

Peter Zenger and Freedom of the Press

In the latter part of 1733 **John Peter Zenger** began publishing a newspaper in New York to voice opposition to the onerous policies of newly appointed **colonial governor William Cosby**.

Upon his arrival in New York Cosby plunged into a rancorous quarrel with the Council of the colony over his salary. Unable to control the state's Supreme Court he removed Chief Justice Lewis Morris, replacing him with James Delancey of the royal party.

Supported by members of the popular party, Zenger's New-York Weekly JOURNAL continued to publish articles critical of the royal governor. Finally, Cosby issued a proclamation condemning the newspaper's "divers scandalous, virulent, false and seditious reflections." On Sunday, November 17, 1734 Zenger was arrested and charged with **seditious libel**.

After more than eight months in prison, Zenger went to trial defended by illustrious Philadelphia lawyer **Andrew Hamilton**. The case was now a cause celebre with public interest at fever-pitch. Rebuffed repeatedly by Chief Justice Delancey during the trial, Hamilton decided to plead his client's case directly to the jury. After the arguments for both sides were finished, the jury was retired, only to return shortly with a verdict of **not guilty**.



Zenger's lawyer stands up for freedom of the press
courtesy, Chronicle of America

To better understand the significance of this historic case it is important to examine an actual issue of the *New-York Daily JOURNAL* prior to Zenger's arrest. Here we see a typical attack against the government in Zenger's original newspaper as it originally appeared more than 260 years ago.

Page one of this issue dated February 25, 1733* carries an article by **CATO**,** a pseudonym for one of Zenger's authors. This article gave its readers a preview of the same argument Attorney Hamilton would present 18 months later in the government's libel case against Zenger: **That the truth is an absolute defense against libel.**

In successfully defending Zenger in this landmark case, Hamilton established the precedent that a statement, even if defamatory, is not libelous if it can be proved, thus **affirming freedom of the press** in America.

As CATO prophetically writes in this issue of the JOURNAL:

"But this Doctrine ('A libel (sic) is not left a Libel for being true') only holds true as to private and personal failings; and it is quite otherwise when the Crimes of Men come to Affect the Publick?. Every Crime against the publick, is a great crime?..

"– The exposing therefore of Publick Wickedness, as it is a Duty which every Man owes to the Truth and his Country, can never be a Libel in the Nature of Things?.

"– it has been hitherto generally understood, that there was no other Libels but those against Magistrates and those against private Men. Now to me there seems to be a Third set of Libels, full as Destructive as any of the former can probably be, I mean Libels against the People.

"– I have indeed often wondered that the Inveighing against the Interest of the People, and calling their Liberty in Question?.has never been made an express Crime.

"– I know not what Reason is if sapping and betraying the Liberties of a People be not Treason.

"– almost all over the Earth, the People for one Injury they do their Governor, receive Ten Thousand from them. Nay, in some Countries it is made Death and Damnation, not to bear all the Oppression and Cruelties, which Men made Wanton by Power inflict upon those that gave it them."



The Mayflower Compact by William Bradford- November 11, 1620

The Mayflower Compact: A Social Contract

The basic idea that grows out of the philosophy of Hobbes and Locke and that was later elaborated upon by Jean Jacques Rousseau was the social contract, or social compact. This theory of the social contract—that man is born free, but willingly gives up some freedom in exchange for the benefits of civilization—is at the heart of most Western political thought. The social contract theory is embedded in our Constitution, which is designed “to promote the general welfare.”

Another example, as nearly pure and perfect as one is likely to find, is the Mayflower Compact. Looking at that document one is struck by its simplicity, yet it contains everything that is essential in the United States Constitution—all that is missing are the details. Look at it carefully and see if you agree with that assessment. The Plymouth colony survived and was later absorbed into Massachusetts Bay.

The Mayflower Compact was drawn up on the Mayflower, under these circumstances as described by Gov. William Bradford: "This day, before we came to harbour, observing some not well affected to unity and concord, but gave some appearance of faction, it was thought good there should be an association and agreement, that we should combine together in one body, and to submit to such government and governors as we should by common consent agree to make and choose, and set our hands to this that follows, word for word. . ."

IN THE name of God, Amen.

We whose names are underwritten, the loyal subjects of our dread sovereign Lord, King James, by the grace of God, of Great Britain, France and Ireland king, defender of the faith, etc., having undertaken, for the glory of God, and advancement of the Christian faith, and honor of our king and country, a voyage to plant the first colony in the Northern parts of Virginia, do by these presents solemnly and mutually in the presence of God, and one of another, covenant and combine ourselves together into a civil body politic, for our better ordering and preservation and furtherance of the ends aforesaid; and by virtue hereof to enact, constitute, and frame such just and equal laws, ordinances, acts, constitutions, and offices, from time to time, as shall be thought most meet and convenient for the general good of the colony, unto which we promise all due submission and obedience.

