

Second Treatise of Civil Government: Legislative Power

John Locke

In England royal absolutism had been under attack throughout the 17th century and finally was defeated by the Glorious Revolution of 1688-1689. At that point there was a definitive shift in power to Parliament, which was controlled by the upper classes. John Locke (1632-1704), in his Two Treatises of Civil Government (1690), justified the revolution and the new political constitution of England and expounded political ideas that became influential during the 18th and 19th centuries. This work and other writings established Locke as a first-rate empirical philosopher and political theorist. In the following selection from his Second Treatise of Civil Government, Locke analyzes legislative power.

Consider: *The purposes for entering into society; the extent of and limitations on legislative power; how Locke justifies his argument; how these ideas are contrary to monarchical absolutism.*

134. The great end of men's entering into society being the enjoyment of their properties in peace and safety, and the great instrument and means of that being the laws established in that society, the first and fundamental positive law of all commonwealths is the establishing of the legislative power, as the first and fundamental natural law which is to govern even the legislative. Itself is the preservation of the society and (as far as will consist with the public good) of every person in it. This legislative is not only the supreme power of the commonwealth, but sacred and unalterable in the hands where the community have once placed it. Nor can any edict of anybody else, in what form soever conceived, or by what power soever backed, have the force and obligation of a law which has not its sanction from the legislative which the public has chosen and appointed; for without this the law could not have that which is absolutely necessary to its being a law, the consent of the society, over whom nobody can have a power to make laws but by their own consent and by the authority received from them; and therefore all obedience, which by the most solemn ties any one can be obliged to pay, ultimately terminates in this supreme power and is directed by those laws which it enacts. Nor can any oaths to any foreign power whatsoever, or any domestic subordinate power, discharge any member of the society from his obedience to the legislative, acting pursuant to their trust, nor oblige him to any obedience contrary to the laws so enacted or farther than they do allow, it being ridiculous to imagine one can be tied ultimately to obey any power in the society which is not the supreme.

142. These are the bounds that which the trust that is in them by the society and the law of God and Nature have set to the legislative power of every commonwealth, in all forms of government. First: They are to govern by promulgated established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favourite at Court and the countryman at the plough. Secondly: These laws ought to be designed for no other end ultimately but the good of the people. Thirdly: They must not raise taxes on the property of the people without the consent of the people given by themselves or their deputies. And this properly concerns only such governments where the legislative is always in being, or at least where the people have not reserved any part of the legislative to deputies to be from time to time chosen by themselves. Fourthly: Legislative neither must nor can transfer the power of making laws to anybody else, or place it anywhere but where the people have.

Absolutism: Myth and Reality

G. Durand

During the 17th century, several monarchs attained such unprecedented power and authority that historians have used the term "absolutism" to describe these political systems. Other historians have argued that the term is misleading, that neither the ambitions of the monarchs nor the results constituted political absolutism. In the following selection, G. Durand analyzes the myth and reality of absolutism.

Consider: Why Durand prefers to view absolutism as a tendency; how Durand evaluates the goals and attitudes of the monarchs; whether the primary sources by Frederick William and Saint-Simon support Durand's analysis.

Viewed as a tendency rather than a political system, absolutism is an undeniable reality. In every state the sovereign sought to free himself from pressure and control. The means were everywhere the same; the monarch tried to rule through councillors whom he chose rather than nobles who claimed such positions as their right. He also tried to recover control of the administration of justice which had been taken over by the feudal nobility and the church. These tendencies produced two institutions common to every state.

First a small inner or secret council, a cabinet ("Conseil des Affaires"), distinct from the traditional councils which had grown from the division of the functions of the old *Curia Regis*. There is a great similarity between, for instance, the *Consejo de Estado* in Castile, and the inner circle of the privy council in England, and the Austrian Council of State of 1747 and the Imperial council set up by Catherine the Great in 1769.

Second, a system of unifying and centralizing judicial institutions. In France the drafting of customary law in the 16th century and the publication of the Codes and Great Ordinances in the 17th, formed the basis for royal intervention in the judicial process. The procedures of *evocation* to a higher court, or judgment by special commissioners named by the king, were specifically French; but an institution like the *conseil des parties* had its counterpart in the Royal Council of Castile, the English Star Chamber, or Austrian *Hofrat*.

From this we may infer the existence of a general climate of absolutism, more or less pervasive, which offered the monarch no more than the opportunity to deliberate on matters of state without being affected by intrigue and pressure, and to ensure that the judicial process followed his wishes and directives.

As an actual political system, absolutism is a myth. The monarchs themselves never regarded themselves as an absolute, except in the case of the autocrats of Russia, where the fundamental laws, of established customs and corporate orders within the state allowed the growth and dictatorial form of government. In France, however, even Louis XIV never planned to abolish the Parlement, but merely curbed its pretensions and in December 1655 limited its right of remonstrance; nor did he try to abolish the estates. Monarchs did not try to create a system of institutions which would destroy any possibility of resistance through inertia. They merely sought to restrict the activities of persons who might cause trouble and to set up a new administrative structure parallel to the old; a handful of commissioners directed, urged on and controlled the system inherited from a time when counsel, remonstrance and shared power were the rule. Sovereigns also continued to delegate their administrative powers through the sale of offices or to farm them out to financial potentates who became virtual states within the state. The kings of Spain suffered the

tyranny of their own councils. In practice absolutism seems much more the result of circumstances and personalities than a deliberate intention to revolutionize the whole structure of the state.

Source: From George Durand, "What is Absolutism?" in *Louis XIV and Absolutism* pp23-24, ed by Ragnhild Hatton, copyright 1976