

**Rewriting the History of English Liberty:  
Jean-Louis Delolme's *The Constitution of England* (1771)**

Ployjai Pintobtang<sup>1</sup>

University of Sussex

## **Introduction**

In this article, I examine Jean-Louis Delolme's *The Constitution of England* as a historical work which aims to propose a new narrative to the history of English liberty distinct from both its ancient constitutionalist and modern liberty predecessors. Delolme's magnum opus is mostly known for its advocacy of the executive power. Previously studied as a part of modern republicanism and in the context of the emergence of the 'science of politics', as well as for its use of mechanical language to describe political systems, Delolme's *The Constitution* is associated with the rise of constitutionalism and proto-liberalism in the British Empire during the American crisis.<sup>2</sup> Delolme intended not only to demystify the ancient constitutionalism of orthodox Whigs who argued for a Germanic root of English liberty, but also proposed an alternative account of English liberty as stemming from the resistance against the Norman feudal yoke which, after the introduction of Habeas Corpus and the events of 1688, eventually matured into modern English liberty defined as the legal protection of individuals.

---

<sup>1</sup> Ployjai Pintobtang is a History PhD candidate at the University of Sussex, Brighton. Her doctoral research explores the political thought and reception of Jean-Louis Delolme, focusing on his idea of the science of politics and its contribution to the shaping of modern republicanism. Her broader research areas include the criticisms of civic republicanism and modern constitutions in the late eighteenth century and how they are related to the historiography of European state formation. Before embarking on her doctoral studies, she read for an MA in Social and Political Thought awarded by the University of Sussex. Her MA dissertation was on the idea of political representation in William Godwin's *An Enquiry Concerning Political Justice*. Before that she read for a BA in English Literature with a minor in Political Science at Chulalongkorn University, Bangkok.

<sup>2</sup> See Iain McDaniel, 'Jean-Louis Delolme and the Political Science of the English Empire', *The Historical Journal* 55, Volume 1 (2012), 21-44. And David Wootton, 'Liberty, metaphor, and mechanism: checks and balances and the origins of modern constitutionalism', in David Womersley (ed.) *Liberty and American Experience in the Eighteenth Century* (2006), pp. 209-74.

In this regard, Delolme's account of English liberty is not only distinct from the Whig ancient constitutionalist historiography but also from the so-called 'modern liberty' advocates.<sup>3</sup> This tradition is mostly associated with David Hume and John Hervey. Hume rejected a linear history of English liberty and the Whig argument of the Saxon origin and argued for the multiplicity of constitutional arrangements.<sup>4</sup> Meanwhile, Hervey famously argued in his *Ancient and Modern Liberty Compared and Stated* that there was no such thing as English liberty before 1688.<sup>5</sup> Delolme's political thought differs from this modern liberty tradition but, at the same time, agrees with its criticism of the incompatibility of ancient republican thinking, such as its language of moral corruption, to modern politics.<sup>6</sup> To support the English exceptionalism, Delolme also contributes to the systematic rejection of Roman civil law, by examining the common lawyers' writings on English liberty and its origin. His selection of legal literature by such figures as William Blackstone, Edward Coke, and Matthew Hale reveals that he shares their scepticism of the Roman civil law.

Delolme's reworking of English history also emphasizes how the English rejection of the Roman legal system was an important part of the resistance against the Norman Conquest which shaped English liberty and the distinctive legal security which it guaranteed to the individual. Delolme, nonetheless, does not advocate the purity of English common law but, rather, he highlights the existence of the resentment against the Roman heritage as still connected to the Roman invaders; this resentment is shown in numerous examples of medieval legal literature that attempt to prove the superiority of the English common law over the Roman civil law, as exemplified in John Fortescue's *De Laudibus Legum Angliae* (1468-1471). This legal-historical aspect of Delolme's

<sup>3</sup> For ancient constitutionalism see J.G.A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century: a Reissue with a Retrospect* (Cambridge: Cambridge University Press, 1987).

<sup>4</sup> Originally from Hume's untitled eight-page long note on the English system as a part of his voluminous *the History of England*. David Hume, 'The Progression of English Liberty' [1778], in *Liberty Fund* <<http://oll.libertyfund.org/titles/2253>>. Accessed 12/09/18.

<sup>5</sup> John Hervey, *Ancient and Modern Liberty Compared and Stated* (London: 1734).

<sup>6</sup> For relationships between republicanism and the language of moral corruption in eighteenth century see J.G.A. Pocock, *Virtue, Commerce and History* (Cambridge: Cambridge University Press, 1976), pp. 75-79.

work, however, has thus far been substantially underappreciated. I argue that this legal aspect of Delolme's reworking of the English history is also congruent with the perception of Delolme's work as a part of modern republicanism where constitutionalism replaces civic virtue and where private liberty is prioritized over public liberty.

This new English exceptionalism also served the Empire better than the obsolete republican patriotism which had been co-opted by the American cause against the unity of the British Empire. Using the republican definition of liberty, taking self-determination as the heart of the argument, Delolme's use of mechanical language to explain English constitutional balance presents itself as an impartial analysis of the constitution. Delolme argues that, if the British government had agreed to accept the American colonies' proposal to subsidize George III directly without Parliament's permission, the parliamentary check on executive power would have been destroyed, resulting in political instability. Delolme's science of politics and his use of historical sources as materials of study aims to serve the British Empire, both as a political attack against supporters of the American cause and as a new approach to the study of politics which was argued to best understand national interest due to its claimed impartiality, as opposed to the false promises of the virtue-based politics of civic republicanism.

### **Jean-Louis Delolme and *the Constitution of England***

Jean-Louis Delolme was a Genevan jurist whose magnum opus, *The Constitution of England* (1771), was written when he was in exile in England after being banished from Geneva for his politically controversial writings. He supported the call for reform and republican renewal and published several polemics, most important of which is the 1767 *La purification des trois points de droit souillé par un anonyme*.<sup>7</sup> It was this controversial polemic that so offended the ruling patrician party, *Les*

---

<sup>7</sup> Jean-Louis Delolme, *Purification des trois points de droit souillés par un anonyme ou réponse à l'Examen des trois points de droit traités dans les Mémoires des Représentans du 19 mai et 16 octobre* (Geneva: 1767); Francis d'Ivernois, *An Historical and Political View of the Constitution and Revolutions of Geneva* trans. John Adams (Dublin: 1784), pp. 250–252.

*Négatifs*, it precipitated his exile. In these writings, Delolme criticizes the politics of his homeland /for its aristocratic nature, disguised as a republic.<sup>8</sup> During his self-imposed exile in England, he began work on his masterpiece, despite financial difficulties. In a letter to Benjamin Franklin, with whom he developed a friendship during his translation into English of a French work on electricity by Beccaria, Delolme wrote, ‘I wish the Preface may amuse you: my design, in the first part of it, was to make the reader Smile, and at the Same time to Speak the truth.’<sup>9</sup> Delolme was referring to the preface of the 1781 edition, where he added the fact that he was preparing to boil his kettles by burning unsold copies of his magnum opus after he failed to find a patron and had to print the copies by subscription.

Unlike his better-known compatriot, Jean-Jacques Rousseau (against whom Delolme directs his criticism of civic republicanism) Delolme focuses his political analysis on constitutional designs, using the theory of the balance of power. He argues that the success of English liberty partly relies on its strong and unitary executive power, which not only enables it to counterbalance the legislative branch but also allows itself to be effectively checked due to its unitary nature.

