

**A Voice of Moderation in the Age of Revolutions:
Jacques Necker's Reflections on Executive Power in Modern Society**

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ABSTRACT. When Auguste de Staël edited Jacques Necker's complete works in fifteen volumes in 1821, the public was surprised to discover how prolific the former minister of Louis XVI had been. For Necker, the wealthy banker originally from Geneva, was the author not only of a monumental two-volume history of the French Revolution (*De la Révolution française*, 1796), but also of one of the most important books ever written on the role of the executive power in modern society (*Du Pouvoir exécutif dans les grands états*, 1792) as well as two important books on religion and politics, *De l'importance des opinions religieuses* (1788) and *Cours de morale religieuse* (1800). His final book, *Dernières vues de politique et de finance* (1802), was the swan's song of a friend of liberty worried about the prospects for freedom in France and Europe, as Napoleon was getting closer to his dream of exercising absolute power. This paper examines Necker's work on the executive power in modern society which, I argue, should be mandatory reading for anyone interested in the French Revolution, executive power, balance of powers, and constitutionalism. In *Du Pouvoir exécutif dans les grands états* Necker restated the fundamental principles of his political moderation and made a strong case for an energetic and limited executive power. He challenged the Rousseauian view according to which the supreme power in a state is the legislative power as an expression of the general will of the people. By rereading this book today, we are invited to explore the complexity of the executive power its key role within a constitutional framework.

NOTE. A version of this essay will appear as an introduction to a new English edition of Jacques Necker's *An Essay on the True Principles of the Executive Power in Great States*, edited with an introduction and critical apparatus by Aurelian Craiutu, under contract with and forthcoming with Liberty Fund.

BIOGRAPHICAL NOTE. Aurelian Craiutu is Professor of Political Science at Indiana University, Bloomington. He has written extensively on modern French political thought from the French Doctrinaires and the Group of Coppet (Jacques Necker, Germaine de Staël, Benjamin Constant) to Alexis de Tocqueville and Raymond Aron. He has also edited François Guizot's *History of the Origins of Representative Government in Europe*, Staël's *Considerations on the Principal Events of the French Revolution*, and Tocqueville's writings on America after 1840. His most recent book is [Faces of Moderation: The Art of Balance in an Age of Extremes](#) (University of Pennsylvania Press, 2017).

“Our legislators have rejected a form of perfection and happiness to which we might have reasonably aspired; [...] they aimed at a liberty that had no model, and they have produced a disorder that has no example.” (II: 199)

“There is no real liberty, or at least there is no secure freedom, if there is an authority without balance in the state” (I: 347)

An unduly neglected political thinker

Referring to her beloved father, Germaine de Staël once wrote that Jacques Necker (1732-1804) was “the only individual who had shown himself profoundly skilled in the art of governing a great country without ever deviating from the most scrupulous morality. ... Eloquence had not hurried him away beyond the limits of reason, nor had reason ever deprived him of a single emotion of true eloquence.”¹ Alas, posterity has not been fair to Necker. As Boissy d’Anglas once claimed, “Of all statesmen, Necker has been treated with the greatest injustice. Many have spoken about him; few have known him, and even fewer have wanted to know him.”² He has remained to this day poorly known by political theorists and historians of political thought.

¹ Germaine de Staël, *Considerations on the Principal Events of the French Revolution*, ed. Aurelian Craiutu (Indianapolis: Liberty Fund, 2008), 475. Two other sympathetic portraits of Necker can be found in Germaine de Staël’s “Du caractère de M. Necker et de sa vie privée” (*Œuvres Complètes de Madame la Baronne de Staël publiées par son fils* [Paris: Treuttel and Würtz, 1821], vol. II, 261-90) and Auguste de Staël’s “Notice sur M. Necker” published in the second volume of *Œuvres diverses de M. le Baron Auguste de Staël* (Paris: Treuttel and Würtz, 1829). Madame de Staël’s portrait of Necker in *Considérations* was criticized for its excessive praise which, according to some like Talleyrand, bordered on idolatry; for example, see Talleyrand’s caustic remark in his memoirs, also quoted in Ghislain de Diesbach, *Necker ou la faillite de la vertu* (Paris: Perrin, 1978), 464-65.

² Boissy d’Anglas as quoted in Robert D. Harris, *Necker: Reform Statesman of the Ancien Régime* (Berkeley: University of California Press, 1979), 241.

The former resident minister of the Republic of Geneva in Paris, Necker was envied by his contemporaries for his fabulous wealth; many scorned him for being a petty bourgeois, mostly concerned with promoting his own reputation and increasing his considerable fortune. The fact that he had proved to be an able steward of the French royal finances in difficult times—he had served three times in the royal government without accepting any remuneration—did not help much either to endear the wealthy Genevan banker to his contemporaries. As a Swiss Protestant, he might have found it difficult at times to live in a predominantly Catholic country. Others, who were slightly more generous to Necker, dismissed him as a prideful bureaucrat whose judgment was of the second order and lacked the necessary skills for weathering political storms. According to Talleyrand, for example, Necker had few ideas and no firm principles of administration; moreover, he was a poor orator and listener, plagued by constant fear and giving the impression of being a charlatan. Still others found Necker's writing style pompous or trivial, and were thus inclined to underestimate him as a political writer and religious thinker.

In spite of all this, nobody can deny that Necker played a key role in French history before and during the first period of the Revolution. Appointed Director of the Royal Treasury in 1776, he became famous in 1781 for his *Account to the King* from January 1781, whose publication caused both controversy and sensation. It was the first time in the history of the kingdom of France that its finances were made public. Necker's plans for reforming the Old Regime focused on revamping the administration of provincial assemblies and paying more attention to public opinion.³ As a practical man who had a good sense of what was feasible and

³ Both Necker's *Compte rendu au roi* (1781) and his *De l'Administration des finances de la France* (1784) brought to the fore the power of public opinion at a point in time when it was still

desirable, Necker understood that the kingdom of France needed an entirely new political structure that could grant legal sanction to the participation of the Third Estate in the most important political deliberations. In May 1789, as Minister of Louis XVI, he presided over the convocation of the Estates-General.⁴ Unfortunately, his hopes for reform were dashed. He was dismissed by Louis XVI, two months later, on July 11, after king's advisors convinced him to cut his ties with his loyal minister. Necker's removal from office was one of the main causes of the popular revolt that eventually led to the fall of the Bastille on July 14. Recalled by the king, Necker enjoyed a triumphal return to Paris a few weeks later, when he was received like a hero and acclaimed like a savior in the streets of the French capital.⁵

Plagued by doubt and anxiety and suffering from poor health, Necker decided to abandon the political scene in early September 1790. In an obvious attempt to cast doubt on his integrity and credibility, the National Assembly had asked him to present a complete account of the government's expenditures and revenues from May 1789 to April 1790. Instead of doing so, Necker decided to retire to his home at Coppet on the shores of Lake Lemman in Switzerland, but not before lending the French government a considerable amount of money—two million livres—which was never repaid during his lifetime.⁶ From Coppet, he anxiously followed the political affairs in the French capital, but never returned to France. Necker's conception of moderate (constitutional) monarchy, based on the joint exercise of sovereignty by the King and

seen by many as a potentially revolutionary force. On Necker's views on public opinion, see Léonard Burnand, *Necker et l'opinion publique* (Paris: Honoré Champion, 2004).

