

John Eidsmoe, *Christianity and the Constitution* (Grand Rapids, MI: Baker Book, 1987), 54-61.

[p. 54>] Montesquieu

Charles Louis Joseph de Secondat, the Baron Montesquieu of France (1689-1755), was cited by the founders of this nation more frequently than any other source except the Bible. His best-known work, *The Spirit of Laws*, distinguished four forms of government: monarchy in which the guiding principle is honor, aristocracy in which the guiding principle is moderation, republican democracy in which the guiding principle is virtue, and despotism in which the guiding principle is fear. His main contribution to the thinking of the founders of this nation was the concept of separation of powers between legislative, executive, and judicial branches of government. This concept is so vital to the American constitutional system.

Because he lived in France and taught in French universities during the time of the philosophes, Montesquieu is sometimes identified as a deist. But he was born a Catholic, and remained a Catholic to his death. He did have some private questions concerning Catholic dogma. Stark suggests that Montesquieu moved closer and closer to Christian orthodoxy as he grew older, noting Montesquieu comment that the establishment of Christianity among the Romans would be an absurdity if it were merely a natural historical event.² In any event, he received Communion shortly before he died, and he emphatically declared his belief that the elements were the true Body and Blood of Jesus Christ.³

Montesquieu believed all law has its source in God. As he says in the opening of *The Spirit of Laws*: "God is related to the universe, as Creator and Preserver; the laws by which He created all things are those by which He preserves them."⁴ These laws apply to the physical world and human beings. Men make their own laws, but these laws must conform to the eternal laws of God.

Particular intelligent beings may have laws of their own making, but they likewise have some which they never made.... Before laws were made, there were relations of possible justice. To say that there is nothing just or unjust but what is commanded or forbidden by positive laws, is the same as saying that before the describing of a circle all the radii were not equal.⁵

[p. 55>] Montesquieu believed man was basically evil and self-centered. His pessimism was due to the fact that he felt intelligent beings do not choose to follow God's laws:

But the intelligent world is far from being so well governed as the physical. For though the former has also its laws, which of their own nature are invariable, it does not conform to them so exactly as the physical world. This is because, on the one hand, particular intelligent beings are of a finite nature, and consequently liable to error; and on the other, their nature requires them to be free agents. Hence they do not steadily conform to their primitive laws; and even those of their own instituting they frequently infringe....

Man, as a physical being, is like other bodies governed by invariable laws. As an intelligent being, he incessantly transgresses the laws established by God, and changes those of his own instituting. He is left to his private direction, though a limited being, and subject, like all finite intelligences, to ignorance and error: even his imperfect knowledge he loses; and as a sensible creature, he is hurried away by a thousand impetuous passions. Such a being might every instant forget his Creator; God has therefore reminded him of his duty by the laws of religion. Such a being is liable every moment to forget himself; philosophy has

provided against this by the laws of morality. Formed to live in society, he might forget his fellow-creatures; legislators have, therefore, by political and civil laws, confined him to his duty.⁶

He compared Christianity to Islam and declared Christianity superior partly because of the better government it promotes, “a moderate Government is most agreeable to the Christian Religion, and a despotic Government to the Mahomedan”:

The Christian religion, which ordains that men should love each other, would, without doubt, have every nation blest with the best civil, the best political laws; because these, next to this religion, are the greatest good that men can give and receive....

The Christian religion is a stranger to mere despotic power. The mildness so frequently recommended in the gospel is incompatible with the despotic rage with which a prince punishes his subjects, and exercises himself in cruelty....

While the Mahomedan princes incessantly give or receive death, the religion of the Christians renders their princes less timid, and consequently less cruel. The prince confides in his subjects, and the subjects in the prince. How admirable the religion which, while it [p. 56>] only seems to have in view the felicity of the other life, continues the happiness of this!⁷

In addition he explained that “the Catholic Religion is most agreeable to a Monarchy, and the Protestant to a Republic,” because “the people of the north have, and will forever have, a spirit of liberty and independence, which the people of the south have not; and, therefore, a religion which has no visible head is more agreeable to the independence of the climate than that which has one....” This was more true of Calvinist societies than Lutheran societies.⁸

In his writings, Montesquieu explained the role of religion in fostering values which find expression in civil laws. He pointed out that this is also true in non-Christian societies. He expressed the orthodox conviction that Christianity is a religion revealed by God himself. “In a country so unfortunate as to have a religion that God has not revealed, it is necessary for it to be agreeable to morality; because even a false religion is the best security we can have of the probity of men.”⁹ Thus, even a false religion can positively affect society if it fosters values which find expression in good laws.

