

The Founders' Vision

The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.

—*James Madison*

In May 1787, a group of men in Philadelphia began to gather to debate and discuss what would become the template for the new United States of America: a new constitution. The youngest was New Jersey's 26-year-old Jonathan Dayton (although James Madison was in his 30s, as were several other delegates), and the oldest was Pennsylvania's Ben Franklin, who at 81 was so infirm that he had to be carried to and from the meetings.

Five men who were not in the room influenced the convention tremendously. Thomas Jefferson was stationed in Paris as the US envoy to France; John Adams was in London as our envoy to the UK. But even more important, Thomas Hobbes was 108 years dead, John Locke had been dead for 83 years, and Baron de Montesquieu had been dead for 32 years.

Thomas Hobbes tutored King Charles II and wrote *Leviathan*, which triggered the earliest stages of the Enlightenment, and also the big split away from monarchy and toward liberal democracy.

Hobbes's ideas, with their faith in hierarchy and patriarchy, also formed a basis for today's conservative movement. He believed that the essential nature of humans was evil (because, the Bible tells us, we're all "born of woman") and that man's "original state" was a life of continual warfare and fear: "During the time men live without a common power to keep them all in awe . . . [they have no] arts; no letters; no society; and which is worst of all, continual fear, and danger of violent death: and the life of man, solitary, poor, nasty, brutish and short."

The only escape from our brutish and fearful existence in the state of nature, according to Hobbes, was under the iron-fisted institutions of church or state.

This is still the primary conservative narrative: without the restraining force of church or state, human life will devolve into chaos. A strong father figure, the story goes, is necessary, both in the form of leaders and rulers, and in the form of a tutelary (to use Alexis de Tocqueville's word) state.

This view also led to the formation of the Supreme Court.

The Glue That Binds Us Together

Two generations after Hobbes, in the 1600s, King James II's tutor, John Locke, saw things differently. He saw balance and democracy in nature and believed that humans could live in the then-modern world without submitting to some "dear leader." Instead, he wrote that humans could live "in society." He described it as the collection, both biological and voluntary, of people living in proximity and united for a common goal with a shared philosophy of social organization.

Locke's *Two Treatises of Government* tore the "divine right" argument for ruling to pieces in 1690, making Locke famous and vaulting him to the front of the philosophers who were arguing for something more egalitarian to replace royalty.

His *Second Treatise* laid out the basis of democracy, as he saw it, and set the stage for today's modern liberal democracies and the overall arc of the US Constitution.

Locke argued against the king's supreme power over person and property, declaring, "Man being born, as has been proved, with a title to perfect freedom . . . hath by nature a power . . . to preserve his property, that is, his life, liberty and estate, against the injuries and attempts of other men."

Nearly a century later, Locke's language informed Thomas Jefferson's drafting of the Declaration of Independence. Because Locke conceived of law as being above any individual (such as a king), his argument called for a *court system*.

Another towering figure who influenced the creation of the Supreme Court was Charles-Louis de Secondat, aka the Baron de La Brède et de Montesquieu. Long gone but still well remembered, he was simply referred to by the founders and framers as Montesquieu.

Montesquieu argued in his 1748 *The Spirit of Laws* that egalitarian, democratic societies could work, and Jefferson wholly embraced Montesquieu's ideas about the separation of powers within a government.

One could argue that Montesquieu was the godfather of the Supreme Court.

Reprinted from *The Hidden History of the Supreme Court and the Betrayal of America* with the permission of Berrett-Koehler Publishers. Copyright © 2019 by Thom Hartmann.