⁴ This was the first time in more than a century and a half that the Estates-General convened; the previous meeting had taken place in 1614.

⁵ Necker's triumphant return to Paris is described in Staël, *Considerations on the Principal Events of the French Revolution*, 165-72.

⁶ The story of Necker's loan is recounted in Othénin d'Haussonville, "La liquidation du 'dépôt' de Necker: entre concept et idée-force," *Cahiers staëliens*, 55 (2004): 153-206.

Parliament, bicameralism, the royal veto, and a strong executive power found few supporters among the deputies of the Constituent Assembly in 1789-1791. A few years later, he was also critical of the main principles undergirding the Constitutions of 1795 and 1799 which, in his view, did not provide a solid foundation for a stable and free regime in France. He died at Coppet on April 9, 1804.

When Auguste de Staël edited Necker's complete works in fifteen volumes in 1821, the public was surprised to discover how prolific the former minister of Louis XVI had been. For Necker the wealthy financier was the author not only of a monumental two-volume history of the French Revolution (*De la Révolution française*, 1796), but also of one of the most important books ever written on the role of the executive power in modern society (*Du Pouvoir exécutif dans les grands états*, 1792) as well as two important books on religion and politics, *De l'importance des opinions religieuses* (1788) and *Cours de morale religieuse* (1800). His final book, *Dernières vues de politique et de finance* (1802), was the swan's song of a friend of liberty worried about the prospects for freedom in France and Europe, as Napoleon was getting closer to his dream of exercising absolute power.

Unfortunately, none of Necker's political works has been reedited in English for over two centuries, and we still lack a full biography of the former minister of Louis XVI in the English-speaking world. The situation is slightly different in France, but even there, Necker's political works have been neglected by editors.⁷ One reason for this oversight might have to do with

⁷ One exception is worth noting in this regard. Necker's *Réflexions philosophiques sur l'égalité* were republished in 2005 by Les Belles Lettres in the collection Bibliothèque classique de la liberté.

Necker's political moderation and his role as a "trimmer"⁸ who sought to keep the ship of the state on an even keel and prevent it from capsizing. Marcel Gauchet was probably right to claim that "Necker has against him the unconditional proscription that attaches to the memory of the vanquished. His handicap suffers, moreover, from the fatal handicap of moderation."⁹ Necker fully embraced the label of moderate and the concept of the golden mean. As he once acknowledged, his political career perfectly illustrated "the persecutions to which a spirit of moderation exposes public characters in times of trouble and agitation. . . . They are struck by all the crossing hands, and as they are passed by the accelerated march of the passions, as they are left behind by new ideas and modern systems, they fall into disrespect, and their character is accused of feebleness."¹⁰

The ambivalence of executive power

It is high time therefore that we take a new look at Necker, the author of one of the most important books on executive power in modern states. If the reflection on executive power goes back to Greek and Roman political philosophy, the concept played a rather limited role in the writings of classical thinkers, their focus being on statesmanship rather than executive power *per se*. The leadership provided by Pericles or Plato's philosopher-king had little to do with the

⁸ For the definition of the trimmer, see Halifax's classic essay "The Character of a Trimmer." Halifax wrote: "This innocent word *Trimmer*," wrote Halifax, "signifieth no more than this, That if Men are together in a boat, and one part of the company would weigh it down on one side, another would make it lean as much to the contrary; it happeneth there is a third Opinion of those, who conceive it would do as well, if the Boat went even, without endangering the passengers" (Marquis of Halifax, *Complete Works*, ed. J. P. Kenyon. London: Penguin, 1969), 50.

⁹ Gauchet, "Necker," in François Furet and Mona Ozouf, eds., *A Critical Dictionary of the French Revolution* (Cambridge, Mass.: Harvard University Press, 1989), 287; on Necker's paradoxical "excess of moderation and audacity" and his limitations, also see Furet and Halévi, *La Monarchie républicaine*, 77-79.

¹⁰ Necker, *On the French Revolution* (London: T. Gadell, Jun. and W. Davies, 1797), I: 308. On Necker's political moderation, see Aurelian Craiutu, *A Virtue for Courageous Minds: Moderation in French Political Thought, 1748-1830* (Princeton University Press, 2012), 113-57.

complexity of the executive power as we know it today. Aristotle mentions it occasionally in his *Politics*, but he did not use the exact term (“executive”), preferring instead to write about one-man rule or monarchy. The very concept of “executive power” emerged much later and became a theme of sustained reflection only in Marsilius of Padua’s *Defensor pacis* (“*Defender of the Peace*”). Marsilius argued that the source of all political power and law is the people and made a distinction between the sovereign (that makes the laws) and the government (that must execute the laws). According to Harvey Mansfield,¹¹ the real doctrine of executive power was developed in Machiavelli’s *The Prince* (1532), a book often considered as the origin of modern political thought through its sophisticated advocacy of a bold power for the leader of the state. The nature, functions, and limits of executive power were subsequently discussed in Hobbes’s *Leviathan* (1651), Locke’s *Two Treatises on Government* (1690), Montesquieu’s *The Spirit of the Laws* (1748), and the *Federalist Papers* (1788).

Two things combine to make the executive power different from other powers in the state and confer on it a special place in the architecture of constitutional government: its indispensable nature along with its ambivalence. First, the executive power is a necessity, since there can simply be no political commonwealth without some form of executive as the main locus of decision-making. Second, the executive power can, in fact, be a very strong power, similar in some respects to the power of a monarch. This resemblance might account for the traditional skepticism of republicans toward the executive power that, it was claimed, might easily degenerate into tyranny. The extent of the power of the executive is demonstrated by the fact that it has the authority and ability to quickly and effectively adjust to emergencies and evolving

¹¹ Harvey C. Mansfield, *Taming the Prince: The Ambivalence of Modern Executive Power* (New York: The Free Press, 1989). Necker is regrettably absent from Mansfield well-known book, that offers a detailed account of the most significant reflections on the executive in the history of political thought.

circumstances. Moreover, in some forms of government the executive has the right to wage war and, in some cases, it must even be allowed to go beyond the law, or even ignore it altogether in the interest of preventing anarchy or civil war.¹² As such, unlike its legislative and judicial counterpart, the executive, through its use of discretionary power (the “prerogative”) is expected to supply the absence or shortcomings of the law in order to prevent anarchy and preserve the common good; yet, like them, it must always remain subordinate to the latter in order for the rule of law to be preserved. How can this difficult task be achieved?

