

# MONTESQUIEU, ROUSSEAU, AND THE FOUNDATIONS OF CONSTITUTIONAL GOVERNMENT

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In an effort to shed light on recent doubts about the future of liberal democracy, this dissertation compares the political thought of Montesquieu and Rousseau – two eighteenth-century philosophers who, beginning from strikingly similar premises, diverged radically in their prescriptions. Whereas Montesquieu sought to rationalize political life by nudging religion to the periphery of public consciousness, by attenuating patriotism, and by shifting legislative and judicial power to educated professionals, Rousseau sought to shore up religion’s popular influence, to instigate revivals of patriotism, and to defend popular self-government.

I first take up their views of “the state of nature.” My account differs from those of the previous interpreters who have read the state of nature as a hypothetical construct, but it differs also from those of the previous interpreters who have read the state of nature as historical, inasmuch as I show that neither Montesquieu nor Rousseau made implausible assumptions about the naturalness of asociality or peacefulness.

Next, I focus on the issue popular enlightenment. Whereas commentators have tended to cast Montesquieu simply as a proponent of the pacifying effects of enlightenment and Rousseau as a critic of its morally corrupting effects, I argue that they were both primarily interested in the relation between the dwindling of religious faith and the maintenance of the psychological qualities that underlie resistance to foreign and domestic threats to liberty.

I then turn to the question of cosmopolitanism, suggesting that Montesquieu embraced it not because of any extreme idealism but because of his horror at the repressiveness and belligerence of actual patriotic republics. Likewise, I maintain that Rousseau's embrace of patriotic "intoxication" was not a product of any romanticism; instead, it was a product of his thoroughly rationalistic inquiry into the phenomena of law and government.

Finally, I argue that the divergence between them on the question of popular self-government followed from their divergent understandings of freedom. This divergence cannot be reduced either to "negative liberty" versus "positive liberty" or to "liberty as non-interference" versus "liberty as non-domination," two paradigms that have long dominated Anglo-American political theorists' thinking about freedom.

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## ABBREVIATIONS

### Montesquieu

*Considerations* = *Considerations on the Causes of the Greatness of the Romans and Their Decline*

*Dossier de l'Esprit des lois* = *Dossier de l'Esprit des lois*

*DSL* = *Defense of the Spirit of the Laws*

*ECMC* = *Essay on the Causes Which Can Affect Minds and Characters*

*ET* = *Essay on Taste*

*NA* = *Notes sur l'Angleterre*

*MT* = *My Thoughts*

*PL* = *Persian Letters*

*Réflexions* = *Quelques réflexions sur les Lettres persanes*

*Réponses* = *Réponses et explications données à la Faculté de Théologie*

*RMUE* = *Réflexions sur la monarchie universelle en Europe*

*SL* = *The Spirit of the Laws*

### Rousseau

*Beaumont* = *Letter to Beaumont*

*Confessions* = *The Confessions*

*Corsica* = *Plan for a Constitution for Corsica*



*CSC = Comparison of Socrates and Cato*

*Dialogues = Rousseau, Judge of Jean-Jacques: Dialogues*

*Emile = Emile, or On Education*

*EOL = Essay on the Origin of Languages*

*FD = First Discourse*

*FR = Final Reply*

*GM = Geneva Manuscript*

*Grimm = Letter from J.J. Rousseau of Geneva to Mr. Grimm on the Refutation of his  
Discourse by Mr. Gautier*

*Hero = Discourse on the Virtue Most Necessary for a Hero*

*JP = Judgment on the Polysynody*

*JPPP = Judgment of the Plan for Perpetual Peace*

*Julie = Julie, or the New Heloise*

*LD = Letter to D'Alembert*

*Lecat = Letter by Jean-Jacques Rousseau [to Lecat]*

*LeRoy = Observations of Charles-Georges LeRoy, with Rousseau's Replies*

*LF = Letter to Franquières*

*LM = Letters to Malesherbes*

*LWFM = Letters Written from the Mountain*

*MP = My Portrait*

*Narcissus = Preface to "Narcissus"*

*Observations = Observations On the Reply Made to his Discourse*

*PE = Discourse on Political Economy*

*PF = Political Fragments*

*Poland* = *Considerations on the Government of Poland*

*Raynal* = *Letter to M. the Abbé Raynal, Author of the “Mercury of France”*

*Reveries* = *The Reveries of the Solitary Walker*

*Second Letter* = *Preface to a Second Letter to Bordes*

*SC* = *On the Social Contract, or Principles of Political Right*

*SD* = *Second Discourse*

*SW* = *The State of War*

*Voltaire* = *Letter from J.J. Rousseau to Mr. de Voltaire* [on providence]

## INTRODUCTION

Since the eighteenth century, it has been possible to see political life in the West moving, by fits and starts, in a broadly “rationalistic” direction. Three developments have been especially impressive. First, religion has shifted from the center to the periphery of the public consciousness, pushed aside by science, commerce, and the arts. Second, national distinctions have been tempered by the expansion of international trade and communication. Third, political authority has been transferred to institutions in which relatively educated, specialized officials hold sway. Liberal intellectuals on both the left and the right have regarded all these changes as hard-won victories in the cause of constitutional government.

There have always been doubters, of course. Orthodox believers and romantic poets alike have lamented the rise of secularized societies. Ethno-nationalists and anti-capitalists have denounced globalization. Traditionalists and radicals have bemoaned the professionalization of political life. Even certain liberals (generally but not always “conservatives”) have expressed worries about the risks of excessive liberalism: Will the lessening of religion’s public authority slide into the loss of religion altogether? Will internationalism slide into contempt even for moderate patriotism? Will enlightened public service slide into a revolt of the elites against the masses?

But recently the doubters have become much louder and more strident. In many quarters of the West, the eclipse of religion's public authority has come to be seen as ushering in an age of spiritual decadence. Commercial cosmopolitanism has come to be equated with facile and cynical sloganeering. Liberal constitutionalism has come to be regarded as a means of sidestepping democratic accountability. Nor are these merely the concerns of intellectuals. Strong anti-establishment political movements – often spearheaded by mercurial and charismatic leaders, often shadowed by racism – have emerged in virtually every Western state, sparking fears about the immediate future of constitutional government.<sup>1</sup>

Are these movements merely products of accidental circumstances or do they indicate underlying weaknesses in the liberal program as such? Partly in an effort to answer that question, this dissertation compares the political thought of the great liberal philosopher Charles-Louis de Secondat, now known simply as Montesquieu (this being the baronage he eventually inherited from his uncle), with that of his greatest philosophic admirer and critic, Jean-Jacques Rousseau. If today's champions of liberalism and their critics have tended to explain away the other side in terms of moral corruption (racism, snobbery, timidity, decadence, opportunism, privilege, etc.), I have turned to the Montesquieu-Rousseau debate in an effort to re-construct the strongest cases that have been made for and against the liberal endeavor to rationalize political life.

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<sup>1</sup> Although this has generally been a right-wing phenomenon, prominent left-wing manifestations of the anti-establishment tendency have emerged in the United States, Britain, Spain, Greece, and Italy. And even supposedly “hard right” populist parties like France's National Front and Austria's Freedom Party have adopted anti-globalization policies once associated with the left.

## *An Overview of the Lives and Works*

### Montesquieu (1689-1755)

Montesquieu, who has been called “the most impeccably liberal author in the history of liberalism,”<sup>2</sup> lived peacefully in Bordeaux and Paris for all but three years of his life, traveling to Austria, Hungary, Italy, Germany, and Holland between April 1728 and October 1729, and then staying in England until April 1731. His three major philosophic publications were the novel *Persian Letters*, the history *Considerations on the Causes of the Greatness of the Romans and Their Decline*, and the political treatise *The Spirit of the Laws*. All three were bold works. In order to avoid persecution by the French authorities, Montesquieu published them outside France, anonymously.<sup>3</sup> Both the *Persian Letters* and *The Spirit of the Laws* were eventually condemned by the Catholic Church. Montesquieu “was attacked by the ecclesiastical community in a manner unknown to Voltaire, Diderot, or La Mettrie.”<sup>4</sup>

The *Persian Letters* (1721) was an immediate success. Through a series of fictional letters, it traced the voyage to Europe of two Persian men, Usbek and Rica, and their observations of the distinctive features of daily life, government, religion, intellectual activity, and sexual relations. At the same time, it suggested a number of parallels between the East and the West: Christianity was likened to Islam, priests to mullahs, Louis XIV to a sultan, and the French monarchy to the despotic rule of Usbek himself over his harem of wives back in Persia. (Belying the clichéd image of Enlightenment writers as “Orientalizing” mouthpieces of European self-satisfaction,

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<sup>2</sup> Manent, “The Crisis of Liberalism,” 139.

<sup>3</sup> On the prevalence of anonymous publishing in eighteenth-century France, see Kelly, *Rousseau as Author*, 12-16.

<sup>4</sup> Lynch, “Montesquieu and the Ecclesiastical Critics,” 487.

Montesquieu's Persian observers were penetrating critics of the West.) The book also included probing discussions of moral virtue, the status of religious revelation, and the nature of happiness. Owing to its literary and philosophic merits, Montesquieu was elected to the 40-member French Academy in 1728, despite the misgivings of Cardinal Fleury, who had been alerted to some of the more impious passages.<sup>5</sup> Although it is now sometimes regarded as one of Montesquieu's less serious works, Alexis de Tocqueville, for one, had a different view. "Jokes in a serious work are acceptable on the condition that they hide a profound sense beneath a trivial form," he wrote. "It is in this way that Montesquieu, in his novel, *Persian Letters*, has written one of the most philosophical books of the eighteenth century."<sup>6</sup>

Montesquieu's *Considerations on the Causes of the Greatness of the Romans and Their Decline* (1734) was a less immediately accessible book. Although it was reprinted several times in order to satisfy public demand across Europe, it disappointed many readers. "His book is useless to those who know nothing [about Roman history], and even more so to those who do know," said the French writer and salon hostess Françoise de Graffigny.<sup>7</sup> "Montesquieu's decline," said Voltaire.<sup>8</sup> As Jean Ehrard has observed, the book perplexed even "the most perspicacious readers."<sup>9</sup> Recently, Paul Rahe has gone some way to explaining why this particular work was so puzzling, suggesting that Montesquieu had originally intended it to be the first of a three-part study comparing ancient Rome unfavorably with modern England, and thereby calling into question the worthiness of the French monarchy's aspirations to emulate the Roman Empire.

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<sup>5</sup> See Volpilhac-Augier, *Montesquieu*, 155-58.

<sup>6</sup> Quoted in Warner, "Montesquieu's Prelude," 162.

<sup>7</sup> Quoted in Volpilhac-Augier, *Montesquieu*, 214.

<sup>8</sup> Quoted in Volpilhac-Augier, 215.

<sup>9</sup> Ehrard, *L'Esprit des mots*, 65.

*Considerations on the Romans* emphasized the peculiarities of Rome in its period of expansion – including, for example, its extreme military discipline, its austerity, and its egalitarian land distribution – and hence implicitly drew attention to the improbability of matching it in the modern world. The book also called into question the view of Rome’s predominance as being a result of divine will rather than of “general causes, moral and physical,” supplemented by “unbelievable good luck” (*Considerations* 169, 181).<sup>10</sup> The second part of the triptych was to be Montesquieu’s *Reflections on Universal Monarchy in Europe*, a work that threw cold water on the idea – once cherished by Louis XIV – of establishing a single government over Europe. This was pulled from publication at the last minute because Montesquieu had been spooked by the French government’s condemnation of Voltaire’s *Letters on the English*. And the work apparently intended as the third part later became a chapter in the *Spirit of the Laws*, “On the constitution of England” (*SL* 11.6) – a chapter that “has some claim to being the single most influential piece of political writing of the eighteenth century,”<sup>11</sup> in which Montesquieu presented the English constitution as the only one in the world dedicated to preserving freedom.<sup>12</sup>

Unlike the *Persian Letters* and *Considerations on the Romans*, neither the seriousness nor the relevance of *The Spirit of the Laws* (1748) was questioned upon its publication. As Rahe has noted, “[F]rom the moment of its release in the fall of 1748, it sold like hotcakes. By the end of the century, it had been published in one hundred twenty-eight edition, and it had been translated into English, Italian, German, Latin,

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<sup>10</sup> The “luck” of the Romans lay mainly in the imprudence of their rivals (see, e.g., *Considerations* 43, 68, 181). Ehrard calls *Considerations on the Romans* “the most radical enterprise of historical demystification.” *L’Esprit des mots*, 64.

<sup>11</sup> Wright, “Montesquieuan Moments,” 163.

<sup>12</sup> For Rahe’s understanding of the planned triptych, see *Montesquieu and the Logic of Liberty*, 19-21, 24-26, 40-42.

Danish, Dutch, Polish, and Russian.”<sup>13</sup> And yet this was a dense, heavily footnoted, occasionally sibylline book about (in Montesquieu’s own words) “physics, politics, and jurisprudence” (*DSL* 1145).

Today, Montesquieu may be “the most neglected of the giants of early modern political thought,”<sup>14</sup> but the influence of *The Spirit of the Laws* would be hard to exaggerate. As Judith Shklar has put it, Montesquieu’s final major publication “set the terms in which republicanism was to be discussed” in the eighteenth century.<sup>15</sup> According to Frederick Melchior Grimm’s contemporaneous testimony, its publication “effected a complete revolution in the [French] national mind.”<sup>16</sup> Many of the leading actors in the French Revolution “learned political analysis from *The Spirit of the Laws*.”<sup>17</sup> And recent scholarship has indicated that Montesquieu was the most cited political writer in America during the revolutionary era and the early republic, outstripping the likes of William Blackstone, John Locke, David Hume, and Plutarch.<sup>18</sup>

Few philosophers have induced such unanimous respect among other influential political writers. Hume credited Montesquieu with having produced “the best system of political knowledge that, perhaps, has ever yet been communicated to the world.”<sup>19</sup> Jean le Rond d’Alembert called him a “benefactor of humanity.”<sup>20</sup> Both James Madison and Alexander Hamilton appealed to his analysis of English government in order to justify

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<sup>13</sup> Rahe, xviii.

<sup>14</sup> Wright, “Montesquieuean Moments,” 156.

<sup>15</sup> Shklar, “Montesquieu and the New Republicanism,” 265.

<sup>16</sup> Quoted in Cheney, *Revolutionary Commerce*, 52.

<sup>17</sup> Volpilhac-Augé, *Montesquieu*, 11.

<sup>18</sup> Lutz, “The Relative Influence of European Writers,” 189-97.

<sup>19</sup> Quoted in Shackleton, *Montesquieu*, 245.

<sup>20</sup> D’Alembert, “Éloge de M. le Président de Montesquieu,” <http://encyclopedia.uchicago.edu/>.



their proposed U.S. Constitution.<sup>21</sup> Edmund Burke called him the “greatest genius” of the age.<sup>22</sup> G.W.F. Hegel regarded him as an exponent of “the genuinely philosophical position” with respect to law.<sup>23</sup> “When I recollect what the President Montesquieu has written,” said Adam Ferguson, “I am at a loss to tell, why I should treat of human affairs.”<sup>24</sup> Addressing himself to a French readership, John Maynard Keynes wrote: “Montesquieu was the real French equivalent of Adam Smith. The greatest of your economists, head and shoulders above the physiocrats in penetration, level-headedness, and good sense (which are the qualities an economist should have).”<sup>25</sup>

This respect seems to have been shared by the vast majority of recent scholars who have studied him. “Montesquieu remains perhaps *the* representative of a certain style of thinking [i.e., liberal political analysis] which is by no means outmoded or anachronistic,” Raymond Aron has said.<sup>26</sup> According to Isaiah Berlin, “Montesquieu’s views have far more relevance to our own situation than those of his nineteenth-century successors. It is their views rather than his that seem obsolete in the bleak light of today.”<sup>27</sup> Tzvetan Todorov has suggested that Montesquieu is the thinker who best “shows that attention to cultures (to ‘the spirit of the nation’) does not necessarily imply blind patriotism.”<sup>28</sup> Jacob Levy has called attention to the unmatched sophistication of *The Spirit of the Laws* among the foundational texts of liberalism, calling it “the first work in the traditional canon of political theory to be published after the consolidation of

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<sup>21</sup> See *Federalist* 47, 78.

<sup>22</sup> Burke, *An Abridgement of English History*, 297.

<sup>23</sup> Quoted in Dallmayr, “Montesquieu’s *Persian Letters*,” 244.

<sup>24</sup> Quoted in Cheney, *Revolutionary Commerce*, 53. On Montesquieu’s influence on the Scottish Enlightenment in particular, see Sher, “From Troglodytes to Americans.”

<sup>25</sup> Quoted in Devletoglu, “Montesquieu and the Wealth of Nations,” 1.

<sup>26</sup> Aron, *Main Currents in Sociological Thought*, 61 (emphasis in original).

<sup>27</sup> Berlin, “Montesquieu,” 132.

<sup>28</sup> Todorov, *On Human Diversity*, 394.

the French and British states” and “the first such work to directly engage with the economic changes of the seventeenth and eighteenth centuries.”<sup>29</sup> “One might say,” Michael Zuckert has written, “that with Montesquieu the liberal tradition reached a level of maturity it has not surpassed since.”<sup>30</sup> More categorically, Thomas Pangle has called Montesquieu “the greatest political philosopher of the liberal tradition” and “arguably the greatest political thinker the West has produced in the postclassical era.”<sup>31</sup>

In addition to his three major works, Montesquieu wrote a number of articles on questions of natural science, published a salacious and quite successful prose poem in seven cantos, and contributed an important essay on the subject of “taste” to the *Encyclopédie* of Diderot and d’Alembert. Catherine Volpilhac-Augier has underlined the improbability of Montesquieu’s career. As she points out, he “only had to take the trouble to be born in order to harvest wealth and social position,” but instead he “turned toward the arid science of politics, so dangerous in his time.” Rather than dividing his life between “the pleasures of Parisian life and the occasionally pleasing days of a [judicial] career in Bordeaux,” he “passed his years devouring documentation the limits of which seems almost impossible to measure, and which led him from Siberia to the depths of the Middle Ages.”<sup>32</sup> Still, his labors were hardly unrewarded. In fact, as Volpilhac-Augier herself notes, he “received every possible honor.”<sup>33</sup>

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<sup>29</sup> Levy, *Rationalism, Pluralism, and Freedom*, 141. See also Wright, “Rousseau and Montesquieu,” 84: “By any measure, *The Spirit of the Laws* marked the founding moment in modern republican thought” (emphasis in original).

<sup>30</sup> Zuckert, “Natural Law, Natural Rights, and Classical Liberalism,” 251.

<sup>31</sup> Pangle, *The Ennobling of Democracy*, 85.

<sup>32</sup> Volpilhac-Augier, *Montesquieu*, 14.

<sup>33</sup> Volpilhac-Augier, 290.

### Rousseau (1712-1778)

Rousseau's literary career, by contrast, brought him disrepute and persecution, in addition to unparalleled and unwelcome celebrity. If Montesquieu dedicated himself to advancing a quintessentially liberal program of popular enlightenment, cosmopolitanism, and law managed by educated elites, Rousseau advanced a quintessentially republican program of piety, patriotism, and popular sovereignty, and he did so in conscious opposition to Montesquieu. He was perhaps the first philosophic critic of modern liberalism.

Two years after Montesquieu's fame had reached its peak with *The Spirit of the Laws*, Rousseau, by then a middle-aged Genevan living in Paris, produced his own publishing sensation with the *Discourse on the Sciences and Arts* (1750). The Academy of Dijon, soliciting entries for an essay contest, had posed the question, "Has the restoration of the sciences and arts tended to purify mores?" Rousseau, who was friendly with many of the stars of the Parisian intellectual scene, and who himself was a talented though obscure musician and writer, answered in the negative: the restoration of the sciences and arts had not tended to purify mores, he insisted; in fact, it had contributed to the corruption of mores. In other words, Rousseau attacked the regnant assumption that public enlightenment went hand-in-hand with broad social and political improvements. His essay was so controversial that it provoked seventy-five published reviews and critiques within three years,<sup>34</sup> including one from a former king of Poland.

Having published a handful of replies to these critics, Rousseau entered another essay contest run by the Academy of Dijon. Now, in 1754, the Academy posed the question: "What is the origin of inequality among men, and is it authorized by natural law?" Rousseau's *Discourse on the Origin and Foundations of Inequality among Men*

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<sup>34</sup> Damrosch, *Jean-Jacques Rousseau*, 218.

(1755), his *Second Discourse*, did not win the prize, but it laid out his principles with hitherto-unparalleled clarity. As in the *First Discourse*, Rousseau took issue with the assumption that modern civilization represented a peak of human flourishing; but whereas previously he had criticized modernity from the standpoint of “virtue,” now he criticized civil society as such from the standpoint of “nature.” The *Second Discourse* purported to uncover the goodness of man’s original situation in “the state of nature” and to explain the roots of the radical inequalities (between rich and poor, rulers and ruled, masters and slaves) that existed among civilized humans. As Rousseau put it later: “I sought, I found the image of the first times whose history I proudly traced; I made a clean sweep of the petty falsehoods of men, I dared to strip naked their nature, to follow the progress of time and things that have disfigured it, and comparing the man of man with the natural man, to show them the genuine source of his miseries in his pretended perfection” (*Confessions* 326). In Rousseau’s judgment, the *Second Discourse* “found only a few readers who understood it in all of Europe, and none of these wanted to talk about it” (*Confessions* 326). Still, this may have constituted a small improvement: to judge from his replies to critics, the *First Discourse* had not found any readers at all who understood it.

Rousseau’s next two major philosophical works were the most directly consequential for him. The *Social Contract* (1762), his treatise on the foundations of free political societies, was condemned by the authorities in Geneva soon after its publication. *Emile* (1762), which examined the psychology of a fictional man brought up to preserve his natural “goodness” in civil society, was condemned for its unorthodox religious teaching by the Parlement of Paris, by the Archbishop of Paris, and by the Genevan

authorities. As a result of the fierce reactions to these two works, Rousseau was forced to escape France and to renounce his Genevan citizenship. He then had to flee from his refuge in Môtiers, Neuchâtel (territory then under the control of the Prussian king), where his house had been stoned by a mob whipped up by a local preacher, only to be ordered to leave yet another refuge on St. Peter's Island, Berne. After that, he lived unhappily in England for several months, and famously fell out with David Hume before finally returning to France, where he lived under an assumed name. It was not until 1770, eight years after the publication of the *Social Contract* and *Emile*, that he was able to resume his real name and move back to Paris.

In addition to the *First Discourse*, the *Second Discourse*, the *Social Contract*, and *Emile*, Rousseau wrote: a popular opera, *The Village Soothsayer* (1752); a highly controversial *Letter on French Music* (1753); a number of articles for the *Encyclopédie*, including the *Discourse on Political Economy* (1755); a hugely successful novel, *Julie, or the New Heloise* (1761); a *Dictionary of Music* (1767); and a series of dialogues, in which he examined the discrepancy between his public reputation and his real self, *Rousseau, Judge of Jean-Jacques* (1776). He also made three direct political interventions: in the *Letter to d'Alembert* (1758), he discussed whether Geneva should establish a theater and thereby become more like Paris; in the *Letter to Christophe de Beaumont* (1763), he defended himself from the charges of impiety leveled by the Archbishop of Paris; and in the *Letters Written from the Mountain* (1764), he attacked the Genevan ruling class for its hasty condemnation of his works and for its usurpation of democratic authority. Finally, he wrote a number of books for posthumous publication, including the *Essay on the Origin of Languages* (1781), *The Confessions* (1782), *Considerations on the Government*

*of Poland* (1782), *Judgment of the Plan for Perpetual Peace* (1782), *The Reveries of the Solitary Walker* (1782), and the *Plan for a Constitution for Corsica* (1861).

Rousseau's influence was at least as great as that of Montesquieu. His status as a hero among the leaders of the French Revolution is well known; he was described by Edmund Burke as the "insane Socrates of the National Assembly."<sup>35</sup> But he was also quite famous in America during the founding period, and at least some of his works were known by James Madison, Alexander Hamilton, George Washington, James Wilson, John Adams, Thomas Jefferson, Noah Webster, Benjamin Rush, and Joseph Story.<sup>36</sup>

It was Rousseau's writings which inspired Immanuel Kant's turn from purely scientific research to the project of establishing "the rights of humanity."<sup>37</sup> Tocqueville nominated Rousseau, along with Montesquieu and Pascal, as one of the three authors he read every day.<sup>38</sup> Nietzsche spoke of him as one the eight writers against whom he repeatedly tested himself.<sup>39</sup> Leo Tolstoy, George Eliot, and Mary Shelley were all among his literary disciples.

Over the past century, Rousseau has been more widely and more closely read than Montesquieu, but the substance of his thought has proved less congenial to scholars. Hannah Arendt's revival of the civic republican ideal, for example, was inspired partly by

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<sup>35</sup> Burke, "A Letter to a Member of the National Assembly," 48.

<sup>36</sup> Spurlin, *Rousseau in America*, 33-35, 60-61.

<sup>37</sup> "There was a time when I believed [scientific excellence] alone could constitute the honor of humankind, and I despised the rabble who knows nothing. *Rousseau* has set me right. This blinding prejudice vanishes, I learn to honor human beings, and I would feel by far less useful than the common laborer if I did not believe that this consideration could impart a value to all others in order to establish the rights of humanity." Kant, "Remarks in the *Observations*," 20:44 (*italics in original*). Compare *Emile* 629, 649.

<sup>38</sup> "I pass a short portion of every day with three men, Pascal, Montesquieu and Rousseau; I miss the presence of a fourth, and that is you." Letter to Count Louis de Kergorlay, 10 October 1836.

<sup>39</sup> "Epicurus and Montaigne, Goethe and Spinoza, Plato and Rousseau, Pascal and Schopenhauer. With these I must come to terms when I have long wandered by myself; they shall tell me whether I am right or wrong; to them I want to listen when, in the process, they tell each other whether they are right or wrong." Nietzsche, *Mixed Opinions and Maxims*, 67.

Rousseau, but she blamed him for encouraging an aggressive brand of politics.<sup>40</sup> John Rawls invoked Rousseau as a predecessor, but reproached him for being insufficiently open to diversity.<sup>41</sup> Leo Strauss praised Rousseau's "passionate and forceful attack on modernity," but faulted him for suggesting that "[m]an has no nature in the precise sense which would set a limit to what he can make out of himself" and for promoting "an ultimate freedom from society" that "lacks any definite human content."<sup>42</sup> Isaiah Berlin admired Rousseau's eloquent articulation of an ideal of liberty as "self-mastery," but regarded that ideal as a serious threat to "a truer and more humane ideal" of pluralism.<sup>43</sup> In the same vein, both Karl Popper and Jacob Talmon helped to popularize the view of Rousseau as a proto-totalitarian.<sup>44</sup> Generally speaking, conservatives have treated Rousseau as a radical, while radicals have treated him as a conservative.

### The Montesquieu-Rousseau Connection

Unfortunately, we have no record of Montesquieu's reaction to Rousseau's works. He "seems to have lived in an almost complete and perhaps voluntary unawareness of the future author of *Du contrat social*."<sup>45</sup> But any evaluation of Rousseau's position is incomplete without an understanding of the strongest objections to it, and Rousseau apparently considered Montesquieu his most capable modern forerunner.

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<sup>40</sup> Arendt, "The Social Question," 258-60.

<sup>41</sup> Rawls, *A Theory of Justice*, 11, 215-60.

<sup>42</sup> Strauss, *Natural Right and History*, 252, 271, 293.

<sup>43</sup> Berlin, "Two Concepts of Liberty," 171. See also Sandel, *Democracy's Discontent*, 320.

<sup>44</sup> See Popper, *The Open Society and Its Enemies*; Talmon, *The Origins of Totalitarian Democracy*. See also Berman, *The Politics of Authenticity*, 319.

<sup>45</sup> Shackleton, *Montesquieu*, 187.

Just before he wrote the *First Discourse*, Rousseau had been employed as a research assistant for a wealthy Parisian's refutation of *The Spirit of the Laws*,<sup>46</sup> and it seems that his thinking developed partly in reaction to Montesquieu's bold defenses of the emergent civilization. In one reply to a critic of the *First Discourse*, Rousseau called Montesquieu "that famous philosopher whose work – always profound and sometimes sublime – exudes everywhere love of humanity" (*FR* 111n). He elsewhere described Montesquieu as an "author who knows how to teach by the things he says and by those he makes one think" (*PF* 31), and put him alongside Plato in point of intelligence (*PE* 166).<sup>47</sup>

Montesquieu died the year that the *Second Discourse* was published. In that work, Rousseau had nominated Montesquieu as one of the few minds worthy of describing the parts of the world unknown to Europeans: "Let us suppose a Montesquieu, Buffon, Diderot, Duclos, d'Alembert, Condillac, or men of that stamp traveling in order to inform their compatriots, observing and describing, as they know how, Turkey, Egypt, Barbary, the empire of Morocco, Guinea.... [W]e ourselves would see a new world come from their pens, and we would thus learn to know our own" (*SD* 86). Reacting to the news of Montesquieu's death in February 1755, Rousseau wrote to a Genevan friend: "You will be regretting as I am the illustrious Montesquieu. It is for those who have a fatherland and who love it to mourn this great man. He did not need such a long life in order to be

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<sup>46</sup> François, "Rousseau, les Dupin, Montesquieu," 47-64.

<sup>47</sup> As Shklar says, Rousseau had "a life-long struggle" with Montesquieu, "the modern author whom he respected the most and quoted most often." "Montesquieu and the New Republicanism," 269. On the contribution of *The Spirit of the Laws* to Rousseau's intellectual development, see Derathé, "Montesquieu et Jean-Jacques Rousseau," 366-86; Ehrard, *L'Esprit des mots*, 261-75.



immortal; but he should have lived eternally in order to teach peoples their rights and their duties.”<sup>48</sup>

In both the *Social Contract* and *Emile*, the author of *The Spirit of the Laws* was clearly on Rousseau’s mind again. In the first, Rousseau criticized Montesquieu for failing to see that citizen virtue is necessary in “every well-constituted State,” but nonetheless called him a “noble genius” (SC 174). And in the second he referred to him as “[t]he only modern in a position to create” the “science of political right” (*Emile* 649). As C.E. Vaughan has observed, “[N]o man could have admired [Montesquieu] more than Rousseau.”<sup>49</sup>

### *Interpretive Approach*

This dissertation offers a comprehensive study of the understandings of political life in the works of Montesquieu and Rousseau.<sup>50</sup> The task is complicated by the fact that, although both Montesquieu and Rousseau wrote in clear, forceful, and jargon-free prose, they did not always spell out everything they believed on a given subject, nor did they always feel compelled to elucidate every step in the chain of their reasoning. As Montesquieu put it, “To write well, one needs to skip over intermediate ideas – enough not to be boring; not too much, for fear of not being understood. It is these happy

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<sup>48</sup> Letter to Jean Perdriau, 20 February 1755.

<sup>49</sup> Vaughan, “Rousseau as Political Philosopher,” 3.

<sup>50</sup> For other treatments of the Montesquieu-Rousseau connection, see Adam, “De quelques sources”; Derathé, “Montesquieu et Jean-Jacques Rousseau”; Ehrard, *L’Esprit des mots*, 261-75; Hampson, *Will and Circumstance*; Kelly, “Rousseau and the Illustrious Montesquieu”; Labro, “Le débat Rousseau/Montesquieu”; Launay, “Le ‘Discours sur les sciences et les arts’”; Mendham, “Enlightened Gentleness as Soft Indifference”; Rahe, *Soft Despotism*, 75-140; Shklar, “Montesquieu and the New Republicanism,” 269-74; Sonenscher, *Before the Deluge*, 222-39; Strauss, “On the Intention of Rousseau”; Sullivan and Balch, “Spectacles and Sociability”; Vaughan, “Rousseau as Political Philosopher,” 2-3, 31-32, 71-86; Vaughan, *Studies in the History of Political Philosophy*, 253-302; Wright, “Rousseau and Montesquieu.”

deletions that made M. Nicole say that all good books are double” (*MT* 1970). Similarly, in a short work reflecting on the *Persian Letters*, he wrote of “a secret and, in some fashion, unknown chain” that held the novel together (*Réflexions* n.p.). And in a preface to *The Spirit of the Laws*, he explained, “Many of the truths will make themselves felt here only when one sees the chain connecting them with others. The more one reflects on the details, the more one will feel the certainty of the principles. As for the details, I have not given them all, for who could say everything without being tedious?” (*SL* Preface).<sup>51</sup>

Likewise, Rousseau consistently distinguished between the “few” readers who would be able to understand his books and the “many” who would fail to do so. For example, in reflecting on his *First Discourse*, he wrote: “I have often taken great pains to try to put into a sentence, a line, a word tossed off as if by chance the result of a long sequence of reflections. Often, most of my readers must have found my discourses badly connected and almost entirely rambling, for lack of perceiving the trunk of which I showed them only the branches. But that was enough for those who know how to understand, and I have never wanted to speak to the others” (*Second Letter* 184-85). Later, in his *Letters Written from the Mountain*, he claimed that his books were “not written for the people” (*LWFM* 211). Elsewhere he suggested that, as a rule, only authors who speak primarily to a popular audience have to be “loose and diffuse” in order to explain their thought “clearly,” whereas those who speak to “the few” can say more in fewer words (*D’Alembert* 255).<sup>52</sup> Thus, in attempting to make explicit the implicit

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<sup>51</sup> For an overview of the conflicting interpretations of *The Spirit of the Laws* in the first few decades after its publication, see Sonenscher, *Before the Deluge*, 173-74.

<sup>52</sup> Hence, for instance, his comment in *Considerations on the Government of Poland*: “[H]ere I am not doing anything but giving an indication, but that is enough for those whom I am addressing” (*Poland* 182).

reasoning that guided Montesquieu and Rousseau, I attempt also to indicate some of the considerations that might have led them to be less than fully candid on occasion.

There are several interpretive temptations that I try to avoid. First, one might assume that neither Montesquieu nor Rousseau really had consistent accounts of political life, or at least not accounts that endured throughout their literary careers. After all, neither one clearly explained the connections between the books in their respective *oeuvres*. Thus, one might treat these books as wholly distinct productions representing different phases of thought, rather than as expressions of sustained, self-consistent reflection.<sup>53</sup>

Yet Montesquieu never referred to a radical change of direction in his thought, and in his private notebook he referred to “my system on liberty” (*MT* 907). Admittedly, he did refer to a discovery of “principles” that allowed him to complete *The Spirit of the Laws*, but he did not say that these principles were at odds with the thinking that guided him in writing his earlier works. The new principles may have been extensions of established insights. Indeed, this is precisely what Montesquieu’s language suggested: he knew the “object” of *The Spirit of the Laws* from the beginning, he said, but only with the discovery of his “principles” could the work “begin, grow, move ahead, and end” (*SL* Preface). The year before he died, he published a new introduction to the *Persian Letters*, which suggests that he had an ongoing concern with that book. Reliable evidence indicates that, on his deathbed, he resisted the attempts of certain Jesuits to have him make revisions to it.<sup>54</sup>

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<sup>53</sup> For this view of Montesquieu’s works, see Richter, *The Political Theory of Montesquieu*, 44-45; Sonenscher, *Before the Deluge*, 102-6, 115. For the same view of Rousseau’s works, see Vaughan, “Rousseau as Political Philosopher,” 2, 15-16, 78-81, 84-86.

<sup>54</sup> See Volpilhac-Augier, *Montesquieu*, 286-87.

Indeed, the *Persian Letters* may be in some important respects the most revealing of Montesquieu's three major books. As Voltaire said, "There are times when one can with impunity do the most daring things; there are other times when something that is exceedingly simple and innocent becomes dangerous and criminal. Is there anything of greater force and strength than the *lettres persanes*? Is there a book in which anyone has discussed the government and religion with less tact and solicitude?"<sup>55</sup> Whereas *Considerations on the Romans* and *The Spirit of the Laws* were published under increasingly oppressive conditions in France,<sup>56</sup> the *Persian Letters* was published during the regency of Philippe d'Orléans, when censorship was relatively relaxed. Besides, *ancien régime* censors "always found literature trying because the author could deny that the morally offensive beliefs of his fictional characters corresponded to his own."<sup>57</sup> Thus, to take one example, the fact that in the *Persian Letters* "Montesquieu biting[ly] satirize[d] not only Islam but much of European politics and culture, perhaps most shockingly Catholicism and the fusion of church and state – even depicting the papacy as despotic, and mocking the doctrine of the Trinity," should not necessarily be taken as proof that Montesquieu had not yet arrived at his "mature" view of religion.<sup>58</sup> One of the first ecclesiastical critics of *The Spirit of the Laws*, the abbé Jacques Fontaine de la Roche, "read *l'Esprit* as simply another version of the *Lettres*, more subtle but equally dangerous."<sup>59</sup> And, as we will see, much of the analysis unfurled in *The Spirit of the Laws* does seem to have been anticipated in his earlier works. This is not to say that his

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<sup>55</sup> Quoted in Rahe, *Montesquieu and the Logic of Liberty*, 17.

<sup>56</sup> See Pangle, *The Theological Basis of Liberal Modernity*, 6-7.

<sup>57</sup> Hulliung, *Montesquieu and the Old Regime*, 110. See also Betts, *Montesquieu*, 9-11; Waddicor, *Montesquieu*, 10.

<sup>58</sup> Carrese, *Democracy in Moderation*, 119.

<sup>59</sup> Lynch, "Montesquieu and the Ecclesiastical Critics," 488.

earliest works contained the germs of everything he had to offer, but only to say that his earliest works do not seem fundamentally disconnected from or inconsistent with his later ones.

As for Rousseau, he frequently insisted on the internal consistency of his writings.<sup>60</sup> In a letter written near the beginning of his literary career, for example, he claimed to have developed a comprehensive “system” which he had exposed “only gradually and always for few readers” in order to avoid being persecuted (presumably by religious authorities) as “the enemy of public tranquility,” and also in order to avoid being ruined by “the zealots of the opposite party” for “the greater glory of philosophy” (*Second Letter* 183-84; see also *Confessions* 326). In a public letter written closer to the end of his literary career, he said: “When an author does not wish to repeat himself incessantly and has once clearly established his sentiment on a matter, he is not bound always to offer the same proofs when reasoning about the same sentiment. His writings then explain each other, and the latest, when he is methodical, always presupposes the earliest. That is what I have always tried to do, and have done” (*Beaumont* 39; see also *Dialogues* 212-14).

Second, one might be tempted to trace the political analyses of Montesquieu and Rousseau to their biographies. As Catherine Volpilhac-Augier has noted, Montesquieu’s treatise “could ... appear as a gigantic effort to justify the profound inequalities of an irremediably rigid society, of a brilliant and dilapidated France.”<sup>61</sup> Montesquieu was an aristocrat; he was also the inheritor of a judicial post (*président à mortier*) that could be legally sold and that he did sell after a decade of service. An important aim of *The Spirit*

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<sup>60</sup> See Melzer, *The Natural Goodness of Man*, 4-12.

<sup>61</sup> Volpilhac-Augier, *Montesquieu*, 10.

*of the Laws* was to defend the traditional rights of the aristocracy in a monarchy like France; another was to defend the venality of offices in a monarchy. Hence one commentator, while insisting that Montesquieu's defense of venal offices and aristocratic rights cannot be "dismissed as merely the product of his own magistral background," has also admitted to "the uneasy feeling that nowhere did the philosopher's *ideology* carry him further from reality."<sup>62</sup> Similarly, the final portion of *The Spirit of the Laws* adjudicates a debate about the origin of the French monarchy, a debate spearheaded on one side by the abbé Jean-Baptiste Dubos (a defender of absolute monarchy and of the monarchy's Roman origins), and on the other by Henri de Boulainvilliers (a defender of the power of the nobles and of the monarchy's Germanic origins). Montesquieu clearly preferred the position of the latter to that of the former. Hence, some scholars have leapt to the conclusion that this preference can be understood as a product of his personal interests: "[B]eing an aristocrat, and seeing himself as descended from 'les Germains,' he tended to sympathize with [Boulainvilliers]," Mark Waddicor has suggested.<sup>63</sup> According to Louis Althusser, Montesquieu's whole constitutional theory was clouded by "parti pris."<sup>64</sup> Indeed, this interpretation goes back to the eighteenth century. In his *Philosophical Dictionary*, Voltaire accused Montesquieu of "writing in defense of his own personal class privileges."<sup>65</sup>

Rousseau, meanwhile, was born a citizen of the small republic of Geneva, and he inherited no titles. One aim of his political writings was to assert the superiority of small republics to large monarchies; another was to defend the equal rights of citizens as

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<sup>62</sup> Ford, *Robe and Sword*, 123 (emphasis added).

<sup>63</sup> Waddicor, *Montesquieu and the Philosophy of Natural Law*, 90.

<sup>64</sup> Althusser, *Montesquieu*, 20, 103-116.

<sup>65</sup> Levy, *Rationalism, Pluralism, and Freedom*, 164. See also Ilbert, *Montesquieu*, 20-21.

citizens. So there is an obvious temptation to explain the politics in terms of the life. Ronald Grimsley, for example, has spoken of the power exerted on Rousseau by “the Genevan outlook of his early life.”<sup>66</sup> Other commentators have claimed that “all the chief works are tethered to Rousseau’s native city”<sup>67</sup> and that for most of his life “he retained an image of Geneva as the ideal community.”<sup>68</sup>

But there are limits to these biographical approaches. As Raymond Aron has noted, Montesquieu’s works “are not lacking in sallies at the foibles and vices of the nobility.”<sup>69</sup> In the *Persian Letters*, for instance, Usbek tells one of his correspondents: “A great lord [in France] is a man who sees the king, who speaks to ministers, who has ancestors, debts, and pensions. If he can, in addition, conceal his idleness by a busy manner, or by a feigned attachment to pleasures, he believes himself the happiest of all men” (PL 88). Likewise, *The Spirit of the Laws* draws attention to the disproportion between modern judicial responsibilities and the abilities of the old French aristocracy: “[W]hen a certain art of procedure and a certain art of jurisprudence began to be formed, when practitioners and jurists appeared, peers and chivalrous men were no longer in a position to judge; peers began to withdraw from the tribunals of the lord; lords were little inclined to convoke them, the more so because judgments, instead of being a striking action, pleasing to the nobility, and interesting to warriors, had become only a practice that they neither knew nor wanted to know” (SL 28.42).

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<sup>66</sup> Grimsley, *Jean-Jacques Rousseau*, 80.

<sup>67</sup> Barber, “How Swiss is Rousseau?” 477.

<sup>68</sup> Garrard, *Rousseau’s Counter-Enlightenment*, 31. For a sophisticated treatment of the relation between Rousseau’s political thought and his familiarity with actual Genevan political life, see Rosenblatt, *Rousseau and Geneva*.

<sup>69</sup> Aron, *Main Currents in Sociological Thought*, 72 n. 18.

More generally, *The Spirit of the Laws* presents England – a country in which aristocrats had relatively few clear privileges – as legally and politically more developed than France (SL 6.16-17, 11.6, 29.11). Indeed, James Madison went so far as to write in *Federalist* 47: “The British Constitution was to Montesquieu what Homer has been to the didactic writers on epic poetry. As the latter have considered the work of the immortal bard as the perfect model from which the principles and rules of the epic art were to be drawn, and by which all similar works were to be judged, so this great political critic appears to have viewed the Constitution of England as the standard, or to use his own expression, as the mirror of political liberty.” To be sure, several commentators have questioned the purity of Montesquieu’s admiration for England, drawing attention to his comment that liberty in England is extreme rather than moderate: “I do not claim hereby to disparage other governments, or to say that this extreme political liberty should humble those who have only a moderate one. How could I say that, I who believe that the excess even of reason is not always desirable and that men almost always accommodate themselves better to middles than to extremities?” (SL 11.6).<sup>70</sup> With respect to that disclaimer, however, we should probably be guided by the eighteenth-century American pamphleteer who suggested that “when the great and amiable Montesquieu had hazarded a panegyric on the English constitution, he [shrank] back with terror.... The author of the Persian letters, at that moment recollected the afflicting pressure he had felt from the hand of the Gallic government, and his pen trembled as he wrote.”<sup>71</sup> After all, since “liberty” is defined by Montesquieu as “that tranquility of spirit which comes from the

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<sup>70</sup> See Carrese, *Democracy in Moderation*, 28-29, 48, 118; Dijn, “Was Montesquieu a Liberal Republican?” 35; Levy, *Rationalism, Pluralism, and Freedom*, 168; Spector, *Montesquieu: Liberté, droit, et histoire*, 190. See also Wright, “Montesquieuan Moments,” 149-50.

<sup>71</sup> Maryland Farmer, Essay V, 262.



opinion each one has of his security,” how much sense does it make to speak of an “excess” of it? Would England be better off if allowed for a moderate degree of custodial torture, for example (see *SL* 29.11)?

Thomas Paine wrote that Montesquieu “went as far as a writer under a despotic government could well proceed; and being obliged to divide himself between principle and prudence, his mind often appears under a veil, and we ought to give him credit for more than he has expressed.”<sup>72</sup> Even so, Montesquieu’s approval of England over France in the *Persian Letters* was obvious enough that it cost him the opportunity to attain a French diplomatic post.<sup>73</sup> And under the pressure of French censors, he was forced to remove from his *Considerations on the Romans* a passage singling out the English constitution for praise.<sup>74</sup>

Montesquieu was also out of step with his sophisticated French contemporaries. His distrust of governmental efficiency, for instance, set him apart from the many French intellectuals who venerated orderliness and therefore disdained the tussling endemic to the English system.<sup>75</sup> In fact, whereas Montesquieu regarded Turkey as an archetype of inhumane government (*SL* 5.14), admiration for Turkish absolutism was not uncommon among French sophisticates. As Céline Spector has explained, many French writers appreciated a government “which attributed honors to merit rather than to birth, which could contain the germs of sedition spread by noble families, and which made an equal justice reign in its tribunals, without interminable formalities or ‘class justice.’”<sup>76</sup> “It is *constantly* said that justice should be rendered everywhere as it is in Turkey,”

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<sup>72</sup> Paine, *Rights of Man*, 90.

<sup>73</sup> Volpilhac-Augier, *Montesquieu*, 160.

<sup>74</sup> Rahe, *Montesquieu and the Logic of Liberty*, 44. See also Berlin, “Montesquieu,” 152.

<sup>75</sup> See Gonthier, *Montesquieu and England*, 84.

<sup>76</sup> Spector, *Montesquieu: Liberté, droit, et histoire*, 108.

Montesquieu noted (*SL* 6.2, emphasis added). Similarly, Jacob Levy has highlighted the contrast between Montesquieu and Voltaire in light of the latter's admiration for absolutism and distrust of France's intermediary institutions.<sup>77</sup> Montesquieu's opposition to slavery also put him at odds with the "dominant thought" of the period.<sup>78</sup> Slavery was accepted by Grotius, Pufendorf, Melon, and Mably, among many others.<sup>79</sup> "Every day one hears it said that it would be good if there were slaves among us," Montesquieu observed (*SL* 15.9).

No one would accuse Rousseau of being a mindless imitator of his sophisticated contemporaries, with whom he disagreed on almost every fundamental issue.<sup>80</sup> But it does not require a careful reading of his works to see that he was equally far from being an uncritical admirer of Geneva. The treatment of his works by the Genevan authorities provides good evidence of that: whereas the French government condemned *Emile* alone in 1762, the Genevans condemned both *Emile* and the *Social Contract*.<sup>81</sup> And they were right to feel impugned by Rousseau's statement of his political principles. Discussing the situation of Geneva with respect to those principles, Rousseau wrote: "Nothing is more free than your legitimate state; nothing is more servile than your actual state" (*LWFM* 237).

Nor was this a departure from some earlier idealization. In the *Social Contract* itself, he called England "closer to freedom" than "all" other modern communities (*SC* 139n). It was Rome, not Geneva, that he had called "the model of all free peoples" in the

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<sup>77</sup> Levy, *Rationalism, Pluralism, and Freedom*, 161-64. See also Ehrard, *L'Esprit des mots*, 57-59.

<sup>78</sup> Volpilhac-Augier, *Montesquieu*, 201

<sup>79</sup> See Sullivan, *Montesquieu and the Despotic Ideas of Europe*, 259-60 n. 27; Volpilhac-Augier, *Montesquieu*, 255-56.

<sup>80</sup> See Hulliung, *The Autocritique of Enlightenment*.