Nonetheless, Delolme’s work is rarely studied for its contribution to English historiography, despite his unique historical account of English liberty. For Delolme, crucially, English liberty originated with the resistance to the Norman Invasion of 1066 from the native inhabitants. This article aims to explore Delolme’s role as a historian and to contextualise *The Constitution* relative to contemporary English historiography.

---

<sup>8</sup>Jean-Louis Delolme, *The Constitution of England: Or, An Account of the English Government*, (ed.) David Lieberman (Indianapolis: Liberty Fund, 2009), p. xxi.

<sup>9</sup>To Benjamin Franklin from De Lolme, 29 November 1781,’ *Founders Online*, National Archives, <<http://founders.archives.gov/documents/Franklin/01-36-02-0108>>. Accessed 12/09/18. [Original source: *The Papers of Benjamin Franklin*, vol. 36, November 1, 1781, through March 15, 1782, (ed.) Ellen R. Cohn (New Haven and London: Yale University Press, 2001), pp. 168–169.] The French edition of Beccaria’s work on electricity was translated from the original Italian work, Giambatista Beccaria, *Elettricismo artificiale* (Torino: 1772).

Secondary literature, particularly Joyce Appleby's work in the late 1990s, emphasises John Adams' interpretation of Delolme as a part of the broader literature of the Anglophones, who sought to promote the English system as a model for America to emulate.<sup>10</sup> Richard Whatmore's *Against War and Empire* provides an excellent narrative of Delolme's work emphasising its European, and explicitly Genevan genesis, and how he experienced the defects of republicanism at first hand. This experience, in turn, inspired his work on both Sweden and England, which emphasize the importance of the executive power being unitary and strong enough to counterbalance the legislative, thus securing liberty.<sup>11</sup> Later secondary literature, however, shifts the focus to Delolme's contribution to the 'science of politics' which frames the political system as a machine. His new equation of the balance of power, nonetheless, is still contestable. Iain McDaniel argues that Delolme's science of politics is best understood in the context of the large modern empire and its problematic instability. Armed with this new understanding of politics as a science, and the idea of the science of man, McDaniel proposes that Delolme's purporting of unitary executive power is important not only because of its counterbalancing effect to the legislative power but also due to its creation of a 'community of interest' between all the orders of the state.<sup>12</sup>

David Wootton's work tells another story: of Delolme as a theorist of a new balance of power. He presents a rigorous study of the history of the widely employed phrase 'checks and balances', arguing that one can fruitfully locate Delolme's narrative within the tradition stretching back to Plutarch and Polybius. Wootton argues that Delolme's balance of powers is different from those which predate the initiation of mechanical language into the realm of politics in the seventeenth century. For the American reception, Wootton argues from his historical investigation that it is

<sup>10</sup> As opposed to the French model, championing popular sovereignty and egalitarianism.

<sup>11</sup> Richard Whatmore, *Against War and Empire: Geneva, Britain, and France in the Eighteenth Century* (New Haven: Yale University Press, 2012), pp. 112-121.

<sup>12</sup> Iain McDaniel, 'Jean-Louis Delolme and the Political Science of the English Empire', *The Historical Journal*, 55.1, (2012), 21-44.

Adams' *Defence of the Constitutions* (1787) which popularized the term 'checks and balances' in the introduction of the first volume and that despite his praise of Delolme, Adams does not quite comprehend the depth and innovation that Delolme has contributed to the tradition of the balance of power.<sup>13</sup>

Eric Nelson in his 2014 *The Royalist Revolution* also agrees with Wootton about Delolme's position as a balance of power theorist who admires the English system established at the 1688 Revolution in which the monarch, as the executive, and as a part of the legislative branch of the government, depends financially on the House of Commons.<sup>14</sup> Delolme, according to this interpretation, disagrees with people whom Nelson calls 'theorists of Royal Revolution', such as James Iredell, a North Carolina lawyer who supported the American colonies' direct financial support to the British Crown, concomitantly rejecting the British Parliament's authority over the colonies. Delolme's version of the balance of power, therefore, is not a part of the project to oppose the Whig narrative of parliamentary sovereignty and to turn back the clock (in America) to before 1688 (restoring the balance of power lost to legislative tyranny). This article aims to present a new reading of Delolme as a historian of English liberty who utilised history to produce his general political theory of the modern republican balance of power, with an emphasis on a strong executive power as a prerequisite for the maintenance of liberty.

### **The Roman Shadow**

Delolme's 'systematical politics' traces how the balance of power in each of his selected states had come into being, in contrast with that of England. The Roman Republic, and authors from and on that era, play an important role in Delolme's analysis of previous comparative studies (most of which were associated with Montesquieu's *The Spirit of the Laws* (1748)). Nonetheless,

<sup>13</sup> David Wootton 'Liberty, Metaphor, and Mechanism: checks and balances and the origins of modern constitutionalism' in Womersley (ed.) *Liberty and American Experience*, pp. 229, 249, 261.

<sup>14</sup> Eric Nelson, *The Royalist Revolution: Monarchy and the American Founding* (Cambridge, Massachusetts: the Belknap Press of Harvard University Press, 2014).

like other eighteenth-century studies of politics, *The Constitution* is also comprised of ‘an uneven amalgam of classical maxim of government, narrow partisan polemics, antiquarian learning, historical researches, and technical legal doctrine’.<sup>15</sup> Delolme’s reworking of the history of English liberty, by way of rejecting Montesquieu’s comparison between the English system and the Roman Republic, reiterates the break from the ancient model and points to the superiority of his ‘science of politics’ as the way to understand the genesis of the English constitution in the broadest sense. Classical and mostly Roman references in the work, nonetheless, also contribute to Delolme’s criticism of his contemporary republicans, especially regarding the republican elements in the English constitution. The question of the nature of the English, mixed constitution as essential for English liberty is also implied in Delolme’s scrutiny of the Roman model, and of how the ancient republics failed to contain the political ambitions of certain citizens who, coming into power, turned the republic into an oligarchy in disguise.

The author of *The Constitution* made his purpose clear by stating that he did not intend to write a history of England as such, but instead aimed to write ‘a Book on systematical [sic] politics’.<sup>16</sup> Nonetheless, as was often the case in contemporary writing on political theory, Delolme’s work makes heavy use of meticulously recorded historical details, drawn from various sources dating between 1066 and Delolme’s own day. He utilizes the historical evidence as his raw materials for building the case that English liberty is exceptionally preserved due to its balanced constitution stemming from the strong and unitary executive power of the crown. This rewriting of English constitutional history is there to prove his point that those unique historical circumstances of England which resulted in its strong, limited and unitary executive power are the secret ingredient of English liberty. To support his main argument for a new and modern approach to

<sup>15</sup> David Lieberman, ‘The Mixed Constitution and the Common Law’ (2002), in <<https://escholarship.org/uc/item/7tv5r121>>. Accessed 12/09/18.

<sup>16</sup> Delolme (2007), p. 9.

politics, the Roman authors and historians make perfect materials in which to embed his political criticism.