This question sheds light on the fundamental ambivalence of a power which is constructed in such a way that it is simultaneously “subordinate and not subordinate, both weak and strong.”¹³ It is worth pausing for a moment to reflect on this dual nature of the executive power. On the one hand, the executive is merely an agent that acts to advance the will and interests of the sovereign, being entrusted merely with the execution of its laws or decrees. On the other hand, it is also an independent actor on the political scene, pursuing its own agenda, but always in competition with the other powers. As an agent, the authority of the executive is formally limited and, on paper, it is relatively weak; yet, as a political actor, the power the executive commands is considerable, since the laws are powerless by themselves and must be applied, executed, or enforced by the agents of the executive power. Only a wise political architect can find a way to link the formal weakness of the executive power and its formidable authority in practice in a harmonious way. Such a legislator would seek to give the executive all

¹² See, for example, Locke’s extensive discussion of the executive prerogative in Chapter XIV of his *Second Treatise on Government*.

¹³ Mansfield, *Taming the Prince*, xvi. On the difficulty of defining the exact nature and attributes of the executive power in the American context, see Charles C. Thatch, Jr., *The Creation of the Presidency, 1775-1789: A Study in Constitutional History* (Indianapolis: Liberty Fund, 2007). For the modern French context, see the comprehensive work of Nicholas Roussellier, *La Force de gouverner: le pouvoir exécutif en France XIXe-XXIe siècles* (Paris: Gallimard, 2015).

the means and “energy” it needs to properly fulfill its key functions. At the time, a prudent legislator would also want to tie the hands of the executive through carefully designed constitutional and legal rules—the most prominent being the separation and balance of powers—that could prevent the executive prerogative from becoming arbitrary or tyrannical. This is far from being an easy task. How can one create a viable executive power that is neither weak nor passive and constitutionalize it at the same time so that it can never become tyrannical or arbitrary in the hands of one individual or several persons?

It is no mere coincidence that two original answers to this important question were proposed from a couple of different perspectives at about the same time—late 1780s and early 1790s—on both sides of the Atlantic. In America, the state delegates to the Constitutional Convention who met in Philadelphia in the summer of 1787 struggled to define the scope and the limits of the executive power, along with the attributions of the office of the President. The Articles of Confederation had not provided for executive power and opposition to a unitary executive remained strong, perhaps stemming from the existing skepticism toward the executive power of the British monarchy. The idea that a strong unitary executive power, “instead of being the fetus of monarchy,” as James Wilson put it, could be “the best safeguard against tyranny”¹⁴ seemed highly implausible at that time. In the end, the delegates chose to leave the authority of the President and the executive somewhat undefined with regard to a number of important issues, among them foreign policy questions.

Subsequently, Alexander Hamilton (writing under the pseudonym Publius) made a persuasive case for an energetic executive in a republican government in several essays (# 67-77)

¹⁴ James Wilson’s intervention in the debate on executive power from June 1, in *The Anti-Federalist and the Constitutional Debates*, ed. Ralph Ketcham (New York: Penguin/Mentor, 1986), 43.

included in the *Federalist Papers*. Publius acknowledged that it was important to give the executive a vital role in the constitutional architecture of the new republican system so that it could produce good administration, the true test of any government. A believer in the need for a strong executive capable of undertaking “extensive and arduous enterprises” (*Federalist* # 72), Hamilton had to overcome the classical association between monarchy and executive power and had to respond to those who remained skeptical about placing power in the hands of a single individual at the federal level. He also had to show how it would be possible to deal with necessities and emergencies in a constitutional way, while also allaying the concerns of those who feared that undertaking extensive enterprises would open the door to arbitrary power. The doctrine of the separation of powers, along with the provision of unity and duration to the executive, was supposed to be part of the answer to this conundrum. Yet, the powers not only had to be properly separated from each other, they also had to be blended and balanced, so that they could cooperate and effectively defend themselves against mutual encroachment.

It is well-known that Hamilton’s views on executive power differed in tone as well as substance from those of Madison, who gave the pride of place to the legislative in which he saw, in Locke’s footsteps, the soul of a political commonwealth. A few years later, in 1793-94, after George Washington issued an official proclamation declaring America’s neutrality in the war between France and Britain, the two founding fathers, writing under the pseudonyms of *Pacificus* (Hamilton) and *Helvidius* (Madison), engaged in a public controversy on the role of executive power in foreign policy questions and the limits on its power to interpret the laws.¹⁵ Their exchange shows that contingency and emergency events were never far from the minds of the

¹⁵ The entire debate can be found in *The Pacificus-Helvidius Debates of 1793-1794*, ed. Morton J. Frisch (Indianapolis: Liberty Fund, 2007). It is worth adding that Jefferson sided with Madison (against Hamilton and Washington) in his attempt to deny what they both took to be a dangerous overreach of executive power into foreign affairs.

creators of the United States Constitution. Focusing on the prerogatives of the executive power which must be strictly limited to executing laws (rather than making them), Madison denied the executive the legal power to declare neutrality and make treaties, reserving the right to declare war to the legislative body. The executive power, Madison argued in 1794, “has no constitutional right to interfere in any question whether there be or be not a cause of war,”¹⁶ a position denied by Hamilton whom Madison accused of trying to introduce new principles into the text of the Constitution. The disagreements between Hamilton and Madison on the functions and limits of executive power reflected, in fact, the spirit of the U.S. Constitution, which was silent on several key issues pertaining to the executive and thus avoided a narrow definition of the office of the President. In so doing, the framers of the Constitution opted for a certain degree of flexibility with regard to the prerogatives of the executive power, while also acknowledging the importance and difficulty of properly determining the functions of the executive in a large state. This approach had the advantage that it subsequently allowed for an open-ended debate on the nature, purpose, and bounds of the executive power as well as its relation with the legislative and judicial powers.

The French exception

The French took a different route, explained by Necker in *Du Pouvoir exécutif dans les grands états*, a two-volume book written at about the same time as Hamilton and Madison were debating the role of the executive in foreign policy affairs in America. In her *Considerations on the Principal Events of the French Revolution*, Madame de Staël referred to her father’s work on executive power as “the best guide that can be followed by men called on to make or to modify a constitution of any kind” and “the political chart in which all the dangers that are found in the

¹⁶ Ibid., 90.

track of liberty are pointed out.”¹⁷ She might have been somewhat influenced by her love for her father, but her assessment is, all things considered, on the mark: Necker’s *Du Pouvoir exécutif dans les grands états* should be mandatory reading for anyone interested in executive power and constitutionalism.