<sup>81</sup> See Rosenblatt, *Rousseau and Geneva*, 271-74.

*Second Discourse* (SD 4). In the *Letter to d'Alembert*, when he had intervened in the debate about whether Geneva should establish a theater, he had not exactly argued that his home city was a healthy republic that had to be preserved from luxury and sophisticated entertainment. Instead, he had described the bad effects that the establishment of a theater would have on a small community of mountaineers near Neuchâtel, as well as the good effects that theaters have in big cities like Paris. But were the Genevans of 1758 more like faithful mountaineers or more like corrupt Parisians, in Rousseau's judgment? As Christopher Kelly has pointed out, Rousseau's discussion left it "very much of an open question."<sup>82</sup>

In the *Letters Written from the Mountain*, written several years later, Rousseau expelled any lingering doubts about how he viewed Geneva: "You above all, Genevans, keep your place, and do not go for the lofty objects that are presented to you.... You are neither Romans, nor Spartans; you are not even Athenians. Leave aside these great names that do not suit you. You are merchants, artisans, bourgeois.... [You are] people for whom even liberty is only a means of acquiring without obstacle and for possessing in safety" (*LWFM* 292-93). And it did not require Rousseau's living in Paris in order for him to acquire this kind of critical distance on his city of birth. His formative reading had been drawn less from Geneva than from ancient Rome and Athens, Amsterdam, London, and Paris.<sup>83</sup> Had he lived in his city of birth in the midst of his literary career, he said later, he "would have been much less free" to "speak the truth" (*Confessions* 341; see also *LM* 580-81).

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<sup>82</sup> Kelly, *Rousseau as Author*, 131. Cf. Rosenblatt, *Rousseau and Geneva*, 220-27.

<sup>83</sup> See Damrosch, *Jean-Jacques Rousseau*, 143.

A third interpretive temptation, especially in light of Rousseau's exalted reputation among the French revolutionaries, is to treat the difference between Montesquieu and Rousseau as if it were a case of sober realism versus doctrinaire utopianism. Certainly this was the view of Burke, and it has remained attractive to a number of modern scholars. Isaiah Berlin, for example, has presented Montesquieu as the Enlightenment thinker who paid most attention to the limitations opposed by concrete circumstances, in contrast especially to the abstract dogmatism of Rousseau:

"Montesquieu emerges as a far purer empiricist both with regard to means and with regard to ends than Holbach or Helvétius or even Bentham, not to speak of Rousseau or Marx."<sup>84</sup> F.A. Hayek has cast Montesquieu as a gimlet-eyed observer of the ineradicable bounds of human knowledge, and Rousseau as an arrogant believer in the possibility of total social control.<sup>85</sup> For similar reasons, both Russell Kirk and Gertrude Himmelfarb have evinced considerable relief that Rousseau's thought did not exercise any obvious influence on the framing of the U.S. Constitution, and equal relief that Montesquieu's thought did.<sup>86</sup> In his 1966 seminar on Montesquieu, Leo Strauss criticized Rousseau for his "doctrinarism" or his "concern with the one just order which is just everywhere and at all times," a concern which "does not allow for a variety of solutions in accordance with the variety of circumstances."<sup>87</sup> Following Strauss, Allan Bloom has argued that "Rousseau's analysis leads to a much stricter insistence on freedom and equality within civil society than the thought of Locke or Montesquieu. Against their moderation, Rousseau adds a dose of extremism to modern politics from which it cannot easily

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<sup>84</sup> Berlin, "Montesquieu," 161.

<sup>85</sup> Hayek, *Law, Legislation, and Liberty*, 4, 10.

<sup>86</sup> See Kirk, *The Conservative Constitution*, 36, 45, 120; Himmelfarb, *The Roads to Modernity*, 160-61, 216-17.

<sup>87</sup> Strauss, "Seminar on Montesquieu," 24-25.

recover. What began as an attempt to simplify politics ends up as a program for reform more complex and more imperative than anything that had preceded.”<sup>88</sup> Similarly, Dennis Rasmussen has presented Montesquieu as a quintessentially “pragmatic” thinker, in contrast to theorists like Rousseau who encourage “the idea of a wholesale restructuring of society.”<sup>89</sup> And, although Paul Rahe has warned us not to write off Rousseau’s works “simply” as “the ravings of a profoundly tortured soul,” he certainly does not dismiss that description. Rousseau’s works must be considered largely because of the “brute fact” that they have been so influential on Western thought, Rahe has suggested, whereas Montesquieu’s “sober” words are the products of his “integrity as a thinker.”<sup>90</sup>

But there are serious difficulties with these views. For one thing, Montesquieu also was highly esteemed by the French revolutionaries.<sup>91</sup> As Johnson Wright has pointed out, there is a “line that runs directly from *The Spirit of the Laws* to Robespierre’s tremendous vindication of classical republicanism in his February speech on political morality.”<sup>92</sup> Rousseau’s body was famously transferred to the Panthéon in Paris in 1794, but all that prevented the Directory from bringing Montesquieu into the Panthéon in 1795 was the fact that his remains had disappeared after forty years in the grave.<sup>93</sup>

Moreover, so far from being a rigid universalist, Rousseau emphasized the variety of legitimate governments and the importance of circumstances. “People have always argued a great deal over the best form of government,” he said in the *Social Contract*, “without considering that each of them is the best in certain cases, and the worst in

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<sup>88</sup> Bloom, “Rousseau’s Critique of Liberal Constitutionalism,” 150.

<sup>89</sup> Rasmussen, *The Pragmatic Enlightenment*, 211.

<sup>90</sup> Rahe, *Soft Despotism*, 140, 73.

<sup>91</sup> See Wright, “Montesquieuan Moments,” 167-68.

<sup>92</sup> Wright, 167. See also Keohane, “Virtuous Republics and Glorious Monarchies,” 396.

<sup>93</sup> See Volpilhac-Augier, *Montesquieu*, 290.

others” (SC 172). Shortly after, he added: “[W]hen one asks which is absolutely the best government, one poses a question that is insoluble because it is indeterminate. Or, if you prefer, it has as many correct answers as there are possible combinations in the absolute and relative situations of peoples” (SC 185). As he explained elsewhere, the *Social Contract* had shown that each form of government “had its reason which could render it preferable to all others, in accordance with men, times, and places” (LWFM 235). Like Montesquieu, Rousseau went out of his way to argue that every political society is radically limited by its geographic, historic, economic, and demographic circumstances (SC 157-62, 181-85). In giving concrete advice to states, then, he advised reformers not to pursue revolutions but to enact piecemeal improvements, and then “only with extreme circumspection” (*Poland* 170). He also stressed the need for detailed “knowledge of the locality and particular circumstances, impossible to give in writing, and nevertheless necessary to know to fit an institution to the people for whom one destines it” (*Poland* 169).<sup>94</sup>

Nor did Rousseau hold out much hope for revolutions. “Once peoples are accustomed to masters, they are no longer able to do without them,” he wrote. “If they try to shake off the yoke, they move all the farther away from freedom” (SD 4). A genuine revolution might happen in “rare” circumstances, he admitted, but such an event “cannot even occur twice for the same people” (SC 158).

Finally, studies in the history of political thought are always at risk of becoming mere cataloguing exercises, in which the positions of thinkers are listed as examples of

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<sup>94</sup> “A doctrinaire, who deliberately shuts his eyes to circumstances and rides rough-shod over consequences – that is still apparently the Rousseau of popular belief. Can we honestly say that it is the Rousseau of the *Contrat social* or of *Le Gouvernement de Pologne*?” Vaughan, “Rousseau as Political Philosopher,” 2.

alternative perspectives which can then be classified as more or less “humane,” “radical,” “moderate,” etc. The effort to evaluate the truth of these positions, however, is too often neglected. Conscious of that risk, this study is meant to scrutinize the reasoning that underlies the political analyses of Montesquieu and Rousseau, and therefore not merely to describe but also to judge their political prescriptions.

## CHAPTER ONE: THE STATE OF NATURE

For all their differences, Montesquieu and Rousseau articulate strikingly similar understandings of the original human situation in “the state of nature.” Readers today, however, are likely to cringe at their presumption. As Pierre Manent has noted, today the notion of the state of nature “is not taken seriously. Or we see it from only a ‘historical perspective,’ as an idea that had some importance in a certain political and social context in the seventeenth and eighteenth centuries.”<sup>1</sup> In the estimation of at least one contemporary intellectual authority, all eighteenth-century philosophers who spoke about the state of nature were “talking through their hats”: until fairly recently, no one “knew a thing about life before civilization.”<sup>2</sup> Another scholar has written that Rousseau’s understanding of the state of nature was defective because “he lacked our knowledge of evolutionary psychology, cognitive neuroscience, and behavioural genetics.”<sup>3</sup> Nor is this a novel perspective. In 1904 the Romanes Lecturer at the University of Oxford observed: “Like his predecessors, [Montesquieu] speculated about the state of nature. But for any knowledge of savage or uncivilized man, without which all speculations and theories as to the origin of society are idle, he was dependent on books of travel and accounts of missionaries, with no means of checking their accuracy.”<sup>4</sup>

Partly because of these sorts of objections, many commentators have interpreted the state of nature in Montesquieu and Rousseau as a hypothetical construct. Understood

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<sup>1</sup> Manent, *A World beyond Politics?*, 137.

<sup>2</sup> Pinker, *The Better Angels of Our Nature*, 36.

<sup>3</sup> Garrard, “Rousseau, Happiness, and Human Nature,” 81.

<sup>4</sup> Ilbert, *Montesquieu*, 29.



this way, the state of nature becomes a philosophical device, illustrating certain principles about human nature and politics which transcend the contingent facts of history.<sup>5</sup> And these readings have good textual support. Montesquieu speaks of what a human being in the state of nature “would” be like (*SL* 1.2), implying that such a person may never have lived. He says in his *Defense of the Spirit of the Laws*, “It was permitted to [me] to imagine a man as if he fell from the clouds, left to himself and without education, before the establishment of societies” (*DSL* 1131). As for Rousseau, concerning his attempt to see man “as nature formed him” (*SD* 12), he claims only to have begun “some lines of reasoning” and “ventured some conjectures, less in the hope of resolving the question than with the intention of clarifying it” (*SD* 13). He says that the state of nature “perhaps never existed” (*SD* 13). A bit later, he adds: “The researches which can be undertaken concerning this subject must not be taken for historical truths, but only for hypothetical and conditional reasonings better suited to clarify the nature of things than to show their genuine origin” (*SD* 19). Why not take these very precise writers at their word when they claim to be speaking hypothetically, especially since many of their claims about the state of nature are manifestly implausible as historical facts?

The main stumbling block is this: if the state of nature is meant to be a hypothetical construct, then any principles drawn from it must also be hypothetical. And this is incompatible with the emphatically non-hypothetical character of the claims advanced by both Montesquieu and Rousseau. Midway through *The Spirit of the Laws*,

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<sup>5</sup> For this view of Montesquieu’s state of nature, see Aron, *Les grandes doctrines*, 49; Aron, *Main Currents in Sociological Thought*, 56; Courtney, “Montesquieu and Natural Law,” 51; Spector, *Montesquieu: Liberté, droit, et histoire*, 50-52. For this view of Rousseau’s state of nature, see Gourevitch, “Rousseau’s Pure State of Nature”; Kelly, “Rousseau’s ‘Peut-Etre’”; Marks, *Perfection and Disharmony*, 96-110; Neuhouser, *Rousseau’s Critique of Inequality*, 33-37, 70, 76-77; O’Hagan, *Rousseau*, 40; Reisert, *Jean-Jacques Rousseau*, 33, 35; Vaughan, “Rousseau as Political Philosopher,” 16, 41; Velkley, *Being after Rousseau*, 31-48.

for example, Montesquieu asserts that “men are born in equality” in the state of nature (*SL* 8.3). Nor is this a slip of the pen or an incidental point: because “all men are born equal,” he says later, “one must say that slavery is against nature” (*SL* 15.7; see also *MT* 174). Toward the end of the work, he adds: “[M]en have renounced their *natural independence* to live under political laws” (*SL* 26.15, emphasis added). Thus, both original equality and original freedom are treated by Montesquieu as established facts.<sup>6</sup> Moreover, the hypothetical style he adopts in his chapter on the state of nature is adopted also in his chapter on the customs “of a free people” – including its vigilance toward governmental usurpations and its permissiveness in matters of religion, both sensitive topics for the monarchy under which Montesquieu lived – yet no one doubts that Montesquieu meant to convey historical facts about the English (*SL* 19.27). If he could use this style to protect himself in one chapter, could he not use it in another?<sup>7</sup>

Slavery “is contrary to nature and no right can authorize it,” Rousseau asserts at the outset of the *Discourse on Political Economy*, which he published shortly after the *Second Discourse* (*PE* 141). “[A]ll are born equal and free,” he insists at the beginning of the *Social Contract*, published seven years later (*SC* 132). People “are all equal” in “the natural order,” he says in the opening pages of *Emile*, published the same year as the *Social Contract* (*Emile* 166). These propositions were not hypotheticals. Whatever else he believed he had shown in the *Second Discourse*, the work in which he exposed his principles “completely” (*Confessions* 326), he at least claimed to have “proved that inequality is barely perceptible in the state of nature,” and to have made manifest the fact

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<sup>6</sup> In his private notebook, Montesquieu says that vengeance was, as a matter of historical fact, “the sole coercive power that we had in that state of nature” (*MT* 469).

<sup>7</sup> Montesquieu “wrote with the Censor and the Index always before his eyes. Hence the allusive and hypothetical style, which in some of his imitators became a mannerism.” Ilbert, *Montesquieu*, 23.

that each person there is “free of the yoke” (*SD* 42). Thus, he did not in fact maintain the appearance of dealing merely with hypotheticals. In the *Second Discourse* he spoke of “the immense distance there *must have been* [*dut se trouver*] between the pure state of Nature and the need for Languages” (*SD* 30, emphasis added), and of the qualities that people “had” [*avoient*]” in the state of nature (*SD* 34; see also 88-89). He explained the need for a hypothetical history of governments to connect “two facts given as real” (*SD* 42), with the first of these facts apparently being humankind in the state of nature and the second being humankind as it exists now (*SD* 43, 51).<sup>8</sup> “The theory of man,” he said elsewhere, “is not a vain speculation when it is founded on nature, proceeds with the support of facts by well-linked consequences, and in leading us to the source of the passions, teaches us to regulate their course” (*Beaumont* 31). Indeed, on two occasions outside the *Second Discourse* he talked about “the pure state of nature” as a condition that actually comes into being from time to time (*PE* 146; *SW* 66). And this suggests that, in his judgment, the essence of the condition presented in the *Discourse* was at least a sporadically-occurring reality, rather than something that never or “perhaps never” existed.

Besides, if Montesquieu and Rousseau had meant their accounts to be merely hypothetical, it would have been sensible to avoid even the appearance of discussing an actual historical condition. In particular, they were endangering themselves by seeming to call into question the biblical view of human history. The abbé de la Roche, for one, accused Montesquieu of following “the pagans” in discussing the state of nature.<sup>9</sup> And

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<sup>8</sup> Cf. Reisert, *Jean-Jacques Rousseau*, 37-38.

<sup>9</sup> Waddicor, *Montesquieu and the Philosophy of Natural Law*, 85-86. Montesquieu was keenly aware of the fact that philosophers and scholars had been vulnerable to persecution by defenders of religious orthodoxy (*MT* 853; *PL* 145).

one of Rousseau's early critics said that his natural man was "impious to the point of brutality."<sup>10</sup> In the *Letter to Beaumont*, where Rousseau's task was to defend his system from the charge of impiety (judged from the standpoint of the eighteenth-century Catholic Church), he refrained from using the phrase "state of nature" even once. When, in the *Second Discourse*, he insisted most strongly upon the hypothetical character of his inquiry, he reminded his readers that "any Christian philosopher" would be obliged to deny the existence of the state of nature and to believe the Bible's account of "the first man" (SD 19). Whether Rousseau regarded himself as a "Christian philosopher" is still a hotly debated question among scholars. But even if he did, he knew of at least one philosopher among the "Christian authors" – namely "the philosopher Hobbes" – who rejected the Bible's account of the first man (SC 218). It therefore seems plausible that, following Montesquieu's lead, Rousseau announced the results of his historical inquiry while providing himself with enough rhetorical camouflage to hide beneath in case of need: the state of nature, he could always claim, was meant to be nothing more than an idle fancy.<sup>11</sup>

Accordingly, many commentators have interpreted the accounts of the state of nature offered in *The Spirit of the Laws* and the *Second Discourse* as descriptions of the original human situation meant to rival the descriptions found in the Bible, as well as in Plato's *Laws*, Lucretius' *De Rerum Natura*, Hobbes' *Leviathan*, and so on. The obvious difficulty with such a reading is that the accounts in Montesquieu and Rousseau seem incredible. Thus, scholars have tended to judge them as instances of historical guesswork which can now be consigned to the status of bad fiction, if indeed they should ever have

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<sup>10</sup> Jean-Bertrand Castel, quoted in Sonenscher, *Before the Deluge*, 226

<sup>11</sup> Cf. Vaughan, who claims that the idea of the state of nature was "universally accepted in those days." "Rousseau as Political Philosopher," 15.

been regarded as anything more.<sup>12</sup> Very little evidence supports the view that humans naturally tend toward individualism or peace, as Montesquieu and Rousseau seem to assert that they do.<sup>13</sup> We therefore seem to be faced with a dilemma: either Montesquieu and Rousseau were mere propagandists, begging the all-important anthropological questions in order to advance their political programs, or else they were failed anthropologists.

But perhaps their anthropological claims are more defensible than they at first appear. Perhaps, upon clarification, they will even turn out to be taken for granted by many of those who now accuse Montesquieu and Rousseau of theoretical extravagance. Perhaps the apparent doctrines of natural asociality and natural peacefulness are merely apparent. At any rate, for those who are struck by the difference between the shrewdness of the political analyses offered by Montesquieu and Rousseau, on the one hand, and the apparent naiveté of their theoretical beginning point, on the other, a reconsideration of that beginning point is surely in order.

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<sup>12</sup> For this view of Montesquieu's state of nature, see Bartlett, *The Idea of Enlightenment*, 41; Pangle, *Montesquieu's Philosophy of Liberalism*, 46; Waddicor, *Montesquieu and the Philosophy of Natural Law*, 76. See also Deneen, *Why Liberalism Failed*, 16, 188. For similar doubts about Rousseau's state of nature, see Fukuyama, *The Origins of Political Order*, 26-34; Garrard, "Rousseau, Happiness, and Human Nature," 71; Masters, "Rousseau and the Rediscovery of Human Nature," 111, 133, 135; Melzer, *The Natural Goodness of Man*, 291; Pinker, *The Better Angels of Our Nature*, 36; Strauss, "Seminar in Political Philosophy: Rousseau," 110-11.

<sup>13</sup> For sympathetic views of Montesquieu's state of nature that seem to read it as historical but that do not mention the problem of its apparent implausibility, see Carrese, *Democracy in Moderation*, 45-47; Lowenthal, "Book I of Montesquieu's *Spirit of the Laws*," 492-97; Sullivan, *Montesquieu and the Despotism of Europe*, 55-60. For a very tentative defense of the historical plausibility of Rousseau's state of nature on the basis of recent anthropology and primatology, see Lund, *Rousseau's Rejuvenation of Political Philosophy*, 9-38, 52-60.

## *A Reconsideration of the State of Nature*

### Natural Asociality?

To many commentators, it seems clear that the states of nature presented by Montesquieu and Rousseau are conditions of radical atomism or asociality.<sup>14</sup> And there are powerful reasons for this scholarly consensus. Montesquieu speaks of the state of nature as the condition of humanity prior to “the establishment of societies” (*SL* 1.2). A man in the state of nature, he says, “would at first feel only his weakness; his timidity would be extreme: and as for evidence, if it is needed on this point, savages have been found in forests; everything makes them tremble, *everything makes them flee*” (*SL* 1.2, emphasis added). For his part, Rousseau frequently seems to take it for granted that “society” is not natural (*SD* 13, 14, 19, 22, 28, 30, 34, 35, 38-39, 40, 41, 47, 48, 54, 57, 63, 67, 91). He insists that human beings are not naturally “sociable” (*SD* 24, 42, 66). He describes life in the state of nature as “isolated” (*SD* 90), “solitary” (*SD* 23, 46), and “self-sufficient” (*SD* 40).

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<sup>14</sup> For the association between Montesquieu and a doctrine of natural asociality, see Carrese, *Democracy in Moderation*, 43; Lowenthal, “Book I of Montesquieu’s *Spirit of the Laws*,” 494-95; Pangle, *Montesquieu’s Philosophy of Liberalism*, 38; Pangle, *The Theological Basis of Liberal Modernity*, 21; Sullivan, *Montesquieu and the Despotism of Europe*, 55, 58; Zuckert, “Natural Law, Natural Rights, and Classical Liberalism,” 237, 243. Cf. Berlin, “Montesquieu,” 138-39; Carrese, *Democracy in Moderation*, 45-47; Lynch, “Montesquieu and the Ecclesiastical Critics,” 497; Rahe, “Montesquieu’s Natural Rights Constitutionalism,” 57; Rasmussen, *The Pragmatic Enlightenment*, 253-56; Tuck, *The Rights of War and Peace*, 205. For the view that Rousseau’s state of nature is one of asociality, see Althusser, *Montesquieu*, 16; Bartra, *The Artificial Savage*, 227; Butterworth, “Interpretative Essay,” 177; Douglass, *Rousseau and Hobbes*, 73, 93; Garrard, *Rousseau’s Counter-Enlightenment*, 41-42; Marks, *Perfection and Disharmony*, 7, 61, 102-5; Lund, *Rousseau’s Rejuvenation of Political Philosophy*, 15n, 32, 56n, 241; Melzer, *The Natural Goodness of Man*, 42, 47, 51n, 69n, 73, 74n, 78, 82, 130, 148, 290, 291; Neuhauser, *Rousseau’s Critique of Inequality*, 52-54; O’Hagan, *Rousseau*, 37, 43-44; Pangle, *Montesquieu’s Philosophy of Liberalism*, 40; Pinker, *The Blank Slate*, 7, 285; Plattner, *Rousseau’s State of Nature*, 11, 34, 74-75; Rasmussen, *The Pragmatic Enlightenment*, 236-37, 244, 247-48, 253; Reisert, *Jean-Jacques Rousseau*, 34-35, 38; Robertson, “Rousseau, Montesquieu, and the Origins of Inequality,” 65-66; Tuck, *The Rights of War and Peace*, 199; Vaughan, “Rousseau as Political Philosopher,” 10, 14, 16, 18-19, 51-52.

Now, if Montesquieu and Rousseau do present humans in the state of nature as perfectly disconnected monads, this would be a very reasonable source of skepticism about the historicity – or about their belief in the historicity – of that state of nature. As Francis Fukuyama assures us, “[T]he idea that human beings were primordially individualistic and that they entered into society at a later stage in their development” is a fallacy: “it is in fact individualism and not sociability that developed over the course of human history.”<sup>15</sup> Nor would one need to have read Darwin in order to have doubts about natural asociality.

There are, however, a number of reasons to rethink the consensus. Certainly, Montesquieu does insist that something called “society” is not natural. But it is by no means obvious that by “society” he means “social relations” as such. For example, when he says, “As soon as men are in society, they lose their feeling of weakness” (*SL* 1.3), it is hard to see why this would be true of society in an unqualified sense. Might not secluded, self-sufficient humans feel relatively strong, other things being equal, given the total absence of competition and invidious comparisons? As Montesquieu says later, “The more men there are together, the more vain they are, and the more they feel arise within them the desire to call attention to themselves by small things.” And, he adds, “The result of all this is a general distress” (*SL* 7.2).

Moreover, in the very chapter in which Montesquieu supposedly denies natural sociality, he speaks of the strong natural motives which draw people to live among others: not only “the charm that the two sexes inspire in each other,” but also the useful or pleasant knowledge gained through social relations (*SL* 1.2). Humans in the state of nature, he says, would have a “desire to live in society” (*SL* 1.2). And he says elsewhere

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<sup>15</sup> Fukuyama, *The Origins of Political Order*, 29.

in *The Spirit of the Laws* that humans are “[m]ade for living in society,” “born to live together,” and “made to preserve, feed, and clothe themselves, and to do all the things done in society” (*SL* 1.1, 4.2, 24.11).

Montesquieu does say that fear would impel natural humans to flee strangers at first, but such beings would “soon,” perhaps almost immediately, be persuaded “to approach one another” (*SL* 1.2). Besides, one would presumably not flee one’s kin, and Montesquieu never denies the naturalness of the family. To the contrary, he says that not even the “singular institutions” of Sparta could uproot the “natural feelings” associated with familial attachments (*SL* 4.6). He speaks of “nature” giving fathers both a veto over their children’s marriages and a “desire to procure heirs for their children” (*SL* 23.7). “Nature very much inclines” to marriage, he insists, at least when there is no “difficulty of sustenance” (*SL* 23.10). “Nascent peoples” – peoples that exist before “the nation is formed” – “multiply and increase greatly. Among them it would be a great discomfort to live in celibacy; it is not a discomfort to have many children” (*SL* 23.10). The wish to provide for one’s family is among the “natural feelings” (*SL* 27). “If men did not form societies,” Usbek says in the *Persian Letters*, “if they separated and fled from each other, it would be necessary to ask why, and to seek the reason that they kept themselves apart. But they are all born linked to each other; a son is born near his father, and remains there. There is society, and the cause of society” (*PL* 94; see also *MT* 1266).<sup>16</sup> One commentator has gone so far as to say, “No point was more emphasized by Montesquieu than that man, of his nature, is a social being.”<sup>17</sup> All this leaves us with a puzzle. As

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<sup>16</sup> See Bartlett, *The Idea of Enlightenment*, 41-42; Lynch, “Montesquieu and the Ecclesiastical Critics,” 497; Vaughan, “Rousseau as Political Philosopher,” 111n; Waddicor, *Montesquieu and the Philosophy of Natural Law*, 77.

<sup>17</sup> Lynch, “Montesquieu and the Ecclesiastical Critics,” 497.



Dennis Rasmussen has put it, “Given that an asocial state of nature would necessarily be fleeting [on Montesquieu’s premises], if it were possible at all, it is not entirely clear why Montesquieu felt compelled to speculate about such a state in the first place.”<sup>18</sup>

To be a social animal, however, is not necessarily to be a political animal. According to Aristotle, political society is characterized by the existence of opinions about the just and the unjust.<sup>19</sup> Obviously if there were no thoughts about justice, there could be no opinions about it, even if there were feelings such as fear, anger, and pity. Under these conditions there would be society without political society. Nor is this a purely theoretical condition; it is, presumably, the condition of all non-human animals that live together in groups.

So the key question is this: are general ideas such as “justice” innate in the human mind? John Locke had denied the existence of innate ideas by appealing to the empirical fact of radical human diversity. But Montesquieu goes further than Locke. In arguing that man in the state of nature could not have had “complex” ideas like “empire and domination” (*SL* 1.2), he implicitly denies the existence of innate ideas, and he does so on deductive – not merely inductive – grounds. All general ideas, Montesquieu suggests, depend upon the possession of a complex language (i.e., a language that goes beyond cries and gestures). It is complex language that allows sentient beings to abstract from particular things in order to articulate ideas about class characteristics that unify those things and distinguish them from others. To take the crucial example, complex language allows us to put together the opinion that something is just or unjust. But any language

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<sup>18</sup> Rasmussen, *The Pragmatic Enlightenment*, 254n.

<sup>19</sup> Aristotle, *Politics* 1253a15-18. As Aron notes, “Aristotle’s *Politics* was *the* basic book in the classical tradition; and there is no doubt that Montesquieu wrote the first books with that volume beside him. There are allusions to or comments on the *Politics* on almost every page.” *Main Currents in Sociological Thought*, 18 (emphasis in original).

which makes possible this opinion would seem to have been developed slowly and fortuitously over historical time rather than having been implanted by God or spontaneously developed in physically mature humans. (What, on the contrary assumption, is the one complex language in which people naturally think and speak?) Montesquieu therefore faults those who fail to see that someone in the state of nature “would have the faculty of knowing rather than knowledge” (*SL* 1.2). Having no awareness of general ideas, the natural man could not be political, however social he may be. Natural man, Montesquieu says elsewhere, “would have sentiments before making reflections” (*DSL* 1131).<sup>20</sup>

Thus, the puzzle mentioned by Rasmussen can be solved. When Montesquieu speaks about human life prior to the establishment of “societies,” he almost certainly means life prior to the establishment of *civil* or *political* societies rather than prior to the establishment of social relations as such. If complex language is an accidental feature of human existence, political life must be understood as a contingent development, and not the permanent accompaniment of our sociality.<sup>21</sup>

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<sup>20</sup> “Those who are born among a barbarian people,” Montesquieu writes in the *Essay on the Causes Which Can Affect Minds and Characters*, “have only ideas connected to the preservation of their being; they live in an eternal night with respect to all the rest. There, the differences from man to man, from mind to mind, are less great: the coarseness and the scarcity of ideas equalizes them in some manner.” He continues: “A proof that they lack ideas is that the languages they use are all very sterile: not only do they have few words, because they have few things to express, but equally they have few manners of conceiving and feeling” (*ECMC* 53).

<sup>21</sup> It is not even clear that Aristotle would disagree with this, given the tentativeness of his language in the “noble” or “beautiful” account of the origin of the city: “For, *as we assert*, nature does nothing in vain; and man alone among the animals has speech” (1252a26, 1253a9-10, emphasis added). Aristotle here fails to defend the assumption that speech – the substance of speech, especially general ideas, as distinct from the physical ability to produce speech – comes directly from nature. Perhaps that assumption is part of the “beauty” of this account, an account which was to become authoritative for many later Christian thinkers. Marsilius, however, “never attributes to his master ... the claim that man is by nature a political animal.” Pangle, *Aristotle’s Teaching in the “Politics,”* 277 n. 18.

Rousseau also insists that something called “society” is not natural. But, as with Montesquieu, to assume that “society” means “social relations” for Rousseau is to make him speak nonsense. For example, when he suggests that “previously invented languages” seem to have been necessary “for the establishment of society” among humans (*SD* 33), it is impossible to see why this would be true of all social relations, since many species establish social bonds spontaneously, without the use of previously invented languages. Likewise, when Rousseau says that “the establishment of a single society made that of all the others indispensable” (*SD* 54), sparking a global revolution, he is unlikely to be referring to the establishment of society in an unqualified sense; otherwise, it would be difficult to make sense of the view he expresses shortly before, that the stage of “savage” *societies* prior to the establishment of agriculture must have been the stage of human history “least subject to revolutions” (*SD* 48). Just as clearly, when he speaks of the many writers who have mistakenly derived “all society” from “paternal authority” (*SD* 57), he surely cannot mean that writers like Robert Filmer derived all social relations from the existence of paternal authority, which would be not only untrue but absurd, given that paternal authority presupposes the existence of social relations. And when he claims that amour-propre is “artificial and born in society” (*SD* 91), how could he mean that amour-propre is born simply in a condition of social relatedness, given that “the genuine state of nature” he describes in the very next paragraph is one with humans living in a social condition – one in which humans “can do each other a great deal of mutual violence ... without ever offending one another” (*SD* 91)?

The specific kind of “society” that Rousseau has in mind is implicit in his terminology. He opposes “natural life” not to social life but to “civil” life (*SD* 34, 65), and “natural man” not to social man but to “civil man” (*SD* 19, 37, 48, 74, 82).<sup>22</sup> As with Montesquieu, then, whenever he speaks about human life prior to the establishment of “society,” he means prior to the establishment of *civil* or *political* society.

Even more clearly than Montesquieu, Rousseau emphatically denies the natural existence of the ideas on which civil society depends, faulting those philosophers who “have not hesitated” to attribute to man in the state of nature “the notion of the just and unjust, without troubling themselves to show that he had to have that notion or even that it was useful to him” (*SD* 18). Indeed, he indicates that precisely the absence of general ideas is the essential feature of the state of nature when he points out that the Book of Genesis denies such a state ever existed, since Genesis tells us that “the first man ... received enlightenment and precepts directly from God” (*SD* 19).

Like Montesquieu, Rousseau makes Locke’s anti-nativist argument more solid, or less dependent on “the uncertain testimonies of history” (*SD* 28), by thinking through the *necessary* connection between general ideas and language. As he puts it, “Purely abstract beings are ... conceived only through discourse” (*SD* 32). And speech or discourse must have been a (fairly late) historical acquisition. The importance of these points, that general ideas depend on complex language and that complex languages must have taken thousands of years to develop, is suggested by the fact that Rousseau pursues them at greater length and with more attention to technical detail than anything else in the *Second Discourse* (*SD* 28-34, 90-91). Moreover, in concluding his discussion of the slow

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<sup>22</sup> In the *Geneva Manuscript*, Rousseau does speak of the “passage from the state of nature to the social state” (*GM* 85). But in the *Social Contract* he corrects himself, referring to the “passage from the state of nature to the civil state” (*SC* 141).

development of speech and general ideas, he appeals directly to his philosophic “judges” for the only time in that work. He “beg[s]” them to “suspend their reading” in order to consider the implications of his argument (*SD* 33). It is difficult to see how the point could be undermined. In any case, archaeological evidence now suggests that anatomically modern human beings did indeed emerge about a hundred and fifty thousand years before they began to communicate using complex language.<sup>23</sup> So, assuming that language is a precondition for civil society – and on what grounds could this be denied? – the argument advanced by Montesquieu and Rousseau about the non-natural character of civil society appears eminently defensible. The full establishment of “society” – civil society – requires the establishment of “laws” (*SD* 54), a development which must have been prepared for by the establishment of speech (*SD* 46). And speech was almost certainly absent at the origin of humanity.<sup>24</sup> As Rousseau puts it elsewhere, “All our languages are works of art” (*Emile* 194; see also *Beaumont* 56; compare *MT* 158).<sup>25</sup>

Similarly, while Rousseau does insist that humans are not naturally “sociable,” this need not mean that humans are naturally asocial. After all, he never applies the word “sociable” to non-human animals, however gregarious or instinctively cooperative they may be. And when he says of the state of nature that “it is impossible to imagine why, in that primitive state, a man would sooner have need of another man than a monkey or a

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<sup>23</sup> Fukuyama, *The Origins of Political Order*, 46. The question is not whether the human mind comes equipped with an innate system of grammar which limits and structures all the complex languages we have developed (a question that modern linguists continue to debate), but whether the human mind comes equipped with any complex language and therewith some innate general ideas.

<sup>24</sup> “Almost” certainly because neither Montesquieu nor Rousseau has simply disproved the account in Genesis.

<sup>25</sup> Neither Montesquieu nor Rousseau ever denies that the physical ability to articulate speech is natural to humans, however. Cf. Plattner, *Rousseau’s State of Nature*, 34-38.

wolf of its fellow creature” (*SD* 34), he is surely not forgetting that monkeys and wolves are gregarious animals that often have need of their fellow creatures. Even the orangutans which Rousseau speculates may be humans are said to move in groups (*SD* 81).<sup>26</sup> “Learn my dictionary better, my good friend, if you want us to understand each other,” he would write to Madame d’Épinay in 1756. “Know that my terms rarely have the ordinary meaning.”<sup>27</sup>

The “sociable” person, in Rousseau’s lexicon, is someone who “knows how to live only in the opinion of others,” not merely someone who has social relations (*SD* 66).<sup>28</sup> This helps to explain why the non-natural, “sociable,” state is “the state of reasoning” (*SD* 37). Rousseau is aware that humans, like other animals, can have social relations without reasoning. But to “live only in the opinion of others” requires a level of reflectiveness – and entails a level of psychological dependence<sup>29</sup> – that exceeds the capacity of speechless animals. Nature did “little” to pave the way for “sociability,” Rousseau argues, insofar as it took “little care ... to bring men together through mutual needs *and to facilitate their use of speech*” (*SD* 33, emphasis added).

A similar response can be given to the objection that Rousseau describes life in the state of nature as “isolated,” “solitary,” and “self-sufficient.” The context suggests

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<sup>26</sup> Cf. Reisert, who suggests that “the Enlightenment idea that human beings are naturally social” assumes also “that human nature spontaneously supports the demands of reason and justice.” *Jean-Jacques Rousseau*, 6. Similarly, Lynch writes: “[Montesquieu] posited a universal law of sociability. For Montesquieu, man was not first and foremost a citizen by religious dictate, but by nature. The foundation of all law which regulated man’s conduct in society, religious or otherwise, lay in its relation to man’s nature as a social being.” “Montesquieu and the Ecclesiastical Critics,” 497.

<sup>27</sup> To Louise Florence Pétronille La Live, marquise d’Épinay, 12 March 1756.

<sup>28</sup> Cf. Neuhouser, *Rousseau’s Critique of Inequality*, 184-85.

<sup>29</sup> The shift to the “sociable” state is a shift to “universal dependence” (*SD* 35, emphasis added). In the *Letter to Beaumont*, Rousseau says that “opinion” is what makes “the whole universe necessary to each man” (*Beaumont* 29).

that none of these terms means “asocial.” In the first place, Rousseau says that the state of nature was “a state where men lived isolated *and* where a given man had no motive for living near another given man, nor perhaps to live near one another” (*SD* 90, emphasis added). To insist that “men” in the state of nature were “isolated,” then, seems to mean only that the human race as a whole must have been unconnected across the various regions of the globe, even if individual people always lived “near one another” in communities – the latter issue being one which Rousseau cannot resolve (he says “perhaps”) without more historical knowledge and which is in any case not of primary interest to him. Meanwhile, one of the conditions Rousseau describes as “solitary” is that in which “wives, fathers, and children” are “united” in a “common habitation,” and enjoy the “habit of living together” (*SD* 46). It seems that “solitary” in Rousseau’s lexicon is simply the inverse of “sociable”: to be “solitary” is to be capable of living “within” oneself, even while having social relations (*SD* 66; see also *EOL* 307). Hence Rousseau refers to Caribs, who were known to live in communities,<sup>30</sup> as the opposite of “sociable” humans (*SD* 66). He applies the word in other writings to ordinary country-dwellers (*Julie* 15; *D’Alembert* 295). Indeed, he often describes himself as a “solitary,” without forgetting that he has always lived with other people (*Confessions* 347; *Reveries* 19, 41, 48, 61, 63, 64; *Voltaire* 108), and even while stressing that he takes “pleasure in living in the midst of men” (*Reveries* 86). Likewise, the condition that Rousseau describes as “self-sufficient” in the *Second Discourse* turns out to be compatible with the existence of ongoing relationships: the “self-sufficient” natural man would “*perhaps* never” recognize anyone individually, which is also to say that perhaps he would (*SD* 40, emphasis added).

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<sup>30</sup> Carib life was “characterized by agriculture, seasonally fixed habitations, and extended kinship relations,” and “Rousseau’s sources heavily emphasized the Carib cult of war.” Boucher, *Cannibal Encounters*, 122.

In sum, while Rousseau “question[s]” whether “a kind of society” would exist among humans in the state of nature (*SD* 29), he does not settle the matter.<sup>31</sup> If anything, though, he seems to incline toward the view that social life among humans does exist by nature. The condition that he describes as “the veritable youth of the world” is the condition of people living in families (*SD* 48), which implies that in his judgment a human condition devoid of familial relations has probably never existed, even if one devoid of complex language almost certainly has. The most radically individualistic presentation of the state of nature in the *Second Discourse* is explicitly said to be a mere “supposition” (*SD* 40). In the *Essay on the Origin of Languages*, written at the same time as the *Discourse*, when Rousseau describes “the first men” as living “separated,” he nonetheless takes for granted the existence of settled families (*EOL* 306). And in the *Social Contract*, he says: “The most ancient of all societies, and the only natural one, is that of the family” (*SC* 132).<sup>32</sup>

For Rousseau, then, humans may well be naturally gregarious, though it would be a mistake to assume this without more conclusive anthropological evidence, especially when that assumption slides into claims about the naturalness of absolute monarchy on the model of the patriarchal family: “[T]he whole earth is covered by nations of which we

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<sup>31</sup> Cf. Plattner, *Rousseau’s State of Nature*, 72-73.

<sup>32</sup> In a 1962 seminar on Rousseau, Leo Strauss expressed the view that “the fundamental defect of Rousseau’s teaching” is “the denial of man’s natural sociality.... Here Rousseau does not make a deliberate mistake; he makes a mistake pure and simple.” “Seminar in Political Philosophy: Rousseau,” 110. The sentence that occasioned this remark by Strauss was the following: “Man is, of all the animals, the one who can least live in herds” (*Emile* 187). Considered in context, however, it seems that Rousseau is making a point about urban crowding rather than group life as such. Later in *Emile*, Rousseau traces “the first link in that long chain of which the social order is formed” to the natural cries of infants: “the first condition of man is want and weakness” (*Emile* 194; see also 220-21). In the same work, he attributes the coupling instinct to the “course of nature” (*Emile* 371). *Emile* himself receives “the education of nature” (*Emile* 165), though he never lives without human relations. Elsewhere, Rousseau suggests that primitive humans lived “rather peacefully in herds,” and he acknowledges that man “cannot suffice for himself” (*PF* 18, 53).



know only the names – yet we dabble in judging the human race!” (*SD* 85-86; compare *SL* 23.4). What he insists on, however, following Montesquieu, is that humans cannot be naturally *political*, given the dependence of civil society upon the development of language.

And this view is not even especially idiosyncratic. Hobbes, who also describes the natural condition of humans as “solitary,” does not assert that humans are naturally asocial. He says in *De Cive* that, in denying that man is “born fit for Society,” he denies only man’s natural directedness toward *political* society: “[I]t is true indeed, that to Man, by nature, or as Man, that is, as soone as he is born, Solitude is an enemy; for Infants have need of others to help them to live, and those of riper years to help them to live well, wherefore I deny not that men (even nature compelling) desire to come together. But civill Societies are not meer Meetings, but Bonds, to the making whereof, Faith and Compacts are necessary.”<sup>33</sup> In *Leviathan*, Hobbes’s state of nature is one in which the greatest threats are posed not by atomized individuals but by gangs (“forces united”). To live in “that brutish manner,” he says, is to live with “the government of small Families,” as can be seen “in many places of America.”<sup>34</sup>

### Natural Peacefulness?

An additional source of skepticism about the historicity of the state of nature is the widespread belief that Montesquieu and Rousseau take aggression to be a product of artificial “society.”<sup>35</sup> If Hobbes implies that man is “naturally evil” (*SD* 35), Montesquieu

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<sup>33</sup> Hobbes, *De Cive*, 110n.

<sup>34</sup> Hobbes, *Leviathan*, 87, 89. See also Pangle, *Montesquieu’s Philosophy of Liberalism*, 311 n. 16.

<sup>35</sup> See Aron, *Les grandes doctrines*, 49; Aron, *Main Currents in Sociological Thought*, 56-57; Fukuyama, *The Origins of Political Order*, 73; Garrard, *Rousseau’s Counter-Enlightenment*, 46;

and Rousseau both insist that Hobbes is mistaken. “Hobbes gives men first the desire to subjugate one another, but this is not reasonable,” Montesquieu declares (*SL* 1.2). “Above all,” says Rousseau, “let us not conclude with Hobbes that because man has no idea of goodness he is naturally evil” (*SD* 35). Indeed, Rousseau claims to have “demonstrated” that man is naturally good (*Beaumont* 35; *SD* 74).<sup>36</sup>

Far from being demonstrated, however, the idea of natural goodness at first seems far-fetched, to say the least. Montesquieu and Rousseau themselves emphasize the dearth of goodness in the people they observe. Montesquieu, for example, notes that “Because men are wicked, the law is obliged to assume them to be better than they are” (*SL* 6.17). Beasts “do not make such bad use of their passions,” he says (*SL* 1.1; see also 21.20 end; *Considerations* 107-8). According to Rousseau, likewise, “Men are wicked; sad and continual experience spares us the need for proof” (*SD* 74; see also *Dialogues* 23). A stark incongruity therefore exists between the anti-Hobbesian tone of their discussions of the state of nature and their Hobbesian descriptions of actual humans.

But if this incongruity is stark, it is also reassuring: it suggests that the chain of their thought did not begin with the “goodness” of human nature as an axiomatic principle but with the “wickedness” of people as they are.<sup>37</sup> This suggestion is backed up by what Rousseau says in recounting the history of his ideas: “As soon as I was capable

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O’Hagan, *Rousseau*, 37; Pangle, *Montesquieu’s Philosophy of Liberalism*, 38; Rahe, “Montesquieu’s Natural Rights Constitutionalism,” 56-57; Rosen, *The Elusiveness of the Ordinary*, 40, 43.

<sup>36</sup> In praising the legislators in the Indies – who “have established few penalties,” and these “not very severe or even strictly executed” – Montesquieu remarks, “It seems they have thought that each citizen should rely on the natural goodness [*le bon naturel*] of the others” (*SL* 14.15) Later he speaks of people who are able to “overcome avarice and voluptuousness” because they are “naturally good [*d’un bon naturel*]” (*SL* 27).

<sup>37</sup> Cf. Kant: “*Rousseau*. Proceeds synthetically and starts from the natural human being, I proceed analytically and start from the civilized one.” “Remarks in the *Observations*,” 20:14.

of observing men, I watched them act and listened to them speak. Then, seeing that their actions bore little resemblance to their speeches, I sought the reason for this dissimilarity, and found that since being and appearing were two things as different for them as acting and speaking, this second difference was the cause of the first, and itself had a cause that remained for me to seek” (*Beaumont* 52). Rousseau claims that he found the cause of the discrepancy between our words and our deeds in “our social order,” which “tyrannizes over nature” and which can explain “all the vices of men and all the ills of society” (*Beaumont* 52). A similar line of thought is evident in *The Spirit of the Laws*, where Montesquieu traces the “the state of war” to the sentiments that people develop “in society” (*SL* 1.3) and observes that the introduction of money establishes all “the injustices that come from trickery” (*SL* 18.16). As a result of his reflection on civil society, which was aided by his reading of *The Spirit of the Laws*, Rousseau says that he realized “it was not necessary to assume that man is wicked by his nature” in order to explain his actual “wickedness” (*Beaumont* 52).

To say that a particular cause is “not necessary to assume,” however, is not to say that it has been ruled out entirely. Even if civil society stimulates “wickedness,” we may be naturally driven to civil society and therefore we may be naturally “wicked.” If this had been the end of Rousseau’s inquiry, he could claim at the most to have provided one possible explanation for the phenomenon of “wickedness.” But his inquiry did not stop there.<sup>38</sup> He was led, he explains, to “new research about the human mind considered in the civil state,” and he “found then that the development of enlightenment and of vices always occurred in the same ratio, not in individuals but in peoples” (*Beaumont* 52). In this, he again followed Montesquieu’s lead. Among peoples with “many arts and much

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<sup>38</sup> Cf. Melzer, *The Natural Goodness of Man*, 54.

knowledge” (*SL* 18.15), Montesquieu observes in *The Spirit of the Laws*, “various ways of being wicked” are discovered and refined (*SL* 18.16). For this reason, it seems, “a people attached to commerce and the sea” requires “a more extensive code of laws” than either a pastoral or a foraging people (*SL* 18.8; see also 20.1-2).

At the heart of the anthropological inquiries conducted by both Rousseau and Montesquieu, then, is a link between knowledge and “wickedness.” In order to explain this paradoxical and apparently unverifiable link, it must be understood that both Montesquieu and Rousseau take it for granted that to harm others under the press of natural necessity is not to commit a wicked act. We cannot reasonably be considered culpable for acts which we are compelled to carry out. Thus, to say that humans are naturally “good” rather than “wicked” creatures is not to say that they are harmless, or even that they are less prone to harming others than are tigers or crocodiles. A being is “wicked” only to the extent that it is inclined to harm others gratuitously, for the sake of *superfluous* or *imaginary* goods. In other words, people can be “wicked” only if they commit harms in pursuing *whims* rather than in trying to satisfy genuine *needs*.<sup>39</sup>

Now, either custom or knowledge is necessary in order to develop whims. Customs are by definition not naturally given; nor, according to the argument about

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<sup>39</sup> Whether a “wicked” person can reasonably be considered culpable for his “wickedness” is another question, hinging on whether he is responsible for his habits and opinions and therefore on whether he does evil voluntarily. It would certainly be possible to bemoan the “wickedness” of a person – his tendency to inflict needless harm on others – without holding him ultimately responsible for his character. And the fundamental moral question is not resolved merely by saying that humans have a capacity to “choose,” in the sense of accepting or resisting their instinctive responses, since all choices (as distinct from mere acts of caprice) have to be made on the basis of some already-established knowledge or opinion. Cf. Williams, *Rousseau’s Platonic Enlightenment*, 99-100. In the *Persian Letters*, Usbek says: “No one is gratuitously wicked; there must be a determining reason, and this reason is always a reason of self-interest” (*PL* 83). In the *Social Contract*, Rousseau writes: “One always wants what is good for oneself, but one does not always see it” (*SC* 147; see also *Emile* 387, 399; *Narcissus* 194n).

language sketched earlier, is knowledge. All wickedness therefore depends upon ingrained habits or on education rather than on human nature; which means that the first generations must have been free of wickedness, however aggressive they may have been. Indeed, the first generations must have been scarcely distinguishable from non-human primates.