While Montesquieu's countrymen followed the way of the radical philosophes which ultimately led to destruction, the American founding fathers were receptive to his views. He recognized the value of religion, Christianity in particular, in fostering good laws and good government. Knowing the sinful nature of man, he advocated separation of powers by which power checks power. That was Montesquieu's main contribution to the thinking of the founders of this nation: the separation of powers between the legislative, executive, and judicial branches of government.

Blackstone

Noted for literary quality and readability as well as for legal and historical scholarship, Sir William Blackstone's famous *Commentaries on the Laws of England* are rated as the most famous treatise on common law.

Blackstone (1723-1780) was an English barrister whose talents and inclinations were more suited to teaching law than to practicing law. Harvard Law Professor Duncan Kennedy describes Black- [p. 57>] stone's *Commentaries* as “an important 18th-century treatise that all legal scholars have heard of but

practically no one knows anything about.”¹⁰ One reason may be that Blackstone's God-centered view of law is out of fashion in today's legal community.

Throughout the latter half of the 1700s and the first half of the 1800s Blackstone's popularity in America was uneclipsed. It is said that more copies of Blackstone's *Commentaries* were sold in America than in England, that his *Commentaries* were in the offices of every lawyer in the land, that candidates for the bar were routinely examined on Blackstone, that he was cited authoritatively in the courts, and that a quotation from Blackstone settled many a legal argument.¹¹

The founders of the nation read Blackstone with great interest. At least one delegate to the Constitutional Convention, Charles Cotesworth Pinckney of South Carolina, had been Blackstone's student at Oxford and was Blackstone's firm disciple. James Madison wrote in 1821, “I very cheerfully express my approbation of the proposed edition of Blackstone's *Commentaries*...”¹²

The founding fathers drew three major points from Blackstone. The first was his conviction that all law has its source in God. Blackstone wrote about various categories of law, one of which is the law of nature:

Law of Nature. This will of his Maker is called the law of nature. For as God, when He created matter, and endued it with a principle of mobility, established certain rules for the perpetual direction of that motion; so, when He created man, and endued him with free will to conduct himself in all parts of life, He laid down certain immutable laws of human nature, whereby that free will is in some degree regulated and restrained, and gave him also the faculty of reason to discover the purport of those laws.

Considering the Creator only a Being of infinite power, He was able unquestionably to have prescribed whatever laws He pleased to His creature, man, however unjust or severe. But as he is also a Being of infinite wisdom, He has laid down only such laws as were founded in those relations of justice, that existed in the nature of things antecedent to any positive precept. These are the eternal, immutable laws of good and evil, to which the Creator Himself in all his [p. 58>] Dispensations conforms; and which He has enabled human reason to discover, so far as they are necessary for the conduct of human actions. Such, among others, are these principles: that we should live honestly, should hurt nobody, and should render to everyone his due; to which three general precepts Justinian has reduced the whole doctrine of law....

This law of nature, being coeval with mankind and dictated by God Himself, is of course superior in obligation to any other. It is binding over all the globe in all countries, and at all times: no human laws are of any validity, if contrary to this...

Blackstone then described revealed law, the law of God as found in the Bible.

Revealed Law. This has given manifold occasion for the interposition of divine providence; which in compassion to the frailty, the imperfection, and the blindness of human reason, hath been pleased, at sundry times and in divers manners, to discover and enforce its laws by an immediate and direct revelation. The doctrines thus delivered we call the revealed or divine law, and they are to be found only in the Holy Scriptures. These precepts, when revealed, are found upon comparison to be really a part of the original law of nature as they tend in all their consequences to man's felicity. But we are not from thence to conclude that the knowledge of these truths was attainable by reason, in its present corrupted state; since we find that, until they were revealed, they were hid from the wisdom of the ages. As then the moral precepts of this law are indeed of the same original with those of the law of nature, so their intrinsic obligation is of equal strength and perpetuity. Yet undoubtedly the revealed law is of infinitely

more authenticity than that moral system, which is framed by ethical writers, and denominated the natural law. Because one is the law of nature, expressly declared so to be by God Himself; the other is only what, by the assistance of human reason, we imagine to be that law. If we could be as certain of the latter as we are of the former, both would have an equal authority; but, till then, they can never be put in any competition together.

Upon these two foundations, the law of nature and the law of revelation, depend all human laws; that is to say, no human law should be suffered to contradict these.”