Necker’s work, completed by April 1792, almost half a year after France received its first written constitution, did not pass unnoticed in the French press.¹⁸ Several reviews appeared in widely-read journals of different political persuasions, from *Journal de Paris* (July 17) and *Ami des Patriotes* (July 21), to *Journal de la Cour et de la Ville* (July 23) and *Mercure de France* (August 31). With a few exceptions, the reception was reserved or critical, given Necker’s open endorsement of the English model and its unwritten constitution that had few partisans in France at that time. Necker found vocal critics not only among the Jacobins, who had little or no appreciation for the moderation of the former minister of Louis XVI, but also among the ultra-conservatives, who continued to view him with skepticism due to the role he played before and during the initial stages of the Revolution. Outside of France, *Du Pouvoir exécutif dans les grands états* was more positively received, especially in Germany, being immediately translated into English and German.

Even if we were to leave aside Staël’s exaggerated praise of her beloved father, we would be well advised to pause for a moment to reflect on her words. Any reader of Locke’s *Second Treatise on Government* will recall his claim that it is the legislative rather than the executive that constitutes the “soul” of a commonwealth; as such, the creation of an effective legislative

¹⁷ Staël, *Considerations*, 298.

¹⁸ For a fuller account of the reception of Necker’s book, see Grange, *Les Idées de Necker*, 63-66. The context in which the book was written is discussed in chapter 4 of Harris, *Necker and the Revolutionary Decade*, 84-114.

power is essential to creating a viable and fair representative system. How then can a book on executive power be the best guide on constitutionalism and the preservation of liberty?

To be sure, it may not be easy for us today to fully appreciate the breath, depth, and originality of Necker's book, along with its significance in the rapidly evolving political context in which it was written and published. *Du Pouvoir exécutif dans les grands états*, consisting of seventeen long chapters in two parts, amounting to six hundred pages in the original French, is certainly much more than a simple book on the concept of executive power. In many ways, it is a very French book that emerged from the peculiar context of the French Revolution, written as events were still unfolding, with no endpoint in sight. When he sat down to write the book, Necker had left the political scene not long before; France had just received its first written constitution from the members of the Constituent Assembly, who were replaced by an inexperienced group of deputies in the newly-elected Legislative Assembly. The Terror of 1793-94 had not yet occurred, but Necker's analysis foresees it in some ways. The demise of monarchy had not been completed, but Necker understood that it was both imminent and unstoppable, after the Constituent Assembly had made the king the first public functionary. In early 1792, the power of the Jacobin clubs was rising, but they did not entirely dominate the political scene at that time.

The originality of Necker's book derives in part from the fact that in its pages, the political thinker meets the politician who had been for a while at the helm of affairs. Their voices mingle and at times are indistinguishable. The politician has a sense of what went wrong and when, while the theorist draws on the works of his predecessors who can teach him a few important lessons. Far from being mere theoretical speculations, Necker's ideas had a firm foundation in political reality.

What makes this a book worth reading for us today? First, in *Du Pouvoir exécutif dans les grands états* Necker restates the fundamental principles of his moderate political philosophy, proving that he was a moderate both by personality and principle, a spirit who distrusted extravagant positions and sided with prudence against fanaticism. As an admirer of the unwritten English constitution which looms large in these pages, Necker never ran after novelties and was respectful of the accumulated knowledge of all ages and nations. In his view, the experience of the past counted more than the abstract speculations of those who, in his own words, “have taken up their residences in the clouds of philosophy” (I, 286). Distrusting all forms of enthusiasm, political and religious, Necker was skeptical about intransigent and extremist positions on all sides of the political spectrum. Denouncing what he called “*l’empire menaçant d’un aveugle fanatisme*” (OC, IX, 331), he devoted particular attention to those who advocated absolute equality.¹⁹ Invoking the example of England, he pointed out that in a great kingdom like France, there could be neither public order nor general liberty once all ranks have been leveled and all differences of wealth and status abolished. At the same time, Necker opposed those who used fear and planted the seeds of distrust among citizens in order to better advance their own agendas.

During his entire political career, and most prominently in 1788-90, Necker assumed his role as mediator between parties, fully committed to the common good and painfully aware of the difficult challenges he faced in promoting it. In a climate dominated by chronic mistrust between classes and political actors, Necker acted as a trimmer seeking to keep the ship of the state on an even keel;²⁰ he viewed his entire political career as illustrating, in his own words, “the

¹⁹ See, for example, Chapter XVIII below, entitled “Whether Absolute Equality is a Necessary Condition of Liberty.”

²⁰ See Staël, *Considerations*, 113-14.

persecutions to which a spirit of moderation exposes public characters in times of trouble and agitation.” Such people, Necker acknowledged, “find themselves surrounded by party rage without being in favor with any side, and have for them only the uncertain chance of the justice of posterity, or the low, and trembling voice of the honest men of their age.” Exposed to the crossfire of the extremes and the ridicule of public opinion, “they are struck by all the crossing hands, and as they are passed by the accelerated march of the passions, as they are left behind by new ideas and modern systems, they fall into disrespect, and their character is accused of feebleness.”²¹ That is why, Necker insisted, moderation was a difficult virtue only for courageous minds: “Ideas of wisdom and moderation commonly escape the wavering mass of people who regard absent-mindedly the conduct of statesmen, people whose attention can be caught and whose suffrages can be gained only by colorful novelties and striking exaggerations.” (I: 282).

One must also add that Necker’s moderation was linked to a conservative type of liberalism that, in his view, was justified in order to countervail the character of a nation prone to succumb to various forms of political radicalism. On the one hand, Necker recognized that justice ought to be the main object of all government and unambiguously acknowledged the power of public opinion. On the other hand, he expressed serious reservations about any constitution that vests too much power in the hands of the people. For the many, Necker believed, are susceptible to be carried away by their passions or be ensnared by demagogues who pander to them in order to gain their favor. “In the courts of princes,” Necker wrote, “men whisper their flattery; in the midst of a democracy, they flatter the people to the sound of a trumpet” (II: 186). Slowly but certainly, the demagogues become intolerant chiefs of sects who

²¹ Necker, *On the French Revolution*, vol. I, 308.

come to measure virtue and vice, merit and demerit, according to the opinion that people have of the doctrines they profess. Thus, the political scene becomes divided between the forces of good and evil, and a ruthless campaign is launched to purge the world of all the elements of darkness.

An original form of constitutionalism

Second, *Du Pouvoir exécutif dans les grands états* makes a strong case for an energetic and yet limited executive power and invites us to explore the complexity of the latter and its key role within a constitutional framework. Necker challenged the Rousseauian view according to which the supreme power in a state is the legislative power as an expression of the general will of the people. He took the deputies of the Constituent Assembly to task for failing to create a sound balance of powers and for presenting the weakening of the executive power as “a victory gained by liberty” (I; 339).²² At a time when all the existing authorities, together with all the passions, appeared to have joined their forces against the authority of the king, Necker stood by the embattled monarch because he believed that the executive power was in jeopardy. In so doing, he provided a sophisticated argument in favor of a constitutional monarchy based upon the model of the unwritten English constitution, in which the monarch reigns but does not govern, and in which the nobility provides an indispensable rampart to the throne.