Delolme refers to Tacitus as ‘the best judge of them all’, and observes that he considered a mild and self-correcting constitution to be ‘a project entirely chimerical...’<sup>17</sup> The sentiment is drawn from Tacitus’ *Annals*, where Tacitus further commented, ‘For every nation or city is governed by the people or 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.’<sup>18</sup> For Delolme, the ancient political thinkers were mistaken on this point: he argues ‘Let us not therefore ascribe to the confined views of Men, to his imperfect sagacity, the discovery of this important secret. The world might have grown old; generations might have succeeded generations, still seeking in vain. It has been a fortunate conjunction of circumstances, I shall add, by the assistance of a favourable situation, that Liberty has at last been able to erect herself a Temple.’<sup>19</sup> These last few passages of the book provide us a compass and chart to navigate Delolme’s abundant classical references. Although the idea had been around since the time of Tacitus, Delolme felt that an inherently balanced constitution that effectively sustained liberty had not emerged until the time of the British Empire.<sup>20</sup>

Most of the classical references are included to support Delolme’s argument that the instability of ancient republics arose because they were deprived of effective mechanisms to rein in powerful and ambitious citizens. In the chapter entitled, ‘How far the examples of Nations who have lost their liberty, are applicable to England’, Delolme starts by agreeing with Montesquieu that England will ‘perish when the Legislative Power shall have become more corrupt than the

<sup>17</sup> Delolme (2007), p. 341

<sup>18</sup> Tacitus, *Annals*, book 4, chapter 33, quoted by Delolme in *The Constitution* (2007), book 2, chapter xxi, p. 341, note a.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

Executive.<sup>21</sup> This is essentially a contemporary concern arising due to the legislature gaining sole control over financial matters combined with Whig dominance of the House of Commons. Corrupted legislative power, argues Delolme, gradually transforms the very constitution of the nation without anyone noticing. In modern politics, legislative power is compared to God's power to create light out of nothingness. After that, despite his earlier agreement with Montesquieu, Delolme challenges his famous prediction that England, a republic, will perish as well as Rome, Sparta and Carthage did.

After making clear that it is not his biased preference for England nor his naivety that urged him to reject Montesquieu's prediction, Delolme argues that it is how England 'differs by its structure and resources from all those which History makes us acquainted, so it cannot be said to be liable to the same dangers'.<sup>22</sup> He then begins to argue why there is no analogy to be drawn from the case of Rome to that of England. Montesquieu, he argues, like all 'systematic writers', has neglected to 'enquire into the real foundations of Power, and of Government, among Mankind'.<sup>23</sup> Delolme accuses Montesquieu of mistaking the true form of the English system. The Roman people 'were not, in the latter ages of the Commonwealth, a People of Citizens, but of Conquerors. Rome was not a State, but the head of the State'.<sup>24</sup> This unequal imperial structure and the inequity of imperial laws render unity of interest impossible between different ranks of Roman people. In England, on the contrary, 'From one end of the Island to the other, the same law takes place, and the same interest prevails: the whole Nation, besides, equally concurs in the formation of the Government: no part, therefore, has caused the fear that other parts will suddenly supply the necessary forces to destroy its liberty'.<sup>25</sup>

---

<sup>21</sup> Delolme (2007), p. 304.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid, p. 305.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid, p. 306.

All the Roman references in the book, therefore, are there to throw into sharp relief the contrast between the ancient republics and England, considered as a limited monarchy with a mixed constitution as a better model. But it was far from unprecedented to employ the example of the Roman republic as material to study human nature, being the basis of the science of politics as a part of a broader literature base produced by thinkers of the Scottish Enlightenment. Adam Ferguson made this point clear in a letter to Edward Gibbon, with regards to his own work: 'I comfort myself that as my trade is the study of human Nature I could not fix on a more interesting Corner of it than the end of the Roman Republic.'<sup>26</sup>

It is also through the idea of human nature that Delolme found useful lessons from those republics, ancient and modern, for the study of the English system. Passions and power are employed side by side in Delolme's analyses and while the latter is discussed at length in relation to constitutional design, the former is used to explain the actions of political actors, from commoners to monarchs. Although it is mostly an institutionalist viewpoint, Delolme's treatment of the English system intends to explicate how major political powers function in the system without more credit accruing to one or another.

An important 'branch' of liberty (as Delolme called it) that was not enjoyed under the Roman republic was liberty of expression and liberty of the press. Due to the availability of the primary source known as the Twelve Tables, Delolme was able to find numerous examples of restrictions placed upon the 'press'. For example, he translated some of the Laws of the Twelve Tables on death punishment for libel as 'If anyone should sing, act, or compose a song, which shall cause dishonour or disgrace to another, he shall suffer a capital penalty.'<sup>27</sup> The liberty of the expression in England did not only constitute an important branch of liberty, but also proved to be vital for

<sup>26</sup> Iain McDaniel, *Adam Ferguson in the Scottish Enlightenment* (Cambridge Massachusetts: Harvard University Press, 2013), quoting Ferguson to Edward Gibbon, 18 April 1776, in *Correspondence*, p. 141.

<sup>27</sup> Ibid, p. 278.

maintaining unity of interest amongst citizens. Without the technological advancement of printing and the statutory liberty of the press, English subjects from different parts of the nation under James I would not have been aware of his speech to Parliament endorsing the theory of the divine right of kings.<sup>28</sup> ‘Commerce, besides, with its attendant arts, and above all that of printing, diffused more salutary notions throughout all orders of the people; a new light began to rise upon the Nation; that spirit of opposition frequently displayed itself in this reign, to which the English Monarchs had not, for a long time past, been accustomed.’<sup>29</sup> Liberty of the press, therefore, was not only the result of English liberty but also, in turn, enhanced other branches of liberty.

Using these and other references to Roman history, Delolme thus argues that due to the very nature of their structures, republican governments, fail to generate true liberty (defined as legal protection of the individuals). He also argues that, due to the imbalance between the relative powers of different ranks of people in republics, those in power are able to restrain freedom of the press, thus curtailing liberty still more. Delolme’s re-interpretation of the fall of the Roman Republic features as an important aspect of his ideas on military power, too. For Delolme, the glory of the powerful Roman army and their martial mentality was unsuited to modern politics. In the *Advertisement* of his magnum opus, Delolme contends that, in order for a modern republic to thrive, the military has to be under total control of the civil power.<sup>30</sup> This is explained again by the logic of limitation of executive power under Parliament’s control, not unlike his argument that it is only the legislature that can deal with financial matters and that it is the British Parliament’s exclusive right so to subsidize the crown: the most important criterion for constitutional balance which the American crisis was threatening to destroy.

---

<sup>28</sup> See ‘Speech to Parliament of...1610’ and ‘His Majesties Declaration, Touching his Proceeding in the Late...Parliament,’ in King James VI and I, *Political Writings* (ed.) Johann P. Sommerville (Cambridge: Cambridge University Press, 1994), pp. 179-203, 250-67. Delolme refers to this particular occasion under James I on p. 48 in *The Constitution of England*.

<sup>29</sup> Delolme (2007) p. 48.

<sup>30</sup> Ibid, p. xiii.

