

8. The Danish Debate about Montesquieu: Holberg, Kofod Ancher, Stampe, Sneedorff and Schytte

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The noble art of taking offence is not a modern phenomenon nor was it uncommon in the past that apparently innocent statements provoked strong feelings. Montesquieu definitely did not aim at offending anybody when he wrote about different kinds of government. However his *grand oeuvre* on the spirit of the laws ended up on the *Index Librorum Prohibitorum*, and in distant Denmark his description of despotism and monarchy provoked two Danish intellectuals to write strong apologies of the Danish constitution. Even if “globalization” had not yet been coined, Montesquieu in his own pleasant way was an omnipresent authority whom you apparently did not want to give the last word if you disagreed with his opinions. However, there were also other reasons. In Europe in the middle of the eighteenth century Denmark was not considered an ideal society, and more internationally oriented Danish scholars might feel an urge to defend their country against what they saw as hidden attacks, even from a person such as Montesquieu.

You could only read him in Danish in 1770 when the first translation of *L'Esprit des lois* appeared⁴²⁰. Whether you read the book of the century in this translation or, as the two Danish eighteenth-century professors Ludvig Holberg and Peder Kofod Ancher did, in the original French version, it might seem difficult to be offended by what you were reading, if you did not happen to be a despot living somewhere far away in the Orient or had a particular devotion to that kind of government. Even then you might admire the exactitude with which Montesquieu, without leaving Europe, was able to render the very essence of a government. He tellingly conveyed its basis in the fear felt by people when exposed to the arbitrariness of a ruler who, by the very nature of despotism, need not follow any predictable rules. Nevertheless, offence was taken; at least Holberg and Kofod Ancher acted as if they were offended. They were embarrassed on behalf of their government, and even if they admired the genius of the baron from La Brède and did

not hesitate in praising his great work, they felt the urge to enter the European stage in defence of what they saw as a third and very commendable form of government, the paternal Danish absolute Monarchy.

Sneedorff and Schytte, the two other professors to be discussed in this essay, had a somewhat different attitude to the French connection. They did not enter into any polemic nor seemed to have great trouble in accepting Montesquieu's views on contemporary politics. They read Montesquieu with great care, seemed to love what they read and did their best to transmit the results of their reading to Danish students of modern politics in the Academy for the nobility where they were teaching. The line of promotion was pursued even further by Jens Hvas who published the above mentioned complete translation of Montesquieu's *L'Esprit des lois*. As a consequence even the reader who was unfamiliar with the new European *lingua franca* could see for himself what it was all about, learn a lot about foreign cultures seen through the eyes of an uncommonly good writer and think for himself about the secrets of the art of legislation.

A brief summary of the political situation in Denmark in the eighteenth century is necessary to understand the impact of the debate. Even after the loss of what is now the southern part of Sweden (Scania, Halland and Blekinge) in wars in the middle of the seventeenth century, the Danish monarchy remained a considerable power, consisting of the Kingdoms of Denmark and Norway (including Iceland, Greenland and the Faroe Isles), the Duchies of Schleswig and Holstein and colonies in the West Indies, India and Africa.

The Danish government had changed fundamentally with the introduction of absolutism in October 1660. Legally the way to absolutism was constructed as a transfer of power from the people to the King in the unique absolutist constitution of 1665, known as the *lex Regia*. This new *lex fundamentalis* for Denmark and Norway, which in 40 Articles gave the king absolute power, all *jura majestatis* and fixed the rules of succession, was influenced by contemporary European political thinking, especially by Jean Bodin and Henning Arnisaeus.

Shortly after the absolutist *coup d'état* in 1660, important reforms of the Danish administration were also carried out. The King, though an

absolute ruler, exercised his power through a number of administrative departments known as colleges (*collegia*). In 1683 the most ambitious of the early absolutist reforms was successfully completed with a full code of laws. Christian V's "Danish Law" consists of about 1800 articles in six books, and it was to a high degree based on existing legislation. However it also introduced certain reforms in procedural law and in penal law. The first book contained the law of procedure; the second, ecclesiastical law; the third, the law of persons and family law; book four, maritime law; book five, property law and some law of obligations; and the sixth book, penal law. A process of de-codification started soon after the enactment, leading to a gradual substitution of the code with other legislation. Still, some of the articles in the Danish Code of 1683 remain in force, and the same is the case in Norway with certain articles of the Norwegian code from 1687 which was not based on old Norwegian law but is nearly identical to the Danish Code.