In Necker’s opinion, finding a proper role for the executive power is arguably the most difficult political problem that requires “a precise rule, an exact conformity, from which it would be dangerous to depart” (I: 2). In his view, all the different branches of politics are intimately connected with the prudent constitution of the executive power, “the moving force of a government” (I: 1); even the slightest inattention to establishing its particular role and proper

²² Compare and contrast Necker’s analysis with the account given by Guillaume Glénard in *L’Exécutif et la Constitution de 1791* (Paris: PUF, 2010), 11-13. Glénard argues that the Constitution did, in fact, establish such a balance of powers.

functions in the structure of a political constitution might have significant large-scale consequences. This power must be vigilant and effective at the same time, and “its influence depends on an infinity of means entirely distinct from its institution.” (I: 5). While it ought to enjoy all the prerogatives destined to give it energy, authority, respect, and duration, the executive power must also be properly limited so that it may never become arbitrary or tyrannical.

In stressing this point, Necker took up and redefined the complex issues of the separation and balance of powers. It is important to distinguish between the separation of powers and the balance of powers, the latter being only one of the forms in which the separation can appear (the other one being specialization of functions). The doctrine of the balance of powers has historically been grounded in the recognition of the supremacy of the *legislative* power.²³ This view challenges the conventional thesis according to which the theory of balance of powers (or theory of the balanced constitution) was introduced in order to correct the effects of the “pure” theory of separation of powers. Far from implying a strict separation between the legislative and the executive powers, the doctrine of the balance of powers refers instead to the balance between the executive and legislative powers sharing in the exercise of the legislative *function*. The different authorities sharing in the legislative function can be the lower and upper chambers of Parliament, the ministers as agents of the executive power, the (constitutional) monarch, or the head of the state in a republican regime.

²³ Michel Troper, *La Séparation des pouvoirs et l'histoire constitutionnelle française* (Paris: Librairie générale de droit et de jurisprudence, 1980), 121.

As Henri Grange demonstrated,²⁴ the first step undertaken by Necker was to redefine the meanings of both the executive and legislative powers. In a well-constituted government, Necker argued, these powers ought to share, in various degrees, in the exercise of both the legislative and the executive *functions*. On this view, the executive power means *organe de gouvernement* (providing the necessary leadership), while legislative power should serve an *organe de contrôle* (providing the equally needed supervision). Next, Necker complemented the theory of the functional separation of powers with that of *l'entrelacement des pouvoirs*, loosely translated as intertwining of powers, dependent upon the existence of effective links between the executive and the legislative. In the absence of such links, Necker maintained, “all would be contest and confusion” (I: 194) on the political scene. The powers of which a government is composed are intermixed by means of various ties that make possible their dialogue and cooperation. “Were we to discard these principles of *union*, and substitute laws of equilibrium in their stead,” Necker argued, “it would be necessary, if I may so express myself, to place a sentinel on the confines of every vanity, every sort of self-love, every individual ambition (I: 68). In Necker’s view, the existence of such harmonious links between powers is essential to creating a sound and balanced constitution: “They are *ties* then, not counterpoises, *proportions* not distances, fitnesses not vigilance, which most contribute to the *harmony* of government” (I: 68).

According to Necker, the Constitution of 1791 was based on an extreme version of the doctrine of the separation of powers that lacked such ties and proportions and was fiercely held “as an explicit ideological position”²⁵ that excluded (under Rousseau’s influence) the idea of the

²⁴ Henri Grange, “De l’originalité des idées politiques de Necker,” in *Cahiers staëliens*, 36 (1985): 54-55.

²⁵ M. J. C. Vile, *Constitutionalism and the Separation of Powers*, 2nd edition (Indianapolis: Liberty Fund, 1998), 194. For a recent comparative analysis on this topic, see Christoph

necessary division of sovereignty or the sharing of the legislative function. Such an extreme version of the separation of powers amounted, in fact, to a rejection of the doctrine of balance of powers which Necker, as an astute reader of Montesquieu, embraced. The attention of legislators, he claimed, ought to have been focused on the necessity of balancing and blending the three powers in the state by judicious means.

Necker advocated the presence of ministers in Parliament as a means for creating the necessary “harmony” between the legislative body and the administration, indispensable to the regular functioning of the government. “If that harmony were to disappear one day,” he wrote, “if it were replaced by a system based on mistrust and suspicion, everything would become contest, everything would be shaken; and we would quickly discover that anarchy and confusion are the greatest dangers against which a free constitution must protect itself” (I: 194).

Necker justified the need for intertwined powers by referring to the effective sharing of the legislative function between the executive and the legislative body in England and the United States. Across the Channel, Necker remarked, the king’s ministers were almost always *de facto* members of Parliament and played an important role in parliamentary deliberations by contributing their knowledge of affairs and judgment of circumstances. “Far from being considered in either house as inferiors to be silenced or made to speak with the mere waving of a wand,” Necker pointed out, the king’s ministers “are ordinarily expected to open the discussions on new measures useful to the state, or to make the first observations on the proposals made by other members of the legislative body” (I: 195-96). Either by being able to propose new draft laws, or by familiarizing themselves with the draft laws proposed by other representatives of the

nation, the ministers are thus able to assist with their knowledge and experience in the drafting of parliamentary bills, or in the discussion of their details. As such, their presence in the lower chamber does not infringe upon the separation which ought to be maintained between the legislative and executive *functions* in the state. A similar situation could be found in the United States, where the executive power had close ties with the legislative and had effective (if limited) means of proposing and participating in the drafting of laws, which ought to remain the supreme prerogative of the legislative. Necker was certainly aware that doctrine of the balance of powers in America was grounded in the recognition of the supremacy of the *legislative* power, but he decided, however, to invoke it while making his case for the supremacy of the *executive* power.

If Necker defended the intertwining of powers (*l'entrelacement des pouvoirs*) as an essential condition of liberty in a modern representative government, it was because he strongly believed that there can be no real freedom if there exists in the state an authority without balance. The mere existence of such a power—be that of the King, the nobles, or the people—without an effective counterpoise would be a threat to liberty and inimical to the principles of constitutionalism. At the same time, the powers must not only have the necessary resources for being able to compete for supremacy in the state; they must also have the possibility of acting in concert to pursue common goals. Four years later, in his book on the French Revolution, Necker reiterated this point when making a renewed case for creating a constitutional framework in which powers exercise mutual and effective vigilance over each other. His advice was unambiguous and his choice of words revealing. Necker recommended to all the friends of liberty “to establish a constitutional alliance between the executive and legislative powers,” and

insisted that “their *prudent association*, their *artful intertwining*, will always be the best security for mutual circumspection and efficacious vigilance.”²⁶

Necker’s critique of revolutionary radicalism

Third, Necker’s book offers a comprehensive analysis and critique of the French Constitution of 1791, a charter which he viewed as fundamentally flawed and destined to perish soon after its ratification.²⁷ It is no accident that Necker’s assessment of the constitutional text occupied more than half of his entire book on executive power; he was fully aware that only by applying general ideas to concrete cases can they become better understood and appreciated by the general public.

