mystique*, (Geneva: Droz, 1968)

- 'Joseph de Maistre et Herder' in *Revue de Litteraire Comparée* (28, 1954)

- 'Pascal et Joseph de Maistre' in *Revue des Sciences Religieuses* (35, 1961)

Tudor, Henry, *Political Myth* (London: Pall Mall, 1972)

Tulard, J., Fayard, J-F. and Fiero, A., *Histoire et Dictionnaire de la Révolution Française*, (Paris: Robert Laffont, 1998)

Tully, James, *Strange Multiplicity: Constitutionalism in an Age of Diversity*,
(Cambridge: Cambridge University Press, 1995)

Vallin, Pierre, 'Les Soirées de Joseph de Maistre: Une Creation Théologique
Originale' in *Récherches Religieuses* (74, 1986)

Van Creveld, Martin, *The Rise and Decline of the State*, (Cambridge: Cambridge
University Press, 1999)

Van Kley, Dale K., *The Religious Origins of the French Revolution*, (Yale: Yale
University Press, 1996)

Vaulliaud, Paul, *Joseph de Maistre, Franc – Macon*, (Milan: Arche & Edidit, 1990)

Vaulx, Bernard de, *Joseph de Maistre*, (Paris, Vrin, 1940)

Vermale, Francois, *Notes sur Joseph de Maistre Inconnu*, (Chambery: Librairie
Dardel, 1921)

- *Joseph de Maistre Emigré*, (Chambery: Dardel, 1927)

Vernon, Richard, *Citizenship and Order: Studies in French Political Thought*,
(Toronto: University of Toronto Press, 1986)

Vidal – Naquet, P., *La Démocratie Grecque vue d'Ailleurs* (Paris: Flammarion, 1990)

Vigny, Alfred de, *Stello* (Paris: Calmann Levy, 1882)

Villey, Michel, *La Formation de la Pensée Juridique Moderne*, (Paris: Presses Universitaires Françaises, 2003)

- *Philosophie du Droit*, (Paris: Dalloz, 2001)

- *Le Droit et Les Droits de l'Homme*, (Paris: Presses Universitaires Françaises, 1998)

Walker, R.B.J. and Mendlovitz, eds., *Contending Sovereignities:Redefining Political Community* (Colorado: Lynne Rienner, 1990)

Weber, Max, *Le Savant et le Politique* (Paris: Union Générale d'Édition, 1974)

Weiler, J.H.H, *The Constitution of Europe*, (Cambridge: Cambridge University Press, 1999)

Weiss, J., *Conservatism in Europe, 1770-1945*, (London: Thames and Hudson, 1977)

Wilson, Andrew, *The blindfolded prophet: Joseph de Maistre 1753-1821*, (Durham: The Durham University Press, 1979)

Wilson, Edmund, 'Joseph de Maistre' in *The New Republic* (72/925, 24 August 1932)

Wincock M., ed., *Histoire de l'Extrême Droite en France*, (Paris: Seuil, 1994)

- (ed.), *La Droite depuis 1789: Les Hommes, les Idées, les Réseaux*, (Paris: Seuil, 1995)

Wokler, Robert, *Rousseau*, (Oxford: Oxford University Press, 1995)

- (ed.), *Rousseau and Liberty* (Manchester: Manchester University Press, 1995)

Wyatt, E.D., 'The English Image of Joseph de Maistre' in *European Studies Review* (4, 1979)

Zarka, Yves-Charles, *Figures du Pouvoir: Etudes de Philosophie Politique de Machiavel à Foucault*, (Paris: Presses Universitaires Françaises, 2001)

- *La Décision Métaphysique de Hobbes*, (Paris: Vrin, 1987)

- and Gian Mario Cazzaniga eds. *Penser la Souveraineté à l'Epoque Moderne et Contemporaine* (Paris: Vrin, 2001)