Another reform that eventually had a great impact on Danish legal life was the introduction in 1736 of a law examination at the University of Copenhagen. A characteristic of Danish law until well into the eighteenth century is the nearly complete lack of legally trained judges. The all dominating subject of study had been theology. Most litigation took place in the county courts (*ting*), some cases were appealed to the more learned appellate courts, and some ended in the Supreme Court which, however, only from 1771 was recruited exclusively from legally trained lawyers. Not until 1821 was it established as a rule that all judges should have a law degree from the university. In the eighteenth century the same local magistrate (*herredsfoged*) was invested with both executive and judicial power. However, influenced by Montesquieu's ideas on the prince's duties and the need to secure the citizen against arbitrary power, a high Danish official, Henrik Stampe, in a series of official statements propagated the view that executive and judicial powers were different in nature and should be kept separate when a citizen complained about a decision by the local authorities.

The natural law that established itself in protestant Europe based on authorities such as Grotius, Pufendorf, Thomasius and Wolff during the seventeenth and eighteenth centuries was instrumental in systematising the law by filling the many gaps in the old-fashioned Danish code. This happened especially through interpretation of the law by the Supreme Court. Natural law was one of the main subjects in the

legal education at the University alongside Danish law and – to a lesser degree – Roman law that had never been received in Denmark as applied law. Roman law and systematic legal thought had an impact, but basically Danish law was a system developed by the courts on the basis of medieval legislation and later royal decrees.

Bishop Rasmus Wandal called the seventeenth century an iron century; certainly the early years of absolutism were hard with war against Sweden a continuous threat. The Danish debate on Montesquieu that is the focus of this essay took place at a moment when the generation that had been brought up in this period and which was represented by Ludvig Holberg was being replaced by a new cohort that in many ways was represented by two teachers of political science, Jens Schellerup Sneedorf and Andreas Schytte, who combined patriotism with a more liberal reading of Montesquieu. In many ways the mid-eighteenth century was a turning point when an oppressive absolutist system changed into a more tolerant society striving to make necessary reforms under the influence of the European Enlightenment. Peder Kofod Ancher was somewhere between these generations. He was nearly thirty years younger than Holberg and, like the older man, deeply read in Montesquieu but sentimentally more attached to the existing system of government than the two younger colleagues, both of whom taught at the Academy in Sorø outside Copenhagen and thus away from the centre of power.

Montesquieu was not an authority read in the university as part of legal or other studies but appealed to a wider general readership. The Danish debate about Montesquieu was a brief episode following in the 1750s and 1760s following the publication of a translation of his work. Holberg and Kofod Ancher gave vent to their feelings, and these were not shared by the next generation. In fact, the debate might be seen as a last moment of apology for Danish Absolutism. Around 1750 the climate of debate changed and the more reflective awareness of what enlightened absolutism stood for began to fade.⁴²¹

Montesquieu did not try to convince the reader to love despots or harsh punishments. He wrote one of his most moving texts about torture, the letter of complaint attributed to an eighteen-year old Jewish girl and addressed to the Spanish and Portuguese inquisition. The lesson Montesquieu wanted to teach was quite simple. Although starting from a

general notion of the law of nature, his real concern was to portray all those conditions and relations that made up the historical spirit of the laws. The central point was the necessary correspondence between the laws and the various conditions of the land. The discussion starts with the description of the various forms of government and this remains the *pièce de résistance* of the work, even though it is neither particularly scholarly nor necessarily correct.

In many countries, though not particularly in Denmark, the less than clear religious attitude was considered problematic. The book was exposed to criticism on this ground and, as mentioned, it was, much to Montesquieu's grief, entered on the Vatican's list of prohibited books. He had published *The Spirit of the Laws* anonymously and defended himself in a famous *Défense* from 1750. He was, however, also exposed to other kinds of criticism but probably was never aware of it. The Danish contributions by Ludvig Holberg and Peder Kofod Ancher are examples of this.