For this reason, Montesquieu says that nature “has given us very limited means to excite our passions and to corrupt one another” (*SL* 4.6). And he points out that among pre-agricultural peoples, to say nothing of peoples with only simple signs, “each man has few needs and satisfies them easily and equally” (*SL* 18.17; see also *ECMC* 53-54). In the same vein, Rousseau stresses the fact that there must be very few strictly natural human desires: “For one can desire or fear things only through the ideas one can have of them or by the simple impulsion of nature; and savage man, deprived of every kind of enlightenment, feels only the passions of this last kind. His desires do not exceed his physical needs” (*SD* 27; see also 34).<sup>40</sup> In short, the anti-Hobbesian doctrines of Montesquieu and Rousseau are the results of their uncompromising attempts to identify the natural with the physical, following through on the Hobbesian insight that speech must have been a historical invention.<sup>41</sup>

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<sup>40</sup> Compare Aquinas: “[S]ome persons are wicked and prone to vices, and cannot be easily persuaded by words. Therefore, force and fear were necessary to restrain them from evil.... And so it was necessary to establish laws in order that human beings live in peace and have virtue. For, as the Philosopher says in the *Politics*: ‘As human beings, if perfect in virtue, are the best of animals, so are they, if cut off from law and justice, the worst of all animals.’ This is because human beings, unlike other animals, have the tools of reason to satisfy their disordered desires and bestial rages.” *Treatise on Law* (Q. 95, Art. 1, co.), 45.

<sup>41</sup> See Hobbes, *Leviathan*, 24. Pettit maintains that the argument about the dependence of abstract thought on complex language was first made by Hobbes and that what Hobbes calls the “state of nature” can be better understood as the “state of second nature,” following the “state of first nature, before human beings learn language and develop the capacity to think.” *Made with Words*, 98, 158. See also Moloney on Hobbes’s reinterpretation of the curse of Babel: “For Augustine and his medieval successors, God’s sentence was that suddenly each person began to speak in a

Still, it might seem Montesquieu and Rousseau assume that human nature is basically free from aggression, regardless of whether this aggression is “wicked.” After all, Montesquieu suggests that the desire for peace is more deeply rooted in human nature than any other passion, and he claims that “only after the establishment of societies” did people “find motives for attacking others and for defending themselves” (*SL* 1.2).<sup>42</sup> And while Rousseau criticizes Montesquieu for overstating the fearfulness of man in the state of nature and thereby exaggerating the comparative happiness of civilized man,<sup>43</sup> he agrees with Montesquieu that man is naturally timid rather than bellicose in the face of the unfamiliar (*SD* 21-22), and he claims that the state of nature was the condition “best suited to peace” (*SD* 35). Furthermore, Rousseau’s arguments concerning the artificiality of amour-propre and the naturalness of compassion might be taken to imply that humans are something like natural pacifists.<sup>44</sup> But much biological and anthropological evidence

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new tongue; for Hobbes, the curse was that of universal *speechlessness*. The present diversity of tongues had its origin, not in a divinely sent polyglottic plague, but in the gradual reinvention of terms, as necessity demanded, by dispersed social groups, incident upon God’s curse of forgetfulness.” As Moloney observes, this interpretation “radically severed humankind from any Adamic inheritance. Without a tradition that handed down divine prescriptions for human conduct, the race was indeed in the predicament sketched in his state of nature.” “Leaving the Garden of Eden,” 256 (emphasis in original).

<sup>42</sup> See Sullivan, *Montesquieu and the Despotism of Europe*, 56, 75; Rasmussen, *The Pragmatic Enlightenment*, 253; Waddicor, *Montesquieu and the Philosophy of Natural Law*, 65, 73-74.

<sup>43</sup> That Montesquieu was open to this line of thought can be gleaned from the following passage in his *Essay on Taste*: “We owe to the rural life which man led in the first times that cheerful air diffused throughout each Fable.... If the first men had lived like us in towns, the poets would have been able to describe only what we see every day with anxiety or what we feel with disgust; all would breathe avarice, ambition, and the tormenting passions” (*ET* 1252-53; see also *PL* 105).

<sup>44</sup> See Douglass, *Rousseau and Hobbes*, 75; Lund, *Rousseau’s Rejuvenation of Political Philosophy*, 59; Melzer, *The Natural Goodness of Man*, 51n; Reiser, *Jean-Jacques Rousseau*, 35-36.

suggests that it would be a gross mistake to identify human nature with concord.

Fukuyama notes that “violence was endemic” in the genuine state of nature.<sup>45</sup>

Once again, however, Montesquieu and Rousseau are more sober than they might appear. Montesquieu certainly insists that fear is a fundamental attribute of human nature and therefore that humans naturally desire peace. But, as Hobbes himself observes, this hardly guarantees that peace reigned in the state of nature.<sup>46</sup> Additionally, Montesquieu tends to depict primitive peoples in unsentimental terms. In the *Persian Letters*, one character ridicules another for romanticizing the existence of pre-scientific societies, claiming: “There are still some peoples on earth among whom a tolerably trained monkey could live with honor; it would find itself there approximately at the capacity of the other inhabitants ... and would even be distinguished by its kindness” (PL 106). And the *Persian Letters* is a mere preview of the harsh view of savage life that Montesquieu propounds in his maturity. In the early pages of *The Spirit of the Laws* he cites “the Iroquois, who eat their prisoners,” as a limit case for the existence of a right of nations (SL 1.3). According to him, “There is equal cruelty among savage peoples, who lead a hard life, and among the peoples of despotic governments where fortune favors only one man exorbitantly and abuses all the rest” (SL 6.9). Of the Germanic barbarians, who were admittedly not in the first stage of the state of nature but who were much closer to it than

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<sup>45</sup> Fukuyama, *The Origins of Political Order*, 30. See also Pinker, *The Better Angels of Our Nature*, 36; *The Blank Slate*, 56.

<sup>46</sup> Hobbes, *Leviathan*, 87-88: “And from this diffidence of one another, there is no way for any man to secure himself, so reasonable, as Anticipation; that is, by force, or wiles, to master the persons of all men he can.” Cf. Pangle, *Montesquieu’s Philosophy of Liberalism*, 38-39; Sullivan, *Montesquieu and the Despotism of Europe*, 55.

we are, he reports: “Families waged war on one another over murders, robberies, and insults” (*SL* 28.17).<sup>47</sup>

It seems that when Montesquieu declares that humans would not “find motives for attacking others and for defending themselves” before “the establishment of societies” (*SL* 1.2), he is speaking quite precisely. It is not that people in the state of nature refrained from attacking others but only that, in the absence of general ideas, they did not “find motives [*trouver des motifs*]” for doing so. They may have frequently attacked reflexively, out of blind instinct, but before the establishment of complex language they could not have sought out (let alone multiplied) reasons for this behavior. They could not have devised justifications for enmity. As Montesquieu points out, people who have entered the state of reasoning (political society) are peculiarly liable to delusions about their strength, delusions that drive away their natural, well-founded “feeling of weakness” and propel them into a permanent state of conflict with other over-confident people (*SL* 1.3).

By nature humans are perfectly willing to inflict harm on others, Montesquieu suggests, but only in cases of self-defense. He explains in the first book of *The Spirit of the Laws*: “The right of nations is by nature founded on the principle that the various nations should do to one another in times of peace the most good possible, and in times of war the least ill possible, *without harming their true interests*” (*SL* 1.3, emphasis added). Where the true interests of a nation seem to require inflicting extreme ills on another nation, therefore, it will unhesitatingly inflict those ills. This is apparently a principle of

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<sup>47</sup> When Montesquieu discusses the behavior of the Germans in the “state of nature” understood merely as a condition devoid of recognized governmental authority (not as the original human condition), he adds a qualifier: “the state of nature, so to speak,” the state of nature “with respect to others,” “that [*cet*] state of nature” (*SL* 30.19).



behavior which operates spontaneously in the ordinary course of things, even if it can be corrupted (*SL* 10.2 end, 29.14) or improved upon (*SL* 10.3, 29.5) in particular cases. And we are encouraged to draw an analogy between the behavior of nations and the behavior of humans: “The life of states is like that of men. Men have the right to kill [only] in the case of natural defense; states have the right to wage war [only] for their own preservation” (*SL* 10.2). The natural (and therefore blameless) tendency is to fight only when necessary for self-preservation, and not for ends like “glory,” “propriety,” or even “utility” (*SL* 10.2), let alone for the sake of doing harm as an end in itself. Humans, or at least most of them, have a “hatred of violence” (*SL* 5.14).<sup>48</sup>

And while Montesquieu insists that this sentiment moderates the violence that humans are naturally inclined to commit against one another, he does not come anywhere close to saying that humans are naturally in a situation of perfect harmony. Self-preservation would surely require extreme violence under conditions of extreme scarcity; hence the pervasive “cruelty” among “savage peoples” (*SL* 6.9). Only through “their care and their good laws” – as distinct from a natural peace and plenty – have people “made the earth more fit to be their home” (*SL* 18.7; see also *Considerations* 211 n. 3).

Likewise, Rousseau concedes that all animals experience a self-love which can be transformed into a sort of instinctive anger when their desires are thwarted or when they are threatened (*SD* 38; see also *Emile* 195; *EOL* 294).<sup>49</sup> What he denies is that animals

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<sup>48</sup> It may be this natural aversion to violence that Montesquieu has in mind when, in the *Persian Letters*, Usbek speaks of “an interior principle” that generally acts to restrain strong people from harming weaker ones (*PL* 83). Cf. Berlin, “Montesquieu,” 152-53; Hont, “The Early Enlightenment Debate on Commerce and Luxury,” 405.

<sup>49</sup> When Rousseau says that man “perhaps” has no instinct “that belongs to him” (*SD* 21), he must mean that man perhaps has no *unique* instincts that set him apart from every other kind of animal, because he goes on to insist that man “had, in instinct alone, everything necessary for him to live in the state of nature” (*SD* 34; see also 43). Cf. Strong, *Jean-Jacques Rousseau*, 44, 140, 158.

without complex language are subject to the specific kind of anger (moral indignation) that comes from amour-propre. This is because amour-propre depends on general ideas, especially ideas connected with what *ought* to be the case but is not necessarily (ideas of moral desert). Amour-propre inclines “each individual to have a greater esteem for himself than for anyone else,” and therefore inclines each to think that he deserves more than his competitors, for example (*SD* 91). Prior to the perfecting of speech and reason, humans could not have had very strong or distinct ideas about their comparative desert, however frequently they may have been driven to commit furious reprisals against attackers. “Reason engenders amour-propre and reflection fortifies it” (*SD* 37; see also *Dialogues* 9; *Emile* 389). The keenest and most relentless anger requires beliefs which crystallize only in the “state of reasoning.” It is in this sense that the “passage from the state of nature to the civil state” – which, to repeat, *is* the state of reasoning – “produces a remarkable change in man, by substituting justice for instinct in his behavior and giving his actions the morality they previously lacked” (*SC* 141). (It may be precisely moral ideas and their attendant hopes that Montesquieu has in mind when he suggests that the transition to civil society goes together with the dimming of our natural feelings of weakness.)

Nor should Rousseau’s argument concerning the naturalness of “compassion” be mistaken for an argument that the state of nature is simply harmonious. The natural existence of compassion does not mean that humans are naturally gentle; it means only that they are gentle to the extent they are able to satisfy their genuine needs without harming others. By nature they are precisely as violent as they have to be, and therefore they are extremely violent in situations of extreme scarcity. The natural man “will never

harm another man or even another sensitive being, *except in the legitimate case where, his preservation being concerned, he is obliged to give himself preference*” (SD 15, emphasis added). Compassion “will deter every robust savage from robbing a weak child or an infirm old man of his hard-won subsistence,” but only “if he himself hopes to be able to find his own elsewhere” (SD 37). To say that the state of nature would have been the one “best suited to peace” is therefore not to say that early human populations would have been peaceful (SD 35). The prevalence of violence among primitive humans would have depended largely on accidental circumstances affecting the scarcity of food, territory, and sexual partners. Rousseau does raise doubts about the assumption that scarcity would have been a major source of bloodshed (*LeRoy* 133-34; SD 38-40, 70-71), but he insists only that this remains an open question, and he admits that “perhaps many quarrels and fights already arose” in the time of the original fixed dwellings (SD 45-46).<sup>50</sup>

Nature, Rousseau suggests, would have been quite harsh to people in their original condition.<sup>51</sup> It must have been “good” enough not to exterminate the human species, as with all other species that subsist, but even bare survival would have required considerable “industry” (SD 21). Far from favoring the survival of children, “Nature treats them precisely as the law of Sparta treated the children of citizens: it renders strong and robust those who are well constituted and makes all the others perish” (SD 21).

People in the state of nature would have been exposed “from infancy to inclemencies of the weather and the rigor of the seasons, trained in fatigue, and forced, naked and without

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<sup>50</sup> In the *Letter to Beaumont*, Rousseau claims that, before the development of the understanding, man “does not see his well-being as opposed to ... that of anyone” (*Beaumont* 28, emphasis added). This is different from claiming that before the development of the understanding no individual’s well-being is *in fact* opposed to that of any other’s.

<sup>51</sup> See Warner, *Rousseau and the Problem of Human Relations*, 66-68. Cf. Neuhouser, *Rousseau’s Critique of Inequality*, 59.

weapons, to defend their lives and their prey against other wild beasts, or to escape by outrunning them” (*SD* 21). Natural humans would not have lived in constant anxiety, Rousseau suggests, but only because they would have soon become familiar with the “other wild beasts” which they had to fight or flee and because their minds would have been too limited to foresee the other dangers to which they were in fact exposed (*SD* 21, 22; see also *EOL* 313, 315).

### *Natural Law and the State of Nature*

We have seen that the core fact of the state of nature is neither the absence of social relations nor the absence of aggression but the absence of general ideas. But this might seem to be a merely academic point. Its significance becomes clear only when we recall that Montesquieu’s discussion of the state of nature is intended above all to clarify “the laws of nature” (*SL* 1.2). According to Montesquieu, as we have seen, man in the state of nature “would have the faculty of knowing rather than knowledge” (*SL* 1.2). But this means that the only possible natural “laws” would have been pre-rational compulsions. Although Montesquieu mentions as a natural law one which “impresses on us the idea of a creator and thereby leads us toward him,” he immediately adds that someone in the state of nature would have had no such ideas (*SL* 1.2). In what sense is it natural, then?<sup>52</sup>

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<sup>52</sup> Compare Aquinas: “[H]uman beings have inclinations for good by their rational nature, which is proper to them. For example, human beings by nature have inclinations to know truths about God and to live in society with other human beings. And so things that relate to such inclinations belong to the natural law (e.g., that human beings shun ignorance, that they not offend those with whom they ought to live sociably, and other such things regarding those inclinations).” *Treatise on Law* (Q. 94, Art. 2, co.), 36. Spector points out that the denial of natural knowledge of God clashes directly with Pufendorf’s state-of-nature doctrine. *Montesquieu: Liberté, droit, et histoire*, 53. See also Bartlett, *The Idea of Enlightenment*, 37. But Waddicor argues that Montesquieu’s position was “not so unorthodox” as one of his Jansenist critics, the abbé de la Roche, had suggested. *Montesquieu and the Philosophy of Natural Law*, 85. And Carrese takes the remark as

The natural “laws” that Montesquieu affirms people in the state of nature *would* have had are clearly not duties or obligations. They are, as Montesquieu lists them, spontaneous desires for safety, nourishment, sex, and company. This list is presumably meant to be representative rather than exhaustive (what about the desire for rest, for example?). But the fact that Montesquieu is willing to treat morally neutral, sub-rational drives as “natural laws” is clear from the very first chapter of *The Spirit of the Laws*, in which he declares that beasts “have natural laws” (*SL* 1.1).<sup>53</sup>

Thus, insisting upon the absence of knowledge in the state of nature, Montesquieu rules out the existence of natural law in the sense of an eternally binding code of right and wrong,<sup>54</sup> leaving only “natural laws” or “laws of nature” in the sense of blind drives the pursuit of which is morally innocent, above all the drive for self-preservation, which he calls the right of natural defense: “Who can fail to see that natural defense is of a higher order than all precepts?” (*SL* 26.7). Hence he faults a law of Moses for failing to provide adequately for the safety of slaves and thereby ceasing to “cling to natural law” (*SL* 15.17; see also 10.2, 26.3). And he explains that sovereigns – “who do not live under civil laws among themselves” – “are governed” not by moral laws but “by force.” Whereas “we, who live under civil laws,” can seek shelter from violence in *man-made* laws, “a prince, who is always in the state of forcing or being forced, cannot complain of a treaty that violence has had him make. It is as if he complained of his natural state; it is

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evidence that “human nature and natural law ascend higher than earlier moderns had thought.” *Democracy in Moderation*, 125.

<sup>53</sup> Compare Aquinas: “The natural law is promulgated by God when he implants it in the minds of human beings so that they know it by nature.” *Treatise on Law* (Q. 90, Art. 4, ad. 1), 6. “[T]he natural reason of each person at once judges that some things as such are to be done or not to be done (e.g., ‘Honor thy father and thy mother,’ ‘Thou shalt not kill,’ ‘Thou shalt not steal’). And such precepts belong to the natural law absolutely.” *Treatise on Law* (Q. 100, Art. 1, co.), 71.

<sup>54</sup> See Althusser, *Montesquieu*, 20-21; but see Althusser, 31-35. Cf. Waddicor, *Montesquieu and the Philosophy of Natural Law*, 74-75.

as if he wanted ... to run counter to the nature of things” (*SL* 26.20). The natural law which governs in the absence of man-made laws is at bottom the play of desires and fears which emanate from the primary drive for safety (consider also *SL* 24.18).<sup>55</sup>

There are several reasonable objections one could make to this interpretation of Montesquieu’s understanding of natural law. First, he does speak of universally valid “relations of fairness” that exist prior to positive law, and he even lists four of them: the justice of obeying local law, of gratitude to benefactors, of the continued relationship of dependency between an intelligent created being and his creator, and of retributive punishment for harm done by one intelligent being to another (*SL* 1.1; compare *PL* 46). This seems to mark Montesquieu as a believer in natural moral laws.<sup>56</sup> But all of these supposedly fundamental laws are subject to problems which he fails even to take up, let alone to resolve. For example, how can the justice of obedience to local laws be established prior to the existence of those laws? Is it really unjust to disobey foolish laws, such as the many that Montesquieu goes on to criticize and mock?<sup>57</sup> How can a spontaneous feeling such as gratitude be an obligation? If reciprocal acts of gratitude for “kind” deeds are known by everyone to be expected, then in what sense is a benefactor truly deserving of them? What exactly does it mean for a created being to “remain in its

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<sup>55</sup> “When religion justifies an accidental thing,” says Montesquieu, “it uselessly loses the greatest spring there is among men” (*SL* 24.14). The context suggests that “the greatest spring” is the fear of death: Montesquieu goes on to say that because Indians believe that “the waters of the Ganges have a sanctifying virtue,” many of them live immorally, safe in the knowledge that they will have their ashes thrown into the Ganges and thereby go to “a region of delights.” In presenting an “accidental thing” (contact with water) as a path to heaven, the religion uselessly weakens the fear of death. Cf. Carrese, who thinks that Montesquieu is referring to religious faith as “the greatest spring.” *Democracy in Moderation*, 130, 131.

<sup>56</sup> See Aron, *Main Currents in Sociological Thought*, 53-55; Carrese, *Democracy in Moderation*, 120; Douglass, *Rousseau and Hobbes*, 50; Lynch, “Montesquieu and the Ecclesiastical Critics,” 497. More ambiguously, see Althusser, *Montesquieu*, 31-35; Callanan “Liberal Constitutionalism and Political Particularism,” 597.

<sup>57</sup> One of Montesquieu’s friends suggested that *The Spirit of the Laws* (*L’Esprit des lois*) was above all wit about the laws (“l’esprit sur les lois”). Volpillac-Augier, *Montesquieu*, 254.

original dependency”? Are humans products of conscious “creation,” either by God or by their parents? Is it always correct or even possible for one harm to be punished by the infliction of the same harm? Should unintentional harms not be treated differently?<sup>58</sup> A lack of earnestness in this discussion – which, to repeat, concerns nothing less than the enumeration of the fundamental moral laws! – is suggested by the fact that Montesquieu is content to let his enumeration drop with a perfunctory “and so forth.”<sup>59</sup> And when he goes on to speak of “the laws of nature” which derive “uniquely from the constitution of our being,” he says that they exist “[p]rior to all these laws,” meaning “the laws of religion,” “the laws of morality,” and “political and civil laws” which had all been mentioned at the end of the previous chapter (*SL* 1.2, 1.1). Now, if the natural laws are prior to the laws of morality, then the laws of morality are neither natural nor fundamental. But what were the supposedly eternal “relations of fairness” if not “laws of morality”?<sup>60</sup>

Second, throughout *The Spirit of the Laws* Montesquieu makes arguments which appear to take for granted the existence of natural moral laws, specifically arguments concerning suicide, sexual modesty, marriage, and parental and filial duties (see, e.g., *SL* 14.12 n. 23, 15.12, 16.12, 23.2, 23.7, 26.3-6).<sup>61</sup> But he also points out that “laws of nature

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<sup>58</sup> Consider also Bartlett, *The Idea of Enlightenment*, 33-36; Warner, “Montesquieu’s Prelude,” 184.

<sup>59</sup> As Aron observes, “This enumeration of the relations of equity anterior to positive law is not presented in a systematic character.” Aron raises the possibility that the enumeration could be explained by Montesquieu’s “prudence” alone, that is, by his willingness to mask the implications of his radical scientific determinism. He dismisses this possibility, given Montesquieu’s detailed moral criticisms of slavery, despotism, and certain forms of war, criticisms which are hard to square with a value-free sociology. *Les grandes doctrines*, 46-47, 50, 53-54.

<sup>60</sup> In his *Defense of The Spirit of the Laws*, Montesquieu claims to have “demonstrated against Hobbes and Spinoza, ‘that relations of justice and equity are anterior to all positive laws’” (*DSL* 1122).

<sup>61</sup> Montesquieu was forced to add the “clarification” that “[t]he act of those who kill themselves is contrary to natural law and to revealed religion” (*SL* 14.12 n. 23) by the faculty of the Sorbonne,

cannot be local laws” (*SL* 26.14), and he goes out of his way to show the ways in which laws concerning suicide, sexuality, marriage, and parent-child relations *must* differ under different local conditions (see, e.g., *SL* 14.12, 16.4, 16.8, 16.10 end, 19.5-8, 23.2, 23.4, 26.14).<sup>62</sup> Assuming that he is not guilty of a schoolboy’s error, then, we should probably understand his “natural law” arguments in light of his statement that the “law of nature makes everything tend toward the preservation of the species” (*SL* 10.3). With this definition in mind, it seems, he is willing to treat certain artificial obligations and restraints as extensions of the “laws of nature” or the “natural laws,” insofar as their observation in particular circumstances helps to preserve the species. Strictly speaking, however, they are no more natural than floodgates.<sup>63</sup> For example, when he refers to the “natural obligation of the father to nourish his children,” he immediately undercuts the strict naturalness of the obligation by pointing out that among “well-ordered peoples” the father “is the one whom the laws in the ceremony of marriage declare to be such” (*SL* 23.2).

Third, he says that “nature ... has given men shame for their scourge” (*SL* 6.12), and this implies a natural awareness of some moral law and a natural penalty for transgressing it. But even setting aside the fact that Montesquieu fails to mention shame in his chapter on the state of nature, it seems unlikely that he takes it to be natural in the strict sense, given the context of the aforementioned remark: before he calls shame a

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which had objected to his non-moralistic treatment of suicide in the original version of *The Spirit of the Laws* (*Réponses* 1179).

<sup>62</sup> See Pangle, *Montesquieu’s Philosophy of Liberalism*, 31. Cf. Althusser, *Montesquieu*, 34; Carrese, *Democracy in Moderation*, 47; Lynch, “Montesquieu and the Ecclesiastical Critics,” 498.

<sup>63</sup> As Hobbes too suggests at the conclusion of his own treatment of “natural laws” (*Leviathan*, 111). See Moloney, “Leaving the Garden of Eden,” 254. After all, to deny the naturalness of something is not to assert its arbitrariness or badness; hence to deny the existence of natural moral laws is neither to claim that all moral conventions are arbitrary nor to claim that following moral conventions is bad for us.



natural scourge, he refers to French soldiers as being “accustomed” to fear shame, and on this basis he refers to the penalty of disfigurement as preferable to capital punishment in cases of desertion, though he notes that neither penalty succeeds in making inroads against the problem of “very frequent” desertions (*SL* 6.12). Thus, the example of “natural” shame he gives is highly equivocal: it is at least in part a product of custom (the particular pride of French soldiers); it could have arisen only in a context where a man-made law existed (the law of desertion); and, in order to be a deterrent, to the limited extent that it was, it required a conventional penalty (disfigurement). In treating shame as natural, then, Montesquieu seems to be taking “nature” in an extended sense: wherever there are effective positive laws, people tend to feel shame at violating them, and therefore legislators need not rely so much on capital punishment. This loose usage of “nature” on Montesquieu’s part is by no means unique. In the very next chapter, for instance, when he claims that the Japanese “naturally despise death” (*SL* 6.13), he does not mean that Japanese people are born in that condition or that they attain it over time as a result of their physical constitutions. His suggestion is that a certain indifference toward death, developed through the decidedly non-natural experience of political servitude, is so common among them as to be called natural. Elsewhere in *The Spirit of the Laws*, he speaks of the “natural foolishness” of despots and the “natural pride” of princes, and he refers to the duties given to enslaved women “by nature” (*SL* 5.14, 26.21, 16.10). In the *Persian Letters*, he has a character say that unlike French troops, who are accustomed to relative freedom, Persian troops are “cowardly by nature” (*PL* 89).<sup>64</sup>

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<sup>64</sup> Callanan notes that, for Montesquieu, “A government that is according to nature must somehow strive to reflect moral facts rooted in our common human nature. But crucially, it must also reflect what is distinctively ‘natural’ to each nation in the sense of second nature or

Fourth, Montesquieu eventually refers to “the law of natural enlightenment” which “wants us to do to others what we would want to have done to us” (*SL* 10.3).<sup>65</sup> But in the same chapter he distinguishes this principle from “the law of nature,” and he suggests that “natural enlightenment” is dependent not upon “nature” simply but also upon “contemporary reasoning,” “the religion of the present day,” “our philosophy,” and “our mores” (*SL* 10.3). In fact, “natural enlightenment” appears to be a contradiction in terms for Montesquieu: we have learned in the chapter “On the laws of nature” that “nature” is what exists through “the [physical] constitution of our being” alone, whereas “knowledge” is a product of general ideas which are not implanted in our constitution (*SL* 1.2).<sup>66</sup>

As with Montesquieu’s chapter on the state of nature in *The Spirit of the Laws*, Rousseau’s *Second Discourse* is meant to clarify the character of natural law. The question posed by the Academy of Dijon in 1754 had been this: “What is the source of inequality among men, and is it authorized by natural law?” Rousseau replies that “so long as we do not know natural man, we would try in vain to determine the law he has received or that which best suits his constitution” (*SD* 14).

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disposition – what Jean Bodin, before Montesquieu, had called ‘the nature of each nation.’” “Liberal Constitutionalism and Political Particularism,” 591.

<sup>65</sup> Compare Aquinas: “[T]he [Old] Law and the Gospel completely transmit to us the things that belong to the natural law. And so Gratian, after saying that ‘the natural law is contained in the Law and the Gospel,’ immediately adds by way of example: ‘And everyone is thereby commanded to do unto others what one wishes to be done to oneself.’” *Treatise on Law* (Q. 94, Art. 4, ad. 1), 40.

<sup>66</sup> In addition to describing many laws as despotic, tyrannical, harsh, and irrational, Montesquieu calls certain laws “unjust” (*SL* 13.7, 13.18, 28.17). But in these cases – laws that threaten to leave innocent subjects destitute and laws that use one’s ability to withstand physical pain as a means of establishing innocence – he gives no indication that he is judging according to a standard of natural law. He appears to have in mind only the implicit conditions of governmental authority. Cf. Sullivan, *Montesquieu and the Despotic Ideas of Europe*, 51: “[Montesquieu] does not denounce any law, among any people, as ‘unjust’ in the entirety of the work.”

Now, according to Rousseau, “All that we can see very clearly concerning this law is that, for it to be law, not only must the will of him who is bound by it be able to submit to it with knowledge; but also, for it to be natural, it must speak directly by nature’s voice” (*SD* 14).<sup>67</sup> But according to Rousseau’s understanding of the link between knowledge and complex language, natural man has no knowledge at all: “nature’s voice” cries out with feelings rather than rational commands. This helps to explain why Rousseau’s core argument about the non-naturalness of general ideas arises directly out of a disagreement with “the moralists” (*SD* 27). According to his analysis, nature was “subjected to law” at a certain moment in “the progress of things” – specifically, at the advent of sufficient complexity of mind to establish “the first duties of civility” (*SD* 48). But nature in itself operates through “violence,” not “right” (*SD* 18).<sup>68</sup> Indeed, in the Preface to the *Second Discourse* Rousseau explicitly spells out the radical implication of the deprivation of “every kind of enlightenment” (*SD* 27) for the possibility of natural law, albeit with respect to non-human animals: “By this means one also ends the ancient disputes about the participation of animals in natural law; for it is clear that, being devoid of enlightenment and freedom, they cannot recognize this law” (*SD* 15). He concludes later that “love of well-being” is the “sole” natural motive in humans (*SD* 45). By nature, then, there is no “morality” in “human actions” (*SD* 48; see also *Emile* 196; *EOL* 306).<sup>69</sup>

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<sup>67</sup> See Grace, “Built on Sand,” 180.

<sup>68</sup> See Grace, 184-89; Melzer, *The Natural Goodness of Man*, 129-32; Plattner, *Rousseau’s State of Nature*, 106. Cf. Garrard, *Rousseau’s Counter-Enlightenment*, 44-45; O’Hagan, *Rousseau*, 37, 45. Vaughan points out that Rousseau rejects the concept of natural law in his unpublished chapter on the general society of the human race (*GM* 76-82), but he also insists that Rousseau merely leaves aside the concept in the *Second Discourse*. Vaughan, “Rousseau as Political Philosopher,” 16-18.

<sup>69</sup> In his letter to the Archbishop of Paris protesting against his conviction of impiety, Rousseau makes an effort to present the meaning of natural goodness as if it entailed a natural love of justice: “The fundamental principle of all morality about which I have reasoned in all my writings

To be sure, Rousseau does sometimes speak of “the laws of nature” and “natural laws.” But, as in *The Spirit of the Laws*, this language turns out to be somewhat misleading. The natural “laws” as Rousseau describes them are not duties or obligations; they are brute impulses. For example, when Rousseau says in the *Geneva Manuscript* that “according to the natural law” a father “should [*doit*] give every preference to his own” children (*GM* 89; see also *PE* 142), this “should” refers to an ordinary tendency rather than a moral obligation. Fathers hardly need to be taught to care more for their own children than for those of other men. Likewise, while Rousseau denies that “the law of the stronger” would lead to the enslavement of the weak by the strong in the state of nature, he does not deny that such a law of nature exists (*SD* 42; see also 55, 59; *LWFM* 301-2; *Poland* 217). Indeed, the law of the stronger seems to be what he has in mind when, in the sole reference to “natural law” in the body of the *Second Discourse*, he says that the right of property is “different from the one which results from natural law” (*SD* 51).<sup>70</sup> Under despotism, he says, “everything is brought *back* to the sole law of the

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... is that man is a naturally good being, loving justice and order.” In the very next paragraph, however, he writes that naturally man “neither hates nor loves anything” (*Beaumont* 28). And in the paragraph after that, he points out that notions of justice are adopted only after a certain “development whose progress I have shown” (*Beaumont* 28). He neglects to specify what exactly that development is, so that one might assume that it is a spontaneous unfolding of nature rather than an accident. Thus, many commentators believe that Rousseau regards pre-political, pre-moral man as real but not yet fully human. See Garrard, *Rousseau’s Counter-Enlightenment*, 43; Lund, *Rousseau’s Rejuvenation of Political Philosophy*, 31n, 32; Neuhouser, *Rousseau’s Critique of Inequality*, 30, 70, 142; Plattner, *Rousseau’s State of Nature*, 51, 87, 115; Rosenblatt, *Rousseau and Geneva*, 246-47; Strauss, “Seminar in Political Philosophy: Rousseau,” 74; Yack, *The Longing for Total Revolution*, 59.

<sup>70</sup> Neuhouser suggests that the “natural law” Rousseau has in mind here is not the law of the stronger but the natural right to own “the goods one has produced with one’s own labor,” as opposed to the artificial right to own the means of production. *Rousseau’s Critique of Inequality*, 98. One problem with this interpretation is that the distinction between the ownership of goods and the ownership of means of production is not in the text of the *Second Discourse*, as Neuhouser admits. Another problem is that, whereas Neuhouser assumes that Rousseau must recognize a natural right to at least certain kinds of property, the right of property Rousseau recognizes in the relevant passage is distinguished precisely from the unspecified right that results

stronger, and consequently to a new state of nature different from the one with which we began, in that the one was the state of nature in its purity, and the last is the fruit of an excess of corruption.... Force alone maintained [the despot], force alone overthrows him. Everything thus occurs according to the natural order” (*SD* 65, emphasis added). When two disputants exist “under the law of nature alone,” he says elsewhere, “the one who has force available is always master of the outcome” (*SC* 195).

Nor does the naturalness of “compassion” contradict Rousseau’s argument about the absence of moral law in the state of nature. Raw compassion as Rousseau understands it is nothing other than “repugnance” at the signs that a sentient being – especially a being like oneself – has suffered or perished (*SD* 15). The natural consequence of compassion is to avoid the suffering or dead being. Thus, whereas we are likely to think of compassion as something which raises humans above other animals,<sup>71</sup> impelling them to risk their lives in order to help others, for Rousseau compassion is a natural feeling which (in the absence of developed reason) urges all animals to flee dangerous situations; it is an amoral extension of the amoral drive for self-preservation, not a moral counter-balance. So far from being a mark of a special human dignity, compassion must be natural even to beasts, according to Rousseau, in order for the various species to survive. To expand upon one of Rousseau’s own examples (*SD* 36): horses naturally refuse to trample living bodies neither because they feel sorry for injured people nor because they recognize an obligation to avoid making others suffer unnecessarily, but simply because they have a natural aversion to putting themselves in physically dangerous positions and breaking their legs. It is in this sense that compassion is “appropriate to beings as weak

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from “natural law” alone. This comports with what Rousseau says in the same work, that “the right of property is only conventional and of human institution” (*SD* 59).

<sup>71</sup> See Vaughan, “Rousseau as Political Philosopher,” 9.

and as subject to as many ills as we are,” and “contributes to the mutual preservation of the entire species” (SD 36, 37). Without compassion, animals would be insensitive to all kinds of threatening situations, and it would be hard to see how the various species could have subsisted without very powerful foresight or without laws and governments to guide them: “the human race would have perished long ago if its preservation had depended only on the reasonings of its members” (SD 38). According to Rousseau, animal feeling (without moral reasoning) suffices to explain the preservation of the species.

Admittedly, Rousseau at first speaks of compassion as “a virtue” (SD 36), which suggests that he does believe that people have a kind of natural moral dedication.<sup>72</sup> He also says quite clearly, however, that “in the state of nature,” compassion “takes the place of laws, morals, and virtue” (SD 37; see also GM 85; SC 141). But there is no genuine contradiction. Rousseau explains that humans in the state of nature “had neither vices nor virtues: *unless, taking these words in a physical sense, one calls vices in the individual the qualities that can harm his own preservation, and virtues those that can contribute to it*” (SD 34, emphasis added). Compassion can surely be regarded as a virtue in the physical sense, contributing as it does to self-preservation. Still, compassion is essentially a “feeling” (SD 37, 38). In arguing for its naturalness, therefore, Rousseau is arguing for a *less* exalted view of humanity than that defended by theorists (such as Pufendorf) who insist upon a mysterious and uniquely human principle of “sociability,”<sup>73</sup> a principle

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<sup>72</sup> See Douglass, *Rousseau and Hobbes*, 86.

<sup>73</sup> “[B]y a sociable attitude we do not understand here the particular meaning of a tendency to form special societies, which can be formed even for an evil purpose and in an evil manner.... But by a sociable attitude we mean an attitude of each man towards every other man, by which each is understood to be bound to the other by kindness, peace, and love, and therefore by a mutual obligation.” Pufendorf, *De jure naturae et gentium*, 208 (emphasis added).

which would require that every man be naturally “a great reasoner and profound metaphysician” (*SD* 14).

However sensitive to others’ suffering they might have been, though, people in the state of nature would have been “wild” or morally unrestrained animals (*SD* 21; see also *EOL* 305-6). All that would have held them back from doing harm to their fellows would have been a strong aversion to the sight of suffering and death, an aversion no less strong for being devoid of moral content.<sup>74</sup> In “the pure state of nature,” Rousseau writes in the *Discourse on Political Economy*, “obedience is never prescribed except by necessity” (*PE* 146). Along the same lines, he says in a fragment on “The State of War” that “if the prince is above the laws he is living in the pure state of nature” (*SW* 66).<sup>75</sup>

These statements suggest that, so far from the state of nature being a hypothetical which never or “perhaps never” existed, it is something that can actually emerge before our very eyes in lawless situations of despotism and civil collapse. The law of nature which genuinely determines us in these situations, Rousseau indicates, is the drive for self-preservation. It is only in this sense that, in the state of nature, “the natural law ... commands everyone” (*LWFM* 261). Thus, when he insists that the social contract would not be valid if it were “contrary to natural laws,” he seems to mean only that it would not be binding if it were contrary to the demands of survival, since “it is only by these laws themselves that the liberty that gives force to the engagement exists” (*LWFM* 231). After all, he maintains unequivocally that “there is not, nor can there be, *any kind of*

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<sup>74</sup> Perhaps, then, compassion can be subsumed under the law of the stronger. Compare Montesquieu: “Human reasons are always subordinate to that supreme cause that does all that it wants and makes use of whatever it wants” (*SL* 16.2).

<sup>75</sup> I believe these are Rousseau’s only two references to the *pure* state of nature outside the *Second Discourse* (compare *SD* 19, 30, 48, 88-89). Cf. Strauss, who thinks Rousseau is referring to “the state of pure nature,” a theological term that Rousseau does not use. “Seminar in Political Philosophy: Rousseau,” 39.

*fundamental law* that is obligatory for the body of the people, not even the social contract” (SC 140, emphasis added).

### *The Relation Between the State-of-Nature Teaching and Political Life*

#### The Right of Revolution

Few are likely to quibble with the proposition that *The Spirit of the Laws* offers political direction. Montesquieu calls it a guide both for “those who command” and for “those who obey” (SL Preface; see also, e.g., 6.5, 6.13n36, 10.2-4, 11.4, 12.1, 12.12, 12.29-30, 13.10, 13.20, 15.1, 19.5, 19.14, 23.29, 25.12, 26.1, 29.1). The book is clearly meant to have some effect on political life. And the specific political valence of *The Spirit of the Laws* is indicated by the fact that it invokes “human nature” exclusively in connection with the evils engendered by despotism and conquest (SL 2.4, 5.14, 6.9, 7.9, 8.8, 8.21, 10.4, 12.4, 14.11, 15.1, 24.3, 24.4). According to Montesquieu, people should be taught “that, as nature has made them equal, reason can make them dependent [upon a government] only for the sake of their happiness” (SL 17.5; cf. 3.10: in despotic governments “the prince is not assumed to be a man”). In cases where “a certain order of succession” established by local law “becomes destructive of the political body for which it was made,” Montesquieu insists that “another political law can change that order; and far from that same law being in opposition to the first, it will be at bottom entirely in conformity with it, because both will depend on this principle: THE WELL-BEING [*SALUT*] OF THE PEOPLE IS THE SUPREME LAW (SL 26.23, all caps in original).<sup>76</sup>

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<sup>76</sup> Sonenscher underlines the importance in eighteenth-century France of debates about royal succession and notes that the very phrase “spirit of the laws” was, before Montesquieu, associated with Jansenist arguments that emphasized the role of divine providence in succession. *Before the Deluge*, 127-28.



In his private notebook, Montesquieu draws out a more radical implication of this “supreme law,” pointing not merely to a right to exclude certain potential rulers from office but also to a right to call to account the current rulers: “This principle of Hobbes is quite false: that since the people have authorized the prince, the prince’s deeds are the people’s deeds, and consequently, the people cannot complain about the prince nor demand any account of his actions, because the people cannot complain about the people.... The people have authorized the prince under conditions; they have established him under a convention. He must observe it” (*MT* 224; compare *PL* 76, 104, 161). Hence in *The Spirit of the Laws*, in the chapter following his discussion of the state of nature, he writes: “Individual strengths cannot be united unless all wills are united. *The union of these wills*, as Gravina again aptly says, *is what is called the CIVIL STATE*” (*SL* 1.3, italics and all caps in original). In other words, the civil state is a product of the popular will, independent of the government.<sup>77</sup> Since the authority of every government rests on this civil state, in addition to an implicit promise to safeguard the conditions of external wellbeing (*SL* 6.2, 11.3, 12.2, 12.4, 23.29, 26.7), the people’s duty of obedience is far from unconditional.<sup>78</sup> People “have renounced their natural independence to live under political laws” (*SL* 26.15) – which means, by implication, that they return to their natural independence when they cease to live under political laws. And the political laws themselves, Montesquieu shows, are derived not from God but from the customs and

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<sup>77</sup> On the significance of Gian Vincenzo Gravina as an anti-absolutist thinker, see Sonenscher, 130-31.

<sup>78</sup> Cf. Pangle, “The Liberal Critique of Rights in Montesquieu and Hume,” 39: “Especially striking is the silence, in both Montesquieu and Hume, of any endorsement of the human right to revolution that figures so very prominently in Locke’s theory.” According to Althusser, there is no concept of a “social contract” in *The Spirit of the Laws*, nor indeed any normative standard by which to judge political communities. *Montesquieu*, 20-21.

choices of peoples (see, e.g., *SL* 18.22, 28.38, 30.2).<sup>79</sup> Thus, as he puts it in his *Considerations on the Romans*, “It is an error to believe that any human authority exists in the world which is despotic in all respects.... There exists in each nation a general spirit on which power itself is based, and when it shocks this spirit it strikes against itself and necessarily comes to a standstill” (*Considerations* 210).

The political character of the *Second Discourse* is relatively easy to miss, by comparison, even though Rousseau adorns its title page with a version of the same image used in the *Social Contract*, dedicates it to the Republic of Geneva, and presents himself in the guise of “Citizen of Geneva.”<sup>80</sup> As if to dispel any doubt about his political intent, Rousseau says at the outset: “Precisely what, then, is at issue in this discourse? To indicate in the progress of things the moment when, right taking the place of violence, nature was subjected to law; to explain by what sequence of marvels the strong could resolve to serve the weak” (*SD* 18). Later, he claims that his account of the slow shift from “the natural state to the civil state” indicates “the solution to an infinite number of problems of morality and politics” (*SD* 65).

For Rousseau, as for Montesquieu, government as such should be understood neither as a permanent authority above the people nor as a natural institution but as a revocable “trust of public authority” for the protection of citizens’ lives, goods, and spheres of independence (*SD* 56; see also *LWFM* 248). There is no natural-law obligation to obey the powers that be. “It is ... the fundamental maxim of all political right, that peoples have given themselves chiefs to defend their freedom and not to enslave themselves” (*SD* 56). Just as a monarch has a right to “renounce his authority” by

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<sup>79</sup> See also Sonenscher, *Before the Deluge*, 133-34.

<sup>80</sup> See Kelly, *Rousseau as Author*, 42.

abdicating, so “the people, who pay for all the faults of the chiefs, ought to have the right to renounce their dependence” (*SD* 60). Because “tyranny and slavery are manifestly a state of war,” Rousseau says in a fragment, “it is easy to show that a slave who kills his master does not sin by doing so either against the natural law or even against the law of nations” (*PF* 50).

According to the view of human nature advanced in both *The Spirit of the Laws* and the *Second Discourse*, humans are naturally free and equal in the sense that they are equally born free of all political obligations, however unfree and unequal they may be in other ways.<sup>81</sup> If we are naturally free from duties, then certainly no one is born owing obedience to any government. This is why Montesquieu says that “In the state of nature, men are born in equality” (*SL* 8.3; see also 1.3).<sup>82</sup> This is also the principal reason why Rousseau speaks of a “destruction of equality” that took place in the past (*SD* 52).<sup>83</sup> Because of the fundamentally contingent character of the political community, no particular government can claim authorization as a part of the natural order.

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<sup>81</sup> Any suggestion that either Montesquieu or Rousseau argues for a “blank slate” view of radical equality would be hard to maintain. Both take it for granted that mental and physical capacities are unequally distributed by nature. Both acknowledge the importance of sexual differentiation. And both emphasize the extent to which differing environmental circumstances shape different peoples. Because he interprets Rousseau’s arguments for human equality in a very broad sense, Vaughan is puzzled by this: “At one moment he holds that all men are equal and, in respect of capacity for freedom, that all men are alike. At the next he assures us that there is no such things as equality between one group of men and other.... He follows the one line of thought no less ardently than the other. He betrays not the smallest suspicion that the one runs counter to the other.” “Rousseau as Political Philosopher,” 77.

<sup>82</sup> Cf. Aron, who suggests that Montesquieu is “in no sense a doctrinaire of equality.” *Main Currents in Sociological Thought*, 60.

<sup>83</sup> “If we follow the progress of inequality in these different revolutions, we shall find that the establishment of the law and of the right of property was the first stage, the institution of the magistracy the second, and the third and last was the changing of legitimate power into arbitrary power” (*SD* 62).

### The Intellectual Foundation of Absolutist Government

But even if the natural situation of humanity is one of freedom and equality, our acquired ideas are liable to lead us astray. “Man,” Montesquieu says in the preface to *The Spirit of the Laws*, is “that flexible being who adapts himself in society to the thoughts and impressions of others.” Such a being “is equally capable of recognizing [*connoître*] his own nature when it is shown to him, and of losing even the feeling of it when it is concealed from him” (*SL* Preface). “As an intelligent being,” he adds soon after, man “constantly violates the laws god has established and changes those he himself establishes; he must guide himself, and yet he is a limited being; he is subject to ignorance and error, as are all finite intelligences” (*SL* 1.1). For Rousseau, likewise, man’s distinctive faculty of “perfectibility” is what “bring[s] to flower over the centuries his enlightenment and his errors, his vices and his virtues,” and “in the long run” makes him “the tyrant of himself and of nature” (*SD* 26). Whereas Rousseau at first tries to equate the capacity to “deviate from the rule that is prescribed” by nature with a “purely spiritual” freedom of the will (*SD* 25-26), his final suggestion seems to be that perfectibility is really a by-product of the development of complex language, which allows humans to reflect on and shape their circumstances. Hence perfectibility is said to depend on “general” or “purely intellectual” ideas, ideas which in turn depend on the existence of words in addition to mere images (*SD* 32; see also *EOL* 293). But, just as the manipulation of words and the development of novel ideas allows humans to establish abstract truths about themselves, so also it makes them peculiarly liable to accept falsehoods.

These falsehoods may even be soothing. As Montesquieu observes, “We reflect little: the interest we have in having precise ideas about things gives way to another interest, which is a certain repose and a pleasant forgetfulness of oneself” (*Dossier de l’Esprit des lois*, 1038). To be forgetful of oneself is, of course, to be in the grip of a prejudice, in Montesquieu’s lexicon.<sup>84</sup> For his part, Rousseau suggests that, in adjusting themselves to servitude, many peoples have bought “a repose in ideas at the price of a real felicity” (*SD* 18).