## The History of English Historiography

The reworking of English history for Delolme was the only way to apply a ‘science of politics’, partly intended to correct misrepresented historical accounts, but more importantly to demonstrate how previous studies had failed to understand politics in terms of the balance of powers. Delolme’s engagement with secondary literature on English liberty before the eighteenth century informs numerous aspects of history as a discipline, since it was literature from this period that his contemporaries also engaged with in order to support their version of English constitutional history. It is worth noting that the quality most valued in a historian during the seventeenth and early eighteenth century was that he or she should be impartial and judicious.<sup>31</sup> Just as in law, history as a discipline sought to promote truth untainted with bias. Before Hume’s *History of England*, Rapin de Thoyras’ *The History of England* was one of the most prominent texts to be respected by both the Whigs and Tories, and later became the most important target for Hume’s *The History of England* to attack.<sup>32</sup>

Delolme differs from previous historiographers of England in that he was much more ambitious in terms of his objective. He totally disregarded the popularity to be lost or gained by his work. In fact, he wrote in his *Preface* to the 1784 edition that, when he agreed to publish it through a subscription system, his intended audience, whom he sometimes addressed in the footnotes, were the educated elite, and were assumed to be able to comprehend his delineation of ‘real powers’ through the reading of history.<sup>33</sup> With this objective in mind, Delolme selected mostly legal historians to be his sources, particularly Edward Coke and Matthew Hale. However, I argue

---

<sup>31</sup> For example, ‘Kame described Rapin as ‘a most judicious historian’ and ‘Robert Wallace said Rapin ‘appears the most impartial of our historians’. From Duncan Forbes, *Hume’s Philosophical Politics* (New York: Cambridge University Press, 1975), p. 234, referencing ‘Papers of Robert Wallace in Edinburgh University Library, Laing II, 97, No.5, p. II, a paper entitled an address to the Jacobites of Scotland, written soon after the ’45 but never published’.

<sup>32</sup> Forbes, p. 234.

<sup>33</sup> Ibid, p. 276.

that the most important authors for comprehending Delolme's conception of history are Sir William Temple and Sir Henry Spelman.

Sir William Temple's *Introduction to the History of England* (1695) is quoted to depict the untenable truth of the ancient constitution; how the ancient Saxon government had 'left us in story... but like so many antique, broken, or defaced pictures, which may still represent something of the customs and fashions of those ages, though little of the true lines, proportions, or resemblance.'<sup>34</sup> Curiously, Temple's opinion in the debate on the origin of the English constitution stands rather at odds with Delolme's, since Temple was one of the ancient constitutionalists.

I argue that Delolme looked up to Temple in his historical works not only for his interpretations but also, and equally importantly, for his methodology in writing history. Temple provided Delolme with a respectable foundation for the argument that the Norman Conquest was not merely a break in the line of succession of monarchs which was the natural state of society, but a profound and abrupt political and legal transformation that changed the form of government introducing feudalism.<sup>35</sup> However, the first quotation from Temple regarding the nature of the conquest seems only to be there for a rhetorical and aesthetic flourish; in fact it suggests that Delolme finds his support in the unlikely place of an ancient constitutionalist like Temple because he is one of the few antiquarians who put limits on the antiquity of the English constitution.

Temple was one among the minority of antiquarians and historians of seventeenth-century England who were aware of the indefensibility of discussing the nature of pre-Norman, Saxon government with any great confidence. Furthermore, Temple agreed with Delolme on the limitations of a historical method which I argue to be based on the inductive method as

<sup>34</sup> Delolme (2007), p. 1.

<sup>35</sup> Ibid, p. 25.

influenced by the emergence of the New Science.<sup>36</sup> Temple and Delolme were both writing against metaphysics and its influence in the writing of history. C.B. Macperson contends that “Temple’s complaint is precisely that which the natural scientists were making in the seventeenth century, namely, that ‘all the different Schemes of Nature that have been drawn of old, or of late, … seem to agree but for one Thing, which is, the want of Demonstration or Satisfaction, to any thinking and unpossessed Man’”.<sup>37</sup> This echoes Delolme’s preoccupation with ‘demonstration’, which is the main criterion of his science of politics. ‘In general, a Science of Politics, considered as an *exact Science*, that is to say, as a Science of actual demonstration, is infinitely deeper than the reader much perhaps suspects.’<sup>38</sup> ‘Demonstration’ is what is lacking in metaphysics, and to turn the study of politics into a ‘science’, reworking history, therefore, becomes the only available tool for political scientists to both present their arguments and revoke the previous ancient methods that rely on metaphysics. In spite of the pair’s dispute over the origin of English liberty, Temple and Delolme were both seeking a new way to engage with, and analyse the voluminous historical accounts of English history in all its diversity. Like Delolme, Temple’s objective in the study of politics was, ‘to find and account trends and to suggest general laws of causal relations’.<sup>39</sup> Their writing on history, in their eyes, was essentially as a study of politics via the analytical approach rather than to advocate a moral lesson. Nonetheless, this is not to naively say that their works are not political. Quite on the contrary, their presented impartiality was a tactic that claims superiority to that of the ancient approach (as employed by other groups of historians and legal theorists).

<sup>36</sup> See William Temple, ‘Essay upon the Ancient and Modern Learning’, in *The Works of Sir William Temple, Bart Complete in Four Volumes, to Which Is Prefixed, the Life and Character of the Author* (London, 1814).

<sup>37</sup> C.B. Macperson, ‘Sir William Temple, Political Scientist?’, *The Canadian Journal of Economics and Political Science*, No.1, Volume 9 (1943), 39-54.

<sup>38</sup> Delolme (2007), p. 14.

<sup>39</sup> Macperson, p. 44.

The other important figure for Delolme was Henry Spelman, particularly in the latter's essay *Of Parliament*.<sup>40</sup> Like Temple, Spelman foreshadowed Delolme's argument that from the period of the conquest, *novus seclorum nascitur ordo*, or 'a new march of ages' emerged in England due to the sudden change in form of government and legal institutions. However, Spelman's study of common law is also now known for its methodological novelty in the study and writing of English history. 'All this material he studied minutely for the words it employed and the usages it revealed, and he took note of a multitude of resemblances to the laws and terminology of his own country. Studying language for the sake of law, he approached the English past as part of the history of Europe; he did more than any English scholar before him to initiate the comparative investigation of the English and continental Middle Ages'.<sup>41</sup> Spelman's meticulous comparative study of legal vocabularies between different European languages gave him a similar standpoint to Delolme's concerning the antiquity of English liberty. Although neither sought to deny Germanic connections to English liberty, Spelman's comparative study revealed 'a definite check on the exaggerations of those who sought to trace the law back into times more remote still—to assert with Fortescue that it was older than the Romans, or to engage in the not yet extinct fantasies of Geoffrey of Monmouth'.<sup>42</sup> Delolme also avowed the superiority of English liberty as modern liberty resulting from the well-balanced English constitution, but he dates it back to the resistance of the natives against the Norman invaders of 1066. However, when it comes to the antiquity of the English legal system, his story becomes a little bit more complex. Delolme uses Fortescue's *De landibus legum Angliae* (1468–1471) to exemplify the general sentiment against the Roman law after the Norman Conquest.

...the aversion to the Roman Laws gradually spread itself far and wide ; and those laws, to which their wisdom in many cases, and particularly their extensiveness, ought naturally to have procured

---

<sup>40</sup>Henry Spelman, *Relinque Spelmanniae: The Posthumous Works of Sir Henry Spelman* (ed.) Awnsham and Churchill (London: 1698).

<sup>41</sup>J.G.A. Pocock, 'The Discovery of Feudalism: Sir Henry Spelman' in *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century*, (Cambridge: Cambridge University Press, 1987), pp. 91–123.