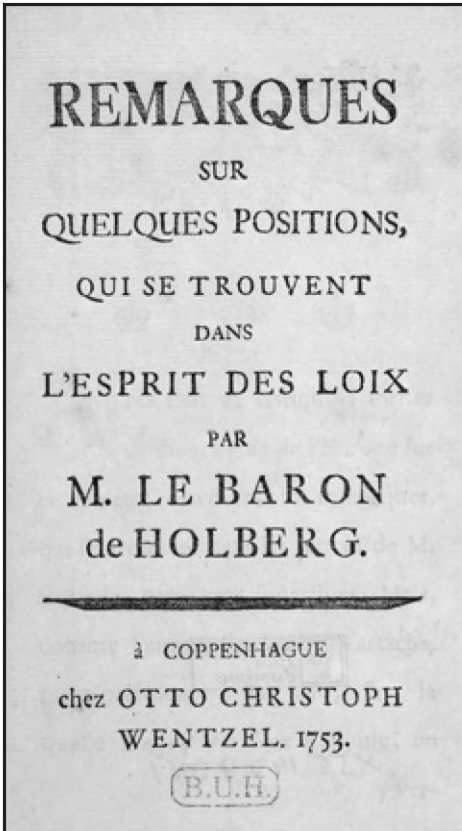
Denmark and the Danish government are not mentioned in *L'Esprit des lois*, but Denmark was commented on briefly in one of Montesquieu's earlier works, the *Considerations sur les causes de la grandeur des Romains et de leur décadence* from 1734. Here he wrote about the arbitrariness of the absolute Danish monarchs: "Aussi voyons-nous aujourd'hui les rois du Danemark exercer le pouvoir le plus arbitraire qu'il y ait en Europe." And he pointed to another sore point, the archenemy Sweden's superiority in warfare: "Nous voyons que, depuis de deux siècles, les troupes de terre de Danemark ont presque toujours été battue par celles de la Suède." The reason for this constant loss on the battle field was, according to Montesquieu, to be found in the way Denmark was governed: "Il faut qu'indépendemment du courage des deux nations et du sort des armes il y ait dans le gouvernement danois, militaire ou civile, un vice interieur qui a produit cet effet, et je ne le crois point difficile a decouvrir."⁴²²

Montesquieu was not the only sceptic as to the efficiency of Danish government. In 1694 the former British ambassador to Denmark, Robert Molesworth, had published *An Account of Denmark as it was in the Year 1692* which spread a negative impression of Denmark among a wide European readership, and even if Montesquieu had not read Molesworth, he may well have heard of his work. At any rate, while the Danish King's *lex Regia* was a beautifully written legitimation of absolute

power, it was equally unacceptable to the representative of a country that boasted the execution of a King who challenged Parliament and held a Glorious Revolution in awe, and to a French nobleman who saw the intermediary powers, “les pouvoirs intermediaires”, as an important and decisive barrier against royal arbitrariness and held such powers as a guarantee for the liberty and security of the inhabitants.

Ludvig Holberg belonged to a generation for whom Hugo Grotius’ *magnum opus* on the law of war and peace, *De jure belli ac pacis libri III* from 1625 still was the leading work in political thought. Although born in 1684, Holberg must still be considered an early reader of Grotius in the Danish-Norwegian context, and he was the first to introduce modern natural law in Danish in 1716, nearly a hundred years after the publication of Grotius’ work and just a few years before the appearance of Montesquieu’s *Lettres Persanes* in 1721. Holberg was a historian and a comic playwright who in Denmark is considered one of the greatest Danish men of letters, founder of Danish theatre and a leading figure in promoting European learning in his country. Like Montesquieu, he travelled all over Europe, in Holland 1704-05, in England 1706-08, in Germany 1708-09 and in France and Italy 1714-16. A self-made man, he ended up as a baron. Comedies and natural law apart, most of his writing was about history, but in his later years he also turned to philosophical reflections. Montaigne was one of his models for a collection of moral thoughts published in 1744, and he continued this line of thinking in a more varied form with a series of fictive letters (*Epistler*) of which no less than 544 – on all kinds of subjects – were published between 1748 and 1754. The last collection appeared posthumously. He knew *Lettres Persane* which he refers to in his *Moralske Tanker* (Moral Thoughts, 1748) and in some of the *Epistler*. He also knew Montesquieu’s *Considérations* which he refers in his own study of Roman decadence which he published in French in Leipzig in 1752.