Repose-inducing as these particular ideas or prejudices may be, Montesquieu and Rousseau both seek to uproot them. “It is not a matter of indifference that the people be enlightened,” says Montesquieu. Less modestly, he adds: “I would consider myself the happiest of mortals if I could make it so that men were able to cure themselves of their prejudices” (*SL* Preface). Likewise, Rousseau suggests that the *Second Discourse* is meant to have a direct effect on political life, declaring that he has “ancient errors and inveterate prejudices to destroy” (*SD* 40; see also *Beaumont* 53).

What precisely are the prejudices that Montesquieu and Rousseau wish to uproot? In *The Spirit of the Laws*, Montesquieu refers to a people living under the despotic rule of a man who styled himself as having a natural connection with the divinized sun (in the suggestively named Louisiana). In this connection, he says: “The prejudices of superstition are greater than all other prejudices” (*SL* 18.18; see also 10.4-5). As for Rousseau, in the *Second Discourse*, having just referred to “the writings of Moses” which (as he stresses) tell a story incompatible with the existence of the “pure state of nature,” he declares: “O man, whatever country you may come from, whatever your opinions may

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<sup>84</sup> “Here I call prejudices not what makes one unaware of certain things but what makes one unaware of oneself” (*SL* Preface).

be, listen: here is your history as I believed it to read, not in the books of your fellow-men, who are liars, but in nature, which never lies” (*SD* 19).

Taken literally, the Bible denies the existence of the state of nature; it suggests that the political order of rulers and ruled is part of humankind’s essential condition, and indeed that some people are providentially selected to rule others in political society. Both Montesquieu and Rousseau seem to identify the most pernicious prejudice as the biblically-supported belief that some people are selected by Providence or nature to govern others in political society.<sup>85</sup> The analyses of man in the state of nature offered by them equally suggest that humans are not fitted by God or nature even to live in a relationship of conscious obedience to God, let alone to obey any human rulers unconditionally.

Rousseau’s project in particular seems to have been grasped well enough by the Archbishop of Paris, Christophe de Beaumont, who in his condemnation of Rousseau’s teaching wrote:

My very dear brethren, the spirit of irreligion did not begin today to be a spirit of independence and of revolt. And how in effect could these audacious men, who refuse to submit to the authority of God himself, respect that of kings who are the images of God, or that of the magistrates, who are the images of kings?.... Thus, then, my very dear brethren, impiety dares to criticize the intentions of the one *through whom kings reign* [Proverbs 8:15]; thus it takes pleasure in poisoning the sources of public felicity, by inspiring maxims that tend only to produce anarchy and all the calamities that follow from it. But what does religion say to you? *Fear God, respect the king...* [First Epistle of Peter 2:17] *Let every man submit to superior powers: for there is no power that does not*

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<sup>85</sup> Cf. Sullivan, *Montesquieu and the Despotism of Europe*, 60.

*come from God: and it is He who has established all those that are in the world. Whoever, then, resists the powers resists the order of God, and those who resist it draw damnation upon themselves* [Epistle to the Romans 13:1, 2].

Yes, my very dear brethren, in everything that belongs to the civil order you must obey the prince and those who exercise his authority, as God himself. Only the interests of the supreme being can set limits to your submission; and if someone wished to punish you for your fidelity to his orders, you should still suffer with patience and without murmur. The Neros, the Domitians themselves, who preferred to be the scourges of the earth rather than the fathers of their peoples, were accountable only to God for the abuse of their power. *Christians*, says Saint Augustine, *obeyed them within time because of the God of Eternity* [Ennarat, in psal. 124].<sup>86</sup>

In the *Letter to Beaumont*, having objected at length to the Archbishop's characterization of his works with respect to "the spirit of irreligion," Rousseau effectively concedes the accuracy of his characterization in "the article on government," expressing only his confidence that readers will disdain the accusation that his political teaching is meant to poison "the sources of public felicity." Indeed, Rousseau takes the Archbishop's condemnation as further evidence for the truth of his political analysis: "If the treatise on the *Social Contract* did not exist and the great truths I develop in it had to be proved anew, the compliments you pay to the powerful at my expense would be one of the facts I would cite as proof, and the fate of the author would be another, even more striking. There is nothing left for me to say about this" (*Beaumont* 79-80).

Of course, the Archbishop's view of the extreme deference owed to governmental authority was far from idiosyncratic. In the seventeenth and eighteenth centuries, certain

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<sup>86</sup> Beaumont, *Pastoral Letter of His Grace the Archbishop of Paris*, 13-14.

authoritative interpretations of Christianity among both Protestants and Catholics demanded unconditional obedience to the powers that be. Robert Filmer wrote that the doctrine of natural freedom “is not to be found in the ancient Fathers and doctors of the primitive church” and “contradicts the doctrine and history of the Holy Scriptures.”<sup>87</sup> Bernard Mandeville spoke of “the Doctrine of Passive Obedience” as one of the “Orthodox Principles” that his Catholic opponents dreamed of instilling among all Englishmen.<sup>88</sup> Characterizing the Tory view of government, David Hume said: “[B]y tracing up government to the Deity, [the Tories] endeavour to render it so sacred and inviolate, that it must be little less than sacrilege, however tyrannical it may become, to touch or invade it, in the smallest article.”<sup>89</sup> In the *Encyclopédie* entry on *lese-majesté*, Antoine-Gaspard Boucher d’Argis wrote: “The crime of *lese-majesté humaine* is an offense committed against a king or another sovereign: this crime is also extremely grave, considering that sovereigns are the images of God on earth and that all power comes from God.”<sup>90</sup> Hence Montesquieu felt the need to insist that, notwithstanding the principle established by Christian emperors and embraced enthusiastically by later French ministers, to call a king’s judgment into question is not an act of sacrilege (*SL* 12.8).<sup>91</sup>

According to the view of human nature advanced by Montesquieu and Rousseau alike, all political authority is provisional; government came into existence only by chance and can be sustained only by the willingness of people to sustain it. Against a

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<sup>87</sup> Filmer, *Patriarcha*, 3.

<sup>88</sup> Mandeville, *The Fable of the Bees*, 259.

<sup>89</sup> Hume, “Of the Original Contract,” 466.

<sup>90</sup> D’Argis, “*Lèse-Majesté*,” <http://encyclopedia.uchicago.edu/>. See also Kelly, “From Lèse-Majesté to Lèse-Nation,” 269-71. Compare Sonenscher, *Before the Deluge*, 157, on the political implications of Jansenist theology.

<sup>91</sup> See Kelly, “From Lèse-Majesté to Lèse-Nation,” 277-78; Sullivan, *Montesquieu and the Despotism of Europe*, 117-22.



powerful strand of religious orthodoxy, they try to show that civil authority, so far from being natural, need never have arisen. Our natural inequalities are much less pronounced, and our natural desires much less strife-inducing, than the religious authorities – the “moralists” – would suggest. It is not surprising that Rousseau calls Montesquieu “[t]he only modern in a position to create” the “science of political right” (*Emile* 649).<sup>92</sup>

### The Legitimate Aims of Political Life

If the widespread belief in a providential order of rulers and ruled (to be quietly endured by the latter) is an accidental fact of human existence, however, the desire for the conditions of earthly wellbeing is perfectly natural. In *The Spirit of the Laws*, Montesquieu consistently argues that the aspiration for spiritual perfection should give way to the needs of physical wellbeing. Religion is the purpose of “the Jewish laws,” he says, not the general purpose of the state as such, which is merely continued existence (*SL* 11.5). Because humans are “made to preserve, feed, and clothe themselves, and to do all the things done in society,” he maintains, “religion should not give them an overly contemplative life” (*SL* 24.11). In actions “that wound the divinity, where there is no public action, there is no criminal matter,” he insists, but in actions that “attack security,” a “kind of retaliation” by the state is necessary (*SL* 12.4). In his *Considerations on the Romans*, he calls the “great distinction” between “ecclesiastical and secular power” the “basis on which the tranquility of peoples rests” (*Considerations* 210).

More-or-less quoting *The Spirit of the Laws*, Rousseau declares that “in offenses that are uniquely against religion, the penalties ought to be drawn uniquely from religion;

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<sup>92</sup> In the *Letters Written from the Mountain*, Rousseau asserts that the notion that “the will of God” is the foundation of political obligation has been “refuted” in his works (*LWFM* 231).

such is, for example, the deprivation of the proof by oath in things that require it” (*LWFM* 208-9; see also 224, where Montesquieu is cited explicitly on this point). “What the civil tribunals have to defend is not the work of God,” Rousseau says, “it is the work of men; it is not souls they are charged with, it is bodies; it is of the state and not of the church that they are the true guardians” (*LWFM* 215). He insists that “the end of the political association” is merely “the preservation and prosperity of its members” (*SC* 185). Civil society is not responsible for “the means used by private individuals to try to make themselves happy,” he notes in a fragment, “but only for providing for the common defense and security and, with regard to subsistence, for enabling private individuals to provide for their needs by themselves.” Hence “all the engagements the confederation can assume toward its members come down to two points: peace and plenty” (*PF* 50).<sup>93</sup>

This is not to say that either Montesquieu or Rousseau takes “naked shivering nature”<sup>94</sup> as a simple template for political reform. In the first place, nature is only the substructure on which political life is built. As Montesquieu puts it, nature and climate may dominate “savages,” but peoples in civil society are influenced considerably also by “religion, laws, the maxims of the government, examples of past things, mores, and manners” (*SL* 19.4). To be sure, a simple separation of these things from “nature” is impossible, since Montesquieu suggests that nature and climate dictate the kinds of conventions that can take root in a given place. Still, it is clearly his view that one learns more about civil society by studying political history than by studying “savages,” let alone non-human primates.

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<sup>93</sup> Cf. Vaughan, “Rousseau as Political Philosopher,” 50; Yack, *The Longing for Total Revolution*, 58. Rousseau does say that virtue is necessary for the preservation of every well-constituted state (*SC* 174), but he does not say that virtue for its own sake is the *aim* of every well-constituted state.

<sup>94</sup> Burke, *Reflections on the Revolution in France*, 171.

Nor does the fact that something exists by nature make it a simple normative standard. For example, the recognition of a certain kind of natural human equality may be important in the face of rival teachings about the naturalness of servitude, but equality as such is not the goal, in Montesquieu's view. After all, certain moral qualities which are likely to raise some people above others are nonetheless necessary for decent political communities to flourish. People "are equal in despotic government," Montesquieu says, "because they are nothing" (*SL* 6.2). Even democracies are threatened by "the spirit of extreme equality" (*SL* 8.2-3). "In a state there are always some people who are distinguished by birth wealth, or honors," he points out, and it is essential that such people be given a special interest in defending the state (*SL* 11.6).

Moreover, the transition from nature to civilization is not to be regretted. Montesquieu insists that "peoples who live under a good public order are happier than those who run about in the forest, without rule and without leaders," in large part because they are more secure (*SL* 5.11).<sup>95</sup>

Like Montesquieu, Rousseau suggests that in civil society, conventional things rather than natural things tend to be decisive. As he puts it in the *Social Contract*, "morals, customs, and especially ... opinion" are "the most important of all" laws in a state, and are therefore vastly more important than the natural laws (*SC* 164-65; see also *GM* 115). To be sure, Rousseau also acknowledges that the range of possible morals, customs, and opinions is always limited by the particular circumstances imposed by

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<sup>95</sup> Robertson offers a similar view of Montesquieu's friendliness to political life as such, though on a very different basis: "[F]or Montesquieu, because *l'homme physique* is only complete in and through a larger social whole, he requires the legal and political order necessary to that society." "Rousseau, Montesquieu, and the Origins of Inequality," 66. Crisafulli, meanwhile, presents Montesquieu as fearing a shift from moral virtue and freedom in the state of nature to moral corruption and subjection in society. "Montesquieu's Story of the Troglodytes," 386-92.

“invincible nature” (*GM* 116; *SC* 164), but he leaves no doubt that, in his view, peoples are led above all by their conventions.

Furthermore, and again following Montesquieu, Rousseau suggests that only under despotism does something like full equality take hold (*SD* 65).<sup>96</sup> “Citizens ... ought to be distinguished and favored in proportion to their services,” he says (*SD* 94). To insist on equal honors for unequal efforts would be perverse, he maintains, and in any case “no society has ever existed, no matter what degree of corruption societies might have reached, in which no difference between evil and good men was established” (*SD* 94). Moreover, though he thinks it necessary to curb the extremes of wealth and poverty for the sake of social cohesion, he rejects the goal of “rigorous” equality as being both impossible and contrary to the just recognition of unequal efforts and abilities (*SD* 94-95; see also 51; *Corsica* 148; *PF* 49; *Poland* 177; *SC* 162-63, 176).<sup>97</sup>

And, like Montesquieu, Rousseau gives at least two cheers for the shift away from the state of nature. Pre-reflective humans “scarcely” profited from “the gifts” of nature, he says (*SD* 43; see also *GM* 77-78). To our amour-propre, which makes us sociable insofar as it “nearly always keeps us outside of ourselves,” we owe the “best” things among us, as well the “worst” (*SD* 63).<sup>98</sup>

Still, the rational goal of politics, in the eyes of both thinkers, is a lowly one: not the achievement of spiritual fulfillment but merely the achievement of security and prosperity. To get these things amidst the “wickedness” of civil society, both agree, effective man-made laws are necessary. So the best approach to politics is not to recreate

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<sup>96</sup> Cf. Spector, *Montesquieu: Liberté, droit, et histoire*, 282-83.

<sup>97</sup> Cf. Aron, *Main Currents in Sociological Thought*, 57; Neuhouser, *Rousseau's Critique of Inequality*, 106.

<sup>98</sup> For a useful elaboration of this point, see Shell, “Stalking *Puer Robustus*,” 288-91.

the wild independence of the state of nature but to preserve *law-bound* communities to the greatest extent possible. As Montesquieu puts it, “One must put oneself in mind of what independence is and what liberty is. Liberty is the right to do everything the laws permit; and if one citizen could do what they forbid, he would no longer have liberty because the others would likewise have this same power” (*SL* 11.3). “[T]he independence of each individual is the purpose of the laws of Poland,” he observes, “and what results from this is the oppression of all” (*SL* 11.5). Echoing Montesquieu, Rousseau insists that “where the vigor of laws and the authority of their defenders cease, there can be neither security nor freedom for anyone” (*SD* 8). “[T]he more violent the passions, the more necessary laws are to contain them,” he argues (*SD* 38). Natural independence was destroyed “for all time” by the birth of the first political society (*SD* 54; see also *Emile* 342; *GM* 82-83).<sup>99</sup> While knowledge of the lawless state of nature may be a necessary antidote to certain prejudices about natural slavery, then, it does not furnish a model to be reproduced on the plane of civil society.

### *Conclusion*

I have argued that, despite their occasional indications to the contrary, Montesquieu and Rousseau both understand the state of nature as a fact rather than a hypothetical construct. In that respect, my account differs from those of the many previous interpreters who have taken the state of nature to be a hypothetical and who have thus reduced its political implications either to merely hypothetical conclusions or to dogmas held on faith. But my account also differs from those of the many previous interpreters who have read Montesquieu and Rousseau as making factual claims about the state of nature,

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<sup>99</sup> Cf. Douglass, *Rousseau and Hobbes*, 81-82.

inasmuch as I have suggested that their claims depend not on the possibility that the first humans were asocial and peaceful but rather on the contingent character of the development of speech, law, and government.

The fundamental political principle advanced by Montesquieu and Rousseau on the basis of the state of nature – the naturalness of freedom and equality – depends only on the claim that humans are naturally preoccupied with the wellbeing of themselves and their kin, and not with ideas such as the just and the unjust.<sup>100</sup> This is not to deny that humans naturally have sentiments such as fear, anger, and pity. In fact, Rousseau goes so far as to insist upon the naturalness of “the sentiment of the just and the unjust” (*Emile* 195), that is, the feeling of self-defensive rage underlying moral indignation. What both he and Montesquieu deny is the naturalness of the general ideas which complicate, broaden, and intensify the natural sentiments. In this view, humans are not innately directed toward political rule or subordination because they are innately free from the general ideas that depend upon complex language. The practical upshot is that no government has been providentially ordained; only by chance did humans become political animals.<sup>101</sup>

Of course, the proposition that government is not natural is something which unites Montesquieu and Rousseau with Hobbes. And their agreement with “the monster of Malmesbury” on the artificial character of political authority probably accounts for

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<sup>100</sup> In a sentence that he removed from the final version of his chapter on the state of nature, Montesquieu wrote that “it is especially among [animals] that one must seek out natural right.” *Dossier de l’Esprit des lois*, 996.

<sup>101</sup> The issue of whether man is *by nature* a political animal takes on special significance only with the advance of the Christian political teaching about the character of man’s original dependence upon law and government. Even if Aristotle sincerely concluded that man was by nature political, he did not link this conclusion to a doctrine about the sinfulness of resistance to established authorities.

much of their stridently anti-Hobbesian rhetoric. Over the course of the chapter devoted to the state of nature in *The Spirit of the Laws*, Hobbes is the one philosopher criticized by name (SL 1.2). In responding to critics of *The Spirit of the Laws*, Montesquieu wrote: “The author has had in view attacking the system of Hobbes, a terrible system which – making all the virtues and all the vices depend upon the establishment of laws that men have made for themselves, and wanting to prove that men are all born in a state of war, and that the first natural law is the war of all against all<sup>102</sup> – overturns, like Spinoza, both all religion and all morality” (DSL 1123). Likewise, in the *Second Discourse*, Rousseau singles out Hobbes for special reproach: “Hobbes did not see that the same cause that prevents savages from using their reason . . . prevents them at the same time from abusing their faculties” (SD 35).

In trying to distance their conclusions from those of the materialist Hobbes, who had emphasized the bellicose character of the state of nature (and had perhaps even exaggerated it for rhetorical effect), Montesquieu and Rousseau turned their attention to those aspects of human nature that tend to moderate violence, without forgetting the human capacity for aggression or the naturalness of many of the conditions that encourage it.<sup>103</sup> Additionally, their somewhat rosier presentations of man’s original condition – their emphasis upon its adequacy for the preservation of the species – helped to distance them from the existential gloom of Hobbes, whose depiction of life in the absence of human artifice smacked of atheism, at least to many of his contemporaries.<sup>104</sup>

Whereas Hobbes argues (not altogether misleadingly) that the natural situation of

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<sup>102</sup> In fact Hobbes’ first “natural law” is the same as Montesquieu’s: seek peace. *Leviathan*, 92.

<sup>103</sup> Hobbes, for his part, was not ignorant of the aspects that Montesquieu and Rousseau emphasized. See, e.g., *Leviathan*, 44: “that any man should take pleasure in other mens great harmes, without other end of his own, I do not conceive it possible.”

<sup>104</sup> Moloney, “Leaving the Garden of Eden,” 251-52.

humankind is fundamentally bad, Montesquieu and Rousseau argue (not altogether misleadingly) that it is fundamentally good and that many of the evils we suffer are due to changeable circumstances. As Montesquieu puts it, “Nature is just toward men” (*SL* 13.2). Upon reading their accounts of the state of nature, one could even come away with the impression that providence is justified.<sup>105</sup>

Finally, in trying to shield themselves from the imputation that, like Hobbes, they were undermining Christianity by radically modifying or indeed abandoning the story of Eden, they sometimes presented themselves as indulging in idle thought experiments about humans abstracted from all social relations. Montesquieu could claim that he was only considering humans “as if [they] fell from the clouds” (*DSL* 1131), just as Rousseau could claim that he was considering only “what we would have become abandoned to ourselves” (*SD* 16).

This rhetoric, it has to be said, was largely successful. Although at least one of Montesquieu’s contemporaries, Jean-Baptiste Louis Cr  vier, accused him of being a covert Hobbesian,<sup>106</sup> Montesquieu “had many defenders among clergy, and even bishops.”<sup>107</sup> *The Spirit of the Laws* was eventually added to the Church’s Index of Prohibited Books, but Montesquieu escaped serious sanction in France.<sup>108</sup> And even if “some of the very early readers of Rousseau ... explicitly linked his views to those of

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<sup>105</sup> Kant writes, “Rousseau discovered for the very first time beneath the manifold forms adopted by the human being the deeply hidden nature of the same and the hidden law, according to which providence is justified by his observations. .... After Newton and Rousseau, God is justified, and henceforth Pope’s theorem is true.” “Remarks in the *Observations*,” 20:58-59. With specific reference to the *Second Discourse*, Vaughan remarks: “If [Rousseau] denounces the follies and vices of man, it is largely that he may justify the ways of God.” “Rousseau as Political Philosopher,” 15.

<sup>106</sup> Waddicor, *Montesquieu and the Philosophy of Natural Law*, 65.

<sup>107</sup> Carrese, *Democracy in Moderation*, 121.

<sup>108</sup> Volpillac-Aug  r, *Montesquieu*, 267-69.



Hobbes,”<sup>109</sup> the persecution of Rousseau began only with the publication of *Emile* and the *Social Contract*, seven years after the publication of the *Second Discourse*, a work which Rousseau says contains “[e]verything that is bold in the *Social Contract*” (*Confessions* 342).

Perhaps the greatest indication of their rhetorical success, however, is that virtually all the scholars who today reject the state of nature as hopelessly implausible actually take for granted its key point, that no human beings are innately directed toward political servitude. Scholars as seemingly unlike as Francis Fukuyama (who has argued that the liberal state is the realization of all humankind’s political striving) and Patrick Deneen (who has argued that the liberal state represents a wrong turn of epic proportions) agree with each other that the state of nature was just bad fiction. But, insofar as neither one of them is prepared to argue that certain human beings are fitted by nature to rule over others even without their consent, they are equally loyal troops in the state-of-nature tradition passed on to us by Montesquieu and Rousseau.

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<sup>109</sup> Tuck, *The Rights of War and Peace*, 198.

## CHAPTER TWO: ENLIGHTENMENT

Having begun from the same point, though, Montesquieu and Rousseau diverged radically in their views about the best means to sustain constitutional government. The first of their disagreements concerns the modern “enlightenment project” to bring the arts, sciences, and commerce to the center of public consciousness, and thus to nudge religion to the periphery. Since this project began to gather steam in the eighteenth century, its value has been a matter of intense debate. Today there are two main versions of the quarrel. One version hinges on whether the world has become more peaceful because of the influence of popular enlightenment; the other hinges on whether people have been morally corrupted by it.

Montesquieu and Rousseau both treated the phenomenon of popular enlightenment as a fundamental political question, but on first impression it seems that, as with today’s polemicists, they did not recognize any common criterion by which the question could be judged. On the one hand, Montesquieu has been widely and justifiably interpreted as a proponent of the pacifying effects of enlightenment.<sup>1</sup> And, in stressing the relative peacefulness of enlightened peoples, he did not claim that they were especially admirable from a moral point of view. Indeed, his major works all suggested

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<sup>1</sup> See Douglass, “Montesquieu and Modern Republicanism,” 713-14; Gilbert, ““Internal Restlessness,”” 56; Hirschman, “Rival Interpretations of Market Society,” 1464-66; Kelly, “Rousseau and the Illustrious Montesquieu,” 24-25; Maletz, “Tocqueville on Mores and the Preservation of Republics,” 5; Pangle, *The Theological Basis of Liberal Modernity*, 132-33; Pocock, *The Machiavellian Moment*, 441; Rasmussen, *The Pragmatic Enlightenment*, 269-70; Robin, “Reflections on Fear,” 351; Sullivan, *Montesquieu and the Despotism of Europe*, 155-56, 211.

that enlightened societies were riddled with at least as many moral flaws as unenlightened ones. In the *Persian Letters*, for example, he had Usbek fulminate against France as a country where “infidelity, treason, rape, perfidy, and injustice lead to respect” (PL 48). In his *Considerations on the Romans*, he contrasted the personal integrity characteristic of republican Rome with his own age, in which “false politeness” had “spread lying everywhere” (*Considerations* 109). And in *The Spirit of the Laws* he suggested that commercialism was making people more selfish than ever: “We can see in countries where one is affected only by the spirit of commerce, there is traffic in all human activities and all moral virtues; the smallest things, those required by humanity, are done or given for money” (SL 20.2).

Meanwhile, Rousseau’s laments about the “corruption of *moeurs*” and the loss of “virtue” in enlightened societies have generally been understood to reflect his love of morality. When he decried the “corruption” of the modern world, it is assumed, he meant “moral corruption.”<sup>2</sup> Understood this way, Rousseau may have invoked Montesquieu as an opponent on the issue of enlightenment (FD 14; FR 111n), but he was really talking past him. Montesquieu and Rousseau simply valued different things: peace for the one, moral dedication for the other. Or else, if they valued the same thing (morality), they had radically different conceptions of its content: gentleness or humanity for the one, austere self-sacrifice for the other.

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<sup>2</sup> See Black, *Rousseau’s Critique of Science*, 45; Campbell and Scott, “Rousseau’s Politic Argument”; Garrard, *Rousseau’s Counter-Enlightenment*, 87-92; Hamilton, “Virtue in Rousseau’s First Discourse,” 119-29; Keohane, “The Masterpiece of Policy in Our Century,” 481; Melzer, *The Natural Goodness of Man*, 100-108; Mendham, “Enlightened Gentleness as Soft Indifference,” 610; Reisert, *Jean-Jacques Rousseau*, 8, 10; Shklar, “Montesquieu and the New Republicanism,” 270-71; Vaughan, “Rousseau as Political Philosopher,” 7-8.

In this chapter, however, we will see that Montesquieu and Rousseau were both primarily interested in the extent to which popular enlightenment enervates the citizens of enlightened communities and thereby leaves them incapable of defending their liberties. Montesquieu did suggest that the spread of science, technology, and commerce – and the concomitant decline in religiosity – goes together with an increase in gentleness. But he first insisted that enlightened society is sustainable because it fosters resilient and energetic individuals who are not especially likely to yield to domination.

For his part, Rousseau did try to establish a connection between “the enlightenment of which our century boasts” (*FD* 8) and the corrosion of “virtue.” But by “virtue,” Rousseau had in mind the same kind of qualities that preoccupied Montesquieu, qualities which Rousseau summed up as “strength and vigor of soul” (*FD* 6). What he worried about in culturally, scientifically, and commercially sophisticated societies was not so much an uncorking of frenzied passions as a general softening which would produce not only bad moral effects but also, and more importantly, a weak and servile spirit. Far from talking past each other, then, Montesquieu and Rousseau agreed on the fundamental question.<sup>3</sup>

### *Montesquieu’s Defense of Popular Enlightenment*

#### The Debate in the *Persian Letters*

In order to shed light on Montesquieu’s valuation of popular enlightenment, we must begin with the only section of his major works that addresses the question at length, that is, the debate between Rhedi and Usbek in the *Persian Letters*, a debate which has

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<sup>3</sup> Hont’s account in “The Early Enlightenment Debate on Commerce and Luxury” suggests that the leading thinkers in the early eighteenth century, before Montesquieu, gave very little attention to this question.

received only glancing mentions in the scholarship.<sup>4</sup> Set in the years just before and after the death of Louis XIV, the *Persian Letters* has been called “the first distinctively political novel written in the West,”<sup>5</sup> the work that “inaugurated the century of Enlightenment,”<sup>6</sup> and “the book that signals with the greatest finesse the departure from the ancient world and the entrance into the new.”<sup>7</sup>

And one of the letters, written from a Muslim character named Rhedi to a fellow Muslim named Usbek, constitutes a direct challenge to that new world. Having left his home in the Ottoman Empire in order to be educated in Venice, Rhedi has come to doubt the viability of the modern order. As he writes to Usbek, “You spoke a great deal, in one of your letters, about the sciences and arts cultivated in the West. You will regard me as a barbarian, but I do not know whether the utility drawn from them compensates men for the bad uses to which they are constantly put” (*PL* 105). Rhedi’s treatment of the issue is wide-ranging. He laments the discovery of gunpowder; he anticipates the development of weapons of mass destruction; he condemns European colonialism for its savagery and economic futility; and perhaps most importantly, he suggests that enlightenment tends to breed enervation, rendering the most refined nations vulnerable to subjugation. “Almost all monarchies have been founded only on ignorance of the arts,” Rhedi says, “and have been destroyed only because they cultivated them excessively” (*PL* 105). As Usbek sums

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<sup>4</sup> See Betts, *Montesquieu*, 59-60; Grimsley, “The Idea of Nature in the *Lettres persanes*,” 302; Hont, “The Early Enlightenment Debate on Commerce and Luxury,” 406-7; Hulliung, *Montesquieu and the Old Regime*, 114-15; Jennings, “The Debate about Luxury,” 85; Kra, “The Invisible Chain,” 43-44; Labro, “Le débat Rousseau/Montesquieu,” 139; Robin, “Reflections on Fear,” 351; Schaub, *Erotic Liberalism*, 123; Sonenscher, *Before the Deluge*, 122; Spector, *Montesquieu, les “Lettres persanes,”* 61-62; Waddicor, *Montesquieu*, 54, 59.

<sup>5</sup> Berman, *The Politics of Authenticity*, 7.

<sup>6</sup> Volpillac-Augier, *Montesquieu*, 12.

<sup>7</sup> Manent, *The City of Man*, 12

up Rhedi's position in his reply, "You believe that the arts soften [*amolissent*] peoples" (*PL* 106).

In coming to the defense of the enlightenment of the West, Usbek makes several preliminary counter-arguments, none of which is altogether persuasive. For instance, in response to the anti-intellectual bearing of Rhedi's argument, Usbek insists that Rhedi contradicts himself by devoting himself to science while decrying its popularization. But this is evidently more of a rhetorical jab than a serious argument. After all, Rhedi has neither depicted himself as a model human being nor claimed that every educated person is made worse by his education. Besides, even if Rhedi has come to believe that he ought to renounce his studies, his very failure to do so would support the argument that intellectual refinement goes together with a certain weakness of spirit. The learned Usbek himself might serve as another supporting example, extolling gentleness in the abstract but imposing harsh punishments on his own household, and thus apparently lacking the inner firmness necessary to act consistently (*PL* 80, 102, 148). Indeed, Usbek's fits of cruelty should prevent us from chiding Montesquieu for a naïve belief that "science makes us gentle, tolerant, and responsible."<sup>8</sup>

Likewise, Usbek dismisses Rhedi's fears about modern weaponry, insisting that "if a fatal invention came to be discovered, it would soon be prohibited by international law."<sup>9</sup> But this hopeful prediction does not even seem to reassure Usbek himself, since in

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<sup>8</sup> Shklar, *Montesquieu*, 125. On the contradiction between Usbek's principles and his behavior, see Mosher, "Monarchy's Paradox," 177; Robin, "Reflections on Fear," 351; Starobinski, "Exile, Satire, Tyranny," 75, 83; Swaine, "The Secret Chain," 97.

<sup>9</sup> Because he assumes that Montesquieu accepts all of Usbek's arguments, Waddicor convicts Montesquieu of "naïve optimism" for this one. *Montesquieu*, 59. See also Grimsley, "The Idea of Nature," 302. In fact there is a persistent temptation to identify Usbek with Montesquieu. See, e.g., Crisafulli, "Montesquieu's Story of the Troglodytes," 380; Dallmayr, "Montesquieu's *Persian Letters*"; Gilbert, "'Internal Restlessness,'" 58; Nelson, *The Greek Tradition in*

the very same passage he asserts that increasingly powerful weaponry makes for shorter and less bloody wars. (On this basis, should he not hope for extremely potent weapons rather than confidently predicting their prohibition?) Usbek's uncertainty is confirmed by his subsequent admission that some arts may turn out to be harmful: "[I]f some particular case should be found where an art has been detrimental, must it be rejected on that account? Do you think, Rhedi, that the religion which our holy prophet brought from heaven is pernicious because it will one day serve to confound the perfidious Christians?" But the answers to these questions are not self-evident. In other words, when Usbek asks whether particular arts ought to be rejected if they are found to have been detrimental, Rhedi may well be inclined to say yes. And when he asks whether Islam is "pernicious" because it will "confound the perfidious Christians," Rhedi may have the same response. For that matter, Usbek's own allegiance to Islam is questionable (*PL* 17, 69, 83, 93, 97, 114-15), and he is clearly opposed to religious warfare (*PL* 46, 60-61, 85).

Initially, then, Usbek's reply to Rhedi is fairly inconclusive. Only in the second half of the letter does he advance an argument which gets to the heart of things.<sup>10</sup> "You speak of the ruin of the ancient Persians' empire, which was the result of their softness [*mollesse*]," he writes. "But this example is very far from deciding the case, since the Greeks – who defeated them so many times, and subjugated them – cultivated the arts

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*Republican Thought*, 155; Starobinski, "Exile, Satire, Tyranny." Schaub notes that "Montesquieu's friends took to calling him 'Usbek'; and in the index to the 1758 edition (overseen by Montesquieu's son), Montesquieu's name was entered with the annotation: 'He paints himself in the person of Usbek.'" *Erotic Liberalism*, 5. Nonetheless, we cannot assume that Montesquieu endorses all of Usbek's arguments. On this point, see Betts, *Montesquieu*, 10-11; Hulliung, *Montesquieu and the Old Regime*, 110-11; Mosher, "Monarchy's Paradox," 180; Shklar, *Montesquieu*, 32-33; Todorov, *On Human Diversity*, 358-59.

<sup>10</sup> Hulliung suggests that Montesquieu does not intend to resolve the debate between Rhedi and Usbek, but that he simply wants to explore "a dialectic of civilization." *Montesquieu and the Old Regime*, 115. This probably goes too far, but it does seem likely that Montesquieu regards Usbek's final argument as more solid than the previous ones.

with infinitely more care.” While a single example cannot settle the debate one way or the other, Usbek admits, he now points to a commonsense reason for doubting the link between mass enlightenment and softness: the hyper-industrious spirit that goes hand-in-hand with the “enlightened” fixation on moneymaking. “When it is said that the arts render men effeminate [*efféminés*], one at least does not speak of the people who work at them, since they are never idle – which, of all the vices, is the one which softens [*amolit*] courage the most,” Usbek says. “It is therefore a question only of those who enjoy them. But in a refined country, those who enjoy the conveniences of one art are obliged to cultivate another, or else see themselves reduced to a shameful poverty; it follows that idleness and softness [*mollesse*] are incompatible with the arts” (*PL* 106).

Usbek elaborates his view by sketching an image of life in Paris, where people are compelled precisely by their worldly desires to discipline themselves relentlessly. “Paris is perhaps the most sensual city in the world,” he says, “and the one in which pleasures are most refined; but it is perhaps there that one leads the hardest life.” One observes there, he insists, an “ardor for work” which “passes from station to station, from the artisans up to the great nobles.” Struck by the pervasive and remorseless competition generated by the materialistic spirit, Usbek points to the impressive robustness of enlightened peoples beneath their gentle façades. “In Paris,” he writes, “you see a man who has enough to live till Judgment Day who works incessantly and runs the risk of cutting short his days in order to amass, he says, enough to live.” However unreasonable such a man may be, he cannot easily be convicted of softness. “The same spirit takes over the nation; one sees only work and industry. So where is that effeminate [*efféminé*] people of which you speak so much?” In short, Usbek argues that the drive to avoid “a



shameful poverty” tends to turn even wealthy people into more vigorous, steadfast versions of themselves (*PL* 106).

That Montesquieu’s earliest spokesperson for the blessings of enlightenment should advance this argument may be surprising in view of the fact that Montesquieu is often linked with the thesis that enlightenment tends to make people gentler and more easygoing.<sup>11</sup> This section of the *Persian Letters* suggests that the gentleness of the enlightened world is only one aspect of its appeal to him. In Usbek’s reply to Rhedi, Montesquieu emphasizes precisely the firmness of enlightened peoples, schooled as they are in the relentless struggle for gain. “For one man to live delightfully, a hundred others must work without relaxation,” he has Usbek say. “A woman takes it into her head that she must appear at a party in a certain dress; from that moment, fifty artisans must no longer sleep, and no longer have the leisure to eat and drink. She commands, and she is obeyed more promptly than our monarch, because self-interest is the greatest monarch on earth” (*PL* 106).

To the extent that Montesquieu approves of this omnipresent industriousness, his brief for the new civilization is less a defense of pacific mildness than an argument that popular enlightenment tends to give a secure foundation for energy and fortitude – not the piety of ancient Rome, Sparta, and Crete but the materialism of London, Amsterdam, and Paris. In the face of this new energy, he suggests, a perfectly austere community – one which banished “all those arts which provide only sensual pleasure, or pleasures of the imagination” – would be hopelessly vulnerable to domination. “The people would waste

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<sup>11</sup> See n. 1 above. Consider also Berman’s view of Montesquieu as a proponent of comfortable “authenticity”: “The basic question, now, is how much freedom do the members of any state or society have *to be the individuals they are* – how far, in other words, is human authenticity allowed to unfold?” *The Politics of Authenticity*, 22 (emphasis in original).

away continually; and the state would become so weak that the smallest power would be able to conquer it” (PL 106).

### The Distinction Between “Softness” and “Gentleness”

It might be objected that Usbek’s reply to Rhedi represents only an immature stage in Montesquieu’s thought, the termination of which is signaled by a famous passage in *The Spirit of the Laws*: “One can say that the laws of commerce perfect mores for the same reason that these same laws ruin mores. Commerce corrupts pure mores, and this was the subject of Plato’s complaints; it polishes and gentles [*adoucit*] barbarous mores, as we see every day” (SL 20.1). It might seem, in other words, that the mature Montesquieu understands modern peoples as gentle rather than tough.

But it is not necessary to conclude that Montesquieu’s position changed over time. After all, the *Persian Letters* offers the same positive valuation of a certain gentling of mores. For example, in one letter to Rhedi, Usbek compares France with Turkey in the following terms: “If, in a gentle [*doux*] government, the people is as obedient as under a severe government, the former is preferable” (PL 80). Later, Usbek says that “the gentleness [*douceur*] of government contributes marvelously to the propagation of the species,” citing the modern Swiss and Dutch republics as examples (PL 122). Another character, discussing the changing atmosphere in a Persian harem, says (in language very similar to that used by the mature Montesquieu in his aforementioned tribute to commerce): “One sees mores corrupted every day.... A new joy, spread through this place, is infallible evidence of some new satisfaction” (PL 151). And in his *Considerations on the Romans*, written midway between the *Persian Letters* and *The*

*Spirit of the Laws*, Montesquieu refers to “gentleness” (*douceur*) as the “prime virtue of princes” (*Considerations* 146).

Furthermore, *The Spirit of the Laws* is full of negative references to a certain kind of softness and positive references to a certain kind of strength. According to the mature Montesquieu, despotic government is characterized by “timid” and “beaten-down” individuals (*SL* 5.14), by a “strange weakness of the people” (*SL* 13.10), by “listlessness” (*SL* 13.15), and by “languor” (*SL* 23.28). It has no place for “an active spirit” or “steadfastness” (*SL* 6.2). Hence the policy of Aristodemus, the ruler of Cumae, to “weaken the courage of the youth” by compelling the boys to dress like girls was “suitable only for a petty tyrant” (*SL* 10.12). Political subjection takes root especially where people are “passive,” where they identify “happiness” with “laziness,” and where servitude is “less intolerable than the strength of spirit necessary to guide one’s own conduct,” Montesquieu argues (*SL* 14.2). Thus he suggests that the “extremely passive state” induced by Buddhism “has caused a thousand ills” (*SL* 14.5; see also *Considerations* 97 on the sect of Epicurus). Free societies, conversely, are said in *The Spirit of the Laws* to be characterized by “courage and industry”; freedom is said to be preserved by “brave and active” peoples (*SL* 23.28), whereas “effeminate, lazy, and timid” peoples are said to be in danger of subjugation (*SL* 17.3). The mature Montesquieu holds that freedom thrives in countries where people are “industrious, sober, inured to work, courageous, and fit for war,” and that it is threatened wherever “ease, softness [*mollesse*], and a certain love for the preservation of life” prevail (*SL* 18.4).<sup>12</sup>

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<sup>12</sup> See also *Considerations* 50-51: “Usually it is not the real loss sustained in battle (such as that of several thousands of men) which proves fatal to a state, but the imagined loss and the discouragement, which deprive it of the very strength fortune had left it.” Thus, while Cheney is right to say that, according to Montesquieu, “[t]echnical prowess and wealth” is destined to

Evidently, Montesquieu praises gentleness (*douceur*) while criticizing softness (*mollesse*) in both his earlier and his later writings. In Montesquieu's lexicon, we infer, to be "soft" means to lack the vigor necessary for demanding tasks, including the maintenance of political freedom (by vigilant political elites, by soldiers, and by ordinary citizens). And to the extent that a society has immersed itself in the arts, sciences, and commerce, Montesquieu suggests, its people are made less "soft." In the same lexicon, we infer, to be "gentle" means to lack the willingness to inflict violence merely to satisfy one's prejudices. Because prejudices are cured by enlightenment, according to Montesquieu (*SL Preface*), the spread of enlightenment means the spread of gentleness. "Knowledge makes men gentle [*doux*]," he claims, "and reason inclines toward humanity; only prejudices cause these to be renounced" (*SL* 15.3). Above all, enlightenment chips away at the "prejudices of superstition," which are "greater than all other prejudices" (*SL* 18.18).<sup>13</sup>

In the *Persian Letters*, Rhedi embodies the movement from "superstition" to knowledge. After first arriving in Venice, he writes to Usbek that he has begun to educate himself in "the secrets of commerce," as well as in the arts and sciences: "at last I am emerging from the clouds which covered my eyes in the country of my birth." But he

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become increasingly important relative to "the traditional virtues of courage and obedience" (*Revolutionary Commerce*, 59), Montesquieu also reminds us that military success will always be partly dependent upon the willingness of a people to endure losses.

<sup>13</sup> Concerning the strength of the "prejudices of superstition" in comparison with other prejudices, Montesquieu writes: "In France we have had two sorts of civil wars. Some had religion as a pretext, and they endured because their motive continued after victory. The others did not really have any motive, but were instigated by the levity or ambition of some powerful men, and were stifled at once" (*Considerations* 121). "In ordinary disputes each person knows he can be wrong and hence is not extremely opinionated or obstinate. But in our disputes over religion, by the nature of the thing, each person is sure his opinion is true, and we are indignant with those who obstinately insist on making us change instead of changing themselves" (*Considerations* 208). When the Turks "turned Mohammedan," he says, "zeal for their religion gave them a marvelous commitment to ravaging the lands of Christians." They were "literally on a manhunt" (*Considerations* 218).

remains at this stage a devout Muslim, and therefore complains bitterly about the absence of fresh water with which to perform the ritual ablutions demanded by Islam: “The city is an abomination to our holy prophet; he never looks upon it, from high in heaven, without anger” (*PL* 31). Five years later, Rhedi makes no mention of this problem. When he praises Islam, he praises the “ignorance” of the pious (*PL* 105). He appears to have been cured of “superstition” by his time in Venice.

Of course, to be against “superstition” is not necessarily to be against religion as such (*Considerations* 203). Religion, for Montesquieu, has its upsides. It can be a brake on governmental power under despotism, for instance (*SL* 3.10), and it can help to mitigate the brutality of political life (*Considerations* 137; *MT* 551; *SL* 10.3, 15.7-8, 24.3, 25.13).<sup>14</sup> Then again, if modern peoples are susceptible to despotism and conquest in the first place, Montesquieu suggests, this is largely an effect of the otherworldliness fostered by Christianity: their souls have become “small,” he says, because of “the opposition ... between the ties of religion and those of the world, a thing unknown among the ancients” (*SL* 4.4).<sup>15</sup> Thus, he indicates that it was Christianity that paved the way for the most thoroughgoing submission to despots in European history: in Rome, Christianity “locked in” (*fixa*) “a spirit of distance from public business” (*SL* 23.21; see also *Considerations* 157-58, 164 n. 11, 203-4, 206-8). And he is sympathetic to Machiavelli’s view that Christian mercy slips all too easily into a weakness incompatible with good government: “The emperor Maurice resolved never to shed the blood of his subjects. Anastasius did not punish crimes. Isaac the Angel swore that, during his reign, he would put no one to death. The Greek emperors had forgotten that they did not carry the sword in vain” (*SL*

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<sup>14</sup> See also Carrese, *Democracy in Moderation*, 126-31; Sullivan, *Montesquieu and the Despotic Ideas of Europe*, 85-91.

<sup>15</sup> See also Pangle, *The Theological Basis of Liberal Modernity*, 67

6.21; see also *Considerations* 197). He reports that “Philippicus, Maurice’s general ... began to cry at the thought of the great number of men who were going to be killed” (*Considerations* 203).

Nor, in Montesquieu’s view, was the rise of Christianity a historical precondition for the idea of gentleness toward foreigners: whenever Alexander the Great entered a country, Montesquieu says, “his first ideas, his first designs, were always to do something to increase its prosperity and power” (*SL* 10.14). Commerce, acting very much against the Christian prohibition of lending at interest,<sup>16</sup> is said to have been responsible for curing European rulers of their cruel “Machiavellianism”: on Montesquieu’s account, the invention of the letter of exchange broke through the “barbarism” of Europe, making governments dependent on financiers whose wealth they could confiscate only with difficulty, and only if they were prepared to jeopardize their own access to future credit. As a result, “Theologians were obliged to curb their principles” (*SL* 21.20; see also *MT* 77).<sup>17</sup>

Montesquieu’s judgment about the untrustworthiness of Christianity as a safeguard against cruelty is made manifest not only by his linking the persecution of the Jews in Europe to the Church’s teachings about usury, but also by his attacks on the behavior of Christians in Latin America and Africa (*SL* 4.6, 8.18, 10.4, 15.3-5; *PL* 121), by his report that the mere prospect of spreading Christianity convinced Louis XIII to “[make] slaves of the Negroes in his colonies” (*SL* 15.4), and by his appeal to the Spanish

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<sup>16</sup> See, e.g., Aquinas: “And there is a precept prohibiting interest-taking, as Dt. 23:19 says, ‘You shall not lend to your brother at interest.’” *Treatise on Law* (Q. 100, Art. 11, co.), 84.

<sup>17</sup> As Cheney explains, “In a state system characterized by war and the massive fiscal and financial operations necessary to sustain it, financial capital flees despotism. At the social level, monarchs needed to attend more closely to the well-being of their productive classes, who could be expected to work continuously only if they drew some benefit.” *Revolutionary Commerce*, 60.

and Portuguese inquisitors, in which “enlightenment” and “philosophy” have to be invoked in order to back up the “morality of [the] gospel” (*SL* 25.13).<sup>18</sup> The gentling teachings that Montesquieu occasionally associates with the New Testament can apparently be supported equally well or perhaps even better by “contemporary reasoning” and “our philosophy” (*SL* 10.3), a “philosophy” free of the “prejudices” that induce people to become cruel. It is “philosophers,” Montesquieu says, who teach people “the laws of morality” (*SL* 1.1).<sup>19</sup> After all, it was the universalist Stoic doctrine “alone,” not Christianity, that made “citizens,” “great men,” and “great emperors” (*SL* 24.10; see also *Considerations* 145). Julian the Apostate is presented as a model ruler by Montesquieu (*Considerations* 158-59; *SL* 24.10).<sup>20</sup> Justinian is presented as an unusually cruel one, given his intolerance of non-Christian and heretical sects (*Considerations* 191).

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<sup>18</sup> “I believe that Montesquieu never, in *The Spirit of the Laws*, ascribes to Christianity the virtue of ‘humanity’ or of the ‘humane.’” Pangle, *The Theological Basis of Liberal Modernity*, 172. On Montesquieu’s comparison between the Catholic Church and global commerce as political influences, see Manent, *The City of Man*, 43-44. On the anti-Christian implications of Montesquieu’s humanitarianism, see Orwin, “Montesquieu’s *Humanité* and Rousseau’s *Pitié*.”

<sup>19</sup> See also Crisafulli, “Montesquieu’s Story of the Troglodytes,” 384.