In witness whereof we have hereunder subscribed our names at Cape-Cod the 11 of November, in the year of the reign of our sovereign lord, King James, of England, France, and Ireland the eighteenth, and of Scotland the fifty-fourth. Anno Domine 1620.

New England: A Society of Yeoman Farmers

As they settled New England, the Puritans created self-governing communities and religious congregations composed of independent landowning farmers, or yeomen, and their families. The Puritan political leadership granted large areas of land to groups of male settlers, known as the proprietors, who then divided the land among themselves. Men of higher social standing usually received larger portions, but every male received enough land to support a family. Equally important, every male had a voice in the town meeting. As the main institution of local government, the town meeting levied taxes, built roads, and elected officials to manage town affairs.

Because of Puritan beliefs that God singled out only a few specific people for salvation, the residents of New England did not automatically become part of the Congregational Church, the church the Puritans founded. Instead, membership was limited to those who could testify convincingly before members of the church that they had experienced religious conversion, or had been saved. Those who had been saved were known as "the elect," or "Saints," and they represented less than 40 percent of the New England population. Because of the power wielded by Saints and men of high status, the New England system of landowning and politics was not fully democratic, but it gave ordinary people more autonomy than their ancestors in England had enjoyed.

The Virginia House of Burgesses



The first legislature anywhere in the English colonies in America was in Virginia. This was the House of Burgesses, and it first met on July 30, 1619, at a church in Jamestown. Its first order of business was to set a minimum price for the sale of tobacco.

Although the first session was cut short because of an outbreak of malaria, the House of Burgesses soon became a symbol of representative government. Among the 22 members was the governor, who was appointed by officials of the Virginia Company in London. The governor in turn appointed six important members of the colony to be his council. The other 15 members were elected by the colony as a whole, or actually men over 17 who also owned land.



The House of Burgesses, which met at first only once a year, could make laws, which could be vetoed by the governor or the directors of the Virginia Company. This continued to be the standard until 1624, when Virginia became a royal colony. At this time, England took much more control of things in Virginia, restricting the powers of the House of Burgesses.

Through the years leading up to the Revolutionary War, many leaders of the move toward independence made their names in the House of Burgesses. Patrick Henry introduced seven resolutions against the Stamp Act there in 1765.

The fact that the burgesses could make their own laws was very much on the mind of many people in the American colonies, especially when Great Britain continued to pass harsh laws that the colonists viewed as "taxation without representation."

Famous burgesses also included George Washington and Thomas Jefferson.

Albany Plan of Union, 1754

The Albany Plan of Union was a plan to place the British North American colonies under a more centralized government. The plan was adopted on July 10, 1754, by representatives from seven of the British North American colonies. Although never carried out, it was the first important plan to conceive of the colonies as a collective whole united under one government.

Representatives of the colonial governments adopted the Albany Plan during a larger meeting known as the Albany Congress. The British government in London had ordered the colonial governments to meet in 1754, initially because of a breakdown in negotiations between the colony of New York and the Mohawk nation, part of the Iroquois Confederation. More generally, imperial officials wanted to sign a treaty with the Iroquois that would articulate a clear colonial-Indian relations policy for all the colonies to follow. The colonial governments of Maryland, Pennsylvania, New York, Connecticut, Rhode Island, Massachusetts and New Hampshire all sent commissioners to the Congress. Although the treaty with the Iroquois was the main purpose of the Congress, the delegates also met to discuss intercolonial cooperation on other matters. With the **French and Indian War** looming, the need for cooperation was urgent, especially for colonies likely to come under attack or invasion.

Prior to the Albany Congress, a number of intellectuals and government officials had formulated and published several tentative plans for centralizing the colonial governments of North America. Imperial officials saw the advantages of bringing the colonies under closer authority and supervision, while colonists saw the need to organize and defend common interests. One figure of emerging prominence among this group was Pennsylvanian Benjamin Franklin. Earlier, Franklin had written to friends and colleagues proposing a plan of voluntary union for the colonies. Upon hearing of the Albany Congress, his newspaper, the *Pennsylvania Gazette*, published the political cartoon "Join or Die," which illustrated the importance of union by comparing the colonies to pieces of a snake's body. The Pennsylvania government appointed Franklin as a commissioner to the Congress, and on his way, Franklin wrote to several New York commissioners outlining "short hints towards a scheme for uniting the Northern Colonies" by means of an act of the British Parliament.

The Albany Congress began on June 19, and the commissioners voted unanimously to discuss the possibility of union on June 24. The union committee submitted a draft of the plan on June 28, and commissioners debated aspects of it until they adopted a final version on July 10.