Holberg read *L’Esprit des lois* in the Amsterdam edition of 1749, and in the following years he wrote a handful of fictive letters in which he commented on selected passages of the work and all those *Epistler* that could be considered as comments on Montesquieu he translated into French. While he liked most of what he read, there were disagreements. Holberg’s translation of his letters was published in 1753⁴²³ as an eighty-four page volume, the last publication before his death shortly



Frontispiece to Ludvig Holberg *Remarques sur quelques positions qui se trouvent dans l'Esprit des Loix* (Copenhagen 1753).

after in January 1754. Montesquieu died in 1755 and there is no reason to believe that he had any knowledge of his distant admirer in the North or of his critical comments.

Holberg did admire Montesquieu but he felt obliged to defend the Danish monarchy against what he saw as implicit charges of despotism in Montesquieu's terminology. Holberg was of the opinion that Montesquieu ought to have made a clear distinction between unlimited monarchy and despotism and that was his main charge. Holberg praised the Danish absolute government as a fatherly institution. People could be just as happy in an arbitrarily ruled country as in a free one. And he was sure that Denmark was evidence of the truth that, as he put it, "Nos Rois icy, quoiqu'ils soient revêtus d'un pouvoir sans bornes, mettent cecy en evidence" (Lettre 518a).

Holberg also criticised Montesquieu's idea that the climate had a determining influence on human development. He was not convinced that there was such a difference between North and South as indicated by Montesquieu. According to Holberg government and good laws played a much more important role than the climate. All countries had to suffer changes and the climate only played a minor role in that respect.

He also discussed the qualities of the British constitution which in the famous chapter 11 of Book VI was seen as the model for the separation of powers. He did not agree with Montesquieu that this constitution was ideal and to be placed above all criticism. According to Holberg, the British constitution did not find the right balance between the different powers and it raised important questions as to competence and security.

Holberg did not doubt that women could be just as able rulers as men, and he rejected Montesquieu's suggestion that it was contrary to reason and nature that women could be rulers of a country. Finally, his Danish experience led him to be critical of Montesquieu's idea that the King ought not to act as a judge.

Holberg had his reasons for protesting against what was only a very limited part of Montesquieu's thinking. There is little doubt that he basically wanted to defend the Danish form of government and that he was convinced of his case. He did believe that the Danish monarchy was the most suitable form of government in his country and he therefore opposed what he saw as a too dogmatic and inflexible way of dividing the different forms of government. To him the theoretical form was not decisive but how the government functioned in practice, and in this respect the Danish way had a clear preference for him.

When Peder Kofod Ancher published his anti-Montesquieu pamphlet in 1756, he had not yet achieved status as the founder of Danish legal history that he later acquired. He was one of the first to take the new degree in law introduced in 1736, he became a professor of law in the University of Copenhagen 1741, and he also performed other public service until his death in 1788. His 200 pages long treatise in Latin was not a general critique of Montesquieu whom Kofod Ancher in fact greatly admired. He only opposed a particular opinion of Montesquieu's. The work, *De indole juris privati pro habitu imperii Danico-Norvegici*, on the nature of private law

under the Danish-Norwegian government, was basically a refutation of Montesquieu's view of monarchy and despotism. In his dedication to the Danish king, Kofod Ancher mentions how in *LEsprit des lois* the republican government and the limited monarchy are favourably described, whereas not much is left for absolute government: "Monarchiae autem absolutae ne micam quidem boni facientis," he states, absolutely not a crumb of good is left. That was also the reason why Kofod Ancher wanted to prove to the world that Montesquieu had an unjustified opinion of the Danish government which according to the Danish jurist came very close to the divine order as it was instigated by God: "quod divini proximum et simillimum, Deo statori et auspice originem debet." Kofod Ancher was a Danish patriot whose later great work on Danish legal history was part of a national revival, as we shall see, strongly stressing Danish particularities and the independence of Danish law from Roman law or German law.

There was a strong link between Danish national identity and the history of Danish law. It is therefore no wonder that Kofod Ancher's Latin work stresses how much he is inspired by patriotic feelings, "Dulci enim amore natalis solia ductus pro patria duntaxat dicere constitui," he says. He stresses that he has no intention of being critical towards the work of Montesquieu except out of love for his country. However, what has annoyed him in particular is what Montesquieu has to say about despotism, the *imago Imperii Despotici*.