<sup>20</sup> Ehrard points out that, unlike other prominent French writers in the eighteenth century, Montesquieu does not present the establishment of the Roman Empire as a providential means of spreading the Christian faith. *L’Esprit des mots*, 57. In explaining the spread of Christianity in Rome, Montesquieu does not formulaically to “the secret means God chose to use and which he alone knows,” but he expressly puts this aside in order to speak about Heliogabulus’ decision to “destroy all of Rome’s objects of veneration and remove all the gods from their temples in order to place his own there.” This decision, Montesquieu says, “did much for the establishment of the Christian religion,” because “there was no longer anything foreign in the empire, and the people were prepared to accept all the customs an emperor might wish to introduce” (*Considerations* 148). Soon after, Montesquieu draws attention to Constantine’s “vanity” and to his “not very sensible” decisions which ultimately “ruined” the Empire, whereas he praises the “wisdom, constancy, economy, conduct, bravery” of Julian (*Considerations* 159, 161). Only in his *Defense of the Spirit of the Laws*, under the heat of censure from Christian theologians, does he write: “[T]he religion of heaven does not establish itself by the same paths as the earthly religions. Read the history of the Church, and you will see the prodigies of the Christian religion. Should it resolve to enter a country, it knows how to open the doors; all instruments are good for that. Sometimes God chooses to use a few fishermen; sometimes he will seize an emperor on the throne, and make him lower his head under the yoke of the Gospel.... God, following decrees that we do not understand, extends or restricts the limits of his religion” (*DSL* 1147).

And, even if Montesquieu argues that religion is “the best warrant men can have of the integrity of men” (*SL* 24.8; see also 8.13; *Considerations* 27, 97-98), he suggests that a certain lack of integrity can be conducive to the constant churning of power characteristic of a free society. “As each individual [under a free constitution], always independent, would largely follow *his own caprices and his fantasies*, he would often change parties; he would abandon one and *leave all his friends* in order to bind himself to another in which he would find all his enemies” (*SL* 19.27, emphasis added). “[N]ot all moral vices are political vices,” Montesquieu notes elsewhere in *The Spirit of the Laws*, referring specifically to the dishonest, industrious, and worldly Chinese, who are more successful in commerce than the honest, lazy, and pious Spanish (*SL* 19.11).<sup>21</sup>

Montesquieu therefore leaves his readers with no clear reasons to fear the dwindling of religion’s popular influence. To the contrary, he sees fit to indicate that spreading “the comforts of life” is a sure “way to attack a religion [*attaquer une religion*]” (*SL* 25.12).<sup>22</sup> And what is the aim of his celebrated defense of commerce if not to help spread the “comforts of life”? His own method of “attack” is not to engage in public theological disputes, which would only inflame the problem,<sup>23</sup> but to lead people toward “other passions” (*SL* 25.12). If he sometimes presents his political program as Christian (*SL* 24.1), then, he may see himself like “the new Ibrahim” in the *Persian*

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<sup>21</sup> For Montesquieu’s interest in the worldliness of the Chinese, see *SL* 8.21, 24.19.

<sup>22</sup> See Bartlett, *The Idea of Enlightenment*, 31-32; Pangle, *The Theological Basis of Liberal Modernity*, 102-3. Cf. Carrese, who speculates that Montesquieu has in mind “immoderate and illiberal religions most especially [or indeed exclusively?]” as targets of attack. *Democracy in Moderation*, 130.

<sup>23</sup> “One should pay great attention to the disputes of theologians, but as covertly as possible. The trouble one seems to take in pacifying them adds to their prestige; it shows that their thinking is so important that it determines the tranquility of the state” (*Considerations* 209). Montesquieu thus does not counsel his own readers to forget theological disputes; one should “pay great attention” to them, but privately.



*Letters* who adopts the guise of the old authority precisely in order to overthrow it, and who does so not by moralizing but by providing new pleasures (*PL* 141).<sup>24</sup> Judith Shklar exaggerated only slightly when she noted that, despite Montesquieu's general pronouncements in favor of "religion," "all his careful considerations of the relative values of various religions in different societies could scarcely hide his distaste for all of them."<sup>25</sup>

England emerges as the country that has gone furthest in the direction of gentleness. In the *Persian Letters*, Usbek connects England with religion only once, and then merely to drive home the country's essentially impious character: he says that because the English believe the crime of high treason is merely the rebellion of the weaker party against the stronger, "they have good reasons for saying that the precept of their Koran which ordains submission to the powers that be is not at all difficult to follow, since it is impossible not to observe it" (*PL* 104). From the English perspective, he notes, "the origin of all kingdoms and all societies" is merely the sentiment of personal gratitude, not divine will. Accordingly, the English believe that "if a prince, so far from making his subjects live happily, wants to burden them and destroy them, the foundation of obedience is removed; *nothing* binds them, *nothing* attaches them to him, and they return to their *natural liberty*" (*PL* 104, emphasis added). Montesquieu is more direct in

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<sup>24</sup> Cf. Runyon, *The Art of the "Persian Letters,"* 228-30; Schaub, *Erotic Liberalism*, 99-100. "Whatever his [religious] convictions might have been, did he not always extol the idea that one must conform to the reigning principles so as not to shock minds?" Volpilhac-Augier, *Montesquieu*, 288.

<sup>25</sup> Shklar, *Men and Citizens*, 123. In the judgment of Thiemann, Montesquieu "demonstrates a subtle and dialectical understanding of the relation between religion and politics," since he approves of religion wherever it "functions to bolster the laws of civil society" and criticizes it wherever it "undermines social or political ties." "Montesquieu and the Future of Liberalism," 277. But is this not a fairly one-sided dialectic?

his *Notes on England*: “No religion in England.... If someone speaks of religion, everyone begins to laugh” (NA 883).<sup>26</sup>

But, rather than being meek and docile, the English nation is said by Usbek to be the people which shows the least tendency toward “submission and obedience” (PL 104). It is “an impatient nation, wise in its very fury,” according to Rica (PL 136). Likewise, in *The Spirit of the Laws*, Montesquieu notes with reference to the English: “Servitude always begins with drowsiness. But a people who rest in no situation, who constantly pinch themselves to find the painful spots, could scarcely fall asleep” (SL 14.13). The English are later described as “proud,” “haughty,” and capable of uniting forcefully against any power that threatens “the fundamental laws.” So far from there being a spirit of quiet resignation in England, Montesquieu observes “hatred, envy, jealousy, and the ardor for enriching and distinguishing oneself” stretched to their fullest. “This nation,” he asserts, “would love its liberty prodigiously because this liberty would be true; and it could happen that, in order to defend that liberty, the nation might sacrifice its goods, its ease, and its interests, and might burden itself with harsher imposts than even the most absolute prince would dare make his subjects bear” (SL 19.27). Along the same lines, he insists upon the daring of people in commercial countries, where “one’s belief that one’s prosperity is more certain ... makes one undertake everything” (SL 20.4).

As well as undermining “superstition” through enlightenment, Montesquieu suggests that the materialistic spirit of enlightened society is incompatible with the monastic and aristocratic idleness that has often given rise to cruelty. He observes that those who do not feel the need to work for money are susceptible to a certain blindness to their own weakness and dependence upon fortune, hence to a certain contempt for

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<sup>26</sup> See also Sullivan, *Montesquieu and the Despotism of Europe*, 243-44.

unfortunates and their suffering. “Simple nations who are attached to work are ordinarily gentler [*plus de douceur*] toward their slaves than those who have renounced work,” he says (SL 15.16). Catholic Spain is his favorite negative example. Spaniards receive the bluntest criticism in *The Spirit of the Laws* for their treatment of American natives and European Jews (SL 4.6, 8.18, 10.4, 15.3, 23.7, 25.13, 26.22), and Montesquieu repeatedly characterizes the Spaniards of his time as both idle and arrogant. In a footnote appended to his statement that “advancing oneself by way of wealth inspires and maintains industry,” he writes, “Laziness of Spain: all employments there are given out” (SL 5.19 n. 66). And the otherworldliness of the Church, he suggests, is largely responsible for Spaniards’ comfort with joblessness: “In order to conquer the laziness that comes from the climate, the laws must seek to take away every means of living without labor, but in southern Europe they do the opposite: they give to those who want to be idle proper places for the speculative life [i.e., monasteries], and attach immense wealth to those places” (SL 14.7). Later – having again pointed out that arrogance produces “laziness, poverty, the abandonment of everything, and the destruction of the nations that chance has let fall into their hands as well as their own nation” – Montesquieu adds that “the arrogance of a Spaniard will incline him not to work” (SL 19.9). In the *Persian Letters*, Spaniards are ridiculed both as “enemies of work” and as being “so attached to the Inquisition that it would be spiteful to deprive them of it” (PL 78).

Nor is the link between idleness and cruelty somehow exclusive to Spain. Usbek points out that under the “severe government” of the Ottoman Empire, where Christians and Jews “are exposed to a thousand acts of violence,” the ruling Turks neglect the arts and sciences, and leave commerce to “hard-working and enterprising” foreigners (PL 19).

The eunuch-slaves of Persia, the epitome of cruelty in Montesquieu's novel, are said to be "in a perpetual lethargy" (*PL* 115).

England again provides a counterpoint. In Montesquieu's account, "the spirit of commerce and industry" could thrive in England only after the dissolution of the monasteries (*SL* 23.29).<sup>27</sup> He points out that, notwithstanding the nation's "opulence," its "excessive" taxation means that one can "scarcely live without industriousness." In contrast to the unemployed and self-satisfied Spaniards, then, the English are so work-obsessed that they have "no time" for "the politeness that is founded on idleness" which is characteristic of absolutism (*SL* 19.27). This increasing preoccupation with moneymaking seems to be the core of what he has in mind by the corruption of "pure mores" that "we see every day" (*SL* 20.1).<sup>28</sup>

Rather than changing his mind over the course of his career, therefore, it seems that Montesquieu consistently argues that a certain pacification of soul (a movement away from cruelty) is compatible with a certain strengthening of soul (a movement in the direction of life and hardiness). In Montesquieu's lexicon, a movement toward gentleness (*douceur*) need not be a movement toward softness (*mollesse*); the corrupting of "pure mores" need not entail enervation. It was this hopeful view that Rousseau rejected in his *First Discourse*.

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<sup>27</sup> See Ward "Montesquieu on Federalism and Anglo-Gothic Constitutionalism," 563-64.

<sup>28</sup> Montesquieu's argument that the corruption of mores is compatible with political health attracted the anger of Jansenist and Jesuit authorities alike. See Carrithers "Democratic and Aristocratic Republics," 120-21.

## *Rousseau's Attack on Popular Enlightenment*

### Morality and Virtue in the *First Discourse*

As with the substance of the Rhedi-Usbek debate in the *Persian Letters*, Rousseau's precise argument in the *First Discourse* has received little scholarly attention. In the words of Sally Howard Campbell and John Scott, "Interpreters typically have not analyzed the *Discourse* in any detail."<sup>29</sup> Some have treated it as little more than a patchwork of moralistic rhetoric.<sup>30</sup> Given that Rousseau classified the essay as one of his three "principal writings" (*LM* 575), however, the rhetoric itself merits close examination, especially because he repeatedly claimed that all the published rejoinders to the *Discourse* had missed the point (*FR* 110; *Grimm* 85; *Narcissus* 189-90; *Raynal* 25; *Second Letter* 185). And there were many rejoinders. As Christopher Kelly and Roger Masters have noted, "The storm aroused by the *Discours sur les sciences et les arts* was so great that it would have taken a life's work to answer all of its critics."<sup>31</sup>

Rousseau eventually stopped responding to those critics, predicting that they would continue to "turn the eyes of the reader away from the essential object" (*Narcissus* 189). Nor was this an unreasonable reaction. Mark Hulliung has gone so far as to doubt whether "anything can be learned about Rousseau's thought from reading the attacks unleashed by the philosophes."<sup>32</sup> Two years after the publication of the *First Discourse*, Rousseau summed up the public debate:

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<sup>29</sup> Campbell and Scott, "Rousseau's Politic Argument," 819.

<sup>30</sup> Garrard, *Rousseau's Counter-Enlightenment*, 89; Grimsley, *Jean-Jacques Rousseau*, 70; O'Hagan, *Rousseau*, 10; Vaughan, "Rousseau as Political Philosopher," 8; Wokler, *Rousseau*, 18-20.

<sup>31</sup> Kelly and Masters, "Human Nature, Liberty, and Progress," 258.

<sup>32</sup> Hulliung, *The Autocritique of Enlightenment*, 201. Cf. Wokler, "The *Discours sur les sciences et les arts* and its offspring."

“Science is good for nothing, and never does anything but harm. It is no less inseparable from vice than ignorance is from virtue. All literate peoples have always been corrupt; all ignorant peoples have been virtuous. In a word, there are no vices except among the learned, nor any virtuous man except one who knows nothing. Therefore there is a way for us to become decent people again; that is to rush to proscribe science and the learned, to burn our libraries, to close our academies, our colleges, our universities, and to plunge back into all the barbarism of the first centuries.”

That is what my adversaries have refuted very well. However I never said nor thought a single word of all that, and nothing can be imagined more opposed to my system than this absurd doctrine which they have the goodness to attribute to me.

(*Narcissus* 189-90)

In order to clarify Rousseau’s actual position, we should begin by acknowledging a key terminological ambiguity: the word “mores” (*moeurs*) is not quite equivalent to “morals” or “morality” (*morale*). Christopher Kelly has pointed out that, in the eighteenth century, the term was sometimes “used by naturalists like Buffon to indicate characteristic modes of behavior of animal species,” and that in a human context it was “connected with morality” but also covered “a range of issues that cannot be reduced to simple principles of right and wrong.”<sup>33</sup> Thus, while “the corruption of mores” might easily be taken to mean “moral corruption,” it might also have a broader meaning. Since Rousseau complains about the vices of his sophisticated contemporaries in the *First Discourse*, his readers are certainly encouraged to impute a moralistic meaning to “the corruption of mores,” and practically all of them seem to have done so.

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<sup>33</sup> Kelly, *Rousseau as Author*, 31.

But readers are also free to piece together Rousseau's meaning from the historical examples he selects. His exemplars of peoples with relatively "pure" mores include indigenous Americans, ancient Persians, Scythians, Spartans, republican Romans, Germanic barbarians, and Swiss provincials. And doubts could be raised about the moral qualities of all these peoples. As one contemporaneous critic, Claude-Nicolas Lecat, wrote with puzzlement, "The goal of Lycurgus was less to make honest men than soldiers.... For this reason all the laws of Sparta aimed at barbarism, at ferocity rather than virtue."<sup>34</sup> Another critic, Gautier, remarked with respect to the ancient Persians: "[I]t is impossible to read without horror how far they carried disregard and scorn for the most common laws of nature. Among them, all kinds of incest were authorized. In the priestly tribe, the highest dignities were almost always conferred on those born of the marriage of a son and mother. They had to be terribly cruel to put children to death in the fire they worshipped."<sup>35</sup> Concerning the Scythians, Gautier pronounced: "Herodotus and some authors cited by Strabo represent them as one of the most ferocious nations. They sacrificed one fifth of their prisoners to the God Mars, and put out the eyes of those who remained. On the birthday of a king, they strangled fifty of his officers. Those who lived near the Euxine Bridge fed on the flesh of foreigners who arrived there."<sup>36</sup> Nor was Rousseau ignorant of this. Jeff Black has noted that the very section of Ovid's *Tristia* from which Rousseau took the epigraph for the *Discourse* was Ovid's account of the Scythians' murderous ways.<sup>37</sup>

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<sup>34</sup> Lecat, *Refutation by an Academician*, 153.

<sup>35</sup> Gautier, *Refutation by Mr. Gautier*, 74.

<sup>36</sup> Gautier, 74.

<sup>37</sup> Black, *Rousseau's Critique of Science*, 27.

Indeed, Rousseau's critics pointed out that even the storied Romans could hardly furnish a clear-cut example of moral excellence. As Charles Bordes put it, "The ancient Romans plowed with one hand and fought with the other. They were great men, I believe, although they did only small things.... In these first times nothing was known except how to exist; temperance and courage could not be true virtues because they were only forced qualities; it was then a physical impossibility to be voluptuous, and whoever wanted to be a coward had to resolve to be a slave."<sup>38</sup> According to Lecat, moreover, "He who says conqueror, ordinarily says unjust and barbarian; this maxim is true above all for Rome."<sup>39</sup> Along the same lines, Gautier wrote: "What reproaches a philosopher enlightened by all the enlightenment of reason would rightly make to the Romans, at the time when they were not yet familiar with letters. Illustrious barbarians, he could have said them, all your greatness is only a huge crime. What fury animates you and makes you ravage the universe? Tigers thirsty for the blood of men, how do you dare to place your glory in being unjust, in living from pillage, in exercising the most odious tyranny?"<sup>40</sup>

Now, Rousseau might reply – and he does sometimes gesture in this direction – that of course un-enlightened peoples have not been perfectly moral, but at least they have been less immoral than they would have been in a condition of enlightenment (*Grimm* 85-86; *Narcissus* 190). But this is an eminently contestable proposition as long as "humanity" is counted as a moral virtue, as indeed it is by Rousseau (*FD* 17; *SD* 37). Rousseau's view of the exact relation between morality and popular enlightenment is therefore left somewhat muddy. He admits that to settle the question of the moral status of "barbarian" peoples, for example, would embroil him in endless disputes: "Herodotus,

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<sup>38</sup> Bordes, *Discourse on the Advantages of the Sciences and Arts*, 100.

<sup>39</sup> Lecat, *Refutation by an Academician*, 155.

<sup>40</sup> Gautier, *Refutation by Mr. Gautier*, 74-75.



Strabo, Pomponious-Mela would be pitted against Xenophon, Justin, Quintus-Curtius, Tacitus. We would be involved in research of critics, in antiquarian studies, in erudition. Brochures would become volumes, books would multiply, and the question would be forgotten.... It is not worth the trouble to start" (*Grimm* 86).

Still, in spite of the fact that the various "pure" communities in the *First Discourse* are all at least questionable from a moral point of view, there is one clear thing about them in Rousseau's presentation: "[T]he American savages who go naked and live on the yield of their hunting have never been subjugated" (*FD* 5n). The ancient Persians "created their own happiness" by resisting conquest (*FD* 8). The Swiss "could not be destroyed by adversity" (*FD* 9). Sparta "made Asia tremble" (*FD* 14). The Scythians "successfully resisted the most powerful monarchs of the universe" (*FD* 14). The Germans "conquered" Gaul and Britain "with no other treasures than their bravery and poverty" (*FD* 14-15). (Had he written the *Discourse* a few decades later, Rousseau might have mentioned the yokels of British America overthrowing their wealthy rulers.)

What links the "pure" communities, in short, is less their moral wholesomeness than their capacity to resist domination. And what links the "corrupt" communities is less their moral degeneracy than their vulnerability to domination: "If the sciences purified mores, if they taught men to shed their blood for their Fatherland, if they aroused courage, the peoples of China would be wise, free, and invincible" (*FD* 8). When Rome was corrupted, Rousseau notes, "military discipline was neglected, agriculture was scorned, sects were embraced, and the fatherland forgotten" (*FD* 10). He depicts Athens under the tyranny of Peisistratus and on the verge of domination by Macedon (*FD* 9-10). Opulent Sybaris, he points out, "was subjugated by a handful of peasants," just as

wealthy Carthage was destroyed by a Rome which had “nothing,” and just as the Roman Empire, “after devouring all the wealth of the universe, was the prey of people who did not even know what wealth was” (*FD* 14).

To be sure, Rousseau claims that he is “defending virtue” (*FD* 4), which seems to indicate clearly enough that moral rectitude is the main issue. But, as we saw in Chapter One, he often gives a peculiar meaning to his key terms, and no one would quibble with the proposition that “virtue” is an especially important term for him. Oddly, though, “Rousseau’s account of virtue ... has received only a small fraction of the scholarly attention devoted to other central Rousseauian concepts, such as freedom, nature, and the general will.”<sup>41</sup>

What is virtue for Rousseau? In the *First Discourse*, almost in passing, Rousseau defines it simply as “the strength and vigor of the soul” (*FD* 6). In other words, “virtue” denotes something like the capacity to overcome the repulsive force of pain and the attractive force of pleasure in order to execute one’s intentions, a capacity which Rousseau regards as essential for consistent morality but which he refuses to reduce to morality.<sup>42</sup> Thus, although Rousseau certainly uses the word “virtue” as shorthand for morality on many occasions (see, e.g., *Emile* 577; *PE* 149; *Reveries* 51), his own examples in the *Discourse* suggest that “virtue” as such is only accidentally related to moral uprightness. Hence, Rousseau’s exemplary “savages” are said to “not even know by name the vices we have so much trouble repressing” (*FD* 9n), which implies that they

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<sup>41</sup> Reisert, *Jean-Jacques Rousseau*, 11.

<sup>42</sup> Cf. Reisert, who claims that “Rousseau ... seeks the nature of the human soul in order to discover a practical, efficacious means of teaching virtue, which he understands as the strength of soul or will *required to faithfully carry out one’s duties to others*.” *Jean-Jacques Rousseau*, 8 (emphasis added).

did not know the moral virtues either. As Rousseau puts it in the *Second Discourse*, “Savages are not evil precisely because they do not know what it is to be good” (*SD* 35).

Another of the exemplary figures in the *First Discourse* is Socrates, who knew the virtues but who was by no means a clear example of moral service either to his community or to his family. As Rousseau notes elsewhere, “[I]f his noble and gentle death had not honored his life, he would have passed for a sophist” (*LF* 269). “[T]he care of his own felicity is the wise man’s entire occupation.... *Socrates* saw and deplored the misfortunes of his fatherland; but it fell to *Thrasybulus* to end them” (*Hero* 2, italics in original). Thus, rather than being like “the wise Hebrew” who wanted to “raise up his people” (*LF* 269), and rather than being like Cato the Younger, who “wanted all citizens to be free” (*CSC* 15), Socrates was like Bacon, Descartes, and Newton, someone with “the strength to walk alone” in the unwavering pursuit of knowledge (*FD* 21).

Accordingly, whereas the criticisms of artists and intellectuals that Rousseau attributes to Cato the Elder and Fabricius focus on morality and politics, those of Socrates focus on truth (*FD* 10-11). Taking advantage of the fact that Plato and Xenophon had already secured the reputation of Socrates as a fundamentally moral man,<sup>43</sup> though, Rousseau brazenly elides the difference between the “virtue” of Cato the Elder and the “virtue” of Socrates, saying that Cato “continued” in Socrates’s path when he strove to rid his city of

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<sup>43</sup> See, e.g., Reisert, 2: “In his *Apology*, Socrates explained to the men of Athens that his *daimonion* – his conscience – called on him to a nobler citizenship and a higher piety than those his fellow citizens recognized, which required him to seek true knowledge about virtue. The Athenians pressed him to choose between his conscience and his city.... He refused to make the choice, and for that refusal he was made to pay with his life.”

“the sciences, arts, and dialectic[!]” (FD 10). His own source for the details of Cato’s life, Plutarch, reports that Cato regarded Socrates as “a prating, seditious fellow.”<sup>44</sup>

“Rousseau is a moralist, or he is nothing,” Edmund Burke said.<sup>45</sup> But in the *First Discourse*, Rousseau mentions the word “morality” only once, and then only parenthetically: “In politics, as in morality, it is a great evil to fail to do good” (FD 13). His decisive historical examples show a link between intellectual progress and subjugation, not a link between intellectual progress and wickedness (FD 7-9, 14-15). So far from Rousseau’s concerns being merely those of a moralist, he criticizes his contemporaries for being “incapable” of “the vices that presuppose courage and firmness” (FR 116, emphasis added). They are convicted of an excessive “gentleness [*douceur*] of character” and “pettiness [*petitesse*] of soul” rather than sinfulness or viciousness (FD 5, 5n). Near the beginning of the *Discourse*, Rousseau invokes the “strength and vigor of the body” of the “healthy, robust man.” He calls the “good man” the one who “disdains all those vile ornaments which would hamper the use of his strength” (FD 6). In Fabricius’s oration, the “effeminate [*efféminées*]” mores of the Roman Empire are bemoaned (FD 11). Rousseau in his own name accuses modern artists in general of producing works suited only to “faintheartedness [*pusillanimité*]” and Voltaire in particular of suppressing “manly and strong [*mâles et fortes*] beauties” in order to satisfy “our false delicacy [*délicatesse*]” (FD 15).

The unorthodoxy of Rousseau’s understanding of “virtue” is confirmed in the very first reply that he offers to critics of the *First Discourse*. “I know in advance the

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<sup>44</sup> Plutarch, *The Lives of the Noble Grecians and Romans*, 428. On Rousseau’s use of Plutarch in the *First Discourse*, see Keller, “Plutarch and Rousseau’s First Discours.”

<sup>45</sup> Burke, “A Letter to a Member of the National Assembly,” 47. See also Reisert, *Jean-Jacques Rousseau*, 11-14; Vaughan, “Rousseau as Political Philosopher,” 13. Cf. Goldschmidt, *Anthropologie et politique*, 61-66, 84-93.

great words that will be used to attack me: enlightenment, knowledge, laws, morality [*morale*], reason, propriety, consideration, gentleness [*douceur*], amenity, politeness, education, etc.. To all that,” he concludes, “I will reply only with two other words, which ring even more loudly in my ear. Virtue, truth, I will write for myself constantly; Truth, virtue!” (*Raynal* 27). If one of the words Rousseau expects to be used against him is “morality” and one of the words he plans to use in his defense is “virtue,” then the two cannot be identical.

This helps to explain why, in a rejoinder to a particular critic of the *Discourse*, Rousseau points toward a possibility that would be perverse from a simply moralistic perspective: criminals who are virtuous, and virtuous not insofar as they break laws for a just purpose but insofar as their souls have “fire,” “warmth,” and “resource for life” (*Observations* 50). Likewise, Rousseau explicitly distinguishes morality from strength of soul in his *Discourse on the Virtue Most Necessary for a Hero* (*Hero* 8, 9). And in *Emile* he complains that his contemporaries do not even have “enough courage to be illustrious criminals” (*Emile* 506). “[The Spartans’] crimes horrify us,” he says in a fragment. “Sometimes their very virtues make us shudder. Equally weak and pusillanimous in good and evil, everything that bears a definite character of strength and vigor does not appear possible to us” (*PF* 65). “I am an observer and not a moralist,” he admits elsewhere (*MP* 36).

In the *First Discourse*, Rousseau maintains that enlightened peoples lack “firmness” (*FD* 15). Their lack of personal integrity is certainly one symptom of this lack of firmness, but it is not itself the “essential object” of the *Discourse*, which Rousseau rebukes his critics for missing (*Narcissus* 189). In his final restatement, he puts the matter

succinctly: “The taste for letters, philosophy, and the fine arts softens [*amollit*] bodies and souls” (*Narcissus* 192). In sum, the problem of enlightenment as presented by Rousseau is very similar to the problem as presented by Montesquieu’s Rhedi. The concern is enervation more than immorality. As Usbek says to Rhedi, “You believe that the arts soften [*amolissent*] peoples” (*PL* 106). “Precisely what, then, is at issue in this question of luxury?” Rousseau writes in the *Discourse*. “To know whether it is more important for empires to be brilliant and transitory or virtuous and durable” (*FD* 15).

### The Causes and Consequences of Corruption

Several scholars have claimed that Rousseau attributes implausibly vast causal power to the propagation of the arts and sciences.<sup>46</sup> But Rousseau says only, “It is for letters, the sciences, and the arts to claim *their share*” of responsibility for the anemic state of modern society (*FD* 7, emphasis added). The deeper causes, he explains, are inequality and wealth, which give rise to the cultivation of the arts and sciences in the first place (*Observations* 48-49). Indeed, according to Rousseau, the arts and sciences sometimes function merely as diversions for subject peoples, masking the absence of the deeper satisfactions available under freer conditions: “[T]he sciences, letters, and arts ... spread garlands of flowers over the iron chains with which men are burdened” (*FD* 5).

Still, Rousseau points out, a symptom can make an illness worse, and the core effect of popular enlightenment is to *increase* inequality and wealth, hence to increase our preoccupation with moneymaking. Because of this, communities are bound together less by “esteem and mutual benevolence” and more by the “personal interest” of business

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<sup>46</sup> See Cranston, *Jean-Jacques*, 231; Damrosch, *Jean-Jacques Rousseau*, 236; Mason, “Reading Rousseau’s First Discourse,” 262; Wokler, *Rousseau*, 20.

associates (*Narcissus* 193n). “No more sincere friendships; no more real esteem; no more well-based confidence” (*FD* 6).

But why should this pose a political problem? After all, Montesquieu seems to regard the “corruption” of “pure mores” as a condition of the modern world’s fundamental political improvement.<sup>47</sup> The English, he says, should be regarded as “confederates more than fellow citizens.” They enjoy a “solid luxury” thanks to “a great superfluity,” and they easily forget “the laws of friendship,” seeking their advantage wherever the opportunity presents itself. Precisely *because* of this way of life, Montesquieu suggests, Englishmen have been “freed from destructive prejudices.” Or, as he delicately puts it, “It would not be impossible for there to be in this nation people who had no religion” (*SL* 19.27). Luxury can be a good thing, Montesquieu insists (*SL* 19.9, 21.16; compare 20.11).<sup>48</sup> Inequality poses no threat to the foundation of a monarchy except in extreme cases (*SL* 7.4, 14.6-7, 23.28), he maintains, and it need not undermine a commercial republic unless it goes so far as to undermine “love for work” in a democracy or “moderation” in the ruling class of an aristocracy (*SL* 5.6, 5.8).

Rousseau differs from Montesquieu less because he loves righteousness than because he thinks that the weakening of religion tends to foster meekness and servility. It is mainly because enlightened societies are deprived of strong religious hopes, he suggests, that they are relatively susceptible to domination. In other words, faith is linked with strength of soul for Rousseau in a way that is alien to Montesquieu’s analysis. In “all periods,” Rousseau declares in the *First Discourse*, “slavery” has been a “punishment” for “the arrogant attempts we have made to emerge from the happy ignorance in which

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<sup>47</sup> Cf. Rosen, *The Elusiveness of the Ordinary*, 16, 45-46; Shklar, *Montesquieu*, 115.

<sup>48</sup> The “prevalence of luxury” is “not itself a misfortune” (*Considerations* 150).

eternal wisdom had placed us” (FD 11). When he speaks against the “futile declaimers” who are busy “undermining the foundations of faith,” he adds immediately that they are “annihilating virtue” (FD 14). This is why he thinks that every country has to choose between a “brilliant and transitory” existence and a “virtuous and durable” one (FD 15). Religion is the most accessible and reliable source of “virtue,” he maintains, even if not all “virtue” has depended on faith. Thus, as he observes, “Princes always view with pleasure the spread, among their subjects, of the taste for the arts of amusement and superfluities,” which fosters “that pettiness of soul so appropriate to servitude” (FD 5n). The path to subjugation that “always” succeeds, he avows elsewhere, is to “effeminate” the people “under the pretext of educating and enriching them”: “softened [*amollis*], corrupt, delicate, reasoning peoples, making fine speeches about freedom in the ignominy of servitude, have all been crushed under their masters and then destroyed by conquerors” (*Corsica* 126n).

In Rousseau’s analysis, then, what locked in the Romans’ submissiveness was not their acceptance of Christianity but rather their turn toward wealth at the expense of piety. It was “in the time of Ennius and Terence” – in the second century BC – “that Rome began to degenerate,” he maintains (FD 8). In the oration he puts in the mouth of Fabricius, which he later claimed was the first part of the *Discourse* he wrote (*Confessions* 295; *LM* 575), Fabricius declares his disdain above all for the pomp and luxury of imperial Rome, not for its infiltration by Christianity (FD 11).

Of course, Rousseau has his reservations about the psychological effects of Christianity and about the potential for Christian intolerance (*SC* 217-24). The *First Discourse* mostly praises pagan societies, criticizing intellectuals as enemies of “religion”



in general, not as enemies of the Christian faith in particular (*FD* 14; see also 18n). In describing the paradigmatic case of corruption in “the earliest times,” Rousseau speaks of people turning away from “the gods” (*FD* 16). Indeed, the first word of Fabricius’ oration is “Gods” (*FD* 11). Nonetheless, Rousseau seems to understand the spread of Christianity in Rome more as a symptom of political decay than as a cause of it, and for him the revival of some form of Christianity in modern Europe is clearly preferable to the continued dwindling of belief. In his view, the risk of Christian intolerance is a risk that has to be managed to the extent possible, through the promotion of civil and theological toleration (see, e.g., *LWFM* 215-16, 224; *SC* 223-24). But a total cure for intolerance would be worse than the disease. As he puts it in *Emile*,

Bayle has proved very well that fanaticism is more pernicious than atheism, and this is incontestable. But what he did not take care to say, and which is no less true, is that fanaticism, although sanguinary and cruel, is nevertheless a grand and strong passion which elevates the heart of man, makes him despise death, and gives him a prodigious energy that need only be better directed to produce the most sublime virtues. On the other hand, irreligion – and the reasoning and philosophic spirit in general – causes attachment to life, makes souls effeminate and degraded ... and thus quietly saps the true foundations of every society. (*Emile* 479-80n)

There is a qualification in Rousseau’s position, however. In a passage late in the *Second Discourse*, he speaks of “the Citizen” in terms that are very close to those used by Usbek in his reply to Rhedi: “[T]he citizen, always active, sweats, agitates himself, torments himself incessantly in order to seek still more laborious occupations; he works to death, he even rushes to it in order to get in condition to live, or renounces life in order to acquire immortality.” With this blurring of the line between the psychology of

citizenship and the psychology of moneymaking, it might seem that Rousseau has come around to the Montesquieuian position: restless social and economic competitors have the stuff of courageous and vigilant citizens. But, as the passage continues, the “citizen” transforms into a courtier whose undeniable steadfastness is directed only toward furthering his own status: “He pays court to the great whom he hates, and to the rich whom he scorns. He spares nothing in order to obtain the honor of serving them; he proudly boasts of his baseness and their protection; and proud of his slavery, he speaks with disdain of those who do not have the honor of sharing it” (*SD* 66).

Rousseau’s position therefore seems to be that most individuals in enlightened societies are eventually reduced either to an apathetic meekness *or* to a “strength and vigor” entirely in the service of narrow personal ambition. And the latter is only somewhat preferable to the former, since “ambitious and cowardly souls” are ready “to dominate or serve almost indifferently, according to whether it becomes favorable or adverse to them” (*SD* 62). It should not be surprising that he elsewhere evinces grave doubts about the sturdiness of English freedom (*Poland* 199-200; *SC* 192).

### *Conclusion*

Far from denying Montesquieu’s link between enlightenment and gentleness, Rousseau calls it “the most solid statement ever made in favor of letters” (*FR* 111n). But he is skeptical on two fronts. First, he is unconvinced that enlightened societies can really combine this particular kind of gentleness with “strength and vigor of soul.” When money began to circulate in Switzerland, he claims, “all the feelings that give resiliency to the soul” were “stifled,” so that “one no longer saw either firmness in conduct or vigor

in resolutions” (*Corsica* 136). Second, he is unconvinced that such “strength and vigor” as may be produced under conditions of enlightenment is likely to be re-directed toward the maintenance of public freedom. “Ancient peoples are no longer a model for modern ones,” he declares in the *Letters Written from the Mountain*, insisting that even the relatively unsophisticated Genevans are “always occupied with their private interests, with their work, with their trafficking, with their gain” (*LWFM* 292-93).

Rousseau clearly had Montesquieu in mind when he wrote the *First Discourse*. “Ancient political thinkers incessantly talked about morals and virtue, those of our time talk only of business and money,” he complains. “One will tell you that in a given country a man is worth the price he would fetch in Algiers; another following this calculation, will discover some countries where a man is worth nothing and others where he is worth less than nothing” (*FD* 14). As scholars have noted, this passage combines and reworks two important statements from *The Spirit of the Laws*.<sup>49</sup> Early in that work, Montesquieu says: “The political men of Greece who lived under popular government recognized no other force to sustain it than virtue. Those of today speak to us only of manufacturing, commerce, finance, wealth, and even luxury” (*SL* 3.3). And much later, Montesquieu observes: “Sir William Petty has assumed in his calculations that a man in England is worth what he would be sold for in Algiers. This can be good only for England: there are countries in which a man is worth nothing; there are some in which he is worth less than nothing” (*SL* 23.17).

But the passage in the *First Discourse* does not end with these two allusions. “[Modern political thinkers] evaluate men like herds of cattle,” Rousseau continues.

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<sup>49</sup> See Kelly, “Rousseau and the Illustrious Montesquieu,” 28-29; Strauss, “On the Intention of Rousseau,” 458-59; Wright, “Rousseau and Montesquieu,” 66-67.

“According to them a man is worth no more to the state than the value of his domestic consumption. Thus one Sybarite would have been worth at least thirty Lacedaemonians. Guess, then, which of these two republics, Sparta or Sybaris, was subjugated by a handful of peasants and which made Asia tremble” (*FD* 14). Now, at the end of Usbek’s rejoinder to Rhedi in the *Persian Letters*, Usbek argues that if citizens lacked the arts and sciences,

[O]ne would see the end of the circulations of riches and the progression of income which comes from the dependence of the arts on each other. Each private individual would live on his land, and would draw from it only what was precisely necessary for him not to die of hunger. But, since this is sometimes not the twentieth part of the income of a state, the number of inhabitants would have to diminish proportionately, and only a twentieth would remain.

Take careful note of how far the income from arts and manufactures goes. Capital produces, annually, only a twentieth part of its value for its owner; but with a pound’s worth of paint, a painter will make a picture worth fifty. The same can be said about goldsmiths, wool-workers, silk-workers, and every sort of artisan.

From all this it must be concluded, Rhedi, that for a prince to be powerful, his subjects must live amidst delights: he must work as diligently to procure them every sort of luxury as to provide the necessities of life. (*PL* 106)

It seems plausible that this passage, too, was at the back of Rousseau’s mind when he railed against the modern thinkers who claim that sybarites make for good citizens. After all, there are more-than-superficial similarities between the language of the *First Discourse* and the language of Rhedi’s letter to Usbek. Rhedi eulogizes “the innocence of ancient times, and the tranquility which reigned in the hearts of our first fathers,” as well as “the ignorance of the children of Mohammed” (*PL* 105); Rousseau speaks of the

“ignorance and simplicity of our Forefathers,” and the loss of their “ignorance, innocence, and poverty” (*FD* 21). Rhedi says that he expects to be regarded as a “barbarian” (*PL* 105); Rousseau chooses as an epigraph the line from Ovid, “Here I am the barbarian, because no one understands me” (*FD* 1).

Rousseau certainly knew the *Persian Letters*, referring to it in *Emile* (640) and privately recommending it as a model of writing.<sup>50</sup> But whether or not he did have the Usbek-Rhedi debate in mind, Usbek’s reply to Rhedi certainly sheds light on the thought of the philosopher apparently regarded by Rousseau as the most formidable defender of enlightened modernity. It suggests that Montesquieu agreed with Rousseau about the fundamental importance of a certain strength or steadfastness. To be sure, Montesquieu did try to show that enlightenment entails a certain gentling, such that many forms of cruelty would wither away, but he was not simply an apostle of gentleness. He insisted also upon the harsher side of the enlightened world: the unleashing of materialism, he suggested, would produce more than enough strength and vigor to maintain a free community. Precisely because Montesquieu recognized the connection between popular enlightenment and the corruption of mores – the tendency of enlightenment to foster an ugly kind of avarice, beneath a veneer of gentle decency – he attempted to show that it need not lead to feeble passivity, and therefore that it need not pave the way to the political *summum malum* of despotism. He thus rose to Rousseau’s challenge before Rousseau had even issued it: “[W]ill our philosophy still dare deny that good mores are essential to the stability of empires, and that luxury is diametrically opposed to good mores?... [W]hat will become of virtue when one must get rich at any price?” (*FD* 14).

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<sup>50</sup> See Mason, “Montesquieu,” 608; François, “Rousseau, les Dupin, Montesquieu,” 57.

Rousseau had lost his citizenship in 1728, and did not regain it until 1754. In the *First Discourse*, he not only quoted but identified himself with the “obscene” Ovid (*FD* 1, 8; see also *Lecat* 179).<sup>51</sup> But precisely because the *Discourse* could be interpreted as the product of a wholehearted moralist – a “citizen of Geneva” (*FD* 1), “a decent man who knows nothing and yet does not think any the less of himself” (*FD* 4), someone bereft of “great talents” who would limit himself to “fulfilling well” his duties (*FD* 22) – it was the fitting opening salvo of a career-long project focused on undermining the popular authority of science and shoring up religion, which had been “discredited everywhere by philosophy” (*LWFM* 227), not least by the irreverent works of Montesquieu.

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<sup>51</sup> See also Launay, “Le ‘Discours sur les Sciences et les Arts,’” 101-2.

### CHAPTER THREE: COSMOPOLITANISM

In the previous chapter, we considered Montesquieu's and Rousseau's conflicting judgments about the best means of fostering the constancy or steadfastness that underlies resistance to foreign and domestic threats to liberty. This steadfastness might be understood as the fundamental precondition of free government. But steadfastness alone is clearly not enough. What is needed in any decent political community – not merely for its preservation in extreme circumstances but also for its functioning on a daily basis – is a certain spirit of justice, in the minimal sense of respect for the public good. For this reason, we are almost inevitably led to raise the question of whether that spirit of justice must be buttressed by patriotic dedication or whether it can thrive among relatively cosmopolitan societies. As with the question of enlightenment, that of cosmopolitanism is controversial today. In fact, it is now commonly said that the main political division around the world is between those who wish to move beyond strong national identities and those who wish to defend those identities. And this division, too, is visible in the thought of Montesquieu and Rousseau.

In Montesquieu's *Persian Letters*, the ancient republics with a genuine “fatherland” (*patrie*) are described as regimes that produced “the most remarkable services” (PL 89). In his *Considerations on the Romans*, he attributes the Romans' political success in large part to their “love of glory and of fatherland” (*Considerations* 170). Likewise, in *The Spirit of the Laws*, he insists that of all the forms of government, only patriotic republics cultivate “virtue,” by which he means the passion that produces

“a continuous preference for the public interest over one’s own” (*SL* 4.5). Indeed, among all the writers of his time, Montesquieu “did the most to popularise the idea that the ideal form of government was a republic based upon political virtue.”<sup>1</sup>

Montesquieu might therefore seem to be a proponent of patriotism, especially since the patriotic republic appears to be a simply “moderate” or non-despotic government,<sup>2</sup> and monarchical government – which seems at first to be the only other alternative to despotism – is so liable to slide into despotism (*PL* 102; *SL* 8.6-7). The impression of Montesquieu as a defender of patriotic republicanism is strengthened by the fact that he seems to regard the dwindling of patriotism in “the dregs and corruption of modern times” (*SL* 4.6) as tantamount to a shrinking of humanity. Of the ancient republics, he says, “[T]hings were done in those governments that we no longer see and that astonish our small souls” (*SL* 4.4). In regimes where citizens do not act for “love of the fatherland,” he says in *The Spirit of the Laws*, one will rarely find “a good man” (*SL* 3.7). The same contrast between the grandeur of patriotic antiquity and the pettiness of deracinated modernity turns up also in his unpublished writings. “It is love of country that has given Greek and Roman history that nobility that ours does not have,” he says in one of his notebooks. Indeed, “it seems that, ever since those two great peoples ceased to exist, men have lost a few inches in stature” (*MT* 221). Understandably, then, some commentators have maintained that Montesquieu offers an essentially positive appraisal of patriotism.<sup>3</sup>

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<sup>1</sup> Linton, *The Politics of Virtue in Enlightenment France*, 13.

<sup>2</sup> See Aron, *Main Currents in Sociological Thought*, 24-25.

<sup>3</sup> See Hulliung, *Montesquieu and the Old Regime*, 29-30, 218; Nelson, *The Greek Tradition in Republican Thought*, 193; Thiemann, “Montesquieu and the Future of Liberalism,” 273-77. Ilbert says of Montesquieu that his “heart was in the little republics of the Graeco-Roman world.” *Montesquieu*, 34.



But all of Montesquieu's major works finally turn away in disappointment from "love of the fatherland." However impressive it may be, he suggests, patriotic dedication is less conducive to happiness than we might hope, and patriotic regimes have more in common with despotic ones than we might expect. In the future, he argues, commercial cosmopolitanism will produce a decent respect for the public good. More than this, it will smooth the edges of the old national distinctions, encouraging a mingling of all peoples, (hence a pleasant variety), but also an interdependence of all states (hence a reassuring unity). We can therefore consider Montesquieu a founder of the liberal attempt to combine the unity of the human race with respect for the diversity of cultures.<sup>4</sup>

Perhaps even more than Montesquieu, who traveled and read widely but always remained a Frenchman, Rousseau was a genuine cosmopolitan. He ran away from Geneva as an adolescent, renounced his religion and therefore his citizenship, traveled to a variety of countries in a variety of stations, educated himself in the arts and sciences in multiple languages, and wrote some of the most resounding tributes to cosmopolitanism in the history of political thought. The *Second Discourse*, for example, pays tribute to the "few great cosmopolitan souls, who surmount the imaginary barriers that separate peoples" (SD 54). *Emile* sketches an education which would allow the pupil "to get to the point of generalizing his individual notions under the abstract idea of humanity and to join to his particular affections those which can make him identify with his species"

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<sup>4</sup> As Cheney notes, in the eighteenth century "French observers did not use the term 'globalization,' but referred often to the 'advances of trade' (*les progrès du commerce*), a phrase that evokes both economic growth and the social progress accompanying it. The opening of the East Indian trade and the establishment of a colonial plantation complex that rapidly followed upon the discovery of the Americas were commonly held responsible for millennial social and political transformations on the Continent." *Revolutionary Commerce*, 1.

(*Emile* 387). All Rousseau's major works attack what would now be called Euro-centrism (see, e.g., *FD* 9n, *Emile* 641, *SD* 85-86).<sup>5</sup>

Yet Rousseau was a "prophet of the new nationalism" which arose in the eighteenth and nineteenth centuries.<sup>6</sup> In his political writings, he goes out of his way to present himself as a citizen and a patriot (*FD* 1; *LWFM* 197, 269, 305; *SD* 11) and makes efforts to reinvigorate those words in their original senses (*Emile* 165; *SC* 139n).

"Distrust those cosmopolitans who go to great length in their books to discover duties they do not deign to fulfill around them," he warns in *Emile*. "A philosopher loves the Tartars so as to be spared having to love his neighbors." Nor, in endorsing the alternative, does Rousseau shy away from its unpleasant side: "Every patriot is harsh to foreigners. They are only men. They are nothing in his eyes. This is a drawback, inevitable but not compelling. The essential thing is to be good to the people with whom one lives" (*Emile* 163-64; see also *LWFM* 149n).

For Rousseau, the great mingling of peoples observed and promoted by Montesquieu will loosen the bonds of social affection that keep political life from degenerating into an exercise in force and fraud. Stable relations of cooperation, he suggests, can exist only among narrow and exclusive societies, societies probably no larger than those collectivities that understand themselves to be nations.

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<sup>5</sup> Todorov suggests that "Rousseau was perhaps the first writer to offer a systematic criticism of the ethnocentrism of classical philosophy – without renouncing its universalism." *On Human Diversity*, 10.

<sup>6</sup> Hastings, *The Construction of Nationhood*, 196.

## *Montesquieu's Cosmopolitanism*

### Severity and Gentleness

To understand Montesquieu's valuation of patriotism, we must begin with the *Persian Letters*, which contains one of his most extended and revealing treatments of what he means by "virtue," the "continuous preference for the public interest over one's own" that he identifies as the core of patriotism (*SL* 4.5). Early in the novel, Usbek receives the following challenge in a letter from an old companion named Mirza: "Yesterday the question was raised [in our circle of friends] whether men are made happy by the pleasures and satisfactions of the senses, or by the practice of virtue. I have often heard you say that men were born to be virtuous, and that justice is a quality which is as proper to them as existence. Explain to me, I beseech you, what you mean to say." And, in issuing this demand, Mirza suggests that his interest in the question of virtue derives not from a pure love of truth but from a concern with his prosaic obligations: "I have spoken to the mullahs, who drive me to despair with their passages from the Koran, because I do not speak to them as a true believer, but as a man, as a citizen, as the father of a family" (*PL* 10).

Usbek answers with a fable about a nation of "Troglodytes" whose experiment in the lawless pursuit of individual self-interest produces famine, violence, and misery. In order to avoid falling back into the same catastrophic situation, the Troglodytes dedicate themselves so completely to virtue that no laws are required for civic harmony. Finally, however, they adopt a middle course in the form of obedience to laws enforced by a monarch without any special dedication to virtue. We never see Mirza's reply, and Usbek himself offers no commentary on the fable.