For the founding fathers, a second significant point in Blackstone's writings was the role of judges. In Blackstone's view, judges discover and apply law; they do not “make” law. This closely [p. 59>] follows from Blackstone's underlying view of law as part of the revealed law of God or the law of nature. Judges were not a source of law. There are only three sources of law—general custom, the court precedents which present-day judges are not free to alter; special custom, rights of private parties that had ripened into rights by prescription; and statute law, that which was passed by Parliament. In respect to the latter, the role of the judge is to interpret the will of the legislature, not to substitute his own ideas in their place.¹⁴ Blackstone, like Montesquieu, saw three branches of government, but envisioned the legislative as superior to the judiciary.

A third significant point in Blackstone's *Commentaries* was his expert systematizing of the common law of England. While this systematizing was needed in England, it was even more necessary in America because America was a new nation that did not have England's long traditions.

The common law of England is generally founded on biblical principles. The Anglo-Saxon Alfred the Great, for example, started his legal code with a recitation of the Ten Commandments and excerpts from the Mosaic law. There were additions to the Anglo-Saxon law. In the eleventh century Henricus Bracton systematized the common law according to Roman law as revised by the Justinian Code. The result was a Christianized version of the Roman law.

The Jewish interpretation of the Old Testament influenced the commercial law of England and the rest of Europe. Throughout much of the Middle Ages the church prohibited money-lending at interest, based on the interpretation of certain passages of Scripture. The Jews interpreted these Scriptures differently and were willing to lend money at interest. Often the only place one could borrow money was in the Jewish community. Jewish scholars such as Rabbi Moses Ben Maimon (Maimondes) codified the Jewish law and it formed the basis for much of English commercial law.

The canon law of the church and the emphasis on individual rights found in the Viking [p. 60>] law from portions of England controlled by Norwegians and Danes also influenced English common law.¹⁵ The noblemen who forced King John to sign the Magna Carta in A.D. 1215 came mostly from areas which had been under Viking control. While the Vikings were not Christians until about A.D. 1000, their emphasis on individual rights was consistent with biblical principles.

Although for a time it was popular to belittle Blackstone and his beliefs,¹⁶ his views are becoming increasingly valued by legal scholars. One of Blackstone's former students, Jeremy Bentham, charged that Blackstone was an arch-conservative and an “enemy of reformation.” But, fortunately, Bentham never gained the following in America that he had in England.

The 1986 edition of *Encyclopedia Britannica* puts it well: "Blackstone's description of the law as it existed was accurate and comprehensive, and was of great use to those who wished to reform it."¹⁷ The author adds that it is "amusing" (the 1911 edition changes this word to "curious") that even today Blackstone's *Commentaries* "probably express the most profound political convictions of the majority of the English people."

The common law of England is part of the Christian heritage of America. That so much of it survived the migration to America is due in large part to Sir William Blackstone.

Locke

John Locke (1632-1704) was the British philosopher and political theorist who inspired a generation of Americans to thoughts of independence and the rights of man. His best-known works are his "Essay Concerning Human Understanding" and his two treatises "On Civil Government."

John Locke was born into a Puritan family, the son of a rural Calvinist lawyer who fought on the side of the Puritans in the English civil war. He was educated at Calvinist institutions and emerged with a Calvinistic world view although he was a bit more moderate than some Calvinists.

Locke, sometimes identified as a deist and freethinker, was actually a staunch and fervent Christian. He placed a higher value [p. 61>] on human reason than most orthodox Christians; but he used his powers of reason to arrive at Christian truths. According to his understanding of original sin, children are born neither good nor bad, but rather with a "tabula rosa" or "blank slate" upon which good or bad can be written during life. He wrote a treatise titled "The Reasonableness of Christianity," in which he attempted to prove the truth of Christianity. Locke believed that if he showed people how logical and reasonable Christianity was, everyone would accept it. He did not realize that most objections to Christianity come from the heart and not the mind.

He was a pious man,¹⁸ and always held a high view of Scripture. Locke studied the Bible extensively and wrote paraphrases of St. Paul's Epistles to the Romans, Corinthians, Galatians, and Ephesians, as well as "An Essay for the Understanding of St. Paul's Epistles, by consulting St. Paul himself." These were published after his death. He derived his view of Scripture largely from Richard Hooker's "On the Laws of Ecclesiastical Polity." Hooker, an Anglican theologian, took a middle-ground position between the Catholics who placed church tradition on a par with Scripture, and the Puritans who stood for Scripture alone. Hooker argued that where the Scripture is clear, Scripture alone must govern. Where Scripture is unclear, church tradition may be employed to help interpret it; and where both Scripture and church tradition are unclear, or where new circumstances arise, reason may also be employed to apprehend God's truth.¹⁹

Locke frequently cited the Bible in his political writings. In his first treatise on government he cited the Bible eighty times. Forty-two of these citations are from Genesis, mostly chapters 1 and 3. Twenty-two biblical citations appear in his second treatise in which he argued that parents have authority over their children based upon the creation of Adam and Eve and their offspring. He also argued that man has the right to possess property since God gave the earth to Adam and later to Noah. He based the social compact which government is established upon "that Paction which God made with Noah after the Deluge. "(4)²⁰ His basic doctrines of parental authority, private property, and social compact were based on the historical existence of Adam and Noah.