The debate on Montesquieu in Denmark was concentrated on two points. One of them was the theory of the influence of climate, the other and more important discussion concerned the forms of government. Kofod Ancher as a lawyer was not satisfied with the way in which Montesquieu dealt with the latter. The Frenchman, as is well known, distinguished between the republic, and what he called monarchy and despotic government. How this has to be understood in general is one issue, another is how it was understood at the time by touchy Danish readers. Like Holberg, Kofod Ancher saw as his task to defend the Danish system against unjustified criticism and explain that the Danish government did not fit into any of the more positive of Montesquieu's categories.

According to Kofod Ancher, it was a mistake by Montesquieu not to mention absolute monarchy as one of the existing forms of government. He starts out with the assumption that Montesquieu when he distinguishes between monarchy and despotism classifies absolute or

unlimited monarchy as a despotic regime. Kofod Ancher distinguishes differently. According to him, a monarchy is that form of government in which power is concentrated in one person, it is *imperium civile, quod uni plene competit et sol*. Despotism presupposes two conditions. Not only must the ruler be invested with civil power over his subjects, but he must also have the same rights as a master towards his slaves: *praeter summam in cives potestatem, jure simul fruitur in servos*. We must distinguish *potestas servile* from *potestas herile*, according to Kofod Ancher, and also between *imperium* and *dominium*.

Kofod Ancher also stresses the importance of distinguishing between the law and the realities of government. He takes as his starting point that the absolute Danish constitution, the *lex Regia* from 1665, does not mention other limits to royal power than the respect demanded by the Lutheran faith. The greater part of his book is a panegyric on the advantages of Danish governmental practice in which he in detail describes Danish institutions and the anxiety of the King to secure the wellbeing of his citizens.

In addition, Kofod Ancher observes that tyranny is not limited to absolute forms of government but may easily be found also in republics and limited monarchies. He is also critical of the way in which Montesquieu attaches different principles to the various forms of government. According to him *la vertu*, virtue, can be a guiding principle in all governmental systems and especially in absolute government where it is often found as a principle that leads the ruler. Also honour, fear of punishment and the enforcement of the law are principles that belong to all sorts of government and not only to monarchies as defined by Montesquieu.

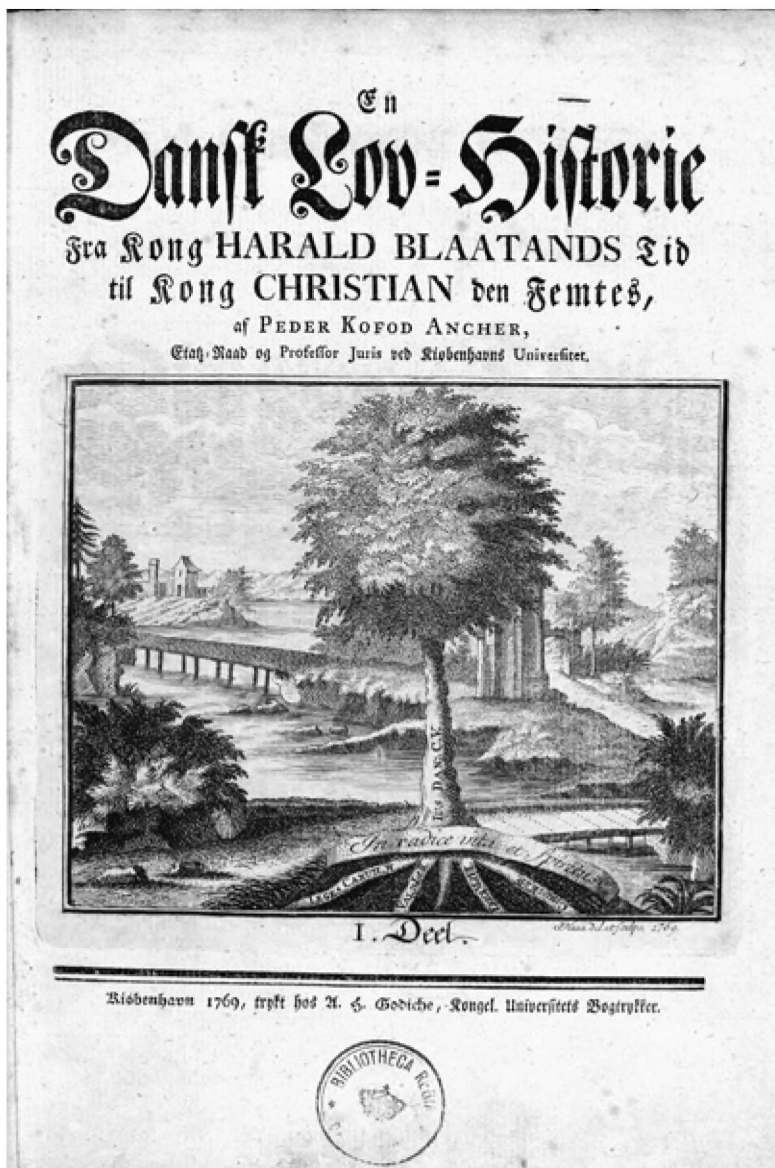
Two notions are especially important in order to appreciate how Kofod Ancher read Montesquieu. On one hand he is driven by what he calls love of his country, *amor patriae*, on the other he promotes the idea of justice as equality in relation to the law. Patriotic love exists in all systems, he maintains. Such love is not particular to republican government. Montesquieu declared (V,2) that “La vertu, dans une republique est une chose très simple: c’est l’amour de la republique.” According to Montesquieu there exists a “vertu politique”, which can be defined as “l’amour des lois et de la patrie.” Kofod Ancher, on the contrary, holds that it is not at all absurd to talk of patriotism and allegiance to absolute