In Necker’s opinion, the greatest error of the 1791 Constitution stemmed from its failure to establish a sound balance between public order and liberty and its prideful ignorance of the true nature and role of the executive power. The Constituent Assembly, he argued, “constantly regarded the king as a rival, instead of having the courage, as a legislator, to consider him as the principal actor in a monarchical government, and to prudently grant him, on time, his share in government” (I: 247). Taken by the doctrine of extreme equality which became the watchword in

²⁶ *On the French Revolution*, vol. II, 127; all emphases added. Here is the original French text: “On doit chercher à établir une liaison constitutionnelle entre le pouvoir exécutif et le pouvoir législatif; on doit songer que leur prudente association, leur ingénieux entrelacement seront toujours la meilleure caution d’une circumspection mutuelle et d’une surveillance efficace” (*Œuvres Complètes de M. Necker*, Vol. X, 133).

²⁷ In this regard, Necker’s critique was stronger than that of Madame de Staël in *Considerations*, Part II, Chapters XXII-XXIII (273-84), Part III, Chapter II (291-98). In her view, the Constituent Assembly ought to be praised for the abuses which it destroyed, even if it created flawed institutions. She attributed the most serious defects of the Constitution of 1791 to the undermining of the nobility, and the fact that ‘the men of rank and property’ offered virtually “no support to liberty” (*Considerations*, 284). On Necker’s views on the Constituent Assembly, also see Robert D. Harris, *Necker and the Revolution of 1789* (Lanham: University Press of America, 1986), 707-41.

France, its members quickly abandoned the etiquette to be observed towards the monarch and his ministers, treating them with vulgar familiarity and cynicism. Thus, the king was granted the title of the “first public functionary” instead of being respected as the hereditary representative of the entire French nation. At the same time, the Constituent Assembly created a flawed legislative body, consisting of a single chamber, elected for a short period of time (only two years compared to six or seven years in England), and virtually unable to make the necessary revisions of the new constitutional text. The short duration and frequent elections in France raised significant challenges, since the effect of any transient authority, Necker pointed out, was to increase the eagerness to act, the willingness to take bribes, and the impatience to distinguish oneself among one’s peers through radical proposals and extravagant actions aimed at achieving short-term populist goals.

In several chapters of the book reminiscent of Burke’s well-known critique in his *Reflections on the Revolution in France*, Necker denounced the errors and excesses of the new legislators of France, engaged in a risky adventure and dominated by vanity which, he opined, “in all its excesses and extravagance, [...] must be considered as the origin of all our misfortunes” (I: 375). Searching for an illusory uniformity in “the vast plains of equality” (I: 375) and in love with their new abstract metaphysics that taught them how to destroy, they began by tearing down ancient customs and mores and ignored the lessons of prudence and tradition. Overconfident in their theories, they chose to disregard the wisdom of their predecessors and attempted to begin everything anew, while relying mostly on abstract principles rather than the lessons of experience. Thus, they regarded France like a mere chess-board where they could move all individuals as they thought fit. In the end, inebriated by their passion for novelty, the authors of the first written French constitution introduced new types of inequalities between

citizens and created a system ‘in which liberty is only a simple device, morality a mere maxim, and happiness a vain boast’ (I: 401). In practice, dissent was condemned as treason, and virtue was identified with blind submission to the new order of things.

Necker attributed the faults and the imperfections of the Constituent Assembly not only to the deputies’ excessive attachment to uniformity and equality at the expense of reason, morality, and liberty, but also to their penchant for intrigue, their unbound ambitions, and their “mad passion for new systems” (I: 34). The new political instructors of France believed in their hearts that they were able to govern the whole world by two words: liberty and equality. They ostentatiously displayed their patriotism as a banner which justified their actions and allowed them, in fact, to persecute all those who differed from them in their opinions. It is Necker’s merit to have highlighted the analogy between the new eloquence, devoid of measure, harmony, taste or decorum, and the new type of politics, devoid of moderation and prudence, and carried away by a blind enthusiasm that ignored the truths that only the heart can know and only religion can teach. The legislators of France invented a novel language that accompanied the decay of civility and the decline of mores and standards of taste. They coined new verbs that expressed their exaggerated sentiments and boundless pride.²⁸ And they disregarded the lessons of religion, ignoring that those not influenced by religious morality have no other motive than selfish interest and no other law than personal gratification. Yet, Necker insisted, it is religion alone that can restrain human beings in the exercise of their passions and teach them their duties. It is religious

²⁸ This is how Necker describe the consequences of these changes with regard to taste and language: “Taste is no longer necessary, and must become every day more and more perverted, when everyone wants to write and speak, and in the midst of this universal rivalry, each endeavors to surpass the other by using the most savage expressions and the most repulsive images” (II: 209).

morality alone that can render them at the same time severe toward themselves and indulgent toward others, moderate in the exercise of their rights, and determined to fight for justice for all.

Even when the new legislators imitated other models, they “sometimes exaggerated known truths, sometimes arranged words in a new order, and sometimes called things by different names, thus giving an appearance of originality to the most literal imitations” (II: 70). They focused their entire attention on the *Declaration of the Rights of Man* without properly considering how its articles would be connected to the future constitutional articles. To be sure, the Constituent Assembly began the work of legislation without having formed any coherent plan regarding the means necessary for the construction of the executive power. Its deputies declared the government monarchical, but did not properly examine the degree of consideration, influence, and authority which the monarch needed to effectively discharge the functions of the executive power. Necker also criticized the ways in which the imprudent legislators approached the twin issues of the participation of the king in the legislative power and the prerogatives of the monarch, from granting mercy, to the distribution of favors, and nomination to employments. They viewed the king’s ministers with skepticism and treated them with arrogance, reserving for them only a degraded status, incompatible with their quality as first agents of the supreme power in the state. Fearing the influence of aristocracy, the deputies of the people chose monocameralism over bicameralism and paved the way for the domination of a single chamber that absorbed all power in its own hands. Thus, the Constitution of 1791 placed, on one side, a single permanent and strong assembly, and, on the other side, “an executive power, without prerogatives, without the means of effecting either good or ill,” (I: 341), stripped of all exterior splendor and deprived of majesty and respect.