Because the Troglodytes' period of virtue appears to be a model of flourishing, whereas the establishment of monarchy and laws at the end of the fable seems to be a sad decline, commentators have tended to interpret the tale of the Troglodytes as a praise of virtue.<sup>7</sup> But there are several difficulties with this reading. For one thing, virtue is embraced by the first generation of "good" Troglodytes as a response to the failure of a society built by "wicked" Troglodytes upon a foundation of absolutely uncalculating selfishness, a society in which all the individuals "agreed that they would no longer obey anyone, that each would watch over his own interests alone, without consulting those of others" (*PL* 11). But the notion of people motivated by such a short-sighted and aggressively atomistic view of self-interest – never sharing any excess food with the needy, refusing to help neighbors settle their disputes, avoiding alliances or breaking them at the first opportunity, always charging the highest possible price, never reciprocating favors – is hard to credit; it is a fairytale version of selfishness which makes virtue appear both necessary and attractive by comparison. Even according to the unsentimental Hobbes, basically selfish individuals can see the utility of *some* cooperation; the problem is only how to regularize and generalize it.<sup>8</sup> As Usbek acknowledges, the story he tells Mirza – who seems to be going through a moral crisis – is not "subtle philosophy." The nightmarish existence of the "wicked" Troglodytes is at

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<sup>7</sup> See Crisafulli, "Montesquieu's Story of the Troglodytes"; Douglass, *Rousseau and Hobbes*, 47-48; Hont, "The Early Enlightenment Debate on Commerce and Luxury," 405-6; Hulliung, *Montesquieu and the Old Regime*, 118, 137-38; Keohane, "Virtuous Republics and Glorious Monarchies," 385-87, 394; Lynch, "Montesquieu and the Ecclesiastical Critics," 497; Nelson, *The Greek Tradition in Republican Thought*, 156-58; Shackleton, *Montesquieu*, 37-38; Sonenscher, *Before the Deluge*, 98-99, 107; Wright, "Montesquieuean Moments," 149. Schaub takes a more skeptical view, emphasizing the dramatic context of the fable, but she still regards it as an essentially positive depiction of virtue. *Erotic Liberalism*, 36-37.

<sup>8</sup> As we noted in Chapter One, Hobbes takes for granted the existence of small societies in the state of nature. Cf. Crisafulli, "Montesquieu's Story of the Troglodytes," 373-74.

best an extreme aberration, and apparently one adopted by Usbek for rhetorical purposes. “There are certain truths for which it is not enough to persuade,” he writes, “but one must also make felt; such are the truths of morality” (*PL* 11).

Even stipulating the genuineness of the problem of this kind of “wickedness,” though, the virtuous way of life adopted by the good Troglodytes is a manifestly precarious solution. Its success depends on a rare and tenuous combination of circumstances: the time and willingness to carry out incessant moral instruction of children; a very small population; extreme austerity; hermetic isolation from foreign influences.<sup>9</sup> All these things seem to be necessary conditions of their extreme social cohesion. The Troglodytes’ virtuous republic can hardly serve as a helpful model for many other communities, let alone for those individuals (like Mirza) who live in very different circumstances.

Still, to say that virtue is difficult both to establish and to maintain is not to say that it is not worth striving for, especially if it is the only means by which to hold a community together. But virtue is *not* the only alternative to civic decay. As we learn at the end of the fable, a much simpler and more reliable path is open to the Troglodytes: elect a government to enforce a basic code of law and let people do what they want within these laws, without worrying about trying to instill a spirit of rigorous self-sacrifice. At the end of the fable, the outstandingly virtuous king-elect himself admits, “[P]rovided that you avoid falling into the greatest crimes, you will not need virtue” (*PL* 14; compare *SL* 3.5-7). Indeed, the superfluity of virtue is implied even earlier, given that

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<sup>9</sup> In *The Spirit of the Laws* Montesquieu says that virtue depends on “singular institutions,” that is, distinctive customs which bind together a people as a people. “Those who want to make similar institutions will establish ... the separation from strangers in order to preserve the mores, and commerce done by the city, not by the citizens” (*SL* 4.6; see also *Considerations* 91-93).

the founders themselves were bound together not by any self-forgetting patriotic devotion but by a recognition of the benefits of cooperation. They saw that respect for the public good was an essential means to self-preservation.

Nonetheless, wholehearted dedication to the public good (rather than a merely prudential willingness to fulfill the obligations one has promised to fulfill) may yet be justified if, as the good Troglodytes teach their children, virtue is the core of happiness. But the fable itself gives us reasons to doubt this. Usbek notes that the young Troglodytes are brought up to “feel” – he does not say “know” – “that the interest of individuals is always found in the common interest, that wanting to separate oneself from it is to want to ruin oneself, that virtue is not at all a thing which must cost us, that one must not at all regard it as a tiresome exercise, and that justice for another is a charity to ourselves.”<sup>10</sup> That such things are only felt rather than understood or known is an indication that what looks at first like education is in fact only a kind of habituation. Endless incantations take the place of rational instruction.<sup>11</sup> (It is worth remembering that Usbek tells Mirza that his own fable will make the truths of morality “felt.”)

And the very lives of the good Troglodytes suggest that virtue, far from being its own reward and the essence of a happy life, only makes *other people* happy, and that it does so mainly by providing them with physical goods. Rather than being superior to the satisfaction of the senses, as Mirza wants it to be, virtue seems to be valuable only to the extent that it functions as a means to the satisfaction of the senses. Hence the activities of

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<sup>10</sup> It is the “virtuous” Troglodytes who affirm these hopeful propositions, not Usbek, let alone Montesquieu. Cf. Crisafulli, “Montesquieu’s Story of the Troglodytes,” 380; Lynch, “Montesquieu and the Ecclesiastical Critics,” 497.

<sup>11</sup> In discussing the “education” necessary in patriotic republics, Montesquieu emphasizes the role of fathers, saying, “One is ordinarily in charge of giving one’s knowledge to one’s children *and even more in charge of giving them one’s own passions*” (SL 4.5, emphasis added). He later says explicitly that virtue “is a feeling and not a result of knowledge” (SL 5.2).

virtue are not among the rewards bestowed by the good Troglodytes on their fellows. (The rewards mentioned in the fable are relief from labor, marriage, health, and rest.) Indeed, virtue is finally revealed to be a “yoke” under which the Troglodytes have been chafing. Thus they cast off virtue in order to enjoy “ambition,” “riches,” and “slack pleasures” (*PL* 14).<sup>12</sup> Before this, they seem to have been motivated not only by an exaggerated fear of falling into “the misfortunes of their compatriots” (*PL* 12) but also by the expectation of an otherworldly reward for their virtue (*PL* 14 end). That the virtuous as such tend to demand a reward for their virtue in the afterlife, and that they want this reward to be something other than the continued practice of virtue, is an explicit theme of later letters (*PL* 125, 141).

In sum, the Troglodytes’ initial embrace of virtue was an extreme response to an aberrational set of circumstances, a response which overlooked a more sturdy, reasonable, and pleasant alternative. The move away from virtue is progress, not decline.

Ironically, Usbek’s own household emerges as a symbol both of patriotic republicanism and of despotism; the two repressive regimes blur. Usbek’s five wives are meant to live with strict virtue, and this virtue requires all kinds of fear-inspiring measures in order to be sustained. In fact, the wives live in a seraglio which is hard to distinguish from a prison (*PL* 9, 20, 47, 55, 62). Their dutifulness is guaranteed by a squad of eunuch-guardians. And just as the Troglodytes are fervently devoted to their fatherland because of their isolation, so one of Usbek’s wives is especially devoted to

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<sup>12</sup> Sher points out some of the ways in which the final settlement of the Troglodytes is “not necessarily so disagreeable.” “From Troglodytes to Americans,” 372. Cf. Keohane: “There is no evidence that [Montesquieu] thought the citizens of a virtuous republic would *feel* less free, despite their careful nurture, than the more randomly shaped citizens of a monarchy” (“Virtuous Republics and Glorious Monarchies,” 394 [emphasis in original]); Crisafulli, “Montesquieu’s Story of the Troglodytes,” 386-87.

him because she has not even been allowed to see another man (*PL* 7; see also 62; compare *SL* 12.30 n. 84).

Usbek argues that these measures are equivalent to necessary medical procedures, artificial but productive of natural flourishing. As he puts it, “[T]he seraglio is made for health rather than pleasures” (*PL* 34). A painful course of medical treatment may be necessary to produce relief from pain, surely, but is health that is of its essence painful truly health? Or does virtue tend to “waver” (*PL* 2) precisely because it is unnatural? The necessity of guards, locks, and punishments in the seraglio certainly suggests that virtue fails to produce the satisfaction one would expect from a way of life that is naturally fulfilling. In the book’s final letter, a suicide note from one of the wives, the rule of virtue is equated with “servitude.” The laws of the seraglio, she says, are opposed “to those of nature,” which provides “delights and pleasures” (*PL* 161).

Immediately before the exchange between Mirza and Usbek, Montesquieu inserts a letter by a eunuch who claims that he was “born to command” the women of the seraglio (*PL* 9), a formulation that parallels the claim that human beings are “born to be virtuous” (*PL* 10). And in the letter immediately following the tale of the Troglodytes, Montesquieu inserts another letter from the same eunuch: just as the Troglodytes were said to be focused on “raising their children to virtue” (*d’élever leurs enfants à la vertu*), the eunuch says that he has been “raised” (*élevé*) to a superior level by his castration (*PL* 12, 15). Rather than offering a clear alternative to despotism, Montesquieu’s linguistic parallels suggest that the regime of virtue requires its own distortions and mutilations of human nature (compare *SL* 16.10).<sup>13</sup>

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<sup>13</sup> For a different interpretation of the relation between these letters, see Runyon, *The Art of the “Persian Letters,”* 43.



In *The Spirit of the Laws*, as in the story of the Troglodytes, Montesquieu presents monarchy as a kind of salvation from the rigors of patriotic republicanism: “The law replaces all these [heroic] virtues, for which there is no need; the state excuses you from them [*l’État vous en dispense*]” (SL 3.5). Likewise, he stresses the unnaturalness of citizen virtue by emphasizing the “unique” institutions required to instill it (SL 4.6). “[L]ess care is needed to induce honor in monarchies or to inspire fear in despotic states” (SL 4.7). As in the *Persian Letters*, Montesquieu shows that the attempt to inculcate virtue requires fearful punishments not merely for law-breaking but for deviations from pure morals: just as eunuchs are required in Usbek’s seraglio, censors are required in patriotic republics to punish “negligence, mistakes, a certain slackness in the love of the fatherland, dangerous examples, the seeds of corruption, that which does not run counter to the laws but eludes them, that which does not destroy them but weakens them” (SL 5.19; see also 5.8, 19.16-17). And the punishments levied in the service of pure morals are to some extent arbitrary, Montesquieu emphasizes, since “all that concerns morals and all that concerns the rules of modesty can scarcely be included in a code of laws” (SL 7.10). Moreover, the punishments tend toward excess, because the repressive spirit of patriotism pushes citizens toward “ferocity,” “anger,” and “cruelty” (SL 4.8; compare PL 9). “When we are cruel in the civil state, what can we expect from natural gentleness and justice?” (*Considerations* 136). The Athenian democracy “sent to his death a child who had put out the eyes of a bird.” In this case, Montesquieu points out, it was not a question of condemning a crime “but of judging morals in a republic founded on morals” (SL 5.19). Rome’s legal code was “full of very cruel provisions,” he notes (SL 6.15). The

Porcian laws that he cites in support of Rome's gentleness (*SL* 6.15) were passed late in the republic, around the beginning of the epoch of luxury (*SL* 7.14).<sup>14</sup>

Like the *Persian Letters*, then, *The Spirit of the Laws* calls into question the distinction between patriotic republicanism and despotism.<sup>15</sup> It notes, for example, that prohibitions on foreign travel have their origin in despotisms, where subjects are “regarded as slaves,” and then points out that such laws also suit patriotic republics (*SL* 12.30, 12.30 n. 84). And, in an especially revealing formulation, Montesquieu says that when “virtue ceases” – when political men speak about “manufacturing, commerce, finance, wealth, and even luxury” rather than about love of the fatherland – each citizen “is like a slave who has escaped from his master’s house” (*SL* 3.3). Thus, he spots a fundamental similarity in the general spirits of Sparta and China, a small republic and a vast despotism which might seem to be polar opposites to a classical political theorist (*SL* 19.4, 19.16-17, 19.20-21).<sup>16</sup>

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<sup>14</sup> Sullivan draws our attention to the Spartan origin of a number of Roman laws according to *The Spirit of the Laws* (*SL* 23.20, 26.18, 27, 29.13). *Montesquieu and the Despotism of Europe*, 165-67, 257 n. 49.

<sup>15</sup> In this Montesquieu follows in the footsteps of Jean-François Melon: “For Melon, the Roman republic and the despotic monarchies of Asia both pursued ‘military government’ to the detriment of ‘commerce and police.’” Cheney, *Revolutionary Commerce*, 40. See also Sullivan, *Montesquieu and the Despotism of Europe*, 171: “Montesquieu finds slavery at the very foundation of the ancient republic, and this finding, in his assessment, renders that republican enterprise fundamentally despotic.”

<sup>16</sup> According to Montesquieu, “The political men who lived under popular government recognized no other force to sustain it than virtue” (*SL* 3.3). Manent criticizes this statement, pointing out that the classical political philosophers “were forceful critics of democracy who found that it deliberately and insolently refused to give virtue its proper place.... Montesquieu’s approach reeks of bad faith.” *The City of Man*, 18. Undoubtedly, neither Plato nor Aristotle believed that the democracy of Athens was adequately dedicated to any kind of virtue, but it is not implausible to claim that they recognized political or moral virtue as the thing that sustained a city, even if they encouraged a less egalitarian conception of it.

To be sure, Montesquieu never denies that virtue is a real phenomenon that really can produce impressive feats.<sup>17</sup> The dedication of the Troglodytes to each other is the most obvious feature of that fable. And there are indications that at least one of the wives remains faithful to Usbek, not despite but because of his harshness (*PL* 158-59). As Montesquieu explains in *The Spirit of the Laws*, “The less we can satisfy our particular passions, the more we give ourselves up to the passions for the general order” (*SL* 5.2). In a patriotic republic, as under many other kinds of repressive rule,<sup>18</sup> the energy ordinarily squandered on a thousand private concerns can be conserved and redirected entirely to one goal. “The love of the public good can be such that it equals or surpasses any other love” (*SL* 23.7).

But patriotic zeal “corrects everything” (*SL* 8.11) not only in the sense that it can take the place of good laws in a republic but also in the sense that it insists on “correcting” all the natural inclinations of citizens. Like Usbek’s wives and the good Troglodytes, the patriotic Spartans were “[a]lways correcting or being corrected, always instructing and being instructed” (*SL* 19.16). Like Usbek’s wives and the good Troglodytes, the patriotic Spartans “were incessantly discomforted by singular and subtle laws” (*PL* 116). To be virtuous *is* to be incessantly discomforted. One thinks of the tight

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<sup>17</sup> Cf. Waddicor, who insists that the virtuous Troglodytes are “too good to be true.” *Montesquieu and the Philosophy of Natural Law*, 74.

<sup>18</sup> The allegory of the Troglodytes seems to apply to virtue in all its forms, including religious virtue. “Troglodyte” means “hole-dweller,” and the day after sending the final part of his story to Mirza, Usbek writes to a mullah and refers to him in the first line as someone who lives in tombs (i.e., another kind of troglodyte). See Runyon, *The Art of the “Persian Letters,”* 42. For the relation between sacrifice and religious dedication, see *PL* 67: “I am making too great a sacrifice for [Islam] to be able not to believe it.”

In the foreword first printed in the 1757 edition of *The Spirit of the Laws*, Montesquieu goes out of his way to insist that when he discusses “virtue” in the first four books of that work, he means only “political virtue,” which is “love of the fatherland.” “It is not a moral virtue or a Christian virtue,” he says (*SL* Foreword). This disclaimer is belied by the blurring of political and moral virtue in *SL* 3.5 n. 9, and by the blurring of political and religious virtue in 4.6, 5.2, 5.3, 7.9, 8.13, 19.16 n. 16, and 25.4.

restrictions on behavior in Oliver Cromwell's short-lived republic, for instance, and in the democracies of colonial New England. Virtue amounts to "a renunciation of oneself," which is "always a very painful thing" (*SL* 4.5).<sup>19</sup>

The Troglodytes' mistake was to move from the extreme of antagonistic individualism to the opposite extreme of patriotism, "the continuous sacrifice to the state of oneself and one's aversions" (*SL* 5.19), without first considering a middle course.<sup>20</sup> That men are "born to be virtuous" is doubtful, but the fable does in fact suggest that (as Usbek also claims) "justice is a quality which is as proper to them as existence," in the sense that our own existences could not be secured without a minimal common respect for the public good, especially as that good is instantiated through laws.<sup>21</sup>

Even the slightest prudence, Montesquieu suggests, should be enough to reveal that our private wellbeing is bound up with the wellbeing of our community as a whole. Should this prudence be lacking, a modestly competent government will remind us of the fact by credibly threatening to punish us for failing to hold up our end of the bargain: in leaving behind the republic of virtue, the Troglodytes establish laws, even if these laws are said to be "less rigid" than their old mores. And fear of punishment, not custom or

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<sup>19</sup> Manent describes Montesquieu's analysis of virtue as a convenient caricature. But we should hesitate to accept this judgment, given the fact that, as Manent himself points out, Rousseau endorses Montesquieu's analysis and nonetheless defends virtue. *The City of Man*, 24, 29. Even if Montesquieu's view is incomplete, is there any view of political or moral virtue which would deny that it essentially involves the voluntary subordination of private interest? Even Aristotle's great-souled man is "eager to be of service." He expects honor as compensation for his efforts. *Ethics* 1124b19, 1124a5. Cf. Mansfield, "Self-Interest Rightly Understood," 58: "For Plato and Aristotle, virtue is the perfection of the self (= soul) and therefore primarily self-regarding, not disinterested or other-regarding. Modern morality is essentially social: first it creates self-interest, then it has to guide and modify it so as to make society possible."

<sup>20</sup> "I say it, and it seems to me that I have written this work only to prove it: the spirit of moderation should be that of the legislator; the political good, like the moral good, is always found between two limits" (*SL* 29.1).

<sup>21</sup> As Sher also suggests. "From Troglodytes to Americans," 373. Cf. Crisafulli: "Montesquieu shows that if men had not been born to be virtuous, they necessarily would have perished." "Montesquieu's Story of the Troglodytes," 373.

reverence, is what accounts for “the force of human laws,” Montesquieu declares in *The Spirit of the Laws* (SL 26.2). Hence “the laws must menace” (SL 12.25).

But Montesquieu’s case for justice does not appeal merely to the view that self-dealing leads eventually to the decay of the public goods upon which we depend, nor does it appeal merely to fear of official punishment for law-breaking; it appeals also to the positive interest we have in protecting and advancing our reputations. “The desire for glory,” Usbek says, “is no different from the instinct that all creatures have for self-preservation. It seems that we augment our being when we can cast it into the memory of others. This is a new life we acquire, and it becomes as precious to us as the one we received from heaven” (PL 89; consider also 144). Montesquieu echoes this sentiment in his *Considerations on the Romans*: “[S]uch is the value we set on ourselves that we consent to cease living because of a natural and obscure instinct that makes us love ourselves more than our very life” (*Considerations* 117-18). In *The Spirit of the Laws*, he puts our inevitable concern with reputation in more prosaic terms: “Men, born to live together, are also born to please each other; and he who does not observe the proprieties offends all those with whom he lives and discredits himself so much that he becomes unable to do any good thing” (SL 4.2). And the surest way “to please each other” and “observe the proprieties” is to fulfill one’s duties, Montesquieu suggests, since “in every country in the world morality is desired” (SL Foreword). In the ordinary course of things, there are heavy and entirely predictable reputational costs for living a narrowly selfish existence and violating or shirking one’s duties. Hence Montesquieu argues, in a manuscript chapter of *The Spirit of the Laws*, that oaths are useful constraints even “if there is no Divinity”: “perhaps I neither believe in nor fear divine vengeance. That may

be. But it suffices that I fear men” (*Dossier de l’Esprit des lois* 1016-17). Nor does this calculation apply merely to private life. The conduct of members of government is constantly being monitored for corruption in a free society, even by other members of government, if there is a separation of powers (*SL* 11.6). Their reputations are best served by legislating and administering the laws in at least a minimally public-spirited fashion. As Montesquieu notes, “An unskillful minister always wants to tell you that you are slaves. But, if that were so, he should seek to keep it from being known” (*SL* 12.25).

In *The Spirit of the Laws*, though virtue initially looks indispensable to the longevity of a republic, it is gradually shown to be necessary only in very peculiar circumstances (*SL* 3.3, 4.6-7, 5.6, 9.1). When people can pursue their own gain, Montesquieu argues, they generally recognize that they have an interest in paying their dues to the public. Over the long run, for members of government and private citizens alike, a basic (though far from all-consuming) commitment to the public good is manifestly more advantageous than self-dealing.<sup>22</sup> Thus private interest, broadly construed, emerges as a new basis for citizenship.

“I have often tried to find out which government was the most in conformity with reason,” Usbek writes to a friend. “It has seemed to me that the most perfect is the one which attains its goal at the least expense, so that the one which leads men in the manner which most suits their tendencies and their inclinations is the most perfect” (*PL* 80).<sup>23</sup> In

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<sup>22</sup> Provided that the state is rich enough to look after the deserving poor: “When there are such a great number of branches of commerce, it is not possible for some branch not to suffer and, consequently, for its workers not to be in some temporary necessity.” In this situation “the state needs to bring help promptly” (*SL* 23.29).

<sup>23</sup> Carrese suggests that Usbek’s description of good government is quite different from Montesquieu’s “mature account of government in *The Spirit of the Laws*.” *The Cloaking of Power*, 239. But in *The Spirit of the Laws* Montesquieu offers a restatement of Usbek’s view: “[T]he

this letter, he cites the commercial regimes of Holland, Venice, and England as examples of reasonable and “gentle” (*doux*) communities.<sup>24</sup> The essence of a gentle community is that people are led toward cooperation in accordance with their natural desire for security and gain – not by zealous patriotism (which is unnatural and precarious, and which requires cruel measures to instill), nor by fear (which is easy to instill but produces misery and paralysis), nor by aristocratic honor (which is rare even in monarchies, and which is fragile over the long run because of its falsity).<sup>25</sup>

The connection between commerce and *douceur* is essential in Montesquieu’s thought: “[I]t is an almost general rule that everywhere there are gentle mores [*moeurs douces*], there is commerce and that everywhere there is commerce, there are gentle mores” (*SL* 20.1). This connection is partly a result of the fact that commerce moderates or does away with harsh religious “prejudices,” as we saw in Chapter Two. But there are additional explanations for the connection between commerce and gentleness. First, commercial relationships are voluntary: they depend on people making themselves liked or at least trusted in order to gain repeat customers and collaborators. Such relationships are less widespread in non-commercial societies, dominated as they are by the un-chosen bonds of the family and the political-religious community. As Usbek puts it, “The

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government most in conformity with nature is the one whose particular arrangement best relates to the disposition of the people for whom it is established” (*SL* 1.3).

<sup>24</sup> Usbek also distinguishes France from despotic Turkey, without going so far as to group it with the commercial republics. France seems to be poised between the two (*PL* 80). Later, Usbek also calls Switzerland a gentle country (*PL* 122).

<sup>25</sup> “Speaking philosophically, it is true that the honor that guides all the parts of the [monarchical] state is a false honor” (*SL* 3.7). Cf. Douglass, who identifies “honor” with “ambition.” “Montesquieu and Modern Republicanism,” 707, 712. The fragility of aristocratic honor (as distinct from ambition in general) is suggested by the fact that its principal rule is “that we are indeed allowed to give importance to our fortune but that we are sovereignly forbidden to give any to our life” (*SL* 4.2). Some kinds of ambition certainly encourage one to risk one’s life, but no one would claim that ambition as such forbids one to give any importance to one’s life.

Asiatics' gravity comes from the paucity of commerce among them: they see each other only when they are forced to do so by ceremony. Friendship, that gentle engagement of the heart, which makes for the sweetness [*douceur*] of life here [in the West], is almost unknown to them. They withdraw into their houses, where they always find one company waiting for them; in such a manner each family is, so to speak, isolated" (*PL* 34). The commercial way of life, by contrast, tends to make people believe or understand that families themselves are "bound together only by the love that they have for each other or by the benefits that they procure for each other" (*PL* 104). Second, commercial exchanges are not zero-sum, because "if one has an interest in buying, the other has an interest in selling, and all unions are founded on mutual needs" (*SL* 20.2). Third, women can have a relatively prominent role in commercial society (*PL* 28, 34, 52, 58, 63, 86, 99, 106). And women, in the words of a "gallant philosopher" quoted approvingly by Rica, "have more gentleness than [men], and, consequently, more humanity and reason" (*PL* 38; see also *SL* 7.17, 19.5). Fourth, whereas the repression of desires is essential to virtue, commerce is focused on the satisfaction of desires, especially the lowest and therefore most common – "frivolous" ornamentation (*SL* 19.8), "debauchery" (*SL* 19.27), "play" (*SL* 20.6). For all these reasons, commerce not only allows for but encourages a gentling of spirit.

The gentleness of commercial mores in turn makes possible a gentling of the law. Since, under the regime of commerce, the unnatural "love of the fatherland" is replaced by the natural attachment to one's private interests, the very range of crimes can be shrunk – offenses against religion, morals, and public tranquility need no longer be



treated as capital crimes, and ought not to be (*SL* 12.4).<sup>26</sup> Indeed, the heart of Montesquieu's liberalism is his insistence that moralistic "corrections" are almost always worse than the ills they are meant to remedy. "If the character is generally good, what difference do a few faults make?" (*SL* 19.5; see also Preface, 6.14, 12.4, 19.6, 22.21, 24.7). He therefore approves of the fact that on everything except international commerce and navigation, England's laws are "gentle and easy" (*SL* 19.27; see also 20.12). And when crimes are committed, commercial regimes can employ relatively gentle punishments. According to Montesquieu, the very shame that comes from being convicted of a crime is often punishment enough (*PL* 80; *SL* 6.12). England, he says, has rejected torture "without meeting drawbacks" (*SL* 6.17; see also 29.11).

Commercial regimes do not dispense with moral education, of course, but the character of morality is transformed. We can take the measure of this change by comparing Montesquieu with Aristotle. Giving voice to the perspective of the purest moral virtue, Aristotle insists that its goal is the noble.<sup>27</sup> From the commercial perspective, by contrast, the goal is the useful. The morals of commercial peoples are less pure or high-minded because their virtues are adopted as tools for the sake of peace and prosperity. A certain honesty is "natural" to commerce (*SL* 19.20), for example, inasmuch as merchants ordinarily have to compete for customers.<sup>28</sup> Likewise, because of the strictures of market competition, "the spirit of commerce brings with it the spirit of frugality, economy, moderation, work, prudence [*sagesse*], tranquility, order, and rule" (*SL* 5.6). The citizens of the commercial republic Marseilles "had to be hardworking in

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<sup>26</sup> "Every penalty that does not derive from necessity is tyrannical" (*SL* 19.14).

<sup>27</sup> Aristotle, *Ethics* 1115b14

<sup>28</sup> "It is competition that puts a just price on goods" (*SL* 20.9). By contrast, ancient and medieval political authorities tried to inspire in men the thought of being good (by hampering usury), and merely fostered an interest in being dishonest (*SL* 21.20, 22.19, 22.21).

order to replace that which nature refused them; just, in order to live among the barbarian nations that were to make their prosperity; moderate, in order for their government always to be tranquil; finally, of frugal mores, in order to live always by a commerce that they would the more surely preserve the less it was advantageous to them” (*SL* 20.5).<sup>29</sup> As Montesquieu writes in a private reflection on England, “It seems to me that a lot of extraordinary things are done in England; but they are all done for the sake of money. Not only is there no honor or virtue here, but there is not even the idea of them” (*NA* 880).

For Montesquieu, the lowering of morality under the influence of commerce entails a genuine loss. He observes that commerce produces “a certain feeling” which is opposed “to those moral virtues that make it so that one does not always discuss one’s own interests alone and that one can neglect them for those of others” (*SL* 20.2). Calculating peoples may be nice enough, but they are hardly models of generosity. Hospitality to strangers is “rare among commercial countries” (*SL* 20.2). Englishmen, who are the masters of commerce (*SL* 20.7; *PL* 136), seem for this very reason to lack amiability entirely (*SL* 19.27). “How could the English like foreigners? They don’t even like each other” (*NA* 876-77). And if they lack affection for each other, they certainly lack the “love of fatherland” that produces self-renunciation.

Still, Montesquieu insists that, given a clear view of our true nature, the commercial transformation is not equivalent to dehumanization. Men are “made to preserve, feed, and clothe themselves, and to do all the things done in society” (*SL*

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<sup>29</sup> On the basis of Montesquieu’s assertion that slave-holding undermines “the moral virtues [*toutes les vertus morales*]” (*SL* 15.1), Sullivan presents Montesquieu as a defender of republican “virtue” (singular) as such. *Montesquieu and the Despotism of Europe*, 184-85. But it seems to me that Montesquieu distinguishes between the moral virtues, many of which are conducive to individual happiness, and the passion of “virtue” simply, which is not.

24.11). What the classical philosophers considered corruption is, from the true perspective, not only material but also moral improvement: “One can say that the laws of commerce perfect morals for the same reason that these same laws ruin morals. Commerce corrupts pure morals, and this was the subject of Plato’s complaints; it polishes and softens barbarous morals, as we see every day” (*SL* 20.1).

### War and Peace

The other negative element of patriotism, as Montesquieu presents it, is its innate tendency toward war and cruel treatment of non-citizens. In fact, patriotism seems to feed on the dread of external threats: “Fear of the Persians maintained the laws among the Greeks. Carthage and Rome intimidated one another and were mutually strengthened. How singular! The more secure these states are, the more, as with tranquil waters, they are subject to corruption” (*SL* 8.5). Patriotism and war therefore go hand in hand. “When the ancients wanted to speak of a people who had the greatest love of the fatherland, they cited the Cretans” (*SL* 8.11), Montesquieu says, and Cretan institutions were “made for war” (*SL* 29.13). In forming his “harsh” institutions, Lycurgus “had in view the bellicose spirit he wanted to give his people” (*SL* 19.16; see also 4.6). Patriotic citizens, lacking private ambitions and distractions, “desire only the glory of the fatherland and [their] own glory” (*SL* 7.2; see also *Considerations* 27-28). They “live, act, and think only for [the fatherland’s] sake” (*SL* 5.19).

Patriots are attached to their fellow citizens and indifferent or hostile to mere human beings. As Montesquieu says of the warlike Germanic barbarians: “Given the narrow bonds within which the northern peoples lived, everything was foreign to them.”

In their times, people “thought that, as foreigners were not united with them by any communication of the civil right, they did not owe them, on the one hand, justice of any sort or, on the other, pity of any sort” (*SL* 21.17). For the same reason, wars undertaken by patriotic republics are distinguished by their mercilessness. From the patriotic perspective, everything that threatens the fatherland is deserving of severe reprisals. Rule by a conquering republic is “harsher” than rule by a conquering monarchy, Montesquieu insists (*SL* 10.7; consider 10.14n15). “Among the Greeks, the inhabitants of a captured town lost their civil liberty and were sold as slaves; the capture of a town brought about its entire destruction” (*SL* 29.14). In order to illustrate how people “become accustomed to despotism” through excessive punishments, Montesquieu adduces the treatment meted out by Athenians to Spartan prisoners of war (*SL* 6.12). Indeed, he reports that the Athenians put to death any foreigner who circulated in the people’s assembly (*SL* 2.2) and implies that the abuse of slaves went hand-in-hand with Spartan and Roman patriotism (*SL* 6.17, 15.12, 15.16; see also *Considerations* 136).

Rome represents the apotheosis of patriotic aggression, for Montesquieu. “The prodigious aggrandizement of the Roman republic would have been a great good fortune for the world,” says Rhedi in the *Persian Letters*, “if there had not been that unjust distinction between Roman citizens and the defeated peoples” (*PL* 131). Similar evaluations are offered in *Considerations on the Romans*. “[N]ot even the justice of brigands, who bring a certain honesty to the practice of crime, was to be found among the Romans”; they “inflicted unbelievable evils upon their enemies” and “never made peace in good faith”; they “could scarcely know the virtue we call humanity” (*Considerations* 74, 68, 136). In *The Spirit of the Laws*, outlining the various ways in which conquerors

behave with respect to conquered peoples, Montesquieu notes that the policy of extermination was “in conformity with the law of nations among the Romans” (*SL* 10.3; see also *Considerations* 138; *MT* 222). Its conquests depopulated the world (*SL* 23.19; see also *Considerations* 29, 56-57, 153; *MT* 1483). Historians may “tire themselves praising the generosity of conquerors who have returned the crown to princes whom they have vanquished,” Montesquieu says, but the Romans “made kings everywhere” only “in order to have instruments of servitude” (*SL* 10.17; see also 11.19; *Considerations* 74-77). Expansion was the purpose of Rome, he adds later, as surely as war was that of Sparta (*SL* 11.5; see also *Considerations* 94, 103, 138).<sup>30</sup> The city was “constantly active, striving, and violent” (*SL* 23.20; see also *Considerations* 33, 123).

Montesquieu’s proposition that “the spirit of republics is peace and moderation” seems to apply only to confederated republics such as the Swiss Confederacy, the Dutch Republic, and the Amphictyonic League, and then only in their internal relations (*SL* 9.2). It does not apply to confederations in their external relations: by using federal republics, “the Romans attacked the universe” (*SL* 9.1). Nor does it apply to republics in isolation (*SL* 10.6-8). After all, republics are naturally small (*SL* 8.16) and “small societies more frequently have the right to wage wars than large ones, because they are more frequently in a position to fear being destroyed” (*SL* 10.2). In discussing the destructiveness of warfare among ancient Greek republics, Montesquieu even seems to revise his earlier presentation of the heroic feats done in the ancient world “that we no longer see and that astonish our small souls” (*SL* 4.4). In that first presentation, patriotic virtue (unmixed

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<sup>30</sup> As Shklar says, “We are never allowed [by Montesquieu] to forget the inveterate bellicosity of the Romans.” “Montesquieu and the New Republicanism,” 267. On the tributes to Roman generosity, probity, and heroism offered by other eighteenth-century French historians, see Ehrard, *L’Esprit des mots*, 62-63.

with Christian otherworldliness) was the sole cause of the difference. In the later presentation, Montesquieu says that fear of enslavement and the “entire destruction” of one’s town was the origin of the “unyielding defenses and unnatural actions” among the Greeks (*SL* 29.14). Likewise, in his *Considerations on the Romans*, he writes: “Since they were always exposed to the most frightful acts of vengeance, constancy and valor became necessary to them. And among them these virtues could not be distinguished from the love of oneself, of one’s family, of one’s country, and of all that is most dear to men” (*Considerations* 28; see also *MT* 761).

Again, however, Montesquieu acknowledges the existence of republics that combine “the *spirit of commerce*, of work, of virtue” (*SL* 7.2, emphasis added). The regime of commerce provides a superior alternative to the regime of virtue with respect to international relations because “[t]he natural effect of commerce is to lead to peace” (*SL* 20.2). First, commerce tends to attenuate aggressive patriotism or citizen virtue by making people more focused on their material wellbeing than on their community’s glory. If “the spirit turn[s] to the interest of the individual” to the extent that “luxury is established” (*SL* 7.2), then even austere commercial republics (let alone commercial monarchies) must cultivate relatively self-interested citizens, since even they make room for a measure of luxury: “there is little luxury,” such that “equality is not *altogether* lost” in them (*SL* 7.2, emphasis added). True patriotism, by contrast, requires the suppression of all wealth and luxury, since “love of the fatherland” entails “love of equality” (*SL* Preface; see also 5.3).

Second, whereas the regime of “virtue” fosters national distinctions, commerce erodes them. “The history of commerce,” says Montesquieu, “is that of communication

among peoples” (SL 21.5). By making people more aware of their common identity as human beings, commerce “cures destructive prejudices” (SL 20.1). In commercial communities, the mixing of cultures – which contributed to the fall of the Roman Republic (*Considerations* 92-93, 172-73 n. 9) – is actually an advantage. There are, for example, economic benefits to encouraging immigration from members of minority religions, who “usually make themselves more useful to their fatherland than those who live in the dominant religion; because, removed from honors, able to distinguish themselves only by their opulence and their wealth, they are led to acquire these things by their work and to embrace the most tiresome jobs in society” (PL 85; see also SL 22.15). If differences among peoples produce a mistrust that justifies war and conquest, these differences can be worn away over time “by customs, marriage, laws, associations, and a certain conformity of spirit” (SL 10.3).

Third, commerce promotes humanity by providing enough material comforts to make people capable of generosity. Only those who are both undeceived about their material needs and prosperous enough to be generous “offer gentleness [*douceur*] and pity,” Montesquieu observes (SL 6.9).<sup>31</sup> In a long fable in the *Persian Letters* about a Zoroastrian woman and her brother caught up in Persian and Tartar oppression and sold into slavery, it is not by accident that their freedom is finally secured through a deal with a merchant. Whereas “the Turkish and Christian priests” are deaf to the Zoroastrians’ appeals for help, the merchant is “a gentle man” (*un homme doux*) And his gentleness is backed up by shrewd self-interest: he insists on the Zoroastrians’ serving him for a year before emancipating them, and he correctly anticipates being rewarded by them in the

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<sup>31</sup> On Montesquieu’s exaltation of a moral virtue that has “the whole of the human community as its horizon” in his dialogue *Xantippe et Xénocrate*, which predates *The Spirit of the Laws* by at least fifteen years, see Volpilhac-Augier, *Montesquieu*, 148-49.

future. Nor is it by accident that the Zoroastrians finally settle in the commercial town of Smyrna, where they “enjoy the most amiable and the gentlest [*la plus douce*] society in the world” (*PL* 67). The moral change wrought by commerce militates against the practices of pillaging and enslavement, in the absence of which conquests are unprofitable: “The Romans brought to Rome in their triumphs all the riches of vanquished nations. Today victories give only sterile laurels” (*RMUE* 19; see also *SL* 9.1 n. 2).

Fourth, luxury brings “the perfection of the arts” (*SL* 21.6), and the perfection of the arts (i.e., modernized technology) makes conquest increasingly difficult. “New discoveries in war have equalized the forces of all men, and in consequence of all nations” (*RMUE* 19). Before the advent of global trade networks, different peoples were largely mysterious to each other: “Among the Persians, Tissaphernes was in revolt for an infinite time before the court knew. Polybius tells us that the kings did not know whether the government of Rome was aristocratic or popular; and when Rome was mistress of everything, Pharnaces, who offered his daughter to Caesar, did not know whether the Romans could marry barbarian women or have several of them” (*RMUE* 23). Owing to modern communications, however, no single state can gain a permanent military advantage over the others: “Today we copy each other incessantly. Does Prince Maurice discover the art of besieging fortresses? We become just as skillful. Does Coehoorn change methods? We change too. A certain people uses a new weapon? All others immediately adopt it. A state augments the size of its army, imposes a new tax? It is a warning for others to do the same. Similarly, when Louis XIV borrows from his subjects, the English and the Dutch borrow from theirs” (*RMUE* 23). Thus, “things among us are



in a firmer situation than they were in ancient times” (*RMUE* 22; see also *Considerations* 39, 198-99).

Fifth, commercial regimes depend for their own wellbeing on the wellbeing of other commercial regimes: “Two nations that trade with each other become reciprocally dependent” (*SL* 20.2). Without commerce, “banditry” would be necessary in order to make acquisitions (*SL* 20.2; see also *Considerations* 27). But a free nation with goods to sell does not “need war to enrich itself” and does not “employ its power making conquests,” just as its citizens neither preoccupy themselves with ideas of glory nor value military over political rank (*SL* 19.27). Hence Montesquieu can declare: “Europe is no longer anything but one nation composed of several, France and England need the wealth of Poland and Muscovy, just as their provinces need each other. And a state which believes it increases its power by ruining that of its neighbor ordinarily weakens itself” (*RMUE* 34). In this respect, commerce makes peace more likely even without requiring any moral improvement: “[H]appily, men are in a situation such that, though their passions inspire in them the thought of being wicked, they nevertheless have an interest in not being so” (*SL* 21.20).

Sixth, because wealth (rather than the mere possession of territory or the toughness of one’s soldiers) is increasingly crucial to international power (*RMUE* 21),<sup>32</sup> precisely those governments that want to preserve or extend their power are compelled, by the logic of international relations, to imitate the commercial openness of their neighbors, and thus to dilute the traditional modes of life that encourage expansionism in the first place. It would be difficult for a European nation to maintain a feudal and honor-

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<sup>32</sup> “It could happen that [a free nation] would undertake something beyond the forces natural to it and would assert against its enemies an immense fictional wealth that the trust and the nature of its government would make real” (*SL* 19.27).

loving regime, for example, given the exigencies of trade and migration. Marseilles was a rare commercial republic in the ancient world; its citizens were “hardworking,” “just,” “moderate,” and “frugal,” but apparently not outstanding in point of patriotic virtue (*SL* 20.5). And this lack of patriotic fervor may explain why Marseilles “always governed itself with wisdom” (*SL* 8.4).<sup>33</sup>

For all these reasons, Montesquieu can speak hopefully of establishing a humane right of nations “around the earth” (*SL* 10.4). The existence of a network of thoroughly commercialized states is a modern phenomenon, he points out. Though ancient cities such as Marseilles and Corinth did engage in trade (*SL* 21.7), the extent of it was limited in comparison with that of modern Europe (*SL* 21.4, 21.6-7). After Alexander’s conquests, international trade was still relatively modest (*SL* 21.8-9). Rome neglected, thwarted, and mismanaged commerce (*Considerations* 98-99, 137; *SL* 5.3, 21.14-16, 22.22, 29.2). Even the shrewd Carthaginians, lacking compasses, were restricted by having to follow the coasts (*SL* 21.11; see also *Considerations* 48). For many years, “at a time when the Gothic nations on one side, and the Arabs on the other, had ruined commerce and industry everywhere else,” the Byzantine Empire “carried on ... almost the only commerce in the world” (*Considerations* 214). And after the crusader sack of Constantinople in 1204, “commerce passed entirely into the control of the Italian cities” (*Considerations* 218).

But modern traders look to “all the nations of the earth” (*SL* 20.4). Today’s commercial regimes draw their livelihood “from the whole universe” (*SL* 20.5) and are capable of summoning “all the nations of the world” (*SL* 21.5). If different climates at

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<sup>33</sup> Consider also *SL* 28.41, where wisdom and the pleasures of moderation are contrasted with virtue and the pleasures of domination.

first contribute to divisions among humanity, then, they ultimately contribute to the unity of humanity as a commercial species. Because geographical differences produce varied economic strengths and weaknesses among different peoples, trade emerges as a natural corollary. “[A]ll nations have reciprocal needs” (*SL* 22.1).

To be sure, Montesquieu’s cosmopolitanism is not the most extreme variety: distinct national governments should remain, he thinks, both for administrative expediency<sup>34</sup> and out of respect for human diversity.<sup>35</sup> Nor is Montesquieu Pollyannaish. He stresses that governmental bankruptcies and wars on a grand scale are a serious threat, if the uses of commerce and the political limits of military power are not properly understood (*RMUE* 20, 22, 36-38; *SL* 9.7, 13.17). He sees that commercial nations “can offend and be offended in an infinity of ways” and that they may subjugate commercially useful nations, as England subjugated Ireland and Jamaica (*SL* 19.27). And he sees limits to multiculturalism (*PL* 85; *SL* 25.9, 25.13).

But Montesquieu’s hope and expectation remains that national differences will be gently worn away by commerce. Global convergence is practically inevitable over the long run, he suggests, because “experience itself has made known that only goodness of government brings prosperity” (*SL* 21.20; see also 22.2). Increasingly, there will be a certain uniformity among all countries (insofar as they are commercial) and a certain diversity within each country (insofar as commerce brings with it a variety of products,

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<sup>34</sup> Over-large states are hard to govern and lend themselves to despotism (*Considerations* 61; *RMUE* 23-24; *SL* 8.17, 8.19, 9.6, 10.16, 17.6). On the goodness of decentralized administration, see *SL* 23.24.

<sup>35</sup> “Laws should be so appropriate to the people for whom they are made that it is very unlikely that the laws of one nation can suit another” (*SL* 1.3; see also 29.18). For a useful treatment of the relation between Montesquieu’s liberalism and his deference to local particularities, see Callanan, “Liberal Constitutionalism and Political Particularism.”

interests, and human types).<sup>36</sup> In Montesquieu's view, good citizenship can be motivated by the interests of individuals who share no common identity beyond their living under a certain jurisdiction. It is here that Rousseau raises an objection.

Rousseau agrees that commerce has brought about a great intermingling of peoples, but he laments the change: "Today there are no longer any French, Germans, Spanish, even English, whatever might be said about it; there are only Europeans. All have the same tastes, the same passions, the same mores.... [T]hey are ambitious only for luxury, they have no passion except the one for gold" (*Poland* 174-75; see also *PE* 155). Thus, in describing the basic differences between ancient and modern politics, Rousseau channels the "noble genius" Montesquieu (*SC* 174), while rejecting his evaluation of that difference.

### *Rousseau's Critique of Cosmopolitanism*

#### Justice and Self-Denial

For Montesquieu, good citizenship does not require any irrational "love of fatherland"; the duties of citizenship can be motivated by private interest. Rousseau rubbishes this view. The pursuit of private benefits<sup>37</sup> is a poor ground for citizenship, he maintains, because there is only a sporadic harmony between private and public goods; under no circumstances can membership in a law-bound community be consistently and unequivocally good for us. There are two fundamental problems with the self-interested

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<sup>36</sup> "The great liberty to say everything and to write everything that exists in certain countries makes for an infinity of singular minds" (*ECMC* 58-59).

<sup>37</sup> Since our familial and personal attachments are "private" from the point of view of the community as a whole, I include them in the category of "private benefits." Private interest is not equivalent to selfishness in the narrowest sense. In fact Rousseau sometimes suggests that our affectionate attachments may be the greatest obstacle to justice (*JP* 98-99; *PF* 38; *Reveries* 51; *SC* 147).

model of citizenship to which Rousseau draws our attention. First, there is the general problem of law. Law as such, he points out, must be focused on the general interest, detached from wholly private or factional interests (*SC* 153).<sup>38</sup> Given the multiplicity of interests in any actual state, of course, it is unusual for any law to satisfy everyone fully: “The general will is rarely the will of all” (*GM* 88; see also *SC* 145n, 147, 198). Indeed, it is astonishing that the general will is ever the will of all, since the commitment to law as such is bound up with at least a small degree of self-renunciation: “the agreement of all interests is formed in opposition to the interest of each” (*SC* 147n). After all, citizens never form a perfectly unified whole; each member always remains an individual and a member of a particular family (*SC* 139-40; *LWFM* 302). Because of the force of private interest, most “laws” fall well short of the generality demanded by law in the first place (*Emile* 666-67; *PF* 32). Acts of legislation are often designed to advance the interests or whims of a particular class or group at the expense of some other part of the community.

But the problem of law goes further than this. Even if the basic legitimacy of a given law is accepted even by most of those citizens who disapprove of that law (i.e., even if the law is accepted as the product of the public-spirited general will rather than the merely self-interested “will of all”), which must be the case with the majority of laws in all but the most tyrannical democracies,<sup>39</sup> in many particular cases *even citizens who*

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<sup>38</sup> Rousseau underlines the importance of this point by declaring that the subject of law is still “entirely new” (*Emile* 653; see also *Confessions* 340). In other words, no thinker before him has given it a satisfactory treatment (compare *Emile* 661).

<sup>39</sup> As Kelly writes, “[T]he doctrine of the general will is, in part, an empirical account of how any functioning group operates as well as a part of a normative doctrine of sovereignty. Rousseau insists that the general will remains constantly present even in a community in which individuals are almost entirely selfish. Such people wish to make the laws in a way that serves their own interests or at least to evade laws that do not, but they do not want others to behave on these same principles. For a community to continue to exist as a community at least this minimal sense of a common interest is necessary. An assemblage of people who have no desire whatsoever for laws

*approve of the law in principle* may reasonably want to make exceptions to it for themselves (*SC* 145; *LWFM* 286). For example, while everyone may agree that there has to be taxation in order to secure basic public goods – “where is the state in which freedom is not paid for and even very dearly?” (*Poland* 215; see also *PE* 157-58) – everyone would naturally prefer to exempt himself from this duty. This is why even good laws impose “continual deprivations” on individuals (*GM* 103; *SC* 156). “Far from there being an alliance between private interest and the general good, they are mutually exclusive in the natural order of things, and social laws are a yoke that each wants to impose on the other without having to bear himself” (*GM* 79). Law is “a common barrier” which limits “the efforts that each would make to improve his situation at the expense of others” (*PF* 18). Even when the law is at its impartial best, then, it prevents citizens from pursuing the good of them and their own, precisely because that good is partial from the point of view of the community. Rousseau admits that people can sometimes be brought to obey the law merely out of self-interested prudence, but he argues that the pursuit of gain generally leads the rich and politically powerful to dominate the poor and politically weak. Though it may be true that one can make a profit by obeying the law, he suggests, one can always make a greater one by bending or evading the law (*SD* 75; *Poland* 211). It usually does pay to be a free-rider (*Emile* 517; *SD* 94).