government: “Absurdus nequaquam est amor imperii absolute.” I think we can consider this idea of patriotic love new in Denmark at the time, and in fact I think it was one of the lasting contributions of the debate on Montesquieu to make it clear how patriotism was linked to the country and could be found independently of the particular kind of government.

Kofod Ancher also asks why Montesquieu has taken honour as a guiding principle for the monarchy and not virtue. In the final parts of his treatise he takes up what he considers Montesquieu’s unjust presentation of the despot and the citizens of a society governed by an absolute monarch. According to Montesquieu the despotic ruler is “paresseux, ignorant, voluptueux”, he governs without any rules, and the citizens are “timides, ignorans, abattus.” Kofod Ancher confronts this picture of absolute ruling with the image of a society in which equality is prevalent. Equality or justice, geometric equality as he calls it, ought to be the norm and is also valid in an absolute monarchy, and he mentions the Danish Code of 1683 as an example of equality before the law.

As was the case with Holberg, also Kofod Ancher bases himself on a misunderstanding of Montesquieu’s fundamental notions. Montesquieu does in no way imply that he would understand the Danish monarchy as an example of despotism. The attacks of Holberg and Kofod Ancher may have to do with their personal ambitions, but they probably also have to be understood in the light of the unfavourable picture of Danish government in Molesworth and in Montesquieu’s earlier works. Against the background the silence on Denmark in *L’Esprit des lois* could be taken as pregnant with implicit criticism of the Danish form of government, in which case men of ambition may have thought that it was time to speak up.

As in the case of Holberg, Kofod Ancher’s discussion of government can deflect from the very real esteem in which he held Montesquieu and his works. This is probably best seen in his work on Danish legal history that to a high degree is based on the ideas of Montesquieu. Kofod Ancher may without exaggeration be considered a pupil of Montesquieu, for he adopted the new way of thinking of law, the so called *scientia legislatoria*, the science of how to legislate, according to which you needed to know the background and governing principles of legislation as you found them in *L’Esprit des lois*.



Peder Kofoed Ancher *En Dansk Lov-Historie* (A history of Danish law) (Copenhagen 1769-1776). The frontispiece is depicting a tree that represents the Code of Christian 5.

Kofod Ancher's most important contribution to Danish legal thought was his history of Danish law from ancient times until the mid-fifteenth century (*En Dansk Lov-Historie*) published in two volumes in 1769 and 1776. It is not a systematically ordered presentation of Danish legal history but rather a series of independent articles on different subjects arranged in chronological order and centred on legislation. His earlier works were influenced more by Wolff, and Montesquieu thus was a turning point in Kofod Ancher's scholarly work. He was the first really to appreciate the importance of the Baron from la Brède even if he was also sceptical and stressed how his principles were often wrong, unsystematic and lacking evidence. His views on criminal law were too lenient, according to Kofod Ancher, but even these gave rise to a lot of reflection.

The science of legislation was, as mentioned, an important element in the thinking of Kofod Ancher when he addressed the question what a reasonable legislator must consider when preparing a new statute. The answer was natural law, equity, the commonwealth, the specific conditions of the country, its system of government and customs. The work is introduced by a frontispiece showing us a tree representing the Danish Code of 1683. The text written across the roots tells us that here we find the life and spirits of the laws: "In radice vita et spiritus". This is a hidden quotation from the 30th book of *L'Esprit des lois*. The feudal laws of the Franks, says Montesquieu, are like an old oak tree seen from the distance. When we come closer we see the trunk but not the roots. We need to dig the earth to find them.