<sup>42</sup>Ibid.

admittance when the English laws themselves were as yet but in their infancy, experienced the most steady opposition from the Lawyers; and as those persons who sought to introduce them, frequently renewed their attempts, there at length arose a kind of general combination amongst the Laity, to confine them to Universities and Monasteries (a). This opposition was carried so far, that Fortescue, ...wrote a Book entitled [sic] *De Laudibus Legum Angliae*, which he proposes to demonstrate the superiority of the English Laws over the Civil; and that nothing might be wanting in his arguments on that subject, he gives them the advantage of superior antiquity, and traces their origin to a period much anterior to the foundation of Rome.<sup>43</sup>

This, however, does not mean that Delolme concurred with Fortescue's assumption about the greater antiquity of English common law over its Roman counterpart. Delolme insisted from the beginning on the unattainability of historical facts regarding the Saxon era. Nonetheless, the very existence of the debate supports Delolme's own argument about the hostility of the English people against the adoption of the Roman legal legacy. In this regard, Delolme agrees with Spelman on the limitation of evidence to date Saxon laws to times prior to 1066, and at the same time, he does not have to reject Fortescue's premise because his resistance narrative only needs to make use of the remnants of that hostility against Roman law which the fifteenth century *de laudibus* perfectly provides. Delolme's resistance argument is unique in the debate about English liberty because he positions himself between the two main opposing theories. Spelman himself also 'held...that an important process had taken place in the structure of barbarian law, namely the rise and diffusion *of the feudum* and its evolution from a precarious grant to a perpetual and hereditary tenure.'<sup>44</sup>

Delolme did not believe in the purity and antiquity of English common law either. He refers to the exchanges and diffusion between common law and Roman civil law, but what makes his analysis unique is that he places great importance on the resentment of the Saxon natives, which

<sup>43</sup> Delolme (2007), p. 60.

<sup>44</sup> Pocock (1975), p. 97.

he sees as being subsequently translated into legal protection of the subjects. In other words, the Norman Conquest, and the Roman legal system that came with it, became a part of the English constitution due to its abrupt and effective initiation of feudalism, which triggered a strong response from the natives. The history of English liberty, therefore, is essentially a history of resistance.

This intertwining of the question of English liberty and the origin of the English constitution can also be portrayed in the context of England's attempt to systematise its common law tradition in the light of the continental acceptance and admiration of the legacy of Roman civil law. Among several legal differences between the two traditions, the structural nature of Roman civil law probably plays the most important part. Unlike the English common law tradition, which is constituted bottom-up, civil law is presumably governed by the external logic of natural law. This premise leads to an expectation of internal logic within the civil law system, despite obvious differences between the cases. The common law tradition, on the contrary, is built up by its accumulation of previous writs and is necessarily retrospective and arguably particularistic in the way that it does not assume coherence of logic of the system. Edward Coke, whom Delolme designates the 'oracle of the Common Law'<sup>45</sup>, 'stands clear in the common law tradition of the unstructured description of the law, for he made no attempt to reduce the law to a coherent, self-contained whole.'<sup>46</sup> Delolme refers to Coke several times to confirm his understanding of English legal history and specifically trial by jury, its rejection of torture as an approved method to obtain the truth from the accused, and proof of English common law's superiority to the Roman civil law when it comes to protection of the liberty of the subject.<sup>47</sup>

---

<sup>45</sup> Delolme, p. 85.

<sup>46</sup> Michael Lobban, 'Blackstone and the Science of Law', *The Historical Journal*, 30, Volume 2 (1987), 311-35.

<sup>47</sup> Delolme (2007), p. 130.

Furthermore, I also argue that Delolme's selection of Coke is consistent with his attempt to rewrite the history of English liberty and propose his new resistance narrative. Coke passed on the legacy of Fortescue in defending the antiquity of English common law with a twist. While the antiquity of the law was one strand in Fortescue's argument, it became dominant in Coke's, and the notion that one could not tell the origins of laws – hence their reason – became a central idea in justifying the common law: Hale noted that it was impossible to discover the origin of all laws, and added that they changed insensibly over time, always improving and becoming better adapted to the need of society.<sup>48</sup> Coke and Hale feature prominently in Delolme's *the Constitution* as legal theorists who appreciated the obscurity of the Saxon era. However, Delolme interprets their arguments for the benefit of his new theory. Delolme's narrative – that resistance of the subjects against Norman invasion was the origin of English liberty – can make use of the ancient constitutionalism argument because they both place emphasis on the semi-time-immemorial nature of English liberty. It is true that Delolme pinpoints the event of 1066, but the conquest is portrayed as a catalyst for what later became English liberty. Delolme's standpoint attempts to reconcile the common law tradition and ancient constitutionalism with the advocates of modern liberty, who argued 1688 to be the origin of English liberty. Furthermore, the bottom-up structure of English common law is congruent with Delolme's science-based approach to politics. Delolme's theory of English liberty agrees with the historicism of common law. Far from being merely an impartial analysis of the English constitution, Delolme's 'science of politics' presents itself as an approach not only worthy of, but also more compatible with, the English constitution and English liberty, with its bottom-up and custom-based mechanism of writing laws. The rejection in principle of Roman law, despite its undeniable influence upon English common law, plays into the narrative of English exceptionalism of which Delolme is a part.<sup>49</sup> Nonetheless, his penchant for the English system did not undermine the novelty or

<sup>48</sup> Lobban, p. 315.

<sup>49</sup> Delolme agreed with most eighteenth century jurists on the importance of this influence.

veracity of his resistance narrative of English liberty. Moreover, Delolme's English modern liberty proposal benefits from the rich selection of legal historians beyond the aforementioned.

### **Delolme's Modern English liberty in the Late Eighteenth-century British Empire**

This section aims to unpack Delolme's selection of his contemporary political writings, and to contextualise *The Constitution* with political questions of the day, including the rise in popularity of republicanism, the Fox-North coalition, and the topic of 'party spirit' in the light of the threat to the unity of the British Empire during the American crisis.

Delolme's engagement with his contemporary political thinkers was mostly concerned with the debate on liberty and how the English system sustained it. The reader can become lost in the legal details of Delolme's selected court cases if they lose sight of the purpose of these demonstrations. After the historical account of the resistance thesis is presented in the first part of the book, Delolme moves on to dissect the English system, paying special attention to how it preserved and advocated liberty. The limitation of the executive is much discussed in the book, despite its reputation for being an advocate of a strong and unitary executive power. In fact, it is one side of the same coin for Delolme, who demonstrates how an overpowering executive is detrimental to public liberty.

Under Charles I, 'attacks of a most alarming nature were made on the privilege of the People to grant free supplies to the Crown, the Commons vindicated...that great right of the Nation, which is the Constitutional bulwark of all others, and hastened to oppugn...every precedent of a practice that must, in the end, have produced the ruin of public liberty.'<sup>50</sup> Delolme goes on to enumerate other attempts of the Commons to prevent abuses of power, especially the abolition of the Star Chamber, which had the effect of bringing 'back to its true Constitutional office, viz.

---

<sup>50</sup> Delolme (2007), p. 241.

the countenancing, and supporting with its strength, the execution of Laws.<sup>51</sup> This ‘unexampled freedom at the expense of the Executive Power’ was enjoyed equally by all subjects from different ranks and, therefore, was not just a usurpation of one kind of power by another, but was for the public good. Delolme then refers to Blackstone’s quoting of Junius, an anonymous pamphleteer, that “The oppression of an obscure individual gave rise to the famous Habeas Corpus.”<sup>52</sup> It is another example of how all orders of the people unite against the despotic ruling power, the same way they did after the Norman Conquest, and curb the power of the ruling class to preserve public liberty.