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that apply generally could not function as a society at all.” “Sovereign versus Government,” 23. Cf. Williams, who argues that the general will is distinguished from the will of all by its connection to a “metaphysical conception of justice.” According to Williams, the status of justice as “transcendent authority” in Rousseau’s political thought radically distinguishes it from Hobbes’s “positivism.” Because Williams insists that Rousseau’s idea of justice is “indeterminate,” however, it is hard to make sense of what he is arguing. *Rousseau’s Platonic Enlightenment*, 95, 125. Similarly, Neuhausser argues that the general will is any law that objectively promotes one’s “interests in freedom and well-being” even when one does not “subjectively recognize it as such.” *Rousseau’s Critique of Inequality*, 129, 193-95.

Second, there is the particular problem of government. Whereas the essence of law is impartiality, government is by its nature a partial community within the state: every government is an independent faction, and has to be independent in order to carry out its legitimate tasks with the requisite speed and energy (*SC* 169).<sup>40</sup> In addition to their identity as simple citizens, then, members of government have a common factional identity as members of the administration. And this factional identity is usually much stronger in their minds than their identity as mere citizens, because the administration is a tighter knit community than the citizen body as a whole (*Emile* 656-57; *SC* 170-71; see also *PE* 144). Christopher Kelly has illustrated Rousseau's point in the case of a democratically elected government:

Imagine a democratic community in which all citizens are genuinely concerned with the common good. A newly elected government forms an administration of genuinely public-spirited citizens. One can hardly ask for more. In order to perform its function of executing the law, this new administration must cultivate an *esprit de corps* that engages its members. Success in implementing its program can increase the general spirit of this body, but so can resistance on the part of those outside of the administration, particularly political opponents who may be equally public spirited, but have their disagreements with the policies of the administration. Devoted public servants are devoted to the administration of which they are a part and feel that they have more in common with each other than with those whom they wish to serve, particularly when those people fail to appreciate what the government is doing. These public servants are or become citizens of the society made up of the administration at least as much as they are citizens of the

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<sup>40</sup> Part of the political art is to find the most advantageous balance between a government prevented from abuse of power and a government capable of acting (*SC* 172). Poland and Geneva represent excessive weakness and excessive strength of government respectively (*Poland* 186-87; *LWFM* 239).

broader community. As a new election looms, this general spirit finds a new focus: the administration must stay in office to pursue its agenda. To this, of course, can be added the selfish desires of administration members to keep their positions. Even so, it is the least self-seeking of these members who develop the strongest factional spirit. They will learn to look at legal formalities as inconveniences that hinder them in implementing the administration's programs.<sup>41</sup>

To be a dedicated "team player" in the government – an admirable thing, in principle – is to be very much at risk of becoming a bad citizen (*JP* 98-99). Hence there is a gap between the demands of law and the self-interest of every government: members of government are reasonably inclined to consider the stability and cohesion of the government itself as well as their duty to the community at large (*SC* 168-69; *LWFM* 238-39). Executing the laws with perfect impartiality is not simply in their interest. Thus, even good laws are often enforced selectively, according to the apparent interest of the administration. It may be true that one can become a powerful, effective government while keeping within the law (*GM* 91; *JPPP* 55-56; *LWFM* 234-35; *PE* 146, 150, 153; *Poland* 201), Rousseau acknowledges, but he points out that actual rulers recognize that they can secure and extend their power much more surely by manipulating the law (*Emile* 517; *LWFM* 299, 301-2, 301n; *SC* 177).<sup>42</sup>

To sum up the two problems: ordinary citizens have a reasonable interest in participating in the legislative process (whether as advocates or voters) in order to advance their partial interests rather than the interest of the whole community, and in

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<sup>41</sup> Kelly, "Sovereign versus Government," 24.

<sup>42</sup> What Rousseau regards as a general principle (government as a self-interested community of its own), Montesquieu regards as a phenomenon restricted to certain types of corrupted government (*SL* 8.5). According to Rousseau, the phenomenon of "government" has not been "well explained" by any other thinker (*SC* 166).



quietly disobeying valid-but-inconvenient laws. And members of government have a reasonable interest in putting themselves and other members of government above the law, and in passing narrowly government-serving decrees under the guise of law. Whether we are ordinary citizens or members of government, then, the requirements of the general will must chafe against our private interests. The easygoing spirit that Montesquieu holds out as a new path to justice is therefore inadequate: “It is almost always costly to be just” (*SW* 72). Duties are “painful” (*Emile* 668). Even the best law is a “salutary and gentle *yoke*” (*SD* 4, emphasis added).

These problems are not avoidable.<sup>43</sup> One way to attempt to solve the general problem of law, following Hobbes, might be to extend surveillance so greatly that every violation of the law would be reliably punished. But to base a society on fear of punishment would be futile, since punishments can be avoided in practice. The public eye has many blind spots (*PE* 149, 160; *PF* 29, 31; *Poland* 182, 183), especially with respect to the rich (*PE* 154, 164-65; *PF* 32, 37, 49-50, 74). And even if it were impossible to avoid punishment, this would still be insufficient to inspire good citizenship: fear of punishment may be enough to *restrain* individuals from violating the law, but fear cannot propel the constant action that is required for the maintenance of the laws over time against those who would corrupt or overthrow those laws, including those in the

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<sup>43</sup> “To put law over man is a problem in politics which I compare to that of squaring in the circle in geometry. Solve this problem well, and the government based on this solution will be good and without abuses. But until then, be sure that where you believe you are making the laws rule, it will be the men who are ruling” (*Poland* 170). “If the laws of nations could, like those of nature, have an inflexibility that no human force could ever conquer, dependence on men *would then become* dependence on things again; in the Republic all the advantages of the natural state *would be* united with those of the civil state” (*Emile* 217, emphasis added).

administration. A fearful community is too passive for its own good (*Corsica* 153).<sup>44</sup>

Thus, the Hobbesian “solution” to the problem of law would massively aggravate the problem of government.

Instead of appealing to fear, of course, one might appeal to the “altruistic” side of human nature: might it not be possible to rely on the compassionate feelings of human beings for their fellows? Now, Rousseau is the last person to deny the force of compassion in human affairs, but he denies that compassion is an adequate basis for citizenship. Compassion may be the source of “all the social virtues” (*SD* 37), but compassion alone merely compounds the basic problems of partiality in citizenship and government, since compassionate feelings are intense only to the degree that they are parochial. As Rousseau puts it, “Interest and commiseration must in some way be confined and compressed to be activated” (*PE* 151; see also *EOL* 306). Thus, even if we were thoroughly compassionate beings, our compassionate feelings would always be limited in practice. Hyper-compassionate citizens and administrators, so far from acting impartially, would be moved to action only by the misfortunes of the people most akin to them and would be indifferent (at best) to others. This would hardly be a recipe for equitable law-making or administration. Indeed, it might not even be preferable to

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<sup>44</sup> The view that fear tends to produce paralysis rather than action seems to be shared by Montesquieu, who says that “in the despotic state, where there is neither honor nor virtue, one can decide to act *only* in anticipation of the comforts of life” (*SL* 5.17, emphasis added). By implication, one does not “decide to act” on the basis of fear (see also *PL* 89). As Spector puts it, “Far from being a composite, refined, or active passion, fear is a simple, brute, passive, asocial, and apolitical passion.” *Montesquieu: Liberté, droit, et histoire*, 150. In his *Essay on the Causes Which Can Affect Minds and Characters*, Montesquieu writes: “There are passions which give spring to fibers; others which slacken them. This is proved, on the one hand, by the strength and the power of anger, and, on the other, by the effects of fear. The arms fall, the legs fold, the voice stops, the muscles slacken” (*ECMC* 50).

ordinary selfishness, since “what would be dishonorable in preferring oneself to others disappears when one favors a large social group of which one is a part” (*JP* 99).

If Rousseau’s analysis is correct, we are faced with a dilemma. On the one hand, affective ties are necessary in order to motivate beneficent action. On the other hand, to act in accordance with the law or the demands of justice requires impartiality, and affective ties are only strong insofar as they are particularistic or partial. Our emotional parochialism would seem to preclude a steady commitment to the public good.

It may be possible, however to “draw from the ill itself the remedy that should cure it” (*GM* 82). Rousseau agrees with Montesquieu: the great alternative to self-interest is citizen virtue, which entails the “conformity of the private will to the general” (*PE* 149; see also *GM* 113). And he agrees that this particular kind of virtue requires patriotism: “love of the fatherland necessarily leads to [virtue], since we willingly want what is wanted by those we love” (*PF* 59; see also *PE* 151). In contrast to Montesquieu, however, Rousseau argues that “love of fatherland” is indispensable. Whereas Montesquieu holds up Stoic universalism as a civic ideal (*SL* 24.10), Rousseau criticizes it (*Poland* 177). In his view, patriotism is the indispensable source of the self-overcoming necessary for justice: particularistic associations (the tribe, the city, and the nation at the outer limit) provide the only possibility of combining happiness with justice, because particularistic associations are capable of providing the affective foundation that makes dedication to law bearable and even positively appealing, despite its personal costliness.

In all political societies, Rousseau says, “the public interest and the laws have no *natural* force and are continuously assailed by the personal interest and passions of both leader and members” (*PE* 141-42, emphasis added; see also *GM* 91). Given the

unnaturalness of the demands of political life, an unnatural “love of fatherland” is a precondition of respect for the political community. “If you want the laws to be obeyed, make them beloved.... That was the great art of the governments of antiquity” (*PE* 148). The moderns’ “egotistical philosophy,” by contrast, “preaches what is deadly” (*Poland* 182; see also *Narcissus* 193; *SD* 74-75). Patriotic “intoxication” is the thing that “alone can raise men up above themselves” (*Poland* 222).

Intoxication is the right word. Just as Montesquieu suggests that love of fatherland is a passion that cannot be taught (strictly speaking) because it depends on dubious beliefs, so also Rousseau suggests that citizen virtue depends on the “heart” rather than the mind (*Poland* 171). But the fact that virtue is a passion rather than a kind of knowledge is precisely its strength: “The mistake of most moralists has always been to consider man as essentially reasonable being. Man is a sensitive being, who consults solely his passions in order to act, and for whom reason serves only to palliate the follies his passions lead him to commit” (*PF* 70; see also *Hero* 2; *PE* 155).

On this point Rousseau criticizes Montesquieu directly. Montesquieu, he observes, identified citizen virtue as the principle of popular government but not of monarchy. He “did not see that ... the same principle ought to apply to every well-constituted state, albeit to a greater or lesser degree according to the form of government” (*SC* 174). Patriotism is necessary in every state, according to Rousseau, if people are to actively uphold the law.<sup>45</sup> Under a popular government, for example, citizens should be constantly attentive to the public interest. What distinguishes the deliberations of a

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<sup>45</sup> Rousseau identifies genuine “love of the fatherland” with love “of the laws and of freedom” (*Poland* 179; see also *PE* 154; *PF* 33-34). Hence his preference for the Romans over the Spartans as “the model of all free peoples” (*SD* 4). The Spartans loved the fatherland unconditionally, whereas the Romans loved the fatherland only insofar as it was free (*PF* 63; compare *SL* 19.4).

healthy from an unhealthy democracy is the predominant motive among the deliberators. In a healthy situation, the participants consider the common interest above all else; in a corrupt situation, by contrast, the very notion of the “fatherland” is a subject of indifference or derision, and political actors are influenced exclusively by their personal and factional interests. Without patriotism, then, “freedom is only a vain name and legislation only an illusion” (*Poland* 222). “In a well-run city, everyone rushes to assemblies.... As soon as someone says *what do I care?* about the affairs of the state, the state should be considered lost” (*SC* 192). A “lesser degree” of patriotism is necessary in less democratic communities, where the people have comparatively little opportunity to engage in politics, and therefore comparatively little opportunity to follow their private inclinations. But citizen virtue is still necessary insofar as the members of government always have to resist the temptation to act for their private ends (compare *SL* 3.4). And the possibility of war – which Rousseau, we will see, regards as an intractable problem – makes the need for citizen virtue in every state even clearer. Here it is a matter not merely of renouncing certain interests but of risking one’s life for the sake of the community.

Paradoxically, then, Rousseau is more attached to citizen virtue than Montesquieu because he is more skeptical about the goodness of justice. And he is skeptical about the goodness of justice not merely because he recognizes that the just are sometimes hard done-by (*Emile* 444; *PE* 152; *SC* 141), as Montesquieu surely knows (*PL* 140-41, 158-59, *SL* 6.1 end), but also because he understands law to be, in its essence, at odds with the bent of human nature. The general will is “always upright [*droite*]” (*SC* 147), whereas people left to their own devices are (naturally and reasonably) crooked. “The citizen wants only the laws and the observation of the laws” (*LWFM* 301), but the individual

human being would often prefer to live without regard for the laws. Law as law – including law in a commercial regime – requires a spirit of self-renunciation that Montesquieu mistakenly regards as outmoded.<sup>46</sup>

For this very reason, however, one might be tempted to reject Rousseau's prescriptions. If citizen virtue is a "burden" that is "much more austere" than "the yoke of tyrants is harsh" (*Poland* 186), should we moderns not be relieved to be beyond old-fashioned citizenship? After all, Rousseau follows Montesquieu in describing the basic psychology of the patriotic citizen as a mutilation of the human constitution (*GM* 101).<sup>47</sup> And Rousseau himself was far from a model of citizen virtue (*Confessions* 544; *LF* 267-68; *Observations* 40; *Reveries* 51; *SC* 152).

But Rousseau does make a case for citizen virtue that is more than rhetorical. The value of life, he suggests, is bound up with "the sentiment of existence": "To live is not to breathe; it is to act; it is to make use of our organs, our senses, our faculties, of all the parts of ourselves which give us the sentiment of our existence." Hence, "The man who has lived the most is ... he who has most felt life" (*Emile* 167). And as an active citizen, one's faculties can be "exercised and developed," one's ideas can be "broadened," one's feelings can be "ennobled" – in short, one's "whole soul" can be "elevated" (*GM* 85; *SC* 141). Compared with the vast majority of civilized humans, patriotic citizens are in a

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<sup>46</sup> Neuhouser argues that the maxim of natural goodness – pursue your own good with the least possible harm to others (*SD* 38) – is "a genuine imperative" in political society. *Rousseau's Critique of Inequality*, 40. But natural goodness is insufficient for good citizenship, not merely because the pursuit of one's merely private good so often entails harm to others in civilized conditions (*SD* 75), but also because the absence of active concern for the good of strangers is tantamount to injustice in political society, even if one pursues perfectly harmless pleasures (*FD* 13; see also *Reveries* 46).

<sup>47</sup> Compare *SC* 155, where Rousseau speaks of "alteration" rather than "mutilation." Still, Meier notes that "throughout his writings Rousseau uses *altérer* in the sense of 'to change for the worse,' 'spoil,' or 'distort,' and not in the neutral sense of 'change.'" "On the Lawgiver," 186 n. 8.

genuinely enviable position. The virtuous Romans and Greeks had “strong souls,” whereas “we” are sunk in “the passions of petty self-interest” (*Poland* 171; see also *Reveries* 87). Moreover, patriotic sentiment is sweet: “I do not conceive how someone who loves nothing can be happy,” says Rousseau, and “love of the fatherland” is “a hundred times more ardent and delightful than that of a mistress” (*Emile* 372; *PE* 151; see also *LD* 351n; *Reveries* 85).<sup>48</sup> And there is a sense in which the beliefs that underpin this sweetness are sober: inasmuch as they love freedom, virtuous citizens love “what is truly beautiful” as distinct from what is beautiful merely by convention (*PE* 155; compare *Corsica* 154). In comparison with the likely alternatives, then, Rousseau seems really to believe that the burdens of citizen virtue are adequately compensated by the “plentitude of feeling” (*SW* 70) that patriotic citizens experience.<sup>49</sup>

Still, for Rousseau as for Montesquieu citizen virtue depends on a sort of inner war: it requires that we renounce the pursuit of at least some genuine goods in this life. In order to be simply content as a citizen, one would have to be perfectly virtuous, meaning that one’s private will would have to be enduringly consonant with the general will (*PE* 149). But this is impossible: “For the private will tends by its nature toward preferences, and the general will toward equality” (*SC* 145). And whereas the voice of the general will

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<sup>48</sup> But consider *FR* 121n: “It is the duty of worthy men to depict virtue as beautifully as is possible. And we would not behave badly if passion were to carry us away for the benefit of such sacred matters.” See also *LWFM* 191: “One cannot say, either, that I attack morality in a book in which I *establish with all my power* the preference for the general good over the private good” (emphasis added).

<sup>49</sup> Todorov argues that Rousseau’s apparent endorsement of citizen virtue is simply a drawing out of the consequences of the patriotic starting point, of which Rousseau is wholly critical. *Frail Happiness*, 25-30. But this may be a better description of Montesquieu’s treatment of patriotic republicanism than Rousseau’s. For instance, Todorov insists that Rousseau is merely giving voice to the perspective of a patriotic citizen when he calls harshness to foreigners “a drawback, inevitable but not compelling”; but it is not clear that a genuine patriot – of the kind that Rousseau is supposedly imitating – would regard it as a drawback at all.

(the acknowledged rules set by the political community to which one belongs) can be forgotten or neglected, the voice of the private will (the love of self and the things most closely connected to its wellbeing) is “born with man” and “never leaves him so long as he lives” (*Emile* 363; see also *Beaumont* 52; *LWFM* 302). Thus, Rousseau frequently indicates that the most perfect patriotism requires faith in divine rewards and punishments (*Emile* 444-45; *GM* 79, 121; *SC* 223; compare *SD* 38). And he does not go so far as to claim to know that self-sacrifice is ultimately the highest form of self-interest, as (for example) his Savoyard Vicar and Montesquieu’s Troglodytes insist.

### The Prospects for Patriotism

An overriding dedication to the laws and freedom on the part of citizens is a relatively uncommon and fragile thing. Many political communities are only the products of a conquest or usurpation that has come to be grudgingly accepted by subjects (*SC* 133; see also *Corsica* 127). And in better circumstances the experience of living under equitable law and impartial administration does not by itself lead to patriotism, because “like health justice is a good which one enjoys without feeling it, which inspires no enthusiasm at all, and whose worth one feels only after one has lost it” (*Poland* 171). In civil society, Rousseau says, everyone spontaneously “pretends to wish to sacrifice his interests to those of the public, and they are all lying. No one wants the public good except when it agrees with his own. Thus this agreement is the object of the true political thinker who seeks to make people happy and good” (*Beaumont* 29).

In the best cases, a nation can become a genuine political union, tied together by patriotic feeling, through the efforts of a “legislator,” understood as someone who



establishes the moral horizon of the political community rather than as a mere maker of laws. The task the legislator sets for himself is to transform a people from a “blind multitude” into a law-esteeming citizenry (*SC* 154). Rousseau’s three principal examples are Moses, Lycurgus, and Numa (*Poland* 171; compare *SL* 4.6, 5.5).<sup>50</sup>

Initially, the legislator as Rousseau describes him may seem to be almost all-powerful, and therefore “quasi-divine.”<sup>51</sup> “One who thinks he is capable of forming a People should feel that he can, so to speak, change human nature. He must transform each individual, who by himself is a perfect and solitary whole, into a part of a larger whole from which the individual receives, in a sense, his life and his being. He must in a sense mutilate man’s constitution in order to strengthen it” (*GM* 101). On closer inspection, however, the legislator looks more prosaic and limited. First, Rousseau does not countenance the possibility of a genuine overcoming of human nature. The legislator “should feel” that he is capable of changing human nature “so to speak” (and therefore not literally); he must transform individuals into parts of a whole “in a sense” (a phrase repeated twice in this brief passage). In every political community, no matter how well constructed, one always remains an individual as well as a citizen (*SC* 148).<sup>52</sup> The legislator does not even turn natural men into civil men; he directs the amour-propre of civil men in a particular direction. When Moses, Lycurgus, and Numa acted, the Israelites, Spartans, and Romans were not the primitives described by Rousseau in the

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<sup>50</sup> Rousseau’s skepticism about the historical existence of Numa should be noted (*SC* 203n). He may have in mind Cincinnatus as “the wise founder who combined rustic and military labors with freedom, and so to speak relegated to the town arts, crafts, intrigue, fortune, and slavery” (*SC* 204). Servius and Solon are acknowledged as important figures, but they do not seem to be counted among the great “founders” (*SC* 148, 204-8).

<sup>51</sup> Spector, *Montesquieu: Liberté, droit, et histoire*, 272-73.

<sup>52</sup> Cf. Shklar, “Montesquieu and the New Republicanism,” 273; Wells, “Rousseau’s Legislators and the Exemplar of Sparta,” 218-19.

*Second Discourse*, people for whom “power” and “reputation” are meaningless concepts (SD 66).<sup>53</sup> It is, says Rousseau, “certain that it is less within ourselves than in the opinion of others that we [i.e., civil men] seek our own felicity.... All want to be admired. That is the secret and final goal of the actions of men. Only the means differ. Now it is the choice of these means that rests on the skill of the legislator” (PF 36). As a rule, then, a legislator can be successful only when a people is in its “youth,” before its customary opinions have become calcified prejudices (SC 157). And a populace has to be capable of receiving legislation; it has to be sufficiently pliable both in its natural temperament and in its customary way of life in order to be capable of rigorous self-renunciation, for example. A lazy people or a people accustomed to excessive luxury simply cannot be transformed into a genuine citizenry, no matter how talented the legislator (SC 157-62, 181-85). Thus, a legislator must work within the constraints of a particular national spirit or way of life, itself largely a product of environmental circumstances (*Corsica* 127; *GM* 116; SC 163-64, 181-85). And Rousseau readily admits that even the best legislator is capable of uniting a people only for a time. Eventually, every political bond dissolves (SC 186).

Because of all these limitations, Rousseau’s assessment of the prospects for patriotism in the modern world can appear totally bleak. “I take a look at modern nations: I see there many makers of laws and not one legislator” (*Poland* 171). Legislators existed in antiquity not only because the ancients were in some respects superior to modern political thinkers, but also because in antiquity there were more opportunities to mold nations before enervating customs had taken root. As we saw in Chapter Two, Rousseau thinks that modern peoples are “occupied with their private interests, with their work,

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<sup>53</sup> See also Neuhouser, *Rousseau’s Critique of Inequality*, 77.

with their trafficking, with their gain,” and that they disdain liberty or see it only as “a means for acquiring without obstacle and for possessing in safety” (*LWFM* 293; see also *Reveries* 88; *SD* 57). In addition, Rousseau (like Montesquieu) frequently insists that the increased size of countries and the influence of Christianity make patriotism on the ancient model impossible to imitate (*Emile* 165; compare *SL* 4.4). All of this is of a piece with Rousseau’s view that civilization itself is a corrosive force: “In the long run all men become similar” (*EOL* 315). Many commentators have therefore taken the view that “Rousseau’s own political proposals did not constitute a possibility for modern states once beset with luxury and entrenched inequality.”<sup>54</sup>

But this may be an inadequate account of Rousseau’s position, given that in his view luxury and inequality exist even in the healthiest political communities (*FR* 128; *SD* 51). Rousseau is far from imagining that ancient legislators had blank canvases with which to work. The Jews were “a swarm of unfortunate fugitives without arts, without arms, without talents, without virtues, without courage” (*Poland* 171). The Spartans were “degraded by servitude and by the vices that are its effect” (*Poland* 172; see also *PF* 62). The Romans were “a stupid mob that needed to be handled and governed with the greatest wisdom, so that, growing accustomed little by little to breathe the salutary air of freedom, those souls, enervated or rather brutalized under tyranny, acquired by degrees that severity of morals and that pride of courage which eventually made them the most respectable of all peoples” (*SD* 5; see also *Narcissus* 195). In modern Europe, Rousseau clearly had some hope for Poland, a large country with a well-established nobility, an elective monarchy, a long tradition of Christianity, and deep-set “tastes, mores,

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<sup>54</sup> Douglass, *Rousseau and Hobbes*, 202. See also Melzer, *The Natural Goodness of Man*, 290; Shklar, “Montesquieu and the New Republicanism,” 270-71.

prejudices, and vices” (*Poland* 169).<sup>55</sup> The Corsicans, from whom Rousseau expected great things (*SC* 162), were nonetheless “restless, turbulent, hard to govern even by their own leaders,” and had an “inclination toward theft and murder” (*Corsica* 125, 137). And while modern circumstances work against the emergence of a new Moses, Lycurgus, or Numa, Rousseau emphasizes that human nature remains basically the same (*Poland* 171, 182; *SC* 189).

Accordingly, though he sometimes talks as if there is no hope at all for the modern world, he does specify a number of conditions of patriotism that are usually within the reach of political actors. Steps can be taken to prevent “the indifference of citizens concerning the fate of the republic” and the growth beyond “narrow limits” of “that personal interest which so isolates private individuals” (*PE* 156-57). All of these steps cut against Montesquieu’s cosmopolitan vision. And simply by raising the possibility of a newly constructed patriotism, now centered on relatively large nations rather than small cities, Rousseau contradicts one of Montesquieu’s main intentions, namely to convince Europeans that ancient republicanism can no longer serve as a useful example.<sup>56</sup>

First, whereas Montesquieu – by attempting to demystify the charms of the close-knit regime of virtue – encourages statesmen to “enlarge the orbit” or “extend the sphere” of the political community, Rousseau suggests that statesmen should avoid territorial expansion, and even take the opportunity to shrink their countries’ borders if possible. The grand scale of states is the “first and principal source of the misfortune of the human race, and above all of the numberless calamities that undermine and destroy publicly

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<sup>55</sup> On the extreme inequality established in eighteenth-century Poland, see *SL* 2.3 end.

<sup>56</sup> For a discussion of this aspect of Montesquieu’s teaching, see Gonthier, *Montesquieu and England*, 78-82. Cf. Keohane, “Virtuous Republics and Glorious Monarchies,” 395.

ordered peoples” (*Poland* 183). This is mainly because “the more the social bond stretches, the looser it becomes” (*GM* 106). The social cohesion necessary for a patriotic community is best cultivated in a small territory, as Montesquieu stresses (*SL* 8.16), not only because small communities have a stronger sense of fellowship but also because sound judgments about the abilities and morals of one’s fellow citizens are harder to make at a distance (*GM* 107; *SC* 159; *SD* 3-4; *Poland* 183). The best societies, according to Rousseau, are “of a size limited by the extent of human faculties” (*SD* 3). In a large country, fellow citizens become “foreigners” to each other, and the fatherland comes to seem as abstract as “the whole world” (*GM* 106-7). Thus, where it is not possible to make territorial retrenchments, Rousseau supports federalism in order to slow the decay of social trust (*Poland* 183-84, 215). And, at the most local level, he emphasizes the importance of informal associations, praising Geneva’s private circles and London’s men’s clubs, for example, as key political institutions (*LD* 323-32; see also *PF* 62-63).<sup>57</sup>

Second, while Montesquieu approves of the softening of national differences, Rousseau insists that these differences should be deliberately cultivated and preserved as the bases of patriotic identity (*Corsica* 133; *Poland* 174). Here education is “the important item” (*Poland* 179; see also *PE* 156). “National education belongs only to free men; they are the only ones who have a common existence and are truly tied together by law” (*Poland* 179). Public education should be free or, failing that, full scholarships should be provided to “children of poor gentlemen who have deserved well from the fatherland, not as charity, but as a recompense for the fathers’ good services” (*Poland* 180). Together with group-oriented physical exercises and games, at the core of public

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<sup>57</sup> On these private associations as important means of facilitating the responsibilities of citizenship, see Kelly, “Sovereign versus Government,” 30-31.

education should be knowledge of the nation's products, geography, history, laws, and illustrious citizens (*Poland* 180-81). All this should begin from the earliest possible age (*PE* 155). But a sense of national difference can be preserved or reintroduced even in oblique ways, by means of idiosyncratic "games, festivals, solemnities" (*Poland* 176). Bullfights, for example, "have contributed no small amount to maintaining a certain vigor among the Spanish nation" (*Poland* 177). The commemoration of wars of national defense can also go some way to instilling a spirit of separateness (*Poland* 175-76). Even distinctive clothing can be useful (*Poland* 176). In contrast to Montesquieu, then, Rousseau has a low opinion of Peter the Great's attempts to "civilize" Russians, that is, to make them more like Germans and Englishmen (*SC* 158; see also *Poland* 176; compare *Considerations* 203; *SL* 19.14).

Third, whereas Montesquieu presents trade as the keystone of sound foreign policy, Rousseau argues that commerce should be limited as much as possible. Instead of fostering trade, politicians should try to make their nations as self-sufficient as possible. Trade makes people more concerned with money, a private good, and therefore at least somewhat less concerned with the public good (*Corsica* 124-25). In the most "free, peaceful, and wise" countries, money has been made "contemptible" or even "useless" (*Poland* 209-10). "Seek in every country, in every government, and all over the earth. You will not find any great evil in morality and in politics in which money is not mixed" (*Poland* 212). Commercial peoples "consider the public interest only when their own is being attacked," by which time it may be too late (*LWFM* 293). For this reason, "The word *finance* is a slave's word" (*SC* 192). Commerce does harm also by introducing over-refined foreign tastes. The "most mortal enemy of happiness and freedom" is the

taste for “brilliance,” Rousseau insists, and this taste is contracted from cosmopolitan capitals where people are surrounded by “all the refinements of softness and luxury” (*SD* 10-11; compare *SL* 19.14). And the problem is not merely that certain foreign tastes are corrupting: all foreign things are a threat to the relatively closed horizon on which national character depends (*Corsica* 132-33, 135-36; *Poland* 176; *SD* 10). “The ruin of the Roman Empire, the invasions of a multitude of barbarians, have made a mixture of all the peoples which *must necessarily* destroy the mores and customs of each of them,” Rousseau says (*Narcissus* 190n, emphasis added). “The spirit of imitation,” he claims, “produces few good things and never produces anything great. Each country has advantages which belong to it and which its foundation ought to extend and favor” (*Poland* 222).<sup>58</sup>

Finally, whereas Montesquieu sees inequality as a problem only in extreme circumstances, Rousseau argues that the gap between rich and poor must always be moderated to the greatest extent compatible with the rule of law. His concern here is not with an abstract moral principle but with the integrity of the nation as a cohesive political community: “Laws are equally powerless against the treasures of the rich and against the indigence of the poor” (*PE* 154). Therefore the “genuine strength of a state” lies in the mediocrity of fortunes, and luxury items should be heavily taxed (*PE* 169). This furnishes another reason for his opposition to the spread of commerce, which he thinks enriches a lucky elite without making the nation as a whole more prosperous (*SC* 163n; *PE* 168).

“[L]uxury serves to support states as caryatids serve to hold up the palaces they decorate,

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<sup>58</sup> Rousseau frequently presents his city of origin, Geneva, as a community with a distinct culture that is being corrupted by its wish to imitate the French. “If I were the leader of one of the peoples of Niger,” he maintains, “I declare that I would have a gallows built at the frontier of the country where I would hang without pardon the first European who would dare enter it, and the first citizen who would try to leave” (*FR* 125).

or rather like those beams with which rotted buildings are supported and which often end up toppling them. Wise and prudent men, get out of any house that is propped up” (*FR* 116; see also *FD* 5; *Observations* 53-54; *PF* 45-46).

### The Limits of Humanitarianism

Just as Rousseau rejects Montesquieu’s model of citizenship based upon rational self-interest, so he rejects his hopefulness about the pacifying effects of commerce. In Rousseau’s view international market relations not only fail to foster peace among nations, they actually sow new seeds of animosity. Commerce does dissolve certain national prejudices, Rousseau concedes, but he insists that the dissolution of prejudices is overrated. The mere recognition that we are similar to other human beings as human beings is not enough to make us regard them with any great warmth, particularly when we are in actual or potential competition with them. To the contrary, the recognition of essential similarity can be a new source of loathing. Insofar as we are not merely interest-maximizing but also prestige-seeking creatures, we want to distinguish ourselves and claim preeminence *especially* among those who are basically similar to us. Our natural identity “is as frequently a source of competition and jealousy as of mutual understanding and agreement” (*GM* 77).

This insight forms an important part of Rousseau’s critique of the abbé de Saint-Pierre’s *Plan for Perpetual Peace*. Whereas, at least for the sake of argument, Rousseau is prepared to accept the abbé’s claim that a European federation would be in the interest of each European state, he flatly denies the claim that the people in charge of making political decisions are led by clear perception of their genuine interest rather than by a



view of their interest that is overwhelmingly colored by competitive amour-propre (*JPPP* 54). Presumably with the same considerations in mind, he warns the Poles that, with the progress of commerce, “you will form a people that is scheming, fervent, greedy, ambitious, servile, and knavish like the others... [T]here will be no war in Europe into which you will *not* have the honor of being stuck” (*Poland* 209, emphasis added).

And even if commerce could make us more rational, Rousseau suggests, rationality would not support any strong sense of “humanity.” In fact rationality confirms us in our isolation from the rest of humanity. The feeling of pity that can drive us to beneficent action rests on a kind of intellectual confusion: we identify ourselves with beings that are not ourselves. Reason corrects this error. From the point of view of strict reason, “[T]he term *human race* offers to the mind only a purely collective idea which assumes no real union among the individuals who constitute it” (*GM* 78). If we belong to a universal society that has a purely abstract or aspirational existence, only a fool would sacrifice his own palpable good for its sake. The rational person says, “Either give me guarantees against all unjust undertakings or do not expect me to refrain from them in turn.” Harsh as it may sound, Rousseau points out that “this is how every sovereign society accountable for its behavior only to itself does reason” (*GM* 79). Because there is no genuine international community, the only reliable rule among individuals and states in “the large town of the world”<sup>59</sup> is “the law of nature,” that is, force and fraud (*PE* 143). In short, reason provides no satisfying answer as to why anyone would put the good of the human race before his own private good, especially in the absence of any reciprocity

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<sup>59</sup> Rousseau refers to the universal society as a commercial “town” (*ville*), not as a “republic” (*république*) or a “state” (*état*). He thus signals an agreement that commerce is central to cosmopolitanism, such as it exists, while departing from Montesquieu’s view that, since moveable commodities “belong to the world,” the world “in this regard comprises but a single state [*État*] of which all societies are members” (*SL* 20.23; see also 22.15, 26.1; *RMUE* 21).

(*GM* 79-80; see also *SC* 152). This helps to explain why the most reflective members of society are not generally distinguished by acts of kindness and generosity (*SD* 37; see also *Reveries* 26).

Rousseau even suggests that foreign dependence is less conducive to trans-national feelings of “benevolence and friendship” than is national self-reliance (*Corsica* 134). To the extent that we see our fellow human beings as much-needed servants, he suggests, we tend to disdain or even hate them, however superficially polite we may be. Whatever feeling of “universal goodwill” may exist among inter-dependent nations, therefore, is slight in comparison with the feeling of animosity that this very reliance fosters. So far from inclining us toward humanity, the recognition of our precarious dependence inclines us toward resentment. We would like to be the objects of everyone else’s benevolence; we do not like having to aid and flatter them constantly in order to be sure of it (*GM* 76-77, 110n; *SC* 162n). In other words, whereas Montesquieu believes that “all unions are founded on mutual needs” (*SL* 20.2), Rousseau thinks that unions founded on mutual needs alone are of a very peculiar and weak type. Indeed, “the bonds of society based on personal interest” cannot be tightened without relaxing in exact proportion “the bonds of society that are formed by esteem and mutual benevolence” (*Narcissus* 193n; see also *SD* 46).

None of this means that patriotism is at all likely to pacify the world. Rousseau shuns the kind of patriotism that is based on blood or soil (*SD* 4, 7),<sup>60</sup> but the

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<sup>60</sup> Originally nations were distinct groups “unified by mores and character, not by regulations and laws but by the same kind of life and foods and by the common influence of climate” (*SD* 47). But there is no reason why a national identity could not be formed around acculturation to a particular way of life and veneration for particular laws and traditions. Since Rousseau does not regard blood ties as essential to the establishment of a strong political union (*SC* 162; *SD* 7), patriotism based on the idea of a nation need not be equivalent to an emphasis on common race or

phenomenon remains. Nor does he identify patriotism with hatred of outsiders (*Poland* 176), but in practice it may be hard to keep national animosities at bay. And far from patriotism being a path to militarism, Rousseau regards it as essentially defensive (*Poland* 217-18, 222, 238; *SD* 5). Thus, whereas Montesquieu identifies expansion as the purpose of Rome, Rousseau identifies its purpose as virtue alone (*GM* 116; *SC* 163; compare *SL* 11.5). Indeed, Rousseau argues that Rome's conquests were forced upon it; it was not an intrinsically aggressive state (*Poland* 217). The Romans stand out to him not as the people who depopulated "the universe" (*SL* 23.19) but as the people who "least often transgressed their laws" (*SC* 136n; see also *PE* 153).<sup>61</sup> Still, he is awake to the expansionary potential of patriotism, precisely insofar as it fosters good executive management. As he says, Rome's "glory and prosperity" ended "from excess of its power; but it had acquired it only from the goodness of its government" (*LWFM* 292). "Everything that is not in nature has its problems," he admits, "and civil society more than all the rest" (*SC* 193; see also *Emile* 213).

Finally, Rousseau does not absolutely foreclose the possibility of a sort of cosmopolitan moral virtue, but he regards it as too rare to be a practical alternative to citizen virtue, given the normal limits of pity and the normal range of effective action. Emile, for example, is led toward detachment from "national prejudices" in order to be "free everywhere on earth" because he has only corrupt monarchies to choose from

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ethnicity. Likewise, he suggests that a "fatherland" is not constituted by a place (*SD* 4, 7; *PF* 57-58; but see *Corsica* 126). Encapsulating both of these points, he writes of the Jews as a people "without either location or land for nearly two thousand years; a people that has been modified, oppressed, and mingled with foreigners for even longer; perhaps without a single offspring of the first races; a scattered people, dispersed over the earth, subjected, persecuted, scorned by all nations, and yet preserving its customs, its laws, its morals, its patriotic love, and its initial social union when all its links appear broken" (*PF* 33-34).

<sup>61</sup> Cf. Shklar, "Montesquieu and the New Republicanism," 271.

(*Emile* 664, 666). But even in this situation, he will be focused essentially on helping the people in his country of residence – and especially those in his local area – rather than trying to help the human race as a whole. After all, someone without a “fatherland” can still appreciate the benefits of a functional country with “the simulacra of laws” (*Emile* 667-68; compare *LM* 580-81, *LWFM* 226-27, 306).<sup>62</sup>

Genuine cosmopolitanism seems to be exemplified by legislators, who mold the character and laws of particular nations without themselves being fully part of those nations (*PF* 34-35). Rousseau’s own intervention in the debate over the establishment of a theater in Geneva, for instance, can be understood as a kind of cosmopolitan resistance to cosmopolitanism, informed as it was not merely by attachment to Geneva but by knowledge of French literature and by long reflection on the historical conditions of self-government. In defending Geneva from French cultural imperialism, he defended the cause of republicanism in general and offered a lesson to readers in very different circumstances.

### *Conclusion*

Both Montesquieu and Rousseau agree that commerce pulls us in the direction of merely-human individuality and away from a sense of identification with the closed and conventional group. For Montesquieu, this is progress. He turns away from patriotic republicanism not because he wavers about whether such republics really do instill citizen virtue but because he is convinced that needless repression and belligerence are the effects of that virtue. So far from being conclusive recommendations of patriotism,

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<sup>62</sup> For a helpful treatment of the role of cosmopolitanism in *Emile*’s moral education, see Kelly, “Rousseau and the Case For and Against Cosmopolitan Humanitarianism.”

Montesquieu's expressions of admiration at the lives of ancient Greeks and Romans are forced from him, so to speak, against his better judgment. He is astonished by their feats but, when he manages to see things clearly, he no longer envies their "very painful" existences. In modern times a better alternative has come to light: in the commercial way of life Montesquieu sees a new path to human flourishing through a gentle unfurling of the once-repressed passions.

Rousseau is no more intoxicated by citizen virtue than is Montesquieu, but he identifies an insuperable gap between the demands of public and private interest. Not only do we frequently see the path of private interest diverging from the path of the public, he points out, but if we are modestly intelligent and powerful we can very often walk the former with impunity. In other words, there are always many free rides to enjoy for those with the natural and conventional resources to take them. Rousseau therefore seeks to restore citizen virtue to its formerly beautified place in the public imagination, as the necessary link between the individual and his public duties: if they are to be more than dull, easily ignored sermons, the demands of justice require patriotic "intoxication." In addition, Rousseau suggests that a certain proud self-reliance and inwardness is a better (if very imperfect) means of maintaining concord between different states. By contrast, commercial interdependence is likely to foster new forms of hostility.

## CHAPTER FOUR: LIBERAL CONSTITUTIONALISM

We saw in the previous chapter that Rousseau regards patriotism as essential to every constitutional government, whether it be democratic, aristocratic, or monarchical. This means that there *is* such a thing as a constitutional monarchy, from his point of view. Still, in defending patriotism, Rousseau is hardly neutral among forms of government. Patriots esteem their fellow citizens as equals. Such a spirit is surely in tension with every system of government that excludes all but a few of these fellow citizens from direct civic participation. And this brings us to the final important area of disagreement between Montesquieu and Rousseau, that is, the relation between freedom and popular rule.

The split between “liberals” and “populists” on both the left and the right has by now become a core feature of political life around the world. Liberals tend to regard appeals to national citizenship and sovereignty with skepticism, and they tend to argue that fundamental political decisions should be handled less by ordinary people than by professional politicians, judges, and civil servants. Populists, by contrast, embrace the rhetoric of national citizenship and sovereignty, and they look upon the professional legal-political class with distrust, if not outright animosity. Recently we have seen this split emerge in relation to questions of immigration, trade, and the authority of intergovernmental organizations such as the European Union. We have seen it also in calls to settle political debates through plebiscites, to impose term limits on representatives, to appoint judges who respect “the will of the people,” and to elect to public office incorruptible and plain-spoken “outsiders.”

Montesquieu and Rousseau might be considered forerunners of the liberal and populist camps respectively. As we will see, they offer sharply differing accounts of the extent to which the people should govern in a free community. And what underlies this difference is that each account corresponds to a particular conception of freedom. According to Montesquieu, the core of the desire for freedom is the desire to feel that one's person and property are protected by laws; one can be fully free in this sense without participating in political life. According to Rousseau, to be free does not mean to have a sense of security but rather to have a sense that one is not being pushed around by someone else; freedom understood this way requires a sense of agency over the laws under which one lives, something which is available only under a relatively democratic constitution. This disagreement over the nature of freedom is not reducible either to a case of "negative liberty" versus "positive liberty"<sup>1</sup> or to one of "liberty as non-interference" versus "liberty as non-domination,"<sup>2</sup> two paradigms that have long dominated Anglo-American political theorists' thinking about freedom.

For reasons we will see, the distinctiveness of the alternatives offered by Montesquieu and Rousseau has long been blurred by the widespread view of Montesquieu as a republican,<sup>3</sup> a view which has contributed to an under-appreciation of the connection between his case for liberal constitutionalism and his criticisms of popular rule. But it has been blurred also by the widespread view of Rousseau's political

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<sup>1</sup> See Berlin, "Two Concepts of Liberty."

<sup>2</sup> See Pettit, *Republicanism*; Skinner, *Liberty before Liberalism*.

<sup>3</sup> See Goyard-Fabre, "L'idée de représentation," 1; Hulliung, *Montesquieu and the Old Regime*, 47, 87, 215; Lynch, "Montesquieu and the Ecclesiastical Critics," 498-500; Nelson, *The Greek Tradition in Republican Thought*, 175-76; Pangle, *Montesquieu's Philosophy of Liberalism*, 116; Shklar, "Montesquieu and the New Republicanism," 269; Rahe, *Montesquieu and the Logic of Liberty*, 58; Thiemann, "Montesquieu and the Future of Liberalism," 275; cf. de Dijn, "Was Montesquieu a Liberal Republican?" 34; Douglass, "Montesquieu and Modern Republicanism," 708; Sonenscher, *Before the Deluge*, 102-8

prescriptions as being antithetical to individualistic “modern” or “negative” liberty,<sup>4</sup> a view which has contributed to an under-appreciation of the challenge that his political thought poses to liberalism precisely on the territory that liberalism feels itself most secure.

### *Montesquieu’s Liberal Constitutionalism*

#### The Dilution of Sovereignty and Citizenship

Republicanism, Montesquieu recognizes, means the sovereignty of the people. Indeed, in the early sketch of the three kinds of government (republics, monarchies, despotisms) in *The Spirit of the Laws*, “sovereign power” is linked explicitly to republican government alone (SL 2.1; compare *Considerations* 138). But, as Rousseau will stress (SC 140, 145-47), “sovereign power” implies absolute authority, and Montesquieu regards all such authority as malign. The will of a sovereign is essentially “capricious and transitory,” he says (SL 26.2). And the sovereignty of the people can be every bit as harsh as one-man rule (SL 5.8, 8.5; MT 1893). The people, he insists, are “not suited to manage by themselves” (SL 2.2). Their “nature” is to “act from passion” (SL 2.2); “from impetuosity and not from design” (SL 2.3). They are fit neither to “discuss public business” intelligently nor to “make resolutions for action” (SL 11.6).<sup>5</sup> The number of “prudent

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<sup>4</sup> See Berlin, “Two Concepts of Liberty,” 162-63; Constant, “The Liberty of Ancients Compared with that of Moderns,” <http://oll.libertyfund.org/titles/constant-the-liberty-of-ancients-compared-with-that-of-moderns-1819>; Melzer, *The Natural Goodness of Man*, 108-9; Sandel, *Democracy’s Discontent*, 347; Vaughan, “Rousseau as Political Philosopher,” 2, 40, 47-48, 54, 56-57, 59, 62, 69-70, 111-13; Wright, “Rousseau and Montesquieu,” 70; cf. Hanley “Political Economy and Individual Liberty,” 35-36.

<sup>5</sup> See Althusser, *Montesquieu*, 62-63.



people” is always small (*SL* 29.3; see also 29.7). Accordingly, Montesquieu seeks alternatives to sovereign power in general and to republicanism in particular.<sup>6</sup>

To be sure, he holds up the English constitution as a model of freedom, and it is tempting to say that he regards England as a republic, albeit a “liberal” or “commercial” republic.<sup>7</sup> England is clearly one of the countries he has in mind in which “the republic hides under the form of monarchy” (*SL* 5.19; compare 29.19; *PL* 104). Moreover, in a chapter entitled “How the usage of liberty is suspended in a republic,” the practices of England are discussed alongside those of Athens and Rome (*SL* 12.19; see also *PL* 80). England, Montesquieu says, is “a nation where each man in his own way” takes part “in the administration of the state” and in which the constitution gives “everyone a part in the government” (*SL* 19.27). Whereas monarchies require a strong nobility (*SL* 2.4), the English nobility “was buried with Charles I in the debris of the throne” (*SL* 8.9; see also 20.21). Whereas great commercial enterprises are rarely undertaken in monarchies (*SL* 20.4), they are frequently undertaken in England (*SL* 19.27, 20.7). And whereas independent banks are incompatible with monarchy, they exist in England (*SL* 20.10; see also 20.21, 21.5).

But Montesquieu never speaks of the “sovereignty” of the Parliament or of the English people.<sup>8</sup> Nor does he play down the authority of the monarch or the hereditary nobility. To the contrary, he stresses the monarch’s immunity from prosecution (*SL* 11.6;

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<sup>6</sup> Hulliung notes that “Montesquieu ... was opposed to sovereignty in any form,” but nonetheless insists that he was a republican. *Montesquieu and the Old Regime*, 88.