We turn to two other figures in the history of Danish learning in the eighteenth century and move from Copenhagen to the small town of Sorø some eighty kilometres west of Copenhagen. In his later years, Holberg spent the summers close to Sorø, where in 1749 an academy had been re-founded aiming at educating young noblemen for public service. Noblemen were reluctant to go to the University of Copenhagen that was dominated by students of theology, and where the student population was dominated by sons from local academic homes or from smaller towns and to a less degree from the land. Only a small number of students attended Sorø, and besides lectures in riding, fencing, dancing and rhetoric, they could hear lectures on economics, law and politics taught by Jens Schielderup Sneedorff, who was a *professor juris publici et politicae* at the academy from 1751 to

his death in 1764, and by his successor Andreas Schytte who taught there from 1759 to 1777.

Sneedorff has been characterized as the prototype of the Danish Enlightenment. He published twice a week a review called *Den patriotiske Tilskuere* (the Patriotic Spectator 1761-63) and, in 1757, a book on civil government (*Om den borgerlige Regjering*, 1757) very much in the style of Montesquieu to whom he also referred in collections of letters under the signature *Babue*.⁴²⁴

From Sneedorff's hand is also preserved a manuscript of his lectures on Montesquieu whom he was the first to introduce in academic teaching. He mentions Montesquieu as a pioneer in his field but at same time stresses that the importance of religion for a nation has been underestimated by him. In his book on civil government, he stresses that religion is the only protection against tyranny and that true religion is the basis of a monarchy. Vice versa, in the case of Spain, monarchy was a barrier against a too strong ecclesiastical power. At the same time, he



Jens Schielderup
Sneedorff
(1724-1764). Painting
by Johan Hörner.

makes the point that Spain is not to be considered as a despotic state but as an unlimited monarchy.

In the letters attributed to *Babue*, Sneedorff mentions Montesquieu as a Zoroaster who brought the Persians the holy fire. In the 42nd letter he reproaches Montesquieu for not making religion the fourth constitution.

Sneedorff was, of course, familiar with the earlier Danish debate on Montesquieu and he places himself on the side of the great Frenchman. In one of Babue's letters (No. 24) he clears Montesquieu of the charge, made by Holberg and Kofod Ancher, that he included unlimited monarchies in his concept of despotism. It simply required attentive reading to see that limited monarchies were considered as republics and that despotism was only to be found in Asia. It should be added that Sneedorff was a conservative who had no critical attitude towards the Danish government and nor did he find such an attitude in the works of his admired Montesquieu, the founding father of his way of teaching political science.

Andreas Schytte had planned a great work in 42 volumes on modern European history. Five volumes on the "internal government" were published in 1773-76, accompanied by two on "external government" in 1774-75 and a first volume of the constitution of Denmark and Norway in 1777.⁴²⁵ Schytte was in no way an original thinker. He sees himself as the successor of Sneedorff and his work as a fulfilling of a promise to Sneedorff to complete what he had begun. In line with this, Schytte does not deny his admiration for Montesquieu when it comes to his general views of law and society. He defends the present system, advocates certain reforms in the court system but has very little to offer in the way of original non-descriptive writing, but he served as a founding father of political and economic studies in Denmark. His basic attitude was that nature is the proper study of mankind and that the proper means in such study are metaphysics, physics and natural history. Without these, Montesquieu would never have gained his familiarity with nature and would never have been able to teach statesmen how to govern. His praise of the genius of Montesquieu finds virtually no limits:

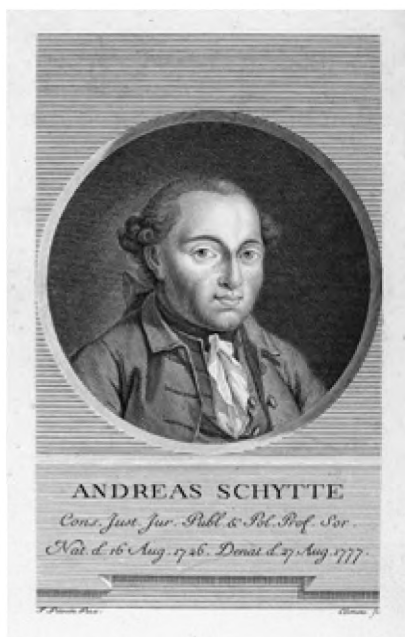
It is a blessing for mankind that our age has produced such a genius, who has been able to grasp the truth that ignorance and

passions for such a long time have disguised, and that he has been able to express them [sic] in a way that has been commonly acclaimed by all Courts and Peoples except his own countrymen. Who does not see, that I am talking of Montesquieu⁴²⁶.