Delolme also engages closely with those with different and often contesting opinions concerning the history of English liberty and the constitution.

M. de Montesquieu, and M. Rousseau, and indeed all the Writers on this subject I have met with, bellow vast encomiums on the Censorial Tribunal that had been instituted at Rome ;— they have not been aware that this power of Censure, lodged in the hands of peculiar Magistrates, with other discretionary powers annexed to it, was no other than a piece of state-craft, like those described in the preceding Chapters, and had been contrived by the Senate as an additional means of securing its authority. Sir Thomas More has also adopted similar opinions on the subject: and he is so far from allowing the People to canvass the action of their Rulers, that in his System of Policy, which he calls, *An Account of Utopia*...he makes it death for individuals to talk about the conduct of Government.<sup>53</sup>

For Delolme, censorial power is anathema to modern liberty. Liberty of the press and freedom of expression have distinctive places in Delolme’s project of reworking the history of English liberty. He emphasizes how ‘Commerce, besides, with its attendant arts, and above all, that of printing, diffused more salutary notions throughout all orders of the people; a new light began to

---

<sup>51</sup> Ibid.

<sup>52</sup> Junius’ discussion of the Habeas Corpus Act appeared in William Blackstone’s letter of January 21, 1772, addressed to ‘Lord Chief Justice Mansfield’.

<sup>53</sup> Delolme (2007), p. 200.

rise upon the Nation; and the spirit of opposition frequently displayed itself in this reign [James I's].<sup>54</sup> Concerted resistance would have been unachievable without effective communication. It was made available by the liberty of the press. Liberty of expression, therefore, was fundamental to a united resistance, and consequently, modern liberty. This was true not only as a principle, but is also demonstrated by historical examples: the Norman Conquest, the reign of Charles I and Cromwell's Republic.

Concerning the topic of censorship, Delolme found that Rousseau made the perfect target to attack civic republicanism and its limitation in understanding modern liberty. For Delolme, there is an overlooked relationship between the legislature's power to initiate laws (as opposed to just passively reject or approve them, as was the case in most ancient republics, including the Roman Republic) and the liberty of expression. English legislative power had the effect of 'undermining of these laws by the precedents and artful practices of those who are invested with the Executive Power in the Government'.<sup>55</sup> This legal initiation not only empowers the legislative against the executive but also provides a solid channel through which people's concerns are translated into legal solutions. This characteristic feature of the English legislative branch is intertwined with freedom of expression as it feeds into the content of those legal initiations. Modern liberty defined as the legal protection of the individuals is preserved through this hard-earned channel via numerous resistances of the subjects. Civic republicanism advocates, however, failed to recognize the importance and the relationship between this active role of the legislative power and freedom of expression.

For Delolme, the Roman Republic which Rousseau and other republicans admired seems like a unitary large-scaled faction, with self-harming patriotism an equivalent of party spirit, not only causing numerous wars of conquest but also nurturing political ambition among powerful

<sup>54</sup> Ibid, p. 40.

<sup>55</sup> Ibid, p. 310.

citizens which eventually led to the fall of the empire. It had all the qualities of party spirit; ‘a Set of Men arm’d with Power, and acting upon no one Principle of *Party* or any Notion of *Publick Good*, but to preserve and share the Spoils amongst *Themselfes*, as their only Cement’ which, for Delolme, the English system alone seems to be able to contain.<sup>56</sup> Unlike throughout ancient and medieval English history, in which liberty of the subjects seemed to always be at odds with monarchical power, in modern England, where the legislative power gained significant importance and control through its curbing of executive power, liberty was now under a new threat of corrupted ministers and the party spirit which eclipsed the national interest.

The party spirit and factions constituted a topical contemporary issue. Delolme himself was well aware of its topicality and makes clear in his postscript that he was in favour of the Fox-North coalition of 1783 on the grounds that the coalition ‘has done away and prevented from settling, that violent party spirit to which the administration of Lord Bute had given rise, and which the American disputes had carried still further...’<sup>57</sup> The effect of this party spirit on the historiography of English constitution is believed to be so profound that it was believed impossible to write an impartial English history except by a foreigner.<sup>58</sup> David Hume’s *The History of England* (1754-1761) is a perfect place to start concerning party distinction and history writing in England. We know that Delolme read the series, as he refers to Hume in *The Constitution* and criticizes Hume’s charitable judgement of James II.<sup>59</sup> The comparison between Hume and Delolme can be fruitful, because the two of them aim to demonstrate how the orthodox, Whig version of English history was indefensible because it was biased; both are keen on the new approach of ‘science politics’, yet the two offer different accounts of the origin of English liberty.

---

<sup>56</sup> *The Country Journal, or the Craftsman*, No. 674, 9, June 1739.

<sup>57</sup> Delolme (2007), ‘Postscript to the Constitution of England’.

<sup>58</sup> Forbes, p. 233.

<sup>59</sup> Here Delolme refers to Hume’s judgement of James II as ‘a Prince whom we may safely pronounce more unfortunate than criminal’ from the final chapter (chap. 71) of Hume’s *The History of England*, which was first published in 1754-62.

Hume was writing as a response both to people like, firstly, Rapin de Thoyras, who argued for the continuity of the English constitution and its Saxon freedom which was only stolen by tyrannical kings like James II, and secondly, the opposite camp of the modern liberty advocates, exemplified by Hervey's *Ancient and Modern Liberty stated and compared* (1734), which tried to prove, against Viscount Bolingbroke, that 'before the 'banishment, abdication, deposition or whatever people please to call it' of James II, there cannot be said to have been any real liberty in England.<sup>60</sup> Hume, on the other hand, believed that 'the first two Stuarts were not so obviously mistaken about the constitution.'<sup>61</sup> Using Hume's essay, *That Politics Might Be Reduced to Science* (1742), Duncan Forbes contends how Hume perceived England mostly as an absolute government until the middle of the seventeenth century. This poses the same problem to Hervey as well as possibly for Delolme, that 'if liberty and constitution are modern, the Stuarts, or the first two at least, could hardly be baled for trying to destroy something which did not then exist.'<sup>62</sup>

The question is very interesting in the light of Delolme's resistance to the Norman Conquest thesis. Delolme specifically argued that English liberty could be traced back to 1066 but, at the same time, that English liberty is essentially modern liberty defined as the legal protection of the subject. First of all, we have to scrutinize Delolme's account of the dethroning of Charles II. He states of the House of Commons:

Finding among themselves Men of the greatest capacity, they undertook that important task with the method and by constitutional means: and thus had Charles to cope with a whole Nation put in motion and directed by an assembly of Statesmen.<sup>63</sup>

---

<sup>60</sup> Forbes, p. 247, quoting Hervey's *Ancient and Modern Liberty stated and compared* (1734).

<sup>61</sup> Ibid, p. 263.

<sup>62</sup> Ibid.

<sup>63</sup> Delolme (2007), pp. 27.

The key word here is ‘by constitutional means’. We can assume that Delolme, unlike Hume, did not think that Charles II correctly interpreted the constitution then as an absolute monarchy.