Although only seven colonies sent commissioners, the plan proposed the union of all the British colonies except for Georgia and Delaware. The colonial governments were to select members of a "Grand Council," while the British Government would appoint a "president General." Together, these two branches of the unified government would regulate colonial-Indian relations and also resolve territorial disputes between the colonies. Acknowledging the tendency of royal colonial governors to

override colonial legislatures and pursue unpopular policies, the Albany Plan gave the Grand Council greater relative authority. The plan also allowed the new government to levy taxes for its own support.

Despite the support of many colonial leaders, the plan, as formulated at Albany, did not become a reality. Colonial governments, sensing that it would curb their own authority and territorial rights, either rejected the plan or chose not to act on it at all. The British Government had already dispatched General Edward Braddock as military commander in chief along with two commissioners to handle Indian relations, and believed that directives from London would suffice in the management of colonial affairs.

The Albany Plan was not conceived out of a desire to secure independence from Great Britain. Many colonial commissioners actually wished to increase imperial authority in the colonies. Its framers saw it instead as a means to reform colonial-imperial relations, while recognizing that the colonies collectively shared certain common interests. However, the colonial governments' own fears of losing power, territory, and commerce at one another's expense, and at the expense of the British Parliament, ensured the Albany Plan's failure.

Despite the failure of the Albany Plan, it served as a possible model for future attempts at union: it attempted to establish the division between the executive and legislative branches of government, while establishing a common governmental authority to deal with external relations. More importantly, it conceived of the colonies of mainland North America as a collective unit, separate from the mother country but also from the other British colonies in the West Indies and elsewhere.





John Locke (1632-1704)

"Though the familiar use of the Things about us, takes off our Wonder; yet it cures not our Ignorance."

---An Essay Concerning Human Understanding (III. vi. 9)

"...he that will not give just occasion to think that all government in the world is the product only of force and violence, and that men live together by no other rules but that of beasts, where the strongest carries it...must of necessity find another rise of government, another original of political power..."

---from The Second Treatise of Civil Government

John Locke was an Oxford scholar, medical researcher and physician, political operative, economist and ideologue for a revolutionary movement, as well as being one of the great philosophers of the late seventeenth and early eighteenth century. His monumental *Essay Concerning Human Understanding* aims to determine the limits of human understanding. Earlier writers such as Chillingworth had argued that human understanding was limited, Locke tries to determine what those limits are. We can, he thinks, know with certainty that God exists. We can also know about morality with the same precision we know about mathematics, because we are the creators of moral and political ideas. In regard to natural substances we can

know only the appearances and not the underlying realities which produce those appearances. Still, the atomic hypothesis with its attendant distinction between primary and secondary qualities is the most plausible available hypothesis.

Locke's *Two Treatises of Civil Government* were published after the Glorious Revolution of 1688 brought William of Orange and Mary to the throne, but they were written in the throes of the Whig revolutionary plots against Charles II in the early 1680s. In this work Locke gives us a theory of natural law and natural rights which he uses to distinguish between legitimate and illegitimate civil governments, and to argue for the legitimacy of revolt against tyrannical governments.

Locke wrote on a variety of other topics Among the most important of these is toleration. Henry VIII had created a Church of England when he broke with Rome. This Church was the official religion of England. Catholics and dissenting Protestants, e.g Quakers, Unitarians and so forth, were subject to legal prosecution. During much of the Restoration period there was debate, negotiation and maneuvering to include dissenting Protestants within the Church of England. In a "Letter Concerning Toleration" and several defenses of that letter Locke argues for a separation between church and state.

Voltaire Author and Philosopher, 1694 - 1778

Francois Marie Arouet (pen name **Voltaire**) was born on November 21, 1694 in Paris. Voltaire's intelligence, wit and style made him one of France's greatest writers and philosophers.

Young Francois Marie received his education at "Louis-le-Grand," a Jesuit college in Paris where he said he learned nothing but "Latin and the Stupidities." He left school at 17 and soon made friends among the Parisian aristocrats. His humorous verses made him a favorite in society circles. In 1717, his sharp wit got him into trouble with the authorities. He was imprisoned in the Bastille for eleven months for writing a scathing satire of the French government. During his time in prison Francois Marie wrote "Oedipe" which was to become his first theatrical success, and also adopted his pen name "Voltaire."

In 1726, Voltaire insulted the powerful young nobleman, "Chevalier De Rohan," and was given two options: imprisonment or exile. He chose exile and from 1726 to 1729 lived in England. While in England Voltaire was attracted to the philosophy of John Locke and ideas of mathematician and scientist, **Sir Isaac Newton**. He studied England's Constitutional Monarchy and its religious tolerance. Voltaire was particularly interested in the philosophical rationalism of the time, and in the study of the natural sciences. After returning to Paris he wrote a book praising English customs and institutions. It was interpreted as criticism of the French government, and in 1734 Voltaire was forced to leave Paris again.