The only negative point mentioned by Schytte is that Montesquieu talked more of ancient than of modern government and treated only a few points of the art of government when he should have covered them all.

Schytté uses Montesquieu's scheme of government with the division into monarchy, despotism, aristocracy and democracy, considering the last to be the "least stable of them all". He mentions Montesquieu's concept of intermediary powers which are, he says, only the counselors and officials of the monarch. He is also aware that Montesquieu was the first to consider despotism a specific form of government.

The picture of how Montesquieu influenced Danish attitudes in the mid-eighteenth century would be incomplete without adding one



Andreas Schytte (1726-1777).
Lithograph by J.F. Clemens.

more professor to the four already mentioned. Henrik Stampe was a professor in the Law Faculty at the University of Copenhagen but more well known as a senior civil servant in the Danish-Norwegian monarchy. In the latter role he was in charge of new legislation and acted as a general legal counsellor to the government. He was profoundly influenced by Montesquieu and due to his recommendations, principles from the works of the great French thinker found their way into Danish administrative practice.⁴²⁷ He often stressed how the judiciary should be separated from the executive administration. He was in favour of punishment that kept a just proportion to the crime, arguing that too harsh punishments were not accepted and thus in practice lead to impunity. The king, he said, should not act as a judge and should never serve to increase but only to mitigate sentences. As a basic principle in the Danish constitution, the throne was a source of mercy, not fear, according to Stampe. However, the *lex Regia* from 1665 did not mention any such restriction on the king's power; Stampe invented a new constitutional principle based on the ideas of Montesquieu.

Holberg and Kofod Ancher had entered into debate with Montesquieu without any obvious domestic rationale, but they may have wanted to convince a foreign audience of the blessings of Danish absolute monarchy. In the case of Stampe's recommendations and his introduction of Montesquieu as a living part of Danish constitutional thinking, the ambition was to prove that there was no despotism, that Denmark in practice was a monarchy, as Sneedorff and Schytte had taught.

We may conclude that absolutism was a part of Danish identity by the middle of the eighteenth century, but despotism was not. Patriotism was linked to the idea of a monarchy, unlimited but not without rules. The absolute constitution was respected but the model of legislation was the Danish Code from 1683 which was seen as deeply rooted in old Danish law and built upon a principle of equality. In 1762 Kofod Ancher in an ironic preface to the poetic works of a judge from Jutland, Thøger Reenberg, wrote that it was true that Nordic people had a drawback, especially at a time when the intelligence of people was measured by to the thermometer, namely that they have been denied the faculty of "bel Esprit" because they against their will must live too close to the North Pole. However, as we have seen, Montesquieu was not just – and not mainly – an occasion for self-deprecating jokes about Denmark and Danish identities. His influence in eighteenth-century

Denmark was substantial. Less so, perhaps, in the mock provocation taken by Holberg and Kofod Ancher than in the important changes of attitude towards executive and judicial power introduced by Henrik Stampe, not to speak of the reflections on the laws of history and the science of legislation by Kofod Ancher in his later works.

In Denmark the monarchy in its absolute form survived the French Revolution and only in 1848-49 was it substituted by a constitutional monarchy. In the new Danish constitution of 1849 the principle of separation of power was introduced. The Danish absolute monarchy managed to resist revolutions mainly through a well developed ability to make reforms from above. In many ways this resilience confirms the thinking of Holberg and Kofod Ancher. Whether Montesquieu would have accepted the arguments of Holberg and Kofod Ancher as to the true character of Danish absolutism remains doubtful. Montesquieu probably would have had his reservations towards a system that did not know any real "intermediary powers". However even if Holberg and Kofod Ancher might have overreacted in their suspicions of Montesquieu as a critic of the Danish government, they were probably right in assessing the role of Danish patriotism and the general satisfaction with the way Denmark was ruled.