The consequential question is: when did limited monarchy and its mixed constitution begin? This also leads to another, equally important question concerning party bias and English historiography. If Hume’s *The History of England* is ‘the non-party History which Hume came to realize that Rapin had failed to provide’, what then becomes of Delolme’s *Constitution*, deviating, as it does, from Hume’s *History* on Charles II and on so many other issues?<sup>64</sup>

Hume’s question surely is problematic for those who believe that the ancient Saxon constitution bore republican traits from the beginning. Therefore, it is ridiculous for one to talk about republicanism especially under the reign of, say, Emperor Hadrian.<sup>65</sup> Hume’s argument also works as an attack against Hervey’s camp, which – according to Hume’s reworking of English constitution – anachronistically accuses James I and Charles I of destroying English modern liberty, which did not then exist. Delolme’s reworking of English liberty, however, does not suffer the same way that the orthodox Whig and the pro-Walpolean arguments do.

Hume wrote of his own reworking of history (especially the history of the early Stuarts) that ‘the impartiality he had achieved...represented a victory over ‘some of the prejudices of my education.’<sup>66</sup> But Delolme’s *The Constitution* is not simply a response to this reworking. By 1771, when *The Constitution* was first published, Lord North, a Tory, was Prime Minister, and his ministry was followed, in 1783, by the Fox-North coalition. North’s long period of ascendancy came subsequent to the polarizing Bute administration. The question of impartiality in English historiography, therefore, was still not settled, but at the same time had changed its shape significantly since Hume’s *The History of England*. Bolingbroke’s former employment of the

---

<sup>64</sup> J.G.A. Pocock, *Barbarism and Religion: Narratives of Civil Government, Vol. 1* (Cambridge: Cambridge University Press, 2001), p. 176.

<sup>65</sup> Forbes, p. 266.

<sup>66</sup> Forbes, p. 260, referring to Hume’s 1775 letter.

orthodox Whig ancient constitutionalism to attack Walpole was now transformed in the face of the American crisis. The Advertisement of *the Constitution* written in May 1784 openly supported the Fox-North coalition but was written against republican supporters of the American cause which he perceived as unconstitutional, especially its proposition to subsidize George III directly without the permission of the British parliament, breaking the check and balance mechanism of the executive power by the legislative.<sup>67</sup>

I argue that Delolme's resistance to the Norman Conquest thesis does not face the same fate as both the ancient constitutionalism of the orthodox Whigs and the modern liberty argument by John Hervey do, primarily because of its new approach to the study of the history of English liberty. Delolme's reworking of the history of English liberty distinguishes itself from the 1740s-1760s literature significantly, especially with regards to politics. Delolme's employment of the resistance against the Norman Conquest as the point of origin of English constitutional history evades Hume's criticism by insisting that it was the innovation resulting from the reaction against feudalism that was the origin of English modern liberty. Unlike the orthodox Whig's argument for gothic liberty and 'democracy', Delolme emphasizes how the English system's success in nurturing modern liberty is due to its strong and unitary executive power that counterbalances the power of the nobility. The resistance against the Norman invasion was not in itself a demonstration of English liberty, but it marked that break in history where modern liberty had its first historical precondition. Delolme's emphasis on the break with the pre-Norman Conquest era in the history of English liberty made a sharp contrast with ancient constitutionalist thesis, which highlighted the continuity in the English constitutional history since the Saxon times through 1688 and then 1721-1742. This is exemplified by, for example, the anti-Walpolean argument which accuses the ministry of destroying the ancient English constitution mostly associated with Bolingbroke, Pulteney, Swift and Pope and other contributors of *The Craftsman*

---

<sup>67</sup> Delolme (2007), pp. 10, 17-18.

(1726-35). On the other hand, Delolme's insistence that English liberty began with the doctrine of resistance against the Norman feudal yoke also negates the accusation that the advocate of Harvey's modern liberty narrative encounter. For Delolme, there were three main events in the history of English modern liberty: the resistance against the Norman Conquest and the resulting Magna Carta; the confirmation of Magna Carta under Edward I which, for Delolme, also produced the rise of the House of Commons; and the events of 1688.

The Great Charter [the Magna Carta] had marked out the limits within which the Royal authority ought to be confined; some outworks were raised in the reign of Edward the First; but it was at the Revolution that the circumvallation was completed. It was at this æra, that the true principles of civil society were fully established. By the expulsion of a King who had violated his oath, the doctrine of Resistance, that ultimate resource of an oppressed People, was confirmed beyond a doubt. By the exclusion given to a family hereditarily despotic, it was finally determined, that Nations are not the property of Kings. The principles of Passive Obedience, the Divine and indefeasible Right of King, in a word, the whole scaffolding of false and superstititious notions, by which the Royal authority had till then been supported, fell to the ground, and in the room of it were substituted the more solid and durable foundations of the love of order, and the sense of the necessity of civil government among Mankind.<sup>68</sup>

Delolme's resistance narrative is essentially modern because, unlike other popular uprisings, this course of historical resistance culminated in the initiation of legal protection of all individuals equally, and simultaneously curbed the power of the crown as well as stripping it of superstitious holiness. This bringing the executive power down to earth also marked the beginning of civil government and modern politics in which the perfecting of citizenship and civic virtue did not matter as much as the structural containment of various kinds of political powers and making sure that none of them was overtly dominant over others. Civil government in English history along with the emergence of modern liberty, in a way, entailed the re-prioritising of private liberty over public liberty. *The Edinburgh Magazine and Review* in 1775 points out this distinction in

<sup>68</sup> Delolme, 2007, pp. 54.

Delolme's work and how without private liberty, 'general liberty, being absolutely frustrated in its object, would be only a matter of ostentation, and even could no longer subsist.'<sup>69</sup> Modern liberty, defined as the legal protection of the subject, is mostly associated in Delolme's thought with his advocating of unitary and strong executive power. Nonetheless, I would like to emphasize the importance of the limitation of power instead, which is at the heart of Delolme's science of politics project. The executive power should be strong and unitary in order to counterbalance the power of the legislative. However, if executive power becomes too strong, it comes into direct opposition with public liberty. In this regard, Delolme agrees with a prominent ancient constitutionalist, George, Lord Lyttleton. In a footnote about the relationship between the people and the crown, Delolme quotes Lyttleton's *Persian Letters* (1735). 'If the privileges of the People of England be concessions from the Crown, is not the power of the Crown itself, a concession from the People? It might be said with equal truth, and somewhat more in point of the subject of this Chapter,—If the privileges of the People be an encroachment on the power of Kings, the power itself of Kings was at first an encroachment (no matter whether effected by surprize[sic]) on the natural liberty of the People.'<sup>70</sup>

## Conclusion

Appleby wrote that 'just like a French student of politics who visited America a half-century later, De Lolme arrived in London as de Tocqueville arrived in New York, equipped with important, conceptual tools. De Lolme's central assumptions about man, society, and the interaction of political forms and social usages were ready to organize the data he gathered by listening, watching, and questioning.'<sup>71</sup> It is true that Delolme's Anglophilic was partly shaped by his experience of the Genevan oligarchs exploiting republicanism for their own interest.

<sup>69</sup> Forbes, p. 161, referring to *The Edinburgh Magazine and Review* (Volume IV, 1775) and its book review of Delolme's *The Constitution of England*.

<sup>70</sup> Delolme (2007), p. 215, referencing George Lyttelton, *Letters from a Persian in England, to his friend at Ispahan* (London, 1735).