John Locke made two major contributions to the thinking of America's founding fathers. The first was his doctrine of natural law [p. 62>] and natural rights which the founding fathers were acquainted with from other sources but found most clearly expressed in Locke's writings. He based both of these concepts on Scripture:

Human Laws are measures in respect of Men whose Actions they must direct, albeit such measures they are as have also their higher Rules to be measured by, which Rules are two, the Law of God, and the Law of Nature; so that Laws Human must be made according to the general Laws of Nature, and without contradiction to any positive Law of Scripture, otherwise they are ill made.²¹

Locke identified the basic natural rights of man as "life, liberty, and property." This phrase is part of the Fifth and Fourteenth Amendments to the Constitution as well as the Declaration of Independence, where Jefferson expanded "property" to "pursuit of happiness."

Second, Locke contributed the theory of social compact: the idea that men in a state of nature realize their rights are insecure, and compact together to establish a government and cede to that government certain power so that government may use that power to secure the rest of their rights. The social compact theory is similar to the Calvinist idea of covenant. The social compact theory, like the covenant, allows the government only the power God and/or people delegate. This is the cornerstone of limited government. It finds expression in the Tenth Amendment to the Constitution and in the Declaration of Independence which states that governments exist to secure human rights and "derive their just powers from the consent of the governed."

2) Werner Stark, *Montesquieu, Pioneer of the Sociology of Knowledge* (Toronto: University of Toronto Press, 1961), pp. 14-16.

3) Robert Shackleton, *Montesquieu: A Critical Biography* (Oxford: Oxford University Press, 1961), pp. 395-96.

4) Montesquieu, *The Spirit of Laws* (New York: Hafner, 1949, 1962), 1:1.

5) *Ibid.*, 1:2.

6) *Ibid.*, 1:2-3.

7) *Ibid.*, 24:27-29.

8) *Ibid.*, 26:30-31.

9) *Ibid.*, 24:32.

10) Duncan Kennedy, "The Structure of Blackstone's Commentaries," *Buffalo Law Review* (1979), 28:203-375, 209.

11) Lutz, "Relative Influence of European Writers," pp. 195-96.

12) Madison, quoted by Verna M. Hall, *The Christian History of the Constitution of the United States of America: Christian Self-Government with Union* (San Francisco: Foundation for American Christian Education, 1962, 1979), p. 130A.

- 13) Sir William Blackstone, *Commentaries on the Laws of England*, quoted by Hall, *Christian History of the Constitution*, pp. 140-46.
- 14) Kennedy, "Structure of Blackstone's Commentaries," p. 250.
- 15) Thamar E. Dufwa, *The Viking Laws and the Magna Carta: A Study of the Northmen's Cultural Influence on England and France* (New York: Exposition Press, 1963), pp. 32-92. For a general discussion and detailed documentation of the Christian and Jewish influence on the development of English common law, see John Eidsmoe, *The Christian Legal Advisor* (Grand Rapids: Baker, 1984, 1987), pp. 26-29.
- 16) "[Blackstone] had only the vaguest possible grasp on the elementary conceptions of law. He evidently regards the law of gravitation, the law of nations, and the law of England, as different examples of the same principle—as rules of action or conduct imposed by a superior power on its subjects. He propounds in terms a fallacy which is perhaps not quite yet expelled from courts of law, viz., that municipal or positive laws derive their validity from their conformity to the so-called law of nature or law of God. 'No human laws,' he says, 'are of any validity or contrary to this'" (*Encyclopedia Britannica*, 1896, s.v. "Blackstone, Sir William"; cf. 1911 ed.).
- 17) *Encyclopedia Britannica: Micropedia*, 1986, s.v. "Blackstone, Sir William."
- 18) *Encyclopedia Britannica: Macropaedia: Knowledge in Depth*, 1986, s.v. "Locke."
- 19) *Encyclopedia Britannica: Micropedia*, 1986, s.v. "Hooker, Richard."
- 20) John Locke, *Of Civil Government, Book Two*, II:11, 111:56; V:25, 55; XVIII:200.
- 21) Locke, *ibid.*, XI:136n.