Such an unbalanced construction had nefarious consequences that made possible the appearance of an authority without counterpoise in the state, an omnipotent legislature unwilling to compromise and listen to its critics. This absolute authority acted in the name of the sovereignty of the people, ignoring the fact that the people, as Necker insisted, could only be a pure abstraction in a large kingdom of twenty-six millions souls. Because he was a critic of popular sovereignty, Necker had to confront the Jacobin theories of popular sovereignty inspired by Rousseau. In his political and historical works, and especially in his reflections on equality that conclude his work on the French Revolution, Necker endorsed the concept of “complex sovereignty.” In his view, “[t]he sovereignty in a free country, in a wisely organized political society, can never exist in a simple manner,”²⁹ and the existence of a mere majority may never serve as a title and justification for the unlimited exercise of sovereignty. In order for sovereignty to be limited, it must never be simple: “The sovereignty, not in its abstraction but in its reality, must be considered as a mixed idea, as a compound institution, and its primary elements are eternal reason and eternal justice.”³⁰

France, England, and America

Finally, Necker’s *Du Pouvoir exécutif dans les grands états* stands out among its peers through its innovative comparative analysis of three political traditions: French, American, and English. Necker combined a strong appreciation for the wisdom of the English unwritten constitution with an endorsement of the key principles of the American Constitution.³¹ “England, in its unity, America in its system of federation,” he wrote, “present to our view two admirable models of government.” (II: 56). The appreciation Necker had for the English political system runs like a

²⁹ *Philosophical Reflections on Equality* in *On the French Revolution*, vol. II, 404.

³⁰ *Ibid*, 402.

³¹ Necker’s views of America are analyzed in Grange, *Les Idées de Necker*, 350-58.

steady current throughout the entire book; much like in Montesquieu's *The Spirit of the Laws*, England is presented as a mirror into which the reader is invited to look in order to find one version of the true principles of liberty. But America is also present in Necker's book in which he appears as an excellent connoisseur—four decades *before* Tocqueville!—of the new U.S. Constitution and political system.

It is important to remember that the French took a strong interest in American federal and state constitutions until 1792, the peak of attention being reached in 1789-1790. During this period, significant documents were drafted, such as the French *Declaration of the Rights of Man and of the Citizen*, and important parliamentary debates took place in the Constituent Assembly on topics such as the royal veto and bicameralism, during which repeated references were made to both the English and the American examples. The French were aware that, if the lightning originated in France in 1789, with its attempt to shake the chains of the past and recreate a new society *ab novo*, the true light came, in fact, from America and its novel constitutional experiment that was successfully completed in September 1787 in Philadelphia.³² America was very important for the Old World because it was the first successful example of popular self-government and free institutions.

Condorcet's *L'Influence de la révolution de l'Amérique sur l'Europe* (1786) epitomized the belief that America was a step ahead of Europe in the fight against superstition, ignorance, despotism, and intolerance.³³ America, he explained, stood for individual rights and liberties and religious toleration whose principles were inscribed in its founding documents. Therefore, for many, America became "mankind's best hope" and a powerful symbol of human perfectibility;

³² See Susan Dunn, *Sister Revolutions: French Lightning, American Light* (New York: Farrar, Strauss, and Giroux, 2000).

³³ On Condorcet's Americanophilia, see Echeverria, *Mirage in the West*, 153-54.

America, it was argued, opened an “asylum” to the oppressed of all nations which should console the entire earth. In a letter to Richard Price dated March 22, 1778, Turgot, whom Necker knew quite well, gave voice to this belief. “It is impossible not to wish ardently that this people may attain to all the prosperity to which they are capable,” he wrote. “They are the *hope* of the world. They may become a *model* to it.”³⁴ Translations of eleven American state constitutions made by the liberal-minded Duke de la Rochefoucauld d’Enville in 1783 circulated widely in France.

There were, no doubt, other important reasons for the French fascination with America at that time. Starting with the 1780s, the American example was also cultivated in France for partisan purposes in order to combat the influence of English ideas. Some of the so-called *américanistes* were critical of England’s complex political system which they considered excessively wedded to the cause of aristocracy. England’s political system, they acknowledged, was better than that of France, but there was an even better one that did not represent two distinctive social groups in two separate chambers. That was the American system, still in its infancy, but already committed to popular sovereignty, equality, and liberty. For those admirers of America, England represented the past of mankind, while America stood for its future. America, they believed, had the honor of teaching mankind an important lesson: that man is actually capable of governing himself. The fear among some was that democratic America, the new hope of all friends of liberty, might one day become similar to aristocratic England. In the end, the French deputies entrusted with the task of giving France a new constitution did not

³⁴ Quoted in Richard Price, *Observations on the Importance of the American Revolution and the Means of Making It a Benefit to the World* (Dublin: White, Whitestone, Bryne., & Co. 1785), 1-2. Also see Philippe Raynaud’s entry, “American Revolution,” in *A Critical Dictionary of the French Revolution*, 593-603, and Marc Lahmer, *La Constitution américaine dans le débat français: 1795-1848* (Paris: l’Harmattan, 2001).

follow the American example. Trusting their own reason, they believed they were called to do better than America when it came to establishing a new declaration of rights. In the words of one of the deputies, Rabaut Saint-Étienne, “*Il fallait surpasser l’Amérique.*”³⁵

Necker dismissed the idea that the French could do better than the Americans when it came to establishing the foundations of a new constitutional system. Such a pretention, he believed, was nothing but an expression of arrogance and ignorance. He took issue with those “political metaphysicians” who (wrongly) pretended that they agreed in principle with the sage legislators of America, but were, in fact, reluctant to follow the Americans’ morality, religious spirit, and domestic virtues. A good example was the elaboration of the famous *Declaration of the Rights of Man*. The Americans, Necker reminded his readers, did not add their Bill of Rights to the Constitution as a set of obvious first principles which everyone had to agree upon as a preamble to their new constitutional text. The American Bill of Rights was adopted after a long and intense debate triggered by the Anti-federalists’ critique of the text of the Constitution approved in Philadelphia in September 1787.

The French legislators decided to take a different route. For them, deciding on a set of fundamental rights was a philosophical distillation of moral and political imperatives conceived in the same spirit that produced many abstract books on government. From the very beginning, they viewed their own declaration of rights as playing a primary role in creating a new constitution and only a secondary role in protecting individual rights. This explains why key rights such as the right against self-incrimination, illegal seizures, and the right not to be deprived of property arbitrarily were missing from the French document.

³⁵ See Marcel Gauchet, *La Révolution des droits de l’homme* (Paris: Gallimard, 1989), 48-59.