<sup>71</sup> Joyce Appleby, *An American Pamphlet in Paris* (Doctoral Dissertation, Claremont Graduate School, 1966), pp. 67-9495 (31).

However, his exile to England also fundamentally changed his opinion about the executive power and monarchy, which prompted him to write *The Constitution*. Delolme's main contribution to eighteenth-century political thought lies in his appropriation of the strong executive power into modern politics, arguing that legislative tyranny was the new modern political concern and needed to be checked by other governing powers including the executive branch. In his magnum opus, he supports this argument using his version of English historical exceptionalism started with the Norman Conquest and the resistance against it.

By examining his various references from legal historians and political writers both ancient and modern, this article argues that Delolme's rewriting of the history of English liberty differs from the ancient constitutionalism thesis because of his rejection of republicanism and its traits in the English constitution as beneficial to the emergence and development of modern liberty.<sup>72</sup>

Delolme's reworking of the history of English liberty was influenced by, first, his scepticism of the ancient (especially the Roman) legacy, which prompted him to study the systematic rejection of the Roman legal tradition by the medieval legal scholars; and, second, the political urgency of his day, occasioned by the looming American War of Independence. For Delolme, the contemporary revival of civic republicanism was a threat to both the political situation and the study of politics, and his political programme was to reveal this incompatibility of ancient political thinking with the modern world. Being written some decades after the lively, partisan historical accounts of English liberty such as Rapin's *The History of England* (1732), Montesquieu's *Spirit of the Laws* (1742) and Hume's *The History of England* (1754-61), Delolme's *The Constitution of England* was another attempt to achieve impartiality in historiography. For Delolme, however, the explicit objective of this instrumental impartiality was the English national interest. By rising

---

<sup>72</sup> Even though Delolme's work later contributed to the development of modern republicanism, especially in North America. See Joyce Appleby, 'Republicanism in Old and New Contexts', *The William and Mary Quarterly: A Magazine of Early America*, 43, 1, (1986), 20-34. Delolme's *Constitution* is also referred to by prominent Federalists including John Adams in his *A Defense on the Constitution of America* and Alexander Hamilton in *The Federalist Paper No. 70*.

above party rivalry, Delolme sought to achieve a self-proclaimed impartial historical account of English liberty, but also to save the empire from a potential disunity which had been provoked by the revival of civic republicanism.

## Bibliography

### Primary Sources

Charles-Louis de Secondat Baron de Montesquieu, *De l'esprit des lois* (1748).

Edward Coke, *Institutes of the Laws of England*, (1628-44).

George Lyttelton, *Letters from a Persian in England, to his friend at Ispahan*, (London: 1735).

Giambatista Beccaria, *Elettricismo artificiale* (Torino: 1772).

Henry Spelman, *Relinque Spelmanniae: The Posthumous Works of Sir Henry Spelman*, ed. by Awnsham and J. Churchill (1698).

David Hume, *The History of England* (1754-62).

David Hume, *Political Essays*, ed. by Khud Haakonssen (Cambridge: Cambridge University Press, 1994).

David Hume, 'The Progress of English Liberty' (Indianapolis: Liberty Fund, 1778, 2010).

<http://oll.libertyfund.org/titles/2253>.

Henry Spelman, *Reliquiae Spelmanniae: The Posthumous Works of Sir Henry Spelman Kt* (1723).

Jean-Louis Delolme, 'Purification des trois points de droit souillés par un anonyme ou réponse à l'Examen des trois points de droit traités dans les Mémoires des Représentans du 19 mai et 16 octobre' (Geneva, 1767).

Jean-Louis Delolme, *The Constitution of England: Or, An Account of the English Government*, ed. by David Lieberman (Indianapolis: Liberty Fund, 2009).

Jean-Louis Delolme, 'To Benjamin Franklin from De Lolme, 29 November 1781,' in *The Papers of Benjamin Franklin*, volume 36, November 1, 1781, through March 15, 1782, ed. by Ellen R. Cohn (New Haven and London: Yale University Press, 2001).

John Fortescue, *De landibus legum Angliae* (Ca. 1468-71).

John Hervey, *Ancient and Modern Liberty Compared and Stated* (London: 1734).

Tacitus, *Annals*.

King James VI and I, 'Speech to Parliament of...1610' and 'His Majesties Declaration, Touching his Proceeding in the Late...Parliament,' in *King James VI and I, Political Writings*, ed. by Johann P. Sommerville (Cambridge: Cambridge University Press, 1994).

*The Country Journal, or the Craftsman*, No. 674, 9 (June 1739).

United Kingdom Parliament, *A Collection of the Parliamentary Debates in England...* (1739-42).

William Blackstone, *Commentaries on the Laws of England*, (1765-69).

William Temple, 'Essay upon the Ancient and Modern Learning', in *The Works of Sir William Temple, Bart Complete in Four Volumes, to Which Is Prefixed, the Life and Character of the Author* (London: 1814).

William Temple, *Introduction to the History of England* (1695).

## Secondary Sources

Appleby, Joyce, 'An American Pamphlet in Paris', (Doctoral Dissertation, Claremont Graduate School, 1966).

Appleby, Joyce, 'Republicanism in Old and New Contexts', *The William and Mary Quarterly*, Vol. 43, No. 1, (1986), pp. 20-34.

Forbes, Duncan, *Hume's Philosophical Politics* (Cambridge: Cambridge University Press, 1975).

Kalyvas, Andreas and Ira Katznelson, *Liberal Beginnings: Making a Republic for the Moderns* (New York: Cambridge University Press, 2008).

Lieberman, David, 'The Mixed Constitution and the Common Law', in *The Cambridge History of Eighteenth-Century Political Thought*, ed. by Mark Goldie and Robert Wokler (Cambridge: Cambridge University Press, 2002), pp. 317-340.

Lobban, Michael, 'Blackstone and the Science of Law', *The Historical Journal*, Vol. 30, No. 2 (1987), pp. 311-335.

Machperson, C.B., 'Sir William Temple, Political Scientist?', *The Canadian Journal of Economics and Political Science*, Vol. 1, No. 9 (1943), pp. 39-54.

McDaniel, Iain, 'Jean-Louis Delolme and the Political Science if the English Empire', *The Historical Journal*, Vol. 55, No. 1 (2012), pp. 21-44.

McDaniel, Iain, *Adam Ferguson in the Scottish Enlightenment* (Cambridge Massachusetts: Harvard University Press, 2013).

Nelson, Eric, *The Royalist Revolution: Monarchy and the American Founding* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2014).

Pocock, J. G. A., *Barbarism and Religion: Narratives of Civil Government*, Vol. 2, (Cambridge: Cambridge University Press, 2001).

Pocock, J. G. A., *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century: a Reissue with a Retrospect* (Cambridge: Cambridge University Press, 1987).

Pocock, J. G. A., *Virtue, Commerce and History* (Cambridge: Cambridge University Press, 1976).

Smith, R.J., *The Gothic Bequest: Medieval Institutions in British Thought, 1688-1863* (Cambridge: Cambridge University Press, 1987).

Whatmore, Richard, *Against War and Empire* (New Haven: Yale University Press, 2012).

Wootton, David, 'Liberty, Metaphor, and Mechanism: checks and balances and the origins of modern constitutionalism', in *Liberty and American Experience in the Eighteenth-Century*, ed. by David Womersley (Indiana Polis: Liberty Fund, 2006), pp. 209-272.