At the invitation of a highly-intelligent woman friend, "Marquise du Chatelet," Voltaire moved into her "Chateau de Cirey" near Luneville in eastern France. They studied the natural sciences together for several years. In 1746, Voltaire was voted into the "Academie Francaise." In 1749, after the death of "Marquise du Chatelet" and at the invitation of the King of Prussia, "Frederick the Great," he moved to Potsdam (near Berlin in Germany). In 1753, Voltaire left Potsdam to return to France.

In 1759, Voltaire purchased an estate called "Ferney" near the French-Swiss border where he lived

until just before of his death. Ferney soon became the intellectual capital of Europe. Voltaire worked continuously throughout the years, producing a constant flow of books, plays and other publications. He wrote hundreds of letters to his circle of friends. He was always a voice of reason. Voltaire was often an outspoken critic of religious intolerance and persecution.

Voltaire returned to a hero's welcome in Paris at age 83. The excitement of the trip was too much for him and he died in Paris. Because of his criticism of the church Voltaire was denied burial in church ground. He was finally buried at an abbey in Champagne. In 1791, his remains were moved to a resting place at the Pantheon in Paris.

In 1814, a group of "ultras" (a right-wing religious group) stole Voltaire's remains and dumped them in a garbage heap. No one was the wiser for some 50 years. His enormous sarcophagus (opposite Rousseau's) was checked and the remains were gone. (see Orioux, Voltaire, vol. 2 pp. 382-4.) His heart, however, had been removed from his body, and now lies in the Bibliotheque Nationale in Paris. His brain was also removed, but after a series of passings-on over 100 years, disappeared after an



auction.

Charles de Secondat, baron de Montesquieu

Soon afterwards he achieved literary success with the publication of his *Lettres persanes* (**Persian Letters**, 1721), a **satire** based on the imaginary correspondence of a **Persian** visitor to **Paris**, pointing out the absurdities of contemporary society. He next published *Considérations sur les causes de la grandeur des Romains et de leur décadence* (*Considerations on the Causes of the Grandeur and Decadence of the Romans*, 1734), considered by some scholars a transition from *The Persian Letters* to his master work. *De l'Esprit des Lois* (**The Spirit of the Laws**) was originally published anonymously in 1748 and quickly rose to a position of enormous influence. In France, it met with an unfriendly reception from both supporters and opponents of the regime. The Roman Catholic Church banned *l'Esprit* – along with many of Montesquieu's other works – in 1751 and included it on the papacy's notorious **Index**. It received the highest praise from the rest of Europe, especially Britain.

Montesquieu was also highly regarded in the British colonies in **America** as a champion of British liberty (though not of American independence). **Political scientist** Donald Lutz found that Montesquieu was the most frequently quoted authority on government and politics in colonial pre-revolutionary British America.^[1] Following the American **secession**, Montesquieu's work remained a powerful influence on many of the **American Founders**, most notably **James Madison** of **Virginia**, the "Father of the **Constitution**." Montesquieu's philosophy that "government should be set up so that no man need be afraid of another" reminded Madison and others that a free and stable foundation for their new national government required a clearly defined and balanced separation of powers.

Besides composing additional works on society and politics, Montesquieu traveled for a number of years through **Europe** including **Austria** and **Hungary**, spending a year in **Italy** and 18 months in **England** before resettling in **France**. He was troubled by poor eyesight, and was completely **blind** by the time he died from a high fever in 1755. He was buried in the **Église Saint-Sulpice, Paris**.

Montesquieu's most influential work divided French society into three classes (or *trias politica*, a term he coined): the **monarchy**, the **aristocracy**, and the **commons**. Montesquieu saw two types of governmental power existing: the **sovereign** and the **administrative**. The administrative powers were the **executive**, the **legislative**, and the **judicial**. These should be separate from and dependent upon each other so that the influence of any one power would not be able to exceed that of the other two, either singly or in combination. This was radical because it completely eliminated the three **Estates** structure of the French Monarchy: the **clergy**, the aristocracy, and the people at large represented by the **Estates-General**, thereby erasing the last vestige of a **feudalistic** structure.

Likewise, there were three main forms of government, each supported by a social "principle": **monarchies** (free governments headed by a hereditary figure, e.g. king, queen, emperor), which rely on the principle of honor; **republics** (free governments headed by popularly elected leaders), which rely on the principle of virtue; and **despotisms** (enslaved governments headed by **dictators**), which rely on fear. The free governments are dependent on fragile constitutional arrangements. Montesquieu devotes four chapters of *The Spirit of the Laws* to a discussion of England, a contemporary free government, where liberty was sustained by a balance of powers.