Necker did not believe, however, that the French should have imported wholesale all of the American principles or institutions. Nor did he claim that the American Constitution could ever work in France *tale quale*. Rather, he noted that there is a striking difference between a constitution grafted upon ancient laws and mores, such as the American one, and a constitution antecedent to the existence of a government, such as the one envisaged by the members of the Constituent Assembly in France. The Americans, Necker went on, enjoyed peculiar geographical conditions and had unique mores adapted to their institutions. In the New World, vanity and self-love had not yet established an absolute empire, being restrained by morality. Nor were people condemned to ignorance and poverty; the labor market and the distribution of property allowed them to be independent and prosperous. Furthermore, unlike the national debt and finances of France which had spiraled out of control during the last years of the Old Regime, America's national debt was moderate. Moreover, the Americans did not have to keep a large and expensive army to wage war or protect themselves against foreign invasion. Necker did not preclude the possibility, however, that one day, America might evolve in the direction of France, and its social and political order might become more susceptible to revolutionary turmoil and disorder. But that day, he suggested, was still far away, and the French would be wise to pay close attention to what America had to teach them in political affairs.

Among those lessons that might be learned from across the Ocean, Necker argued, the organization of the executive power and the federal system stood out. "The prerogatives attributed to the President," he maintained, "are sufficient to show that the United States have secured the activity of government in a more firm and respectable manner than we have done in France" (II: 50-51). Those prerogatives were sufficient to ensure the maintenance of public order, the timely nomination to various employments and offices of administration, as well as the

exercise of the right of pardon and the executive veto. The Americans also chose bicameralism, recognizing the necessity of—and the benefit deriving from—having two chambers instead of one. In turn, the federative system unites force and order, provides security and good administration, and “circumscribes civil government within the limits which the weakness of human beings renders so necessary and proper” (II: 148).

Conclusion

As a moderate, Necker may have had many outstanding qualities, but he also lacked a few important ones. Necker’s political career was at best a mixed success during his first ministry and a failure toward the end, especially after February 1790, when the finances of the kingdom spiraled out of control during his third ministry. As François Furet once remarked, “As in the case of Guizot, Necker the philosopher was a victim of the failure of Necker the political leader.”³⁶ This may be so, but it is important to point out that Necker was not a rigid politician who refused necessary reforms, as Guizot did during the last years of the July Monarchy. Although he remained a staunch supporter of constitutional monarchy on the English model, he refused to join the group of the ultra-royalists and was prepared to accept a conservative republican system, similar to that established in the United States. And yet, his capacity to understand the psychology of other political actors in their search for power, domination, revenge, equality, or recognition was limited. His critics claimed that he was incapable of providing effective leadership, preferring instead to delay or to allow things to drift.³⁷ Because he so feared the absolute domination of Jacobinism, he may have arguably been too insensitive to

³⁶ François Furet, “La monarchie et le règlement électoral de 1789,” in *The Political Culture of the Old Regime*, ed. Keith M. Baker (New York: Pergamon Press, 1987), 386.

³⁷ Also see Robert D. Harris, *Necker and the Revolutionary Decade* (Special Collections & Archives, Moscow: Idaho: University of Idaho Library), unpublished manuscript, 15.

claims for—and aspirations to—equality and political democracy. Finally, he seems not to have had the ability to build coalitions or manipulate passions, and he lacked the capacity to effectively “confront the destructive and violent side of politics.”³⁸

In publishing his great work on executive power, Necker sounded an alarm to all the friends of liberty across Europe. He claimed to have written it not as a party man, but from that pure and untainted affection that he professed for France, his adopted country with which he united his political destiny. Necker’s hope was that the ideas of his book might deter the friends of freedom elsewhere from adopting a government and a constitution similar to that of France. The stakes were high, and the margin for error very small. “We might, perhaps, allow ourselves to consider this government as an amusement of the mind,” he warned, “as a work of the imagination, had it not led to the most fatal consequences, had it not produced the saddest effects” (II: 329). In particular, Necker warned that it would be impossible to create a stable and effective political constitution in which the executive power was ignored and in which all legitimate authorities were forced to compete against each other, lacking an adequate balance between them. Necker also worried that the people would always be likely to be seduced by new promises and bribes. He warned that their leaders would invoke the allegedly treacherous conduct and conspiracies of the “enemies” of the revolution in order to justify stronger measures inimical to liberty and order.

The course of events fully confirmed Necker’s intuitions. France needed several decades to make an arduous apprenticeship of liberty, but not before going through the dark period of the Terror of 1793-94 and the absolute regime of Napoleon Bonaparte that was hostile to Necker and his family. The Charter of 1814 brought about the type of regime that Necker envisaged in 1792,

³⁸ Marcel Gauchet, “Necker,” in François Furet and Mona Ozouf, eds., *A Critical Dictionary of the French Revolution* (Cambridge, Mass.: Harvard University Press, 1989), 289.

a tempered constitutional monarchy and a representative government, based on competitive elections and freedom of the press. But it had to endure a long journey through the desert that would continue even after the return of Louis XVIII to the throne in 1814. The Bourbon Restoration came to an abrupt end in July 1830, when it was replaced by the July Monarchy, the regime that gave France eighteen years of peace before it, too, gave way to the Second Republic in 1848, and the Second Empire in December 1851.

The debate on how to properly empower the executive to respond to legitimate threats without endangering the constitutional order has continued to this day. It is likely to remain a priority on our agenda, as we struggle to come to terms with the rise of the so-called “administrative state” and an ever-growing presidential power at the expense of legislative authority of the Congress.³⁹ Necker’s critique of the “proud inebriation” and the “arrogant confidence” (II: 359-60) of the French legislators along with his argument for a judicious intertwining of powers illustrate the challenges faced by those who attempt to build a free society of responsible individuals. *Du Pouvoir exécutif dans les grands états* might have little to contribute to our present concerns about emergency powers, but it provides a thorough justification of the need for a strong *and* limited executive power. The book also offers a powerful critique of political fanaticism which continues to threaten us today and reminds us of

³⁹ The importance of the modern presidency has been discussed in Steven Skrowonek, *The Politics Presidents Make: Leadership from John Adams to Bill Clinton* (Cambridge, Mass: Belknap, 1997). The discretionary powers of the President are discussed in Clement Fatovic, *Outside the Law: Emergency and Executive Power* (Baltimore: Johns Hopkins University Press, 2009), and Benjamin Kleinerman, *Discretionary President: The Promise and Peril of Executive Power* (Lawrence, KS: University Press of Kansas, 2009). On the rise of the administrative state, see Philip Hamburger, *Is Administrative Law Unlawful?* (Chicago: University of Chicago Press, 2015).

the importance of moderation, that “virtue for courageous minds,”⁴⁰ which might have been able to alter the course of the French Revolution, if reasonable voices such as Necker’s had been heard and respected.

Aurelian Craiutu

⁴⁰ See Craiutu, *A Virtue for Courageous Minds*.