<sup>7</sup> See Hulliung, 47, 87, 215; Pangle, *Montesquieu’s Philosophy of Liberalism*, 116; Shklar, “Montesquieu and the New Republicanism,” 269; Rahe, *Montesquieu and the Logic of Liberty*, 58; Thiemann, “Montesquieu and the Future of Liberalism,” 275.

<sup>8</sup> Cf. Goyard-Fabre, “L’idée de représentation,” 5-6; Pangle, *Montesquieu’s Philosophy of Liberalism*, 116; Ward, “Montesquieu on Federalism and Anglo-Gothic Constitutionalism,” 558-59.

see also 3.3) and he refers to the “supreme authority” of the upper house (*SL* 11.6). He therefore seems to regard England as something beyond his initial tripartite division of governments.<sup>9</sup> In fact, through his discussions of the historical development of the European monarchies, including England, he implies that the concept of sovereignty is inapplicable to these distinctively modern governments, given their roots in the complex system developed by the Germanic tribes, a system which was “at first a mixture of aristocracy and monarchy” and which “soon” harmonized “the civil liberty of the people, the prerogatives of the nobility and of the clergy, and the power of the kings” (*SL* 11.8). In England, as in France, there need be no sovereign power, strictly speaking.<sup>10</sup> True, Montesquieu does say, “A people having sovereign power should do for itself all it can do well,” but this is a statement pertaining only to democracies, in the chapter “On republican government and on laws relative to democracy” (*SL* 2.2). It is a “normative” statement only within the limits set by a particular form of government.<sup>11</sup> When Montesquieu makes a similar statement in the chapter “On the constitution of England,” he makes no reference to sovereignty, saying merely that “the people must have their representatives do all that they themselves cannot do” (*SL* 11.6). Later, he expressly criticizes James Harrington for seeing England only as a republic (*SL* 29.19).

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<sup>9</sup> See Douglass, “Montesquieu and Modern Republicanism,” 705-7, 712-13; Keohane, “Virtuous Republics and Glorious Monarchies,” 393; Spector, *Montesquieu: Liberté, droit, et histoire*, 176-77. As Ward notes, the tripartite division is linked by Montesquieu to the ideas “held by the least educated of men” (*SL* 2.1). “Montesquieu on Federalism and Anglo-Gothic Constitutionalism,” 557.

<sup>10</sup> Douglass points out that “discussions of sovereignty ... are conspicuous by their absence from Montesquieu’s thought in general.” *Rousseau and Hobbes*, 50. In Ward’s view, the “compound nature of sovereignty in England is ... its most distinctive constitutional feature.” “Montesquieu on Federalism and Anglo-Gothic Constitutionalism,” 557. See also Derathé, “Montesquieu et Jean-Jacques Rousseau,” 385-86. Cf. Sonenscher, *Before the Deluge*, 95, 152, 162.

<sup>11</sup> Cf. Goyard-Fabre, “L’idée de représentation,” 8-9.

For Montesquieu, constitutional liberty “is present only when power is not abused, but it has eternally been observed that any man who has power is led to abuse it; he continues until he finds limits” (*SL* 11.4). What is needed therefore is not any particular form of government – democratic, aristocratic, monarchic – but “moderate” government, meaning government in which the locus of supreme power is never identifiable because the various factions are constantly balancing against one another. “In order to form a moderate government,” Montesquieu explains, “one must combine powers, regulate them, temper them, make them act; one must give one power a ballast, so to speak, to put it in a position to resist another; this is a masterpiece of legislation” (*SL* 5.14 end; see also 11.6 end, 29.1). “[P]ower must check power by the arrangement of things” (*SL* 11.4). Hence the goodness of modern constitutionalism as Montesquieu presents it lies above all in the absence of any supreme authority or sovereign. “All of Europe has read my book,” he writes in one of his defenses of *The Spirit of the Laws*, “and everyone is agreed that one cannot discover whether I was more inclined toward republican government or toward monarchical government” (*Réponses* 1183).<sup>12</sup>

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<sup>12</sup> According to Montesquieu’s analysis of the origins of the French monarchy the king, the clergy, the nobles, and the commoners all had their own historically-grounded prerogatives and liberties; none was supreme (*SL* 30.10 end). As a historian, he is opposed on the one hand to the abbé Dubos, who exaggerates the original power of the king by minimizing the opposition between the conquering Frankish nobility and the Roman Empire (especially with respect to the powers of judging and taxation), and on the other hand to Henri de Boulainvilliers, who exaggerates the independent power of the nobles after the Frankish conquest by ignoring the fact that fiefs were originally revocable (not the hereditary property of a family), and who treats the establishment of the centralized, quasi-royal parlements as an abuse of power by Louis IX rather than a consequence of a voluntary transfer of legal power from the nobles of the sword to the nobles of the robe. Cf. Sonenscher, who insists that Montesquieu “made clear provision for the existence of a unitary sovereign power that, somehow, was still limited.” *Before the Deluge*, 95. On Montesquieu’s innovative presentation of the historical origins of monarchy in France, see Cox, *Montesquieu and the History of French Laws*, esp. 30-31, 40-41, 164-65. See also Ward, “Montesquieu on Federalism and Anglo-Gothic Constitutionalism,” 566-69.

A moderate constitution is one that slows things down, allowing for various factions to defend their interests against each other, even within the individual branches of government. However well distinguished the branches might have been in eighteenth-century Venice, therefore, the fact that every member of government came from the same hereditary caste meant that the city did not enjoy constitutional freedom, in Montesquieu's view. As he says in *The Spirit of the Laws*, "[T]he ill is that these different tribunals are formed of magistrates taken from the same body; this makes them nearly a single power" (*SL* 11.6; see also *Considerations* 87).<sup>13</sup>

Likewise, Montesquieu suggests that governmental gridlock and the spirit of partisanship are not merely unfortunate offshoots of constitutional freedom; they are constitutive parts of that freedom, helping to keep any single faction from tyrannizing over the others. Because of all their internal checks, moderate governments are naturally in a state of "rest or inaction," he observes; they act only when "they are constrained to move by the necessary motion of things" (*SL* 11.6). "What is called union in a body politic is a very equivocal thing," he explains in his *Considerations on the Romans*. "The true kind is a union of harmony, whereby all the parts, however opposed they may appear, cooperate for the general good of society – as dissonances in music cooperate in producing overall concord. In a state where we seem to see nothing but commotion there can be union – that is, a harmony resulting in happiness, which alone is true peace" (*Considerations* 93-94). In France, he notes in *The Spirit of the Laws*, "The bodies that

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<sup>13</sup> Aron observes that "after he had completed his analysis of the English constitution [in *SL* 11.6], Montesquieu turned back to Rome and analyzed the whole of Roman history in terms of the relationship between the plebs and the patriciate. What in fact interested him is the rivalry, the competition, *between the social classes* which is a condition of moderate government precisely because the different classes are able to balance each other." *Main Currents in Sociological Thought*, 30 (emphasis added).

are the depository of the laws never obey better than when they drag their feet” (*SL* 5.10). In England, meanwhile, partisans constantly exaggerate the danger posed by their adversaries, thereby helping the people “avoid the real perils to which they might sometimes be exposed” (*SL* 19.27).<sup>14</sup>

Montesquieu does not even limit himself to praising domestic impediments to efficient state action. Anticipating the contemporary liberal champions of global interdependency, he moves so far away from a vision of untrammelled sovereignty that he endorses the spread of commerce largely because the foreign exchange market limits the range of action available to each particular government. “[I]n our time,” he says, the “violent operations” performed by the Roman emperors on their currency “could not occur.” The exchange “has curtailed the great acts of authority, or at least the success of the great acts of authority” (*SL* 22.13; see also 21.20, 22.10, 22.14).

To defend “moderate government” was hardly a trivial thing under the Bourbon Dynasty. In seventeenth- and eighteenth-century France, kings and their supporters regarded the indivisibility of (royal) sovereignty as a matter of fundamental importance. In 1648, for example, the regency

inquired pointedly if the Parlement [of Paris] claimed the power to alter an edict registered by royal authority.... The duc d’Orléans, uncle of the king, Prime Minister Mazarin, and Chancellor Séguier all asked the judges this precise question: did they mean to substitute their authority for that of the [sovereign] king when, by modifying an edict, they executed it only in part?.... In the event, the magistrates hummed and hawed, chopped and changed, and finally declined to answer on the grounds that any response would carry them on to a “dangerous shoal.” Omar Talon, the *avocat général*, said that

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<sup>14</sup> Goyard-Fabre emphasizes Montesquieu’s knowledge of the many “ideological” divisions in England. “L’idée de représentation,” 13-14.

the judges deliberately elected not to address “the most important and most difficult question of polity.”<sup>15</sup>

The issue re-emerged as an extremely sensitive one in the early 1730s.<sup>16</sup> If, as Rousseau suggests, Montesquieu “was careful not to discuss the principles of political right” (*Emile* 649), it may have been the question of sovereignty above all that held him in check.<sup>17</sup>

Rather than attacking the doctrine of royal sovereignty in particular, *The Spirit of the Laws* quietly relegates the entire concept of sovereignty – including, therefore, the sovereignty of the people – to the dustbin of history.<sup>18</sup> As Harvey Mansfield has noted, “Montesquieu does not preserve even the appearance of popular sovereignty.”<sup>19</sup>

Owing to the shift away from the unification of power under a sovereign to the moderation of power by domestic and international forces, the old distinction between the *citizen* (who has a share in the state’s sovereignty) and the mere *human being* is practically erased by Montesquieu. In discussing the political liberty of “the citizen,” he

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<sup>15</sup> Hurt, *Louis XIV and the Parlements*, 10.

<sup>16</sup> See Rahe, *Montesquieu and the Logic of Liberty*, 51-52.

<sup>17</sup> Rousseau seems to be saying that Montesquieu refused to discuss the principles of political right, not that he had no such principles. Cf. Althusser, *Montesquieu*, 21; Rahe, “Montesquieu’s Natural Rights Constitutionalism,” 55; Robertson, “Rousseau, Montesquieu, and the Origins of Inequality,” 63-64; Shklar, “Montesquieu and the New Republicanism,” 269; Vaughan, “Rousseau as Political Philosopher,” 3; Wright, “Rousseau and Montesquieu,” 88.

<sup>18</sup> See Spector, *Montesquieu: Liberté, droit, et histoire*, 66-67, 89.

<sup>19</sup> Mansfield, *Taming the Prince*, 236. Aron points out that precisely because Montesquieu was not “a doctrinaire of popular sovereignty” he was cast by Louis Althusser as “a doctrinaire of the *ancien régime*,” hence as a “reactionary.” *Les grandes doctrines*, 51; *Main Currents in Sociological Thought*, 60. According to Levy, “[T]he reformist agenda of *SL* is one of restoring the long-since weakened limits on the monarchy, especially though not only in France. Strikingly, Montesquieu does not include among these the Estates-General, which are not even mentioned in the book, though some of their institutional ancestors are alluded to in discussions of the distant past.” *Rationalism, Pluralism, and Freedom*, 167. “Despite its critique of Boulainvilliers,” Spector observes, “*L’Esprit des lois* does not restore the legitimate place of the third estate.” “Féodalité,” <http://dictionnaire-montesquieu.ens-lyon.fr/en/article/1376474740/fr/>. Rahe agrees that Montesquieu is “not, strictly speaking, a republican at all.” “Montesquieu’s Natural Rights Constitutionalism,” 63. See also Tuck, *The Sleeping Sovereign*, 123-24. For a more ambivalent view of Montesquieu’s relation to the principle of popular sovereignty, see Waddicor, *Montesquieu and the Philosophy of Natural Law*, 91-99.

means to include “citizens” in every form of government: “The citizen can be free and the constitution not” (SL 12.1). He claims that *every person* “in well-regulated monarchies” is “pretty much” (*à peu près*) a “good citizen” (SL 3.6). European monarchies, he says, “aim only for the glory of *the citizens*, the state, and the prince” (SL 11.7, emphasis added). He speaks of the people in Ireland, an “enslaved” state, as “free” “citizens” (SL 19.27). And in commending the legislators of despotic China for their willingness to allow different peoples to follow different customs, he says, “When *the citizens* observe the laws, what does it matter if they observe the same ones?” (SL 29.18, emphasis added). Such usages violate the assumption of republicanism, which, as Montesquieu himself points out, associates the freedom of the citizen with “sovereign power” (SL 23.6; see also *Considerations* 96 n. 6).<sup>20</sup>

### Representation

Indicative of Montesquieu’s shift away from the old conception of citizenship is his praise of representative legislatures. Emphasizing the chasm between classical democracy and the kind of representative government devised by the Germanic tribes that overran the Roman Empire, he says, “The ancients did not *at all* know the government founded on a body of nobility and *even less* the government founded on a legislative body formed of the representatives of a nation” (SL 11.8, emphasis added).

For Montesquieu, legislative representation is preferable to direct popular participation because those chosen as representatives tend to be more “enlightened” and therefore better suited for lawmaking than typical citizens (SL 19.27). By this standard,

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<sup>20</sup> Cf. Goyard-Fabre, who suggests that suffrage is “an essential attribute of citizenship” for Montesquieu. She therefore expresses surprise that Montesquieu did not devote himself to examining the House of Commons’ electoral system. “L’idée de représentation,” 9, 10.

the use of elective representatives is advantageous also in comparison with the use of monarchical appointees, since the people learn the facts relevant to public service “better in a public square than a monarch does in his palace” (*SL* 2.2), and since courtiers’ personnel decisions are dictated by their “indigence and avidity” (*SL* 5.19). “If one were to doubt the people’s natural ability to perceive merit,” Montesquieu says, “one would have only to cast an eye over the continuous series of astonishing choices made by the Athenians and the Romans; this will doubtless not be ascribed to chance” (*SL* 2.2). By contrast, he insists that “chance will produce better subjects than the choice of the prince” (*SL* 5.19). The people are reliable judges of desert, then, but are not themselves deserving of legislative power. As Montesquieu puts it in another context: “Men, rascals when taken one by one, are very honest as a whole; they love morality” (*SL* 25.2). Besides, in electing members of government, “They have only to base their decisions on things of which they cannot be unaware and on facts that are evident to the senses” (*SL* 2.2).<sup>21</sup>

Anticipating Burke and Mill, Montesquieu argues that representatives ought to be considered independent trustees rather than strictly-bound delegates of their constituents. His most prominently advertised reason for this preference is that the alternative would “produce infinite delays” on “the most pressing occasions” (*SL* 11.6). But he also points out that small assemblies can deliberate calmly in ways that larger ones cannot. Indeed, the cooling influence of the representative legislature in England is “the great advantage” of this government over the ancient democracies, in which “the people had an immediate power” (*SL* 19.27).

Because of their advantages in education, time, and deliberative setting, Montesquieu suggests, representatives will often wisely ignore the wishes of their

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<sup>21</sup> Cf. Goyard-Fabre, “L’idée de représentation,” 8.



constituents. Hence he argues that regular elections are necessary not only in order to minimize corruption among the representatives but also to revive hope in the people. “When various legislative bodies follow each other, the people, holding a poor opinion of the current legislative body, put their hopes, reasonably enough, in the one that will follow,” he says. Without this, the people “would become furious or would sink into indolence” (*SL* 11.6). In other words, Montesquieu expects the people to be constantly disappointed by their representatives and constantly mollified by the deluded expectation of change.

Representation, as Montesquieu understands it, is a healthy ruse. It convinces the people that they can shape legislation – if not immediately, then after the next election. But it is useful precisely because it keeps the people at a safe distance. If representatives were genuinely representative (if they were exactly as ignorant and intemperate as the people they claim to represent), representation would only make for more efficient acts of stupidity. Montesquieu is quite clear that representation is not simply a contrivance to be used in large states where direct democracy is impractical; it is a way to sidestep the “many drawbacks” of democracy as such (*SL* 11.6).<sup>22</sup>

Over the course of two important chapters (*SL* 22.21-22), Montesquieu illustrates the rashness of the people as lawmakers by tracing the unintended consequences of the plebeians’ efforts to attack the practice of lending at interest in Rome. Far from stamping out usury, the moralistic laws drove money-lending underground and made the problem

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<sup>22</sup> As Douglass argues, representation is better understood as aristocratic rather than democratic. “Montesquieu and Modern Republicanism,” 718 n. 11. While Montesquieu’s emphasis upon representation “has produced the belief that Montesquieu was a republican at heart and took the side of the Third Estate,” says Althusser, representation “is in the *spirit* of monarchy.” *Montesquieu*, 101 (emphasis in original). See also Aron, *Main Currents in Sociological Thought*, 31. Cf. Goyard-Fabre, who suggests that Montesquieu saw representation as “the palliative to the impossibility of direct democracy in modern times.” “L’idée de représentation,” 1.

worse: as the risks of lending increased, so too did the interest rates (*SL* 22.22). “Extreme laws for good give rise to extreme evil” (*SL* 22.21; see also 6.14).<sup>23</sup> Such things seem much less likely to happen under the relatively enlightened and deliberate government of England. Because the English people are less directly involved in legislative decision-making than were the Romans, they are less at the mercy of rabble-rousing orators, and less able to give vent to their occasional bouts of outrage. Hence the English are “the people in the world who have best known how to take advantage of each of these three great things at the same time: religion, commerce, and liberty” (*SL* 20.7).

### The Aristocracy of Law

Even if representative governments are less given to foolish action than democracies, they are hardly invulnerable to mistakes. As Montesquieu acknowledges, precisely in a free state, where people are “always heated” about politics, “it would be easy for those who governed [the nation] to make it undertake enterprises against its true interests” (*SL* 19.27). Representatives may be relatively prudent and cool-headed for the most part, but nothing prevents the occasional victory of mere demagogues. Thus, another element is necessary to safeguard freedom: an independent class of enlightened administrators who take it as their mission to resist tyrannical political movements and to rationalize the laws gradually.

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<sup>23</sup> Cf. Shklar, who argues that “we are not led to believe” by Montesquieu “that the popular basis of republican rule was at fault” for the missteps of Rome. “Montesquieu and the New Republicanism,” 267. Consider also Montesquieu’s harsh description of the Carthaginian republic, his description of the Roman people as veering between “extreme ardor” and “extreme weakness” (in contrast to “the wisdom of the senate”), and his reference to the laws “limiting the power of the people” as “the most salutary laws” of Rome (*Considerations* 44-45, 92, 102-3).

Here judges play an especially important role. To be sure, Montesquieu famously praises England's use of the jury, a quintessentially republican institution (*SL* 11.6). But he also stresses the limitations of juries. Ordinary citizens should be entrusted only with straightforward factual questions of guilt or innocence; procedural niceties and issues requiring more subtlety are beyond their capacity, Montesquieu says (*SL* 6.3-4, 11.6). Complex webs of legal formalities must shelter all citizens from hasty or arbitrary punishments, he insists, and these formalities must be navigated by educated judges familiar with the requirements of due process. In monarchical states, for example, "[O]ne must not be astonished to find so many rules, restrictions, and extensions that multiply particular cases and seem to make *an art of reasoning itself*" (*SL* 6.1, emphasis added). As Paul Carrese has argued, Montesquieu's "complete analysis ... endorses a much less popular conception of judging" than his praise of the jury system would seem to indicate. In fact, he "appears to use juries ... to cloak professional judges."<sup>24</sup>

When the people want "to cast aside all the judges," Montesquieu says, a state has been fundamentally corrupted by "the spirit of extreme equality" (*SL* 8.2; see also 8.3). In this respect England stands above Rome again. With its trust in citizens' "boundless zeal for the public good," Rome gave far too much leeway to ordinary people to make criminal accusations (*SL* 6.8; see also 12.20), a problem compounded by the fact that it also gave ordinary people the power to judge (*SL* 11.18).<sup>25</sup>

Montesquieu puts unprecedented weight on the link between freedom and an independent judiciary. In the absence of judicial bodies which "announce the laws when they are made and recall them when they are forgotten," he says, a monarchy is likely to

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<sup>24</sup> Carrese, *The Cloaking of Power*, 49.

<sup>25</sup> See Sullivan, *Montesquieu and the Despotism of Europe*, 36, 39.

become despotic, since the monarch's private council is only "the depository of the momentary will of the prince who executes, and not the depository of the fundamental laws" (*SL* 2.4; see also 8.6). Thus, as long as a monarchy maintains independent judges, "the government is moderate" (*SL* 11.6; see also *Considerations* 147). Indeed, "the masterwork of legislation is to know where properly to place the power of judging" (*SL* 11.11; compare *SL* 5.14, 28.39).

Accordingly, in discussing the French constitution, Montesquieu underlines the power of the parlements, the quasi-independent tribunals capable not only of arbitrating particular cases but also of obstructing, modifying, and remonstrating against new royal laws.<sup>26</sup> In the *Persian Letters* Usbek portrays the parlements as the very "image of public liberty" which, following the rule of Louis XIV, had come to resemble "those ruins that one treads underfoot, but which constantly call to mind the idea of some famous temple from the ancient religion of the people" (*PL* 92).<sup>27</sup> With the parlements in France as with the Parliament in England, Montesquieu's view is that the freedom of the people can be protected without their being directly involved in politics. If a monarch offends the commoners, he says, "people of wisdom and authority intervene; temperings are proposed, agreements are reached, corrections are made; the laws become vigorous again

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<sup>26</sup> "As royal institutions, the parlements depended upon the king for their jurisdiction, authority, and their very existence: they had no standing, legal or otherwise, to defy him outright." Nonetheless, to justify their frequent acts of obstruction and protest in the sixteenth and seventeenth centuries, the parlements "mastered a rhetoric of subservient resistance." Hurt, *Louis XIV and the Parlements*, 9-10. Spector summarizes Montesquieu's understanding thus: intermediary powers in a monarchy are "at once organs of the royal will and obstacles to the extension of its authority." *Montesquieu: Liberté, droit, et histoire*, 100. On Montesquieu's characterization of institutions like the parlements as "subordinate" to and "dependent" upon the monarch, see Shackleton, *Montesquieu*, 279; Sullivan, *Montesquieu and the Despotic Ideas of Europe*, 17. On the basic powers exercised by the parlements, see Cox, *Montesquieu and the History of French Laws*, 18; Hurt, *Louis XIV and the Parlements*, 1-3.

<sup>27</sup> "[T]he parlements and their magistrates emerged grievously weakened from the reign of Louis XIV, their political functions virtually abolished and their venal offices stripped of the capital gains built up in the past century." Hurt, *Louis XIV and the Parlements*, 198.

and make themselves heard” (*SL* 5.11; see also *PL* 140). Under a moderate monarchy, therefore, “the people do, in a way, have tribunes” (*SL* 5.11).

Just as the power of judges is controversial today, Montesquieu’s approval of parliamentary authority was by no means taken for granted in eighteenth-century France. As Carrese has noted, “Republican voices in France associated the *parlements* with the monarchy and unjust privilege, temporarily replacing them just prior to the French Revolution and abolishing them after 1789. Monarchical voices in both France and England, on the other hand, suspected independent courts of weakening a central administrative authority.”<sup>28</sup> The latter opinion, at least, was not unfounded. Although parlementaires tended to affirm their commitment to royal sovereignty when questioned about the extent of their authority, “an eighteenth-century president in the Parlement of Aix confessed privately that [the parliamentary right of] modification alone ‘totally’ undermined royal sovereignty and placed the king ‘beneath the magistrate.’”<sup>29</sup>

As well as blocking certain new laws, of course, judges might also work to re-interpret the old ones, a project whose importance to Montesquieu cannot be overstated: the correct means of rendering criminal justice is “the one thing in the world that it is most important for men to know,” he declares (*SL* 6.2); it is the thing “of more concern to mankind than anything else in the world” (*SL* 12.2). To punish minor infractions with “extravagant penalties” is “the thing in the world most contrary to the spirit of moderate government” (*SL* 13.8; see also 26.24). In very few if any of the countries that Montesquieu discusses do the criminal laws and procedures meet with his wholehearted

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<sup>28</sup> Carrese, *The Cloaking of Power*, 30. See also Kawade, “La liberté civile contre la théorie réformatrice de l’état souverain,” 221: “It must be said ... that it was an ambition of monarchy, especially in France, to unify the judicial system and acquire mastery of it.”

<sup>29</sup> Hurt, *Louis XIV and the Parlements*, 11. On the ultimate political weakness of the parlements, however, see Cox, *Montesquieu and the History of French Laws*, 167-68.

approval. Criminal *procedure* in France, for example, may have improved on that of ancient Greece and Rome (*SL* 6.8, 12.3), but it is clearly inferior to that of England (*SL* 6.3, 29.11), and criminal *penalties* in France are by no means more reasonable than those formerly imposed in Rome (*SL* 29.12). Montesquieu does not suggest that ordinary people should be in any way involved in the reform of these crucial laws. After all, the people have only a “middling enlightenment” which tends to give them “a stronger attachment to that which is established” (*SL* 5.2). He therefore highlights the fact that in England the aristocratic upper house has the “supreme authority” in its judicial capacity to “moderate the law in favor of the law itself by pronouncing less rigorously than the law” (*SL* 11.6), just as in medieval France the lords often “followed the spirit of the law without following the law itself” (*SL* 28.9).<sup>30</sup>

Montesquieu does not see nobles as the best source of reform, however. In medieval France many of the feudal lords had been illiterate, and in no country is there ever a necessary connection between hereditary rank and merit.<sup>31</sup> As an alternative both to the people and to the merely hereditary elites, then, he promotes professional judges as agents of hidden reform. Hence, he celebrates the introduction of written legal codes and works of jurisprudence in France. These things brought a natural elite into closer contact with the legal system: unlike the old methods of judging, the new ways required “literacy,” “ability,” “study,” and therefore a gentler spirit (*SL* 28.42; compare 15.3).

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<sup>30</sup> Thus, although Montesquieu does say that “judgments should be fixed to such a degree that they are never anything but a precise text of the law” (*SL* 11.6), Kawade exaggerates in claiming that “Montesquieu does not admit the need for interpretation of the law.” “La liberté civile contre la théorie réformatrice de l’état souverain,” 221. On Montesquieu’s influence on criminal law reform, see Shuster, *Punishment and the History of Political Philosophy*, 90-96.

<sup>31</sup> “[D]uring civil wars,” Montesquieu observes, “great men are often produced, because in the confusion those with merit come to the fore. Each man finds his own place and rank, whereas at other times each is given his place, and almost always wrongly” (*Considerations* 107).

“[W]hen a certain art of procedure and a certain art of jurisprudence began to be formed,” Montesquieu says, “when practitioners and jurists appeared, peers and chivalrous men were no longer in a position to judge” (*SL* 28.42). “The knowledge of Roman right, of the decisions of courts, of that body of recently recorded customs, required a study of which the nobles and the illiterate were not capable” (*SL* 28.43). Judging, he adds, ought to be understood not as an ordinary civic responsibility but as a “profession” (*SL* 28.45).

To be sure, Montesquieu stipulates that “[t]he laws should not be subtle; they are made for people of middling understanding; they are not an art of logic but the simple reasoning of a father of the family” (*SL* 29.16). But there is a difference between substantive complexity and procedural complexity, and there is a difference between composing clear laws and making incremental interpretive changes with a view to encouraging improved laws over the long term. In communities where the laws are so harsh that citizens have become “accustomed to being checked only by cruel penalties,” Montesquieu suggests, a “wise legislator” should act “silently and imperceptibly” to moderate the penalties “in the most pardonable particular cases until he could manage to modify it in every case” (*SL* 6.13). And if enlightened reforms meet with some initial resistance, they can be expected to take root and spread over time, since human beings are “at bottom reasonable” (*SL* 28.23).<sup>32</sup> Patience is of the essence: “To invite when one must not constrain, to lead when one must not command, is the supreme skill” (*SL* 28.38). In the French context, therefore, Montesquieu reserves special praise for the

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<sup>32</sup> “The Greeks claimed that their usage [concerning the number of witnesses necessary to convict a man of a capital crime] had been established by the gods, but ours was” (*SL* 12.3). In a footnote appended to this sentence, Montesquieu writes: “*Minervae calculus*: vote of Minerva.” Thus, the (one) divinity in question is the goddess of wisdom. As Montesquieu says in the body of the text, the French law requiring three witnesses is what “[r]eason” requires.

piecemeal reformer Louis IX (*SL* 28.39).<sup>33</sup> Enlightened students of the law like Saint Louis, he suggests, are capable of those highly desirable “reasonings of equity, moderation, and decency” which may be in tension with “the spirit of a good republic” (*SL* 27; compare 6.14).<sup>34</sup>

Nor is Montesquieu’s project for enlightened management of the law limited to the domain of judges. One of the most important points of governing, he argues, is to construct taxes such that they are scarcely noticed by the people. Duties on commodities, for example, “can be so wisely managed that the people will be almost unaware that they pay them” (*SL* 13.7). Ideally, the price of a thing and its duty should be “confused in the head of the one who pays” (*SL* 13.8). With respect to taxation as much as criminal justice, then, a certain factual confusion or ignorance in the people is a good thing.

### *Rousseau’s Democratic Constitutionalism*

#### The Revival of Sovereignty and Citizenship

Whereas for Montesquieu the question of governmental form is so trivial that the old distinction between citizen and human being can be abolished, Rousseau endorses “democratic government, wisely tempered” (*SD* 4), revives the classical idea of citizenship (*SC* 131, 139; *SD* 61), and openly identifies himself as a “republican” (*Beaumont* 23). For Montesquieu, as we have seen, the existence of a recognized

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<sup>33</sup> See Pegues, “Law and Justice,” 534: “French law had reached a significant level of growth and sophistication by the early 14<sup>th</sup> century, largely through the suppression of the judicial duel, the transformation and elaboration of the appeal, and the institution of the *enquête* as the system of proof. Louis IX must receive major credit for these accomplishments.” See also Cox, *Montesquieu and the History of French Laws*, 26-27.

<sup>34</sup> Cf. Ward, who insists that “Montesquieu does not envision in England anything even approaching the American practice of judicial review to declare statutes unconstitutional,” since “the courts [in England] were subject to legislative supremacy.” “Montesquieu on Federalism and Anglo-Gothic Constitutionalism,” 559.



sovereign is a threat to security. According to Rousseau, however, sovereignty – understood as the supreme lawmaking authority – is the moving principle of civil life (*SC* 188) and should always be vested in “the entire people” (*SC* 153). Just as Montesquieu calls healthy governments “moderate,” then, Rousseau calls healthy governments “popular” (*PE* 145; see also 156).

But what concretely does the sovereignty of the people entail? In the first place, because Rousseau distinguishes rigorously between the government (which executes the laws) and the sovereign (which makes the laws), popular sovereignty does not entail democratic government in the strict sense of the word.<sup>35</sup> The laws should be *willed* by the whole people, but they should be *executed* only by a minority – a minority which can muster the requisite energy and cohesion to act efficiently, and which can in turn be held responsible for its actions. Rousseau calls elective aristocracy – government by elected elites – the best kind of administration (*SC* 174-75; see also *Corsica* 128). Thus, he is in favor of exclusive state councils, such as senates, as long as those councils limit themselves to managing the execution of the laws in particular circumstances, without getting mixed up in lawmaking.

Nor does the sovereignty of the people entail universal suffrage: “the people” refers simply to the body of eligible voters, a body which can be composed of a small portion of a population in a given jurisdiction. In the Geneva of the 1760s, the voters in the “democratic” General Council numbered only about fifteen hundred of twenty-five thousand inhabitants (*LWFM* 251n).<sup>36</sup> Rousseau does favor the extension of suffrage to the greatest reasonable extent (*Poland* 194, 228), but he is comfortable with restrictions

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<sup>35</sup> Tuck traces the government-sovereign distinction to Jean Bodin. *Sleeping Sovereign*, 9-62.

<sup>36</sup> See also Palmer, *The Age of the Democratic Revolution*, 96.

that seem outrageous to many present-day readers, mainly because he links full citizenship with the willingness to serve in the military: “Every citizen ought to be a soldier out of duty, none ought to be one by profession. Such was the military system of the Romans; today such is that of the Swiss; such ought to be that of every free state” (*Poland* 218; see also *SC* 151).

Finally, Rousseau does not insist that each citizen’s vote be weighted equally.<sup>37</sup> As a model of popular sovereignty he points to Rome’s Centuriate Assembly, in which “all the majesty of the Roman people was found” (*SC* 209-10). And, as he stresses, in the Centuriate Assembly the wealthiest category of citizens controlled more than half the votes, while the poorest and therefore most financially dependent category (comprising more than half the population) controlled less than a hundredth (*SC* 206).<sup>38</sup> Montesquieu makes the same observation about the unequal weighting of votes in Rome (*SL* 2.2, 15.18; see also *Considerations* 86-87). Indeed, a French pamphleteer complained in 1789 that the fourth book of the *Social Contract* had been “spoiled” by the influence of *The Spirit of the Laws*. Montesquieu’s work had “infected” Rousseau’s with “the venom of aristocratism,” he said.<sup>39</sup> Unlike Montesquieu, though, Rousseau stresses the fact that the influence of patricians as a class was tempered by the large number of plebeians who were always among the wealthiest Romans and also by the custom that the first century to vote was drawn by lot, in accordance with the principle of democracy (*SC* 208-9).<sup>40</sup>

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<sup>37</sup> Cf. Douglass, *Rousseau and Hobbes*, 127; Hont, “The Permanent Crisis of a Divided Mankind,” 189.

<sup>38</sup> Cf. Neuhouser, who suggests that, for Rousseau, an imperative of “equal respect” entails “equal rights to political participation” and “that the fundamental interests of every individual count the same as all others’ in the framing of laws.” *Rousseau’s Critique of Inequality*, 148.

<sup>39</sup> Quoted in Sonenscher, *Before the Deluge*, 96.

<sup>40</sup> Some scholars downplay the importance of the discussion of voting in Rome. See Vaughan, “Rousseau as Political Philosopher,” 38; Wright, *The Meaning of Rousseau*, 86. But Rousseau

All of these restrictions on democracy are familiar to us “liberal democrats.” We do not insist on democratic administration, since we accept that only a relatively small number of public servants should make particular policy decisions. Nor do we insist on universal suffrage, since we accept voting restrictions on young people, foreigners, and convicted criminals. Nor do we insist on the equal weighting of individuals’ votes, since we accept the legitimacy of legislative bodies that give equal votes to unequally populated regions.

But Rousseau stands for two radically democratic institutions that go well beyond most present-day understandings of democracy. First, he insists upon the need for regular assemblies of the people in order both to elect a government *and to review the laws* (*GM* 108; *LWFM* 271-74; *SC* 189-90, 197; see also *Corsica* 129). In a free community, he maintains, all laws are ultimately contingent upon the direct consent of the living members, and all governmental officers are merely the removable agents of those members. This point was at the heart of Rousseau’s most consequential intervention in practical politics, his dispute with Geneva’s aristocratic faction in the mid-1760s. As Helena Rosenblatt has noted, “[S]uch assemblies had been consistently denied by the [Genevan] patriciate, who called them hazardous and unnecessary disruptions of the city’s economic life. They claimed that the citizens should be happy to ‘attend to their businesses’ and private lives while they left government to the experts.”<sup>41</sup> His patrician

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himself says that “this matter of suffrage is one of those I discussed with the greatest care in the *Social Contract*” (*Poland* 197). And in his *Discourse on Political Economy* he speaks of “the assembly of the people *or estates of the country*,” which suggests the consistency of his view that voting by (unequally populated) “estates” or classes is just as legitimate as voting in an undifferentiated mass (*PE* 159, emphasis added).

<sup>41</sup> Rosenblatt, *Rousseau and Geneva*, 247.

opponents liked to cite Montesquieu's arguments against democracy.<sup>42</sup> Indeed his principal opponent, Jean-Robert Tronchin, "was once called the Montesquieu of Geneva."<sup>43</sup>

Second, Rousseau insists that if a citizen believes a law is being violated by the government, he has a right to remonstrate, that is, to state his opinion and *to receive a decision from the people in their sovereign capacity* (*LWFM* 263-64). To be sure, a proposal for a change in the law can rightfully be vetoed by the government without being brought before the sovereign, given the riskiness of innovations (*LWFM* 264-65, 276; *SD* 5). But an opinion that an established law has been transgressed requires a decision, since otherwise the government would be its own judge (*LWFM* 264-67, 275).<sup>44</sup> Should the right of remonstrance be denied, citizens may legitimately withdraw from the political community, if necessary by taking up arms against the government (*LWFM* 304). Even in Geneva, a relatively democratic state (*LWFM* 252, 257, 272n), Rousseau regards the right of remonstrance as the indispensable safeguard of political freedom (*LWFM* 262, 267, 282, 284, 304). In contemporary terms, then, Rousseau is a proponent not only of periodic constitutional review by the people but also of a certain kind of popular initiative.

It is true that Montesquieu insists upon the legitimacy of fundamental constitutional change from below under extreme circumstances and that he defends the right to criticize government without fear of punishment (*SL* 12.8, 12.12-13). But he

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<sup>42</sup> Rosenblatt, 250.

<sup>43</sup> Palmer, *The Age of the Democratic Revolution*, 98.

<sup>44</sup> A decision from a tribunate – an independent body with veto power over both the legislature and the executive, meant to maintain an equilibrium between the government and the people – might also be acceptable (*SC* 211-12; compare *LWFM* 267). On the tribunate, see Kelly, "Sovereign versus Government," 27-29; on the right of remonstrance, see Kelly, 32-34.

stops far short of Rousseau's view that the people are "sovereign," let alone Rousseau's view that this sovereign authority should be constantly reaffirmed and distinguished from the administrative authority. For Montesquieu, constitutional controversies can virtually always be settled by prudent elites among themselves, and the right to remonstrate (understood as the domain of aristocratic bodies like the French parlements) amounts merely to a right to complain, a "right" which Rousseau mocks as empty: "Where is the government, however absolute it might be, in which every citizen does not have the right to give memoranda to the prince or to his minister about what he believes to be useful to the state, and what jeering wouldn't be stirred up by a public edict by which one explicitly granted to the subjects the right to give such memoranda?" (*LWFM* 262-63).

### The Critique of Representation

As might be expected from someone who wishes to revive the classical view of citizenship, Rousseau sees Rome's participatory democracy rather than England's representative aristocracy as the peak example of political freedom (*SC* 203; *SD* 4). And this is not because he rejects Montesquieu's essential understanding of representation. He agrees that representation is a modern innovation derived from feudal government (*SC* 192), and he agrees that elected lawmakers tend to be more intelligent than ordinary citizens (*Poland* 189). Nor does he reject the theoretical possibility of representation.<sup>45</sup> Indeed, he acknowledges that there are many preconditions for participatory democracy

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<sup>45</sup> Cf. Douglass, *Rousseau and Hobbes*, 124-25; Manent, *A World Beyond Politics?*, 138; Neuhouser, *Rousseau's Critique of Inequality*, 133; Shklar, "Montesquieu and the New Republicanism," 271; Vaughan, "Rousseau as Political Philosopher," 37. At the opposite extreme, Tuck argues that "Rousseau was not in fact at all critical of the idea of representation as used by Hobbes." *Sleeping Sovereign*, 137. See also Lund, *Rousseau's Rejuvenation of Political Philosophy*, 248-49 n. 59, 252-53.

(SC 173-74), and he suggests that representative legislatures are required under modern European conditions (*Corsica* 128; *LWFM* 293; *SC* 193, 198). Even for Geneva he recommends the use of representatives to solve a constitutional crisis – not in lieu of a general assembly but as a way of judging promptly and with minimal disorder whether a general assembly should be called (*LWFM* 269-71). England may not be Rousseau’s model of freedom, but he concedes that Parliament is the legitimate sovereign “by attribution and deputation” (*LWFM* 246; see also *Poland* 204). More generally, he is willing to say that laws are not obligatory for “anyone who has not voted for them personally ... or at least through his representatives” (*Poland* 185, emphasis added) and that “taxes cannot be legitimately established except by the consent of the people or its representatives” (*PE* 163, emphasis added; see also 170). In emergency situations, he admits, there can be small bodies which legitimately act as sovereign legislatures, and even in ordinary times the tribunate can act as a representative of the sovereign in exercising its veto power (*Poland* 191, 194).<sup>46</sup> After all, in normal legislative acts citizens are represented by the sovereign as a whole, and the sovereign as a whole is represented by a majority (*LWFM* 264). Indeed, mere “commands of leaders” can “pass for expressions of the general will” as long as the people are free to oppose them and fail to do so, as in a constitutional monarchy (*SC* 145; see also 176). Tacit consent is a real thing (*GM* 88; *LWFM* 188; *SC* 138, 151, 188-89, 200).<sup>47</sup>

Nevertheless, whereas Montesquieu thinks that the political community is simply better off when the task of law-making is left to representatives, in Rousseau’s view

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<sup>46</sup> Kelly, “Sovereign versus Government,” 28.

<sup>47</sup> Even Tuck, otherwise keen to stress Rousseau’s openness to representation, says that Rousseau “profoundly disagreed” with the idea that “a sovereign people could be represented *in its sovereignty* through deputies.” *Sleeping Sovereign*, 138 (emphasis in original).

legislative representation invites grave problems. In the first place, though representative assemblies may be more enlightened than assemblies of the whole citizen body, Rousseau argues that they are also more liable to corruption: the fewer voters needed to attain a majority, the easier to buy them off, and deliberate corruption is harder to remedy than an honest mistake (*Poland* 189).

In addition, and more importantly, when sovereignty is delegated to a sub-group, the temptation to enact self-dealing laws becomes practically irresistible: in Rousseau's language, the laws – which should be the general will of the whole people – become merely the general will of a faction and therefore come to be experienced as an alien will by everyone outside the faction; the rightful sovereign is reduced to a passive spectator of the factual sovereign. Because the establishment of a representative legislature constitutes a large step away from the exercise of sovereign authority in its pure form, it constitutes a step toward arbitrary government (*SC* 191).

From the strictest Rousseauian point of view, therefore, the practice of electing lawmakers should be avoided altogether (*SC* 192). Even assuming the steadfast dedication of representatives to the public interest, Rousseau suggests that it would be safer to reserve lawmaking power for the people, since mistakes about the general welfare made in representative legislatures may not be immediately felt by any of the representatives, whereas such mistakes are by definition always felt by some part of the people and are for that reason more likely to be corrected (*LWFM* 301; see also 262n). In cases where the delegation of the lawmaking power is necessary, though, any elected lawmakers should be understood as *deputies* rather than *representatives* – as agents of the sovereign rather than substitutes for the sovereign. As such, they should follow precise

instructions from their constituents or face serious punishment for unjustified disobedience (*Poland* 190-91, 197). And in order to prevent the formation of a distinct class identity among the deputies, Rousseau argues for their frequent turnover through elections (*Poland* 186-87, 189) and term limits (*Poland* 196).

### Democratizing the Law

The problem of a distinct class interest among representatives brings us to the final main area of constitutional disagreement between Rousseau and Montesquieu. As we have seen, Montesquieu encourages professional judges and administrators to enact certain reforms without the oversight of the people. By contrast, much of Rousseau's political thought is devoted to the problem of keeping the people actively engaged in politics and preventing members of the ruling elite from pursuing innovations.

As we saw in Chapter Three, Rousseau argues that the institution most necessary to the survival of the political community, the government, is also intrinsically biased against the general interests of the community. Every government, having its own interest, acts incessantly to advance itself and its members. And in order to do so more smoothly, it acts to usurp sovereignty (*SC* 186; *LWFM* 238-39; *Poland* 188, 195) by, for example, preventing the people from holding sovereign assemblies (*SC* 191, 196-97; *LWFM* 249), restricting the right of free political speech (*SC* 199; *LWFM* 303), and filling independent posts with cronies (*LWFM* 242), even while behaving with scrupulous rectitude over relatively unimportant things (*LWFM* 303). "[E]very body that is a depositary of the executive power tends strongly and continuously to subjugate the legislative power and succeeds in doing so sooner or later" (*Poland* 188; see also *SC*



197). Because “the vices which make social institutions necessary are the same ones that make their abuse inevitable,” there is a natural progression from rulers and ruled to masters and slaves, “which is the last degree of inequality and the limit to which all the others finally lead until new revolutions dissolve the government altogether or bring it closer to its legitimate institution” (*SD* 62).

Rousseau argues that, without explicit recognition of the people’s sovereignty, the members of the government and the representatives (who themselves may be members of the government) will have much less trouble advancing their own corporate interests at the expense of the general community. This is why the integrity of the sovereign people is more than a technical point for Rousseau, and why he faults “our” political thinkers – presumably including Montesquieu – for “not having developed exact concepts of sovereign authority” (*SC* 146).

Given his understanding of government as faction, Rousseau encourages a spirit of extreme vigilance among the people. As he advises his compatriots, “When in doubt, always stop every [governmental] innovation, small or large” (*LWFM* 286). In justifying his proposal for an assembly of deputies to review the actions of the ruling administration in Geneva, he says: “Not being idle as the ancient peoples were, you cannot ceaselessly occupy yourselves with the government as they did: but by that very fact that you can less constantly keep watch over it, it should be instituted in such a way that it might be easier for you to see its intrigues and provide for its abuses” (*LWFM* 293; see also 301n; *GM* 91).<sup>48</sup> “Intrigues” and “abuses” are part of the very fabric of government. In fact,

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<sup>48</sup> Tuck adduces this passage as evidence that “Rousseauian democracy was not an idyll of an ancient city-state transported to the present day, but a serious attempt at working out how a modern commercial state might genuinely deserve the title of a democracy.” *Sleeping Sovereign*, 142. But Tuck misses precisely the difference between ancient and modern republicanism that

Rousseau says in his *Plan for a Constitution for Corsica*, “the abuses of political establishments are so closely related to their foundation that it is almost not worth the effort to make one only in order to see it degenerate so quickly” (*Corsica* 123).

Unlike Montesquieu, who wants to keep the people away from direct participation and even to keep it in the dark about certain facts about the laws, Rousseau wants to make the people an active political force in its own right, principally by keeping it focused on and attached to the established laws. For Rousseau, this popular attachment is the best fence against governmental usurpation. Whereas mere “subjects” are inclined to “praise public tranquility,” he says, true citizens venerate “the freedom of private individuals” (*SC* 185).<sup>49</sup> And the freedom of private individuals has to be actively maintained by watchful citizens. Governments are inclined to impinge upon these freedoms piecemeal, he warns, in the name of domestic order and security (*PE* 152-53). Thus he insists that no law should be allowed to fall quietly into desuetude, which would be both a symptom and a cause of slackening in popular veneration for law as such. In the periodic sovereign assemblies, each law should be either repealed by the people or approved and energetically enforced (*Poland* 209).

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Rousseau is underlining: the modern need for deputies to act on behalf of the sovereign in place of actual assemblies of the people, the dangers of which his patrician opponents had stressed (*LWFM* 291-92). For Tuck, the distinctively modern thing that Rousseau has in mind is not the need for deputies but the sovereign-government distinction. *Sleeping Sovereign*, 162. Rousseau, however, seems to believe that the sovereign-government distinction was equally applicable to ancient republicanism (*SC* 211).

Perhaps because he paid little attention to passages like this, Benjamin Constant argued that Rousseau “failed to recognize the changes brought by two thousand years in the dispositions of mankind.... [B]y transposing into our modern age an extent of social power, of collective sovereignty, which belonged to other centuries, this sublime genius, animated by the purest love of liberty, has nevertheless furnished deadly pretexts for more than one kind of tyranny.” “The Liberty of Ancients Compared with that of Moderns,” <http://oll.libertyfund.org/titles/constant-the-liberty-of-ancients-compared-with-that-of-moderns-1819>.

<sup>49</sup> As Kelly writes, “[N]o thinker, republican or otherwise, insists more on the importance of challenging government than Rousseau does.” “Sovereign versus Government,” 20.

Likewise, although Rousseau disapproves of resistance to the legitimate exercise of authority (*Corsica* 125, 136, 152; *LWFM* 269; *Poland* 177-78; *SD* 8), he goes so far as to endorse Poland's "confederations," the armed associations of local citizens which, though instituted for the repulsion of foreign invasions, were sometimes used for remedying abuses of governmental authority through insurrection. "The federative form, which might have had a fortuitous cause in its origin, appears to me to be a masterpiece of politics," he says (*Poland* 205). According to Montesquieu, by contrast, the drawbacks of Polish insurrections "show clearly that only the people of Crete were in a state to use such a remedy successfully" (*SL* 8.11).

But Rousseau's opposition to Montesquieu's liberal constitutionalism is perhaps clearest with respect to judicial power. The complexity of English legal procedure, which Montesquieu regards as a grand step forward for individual security, is dismissed as "puerile" by Rousseau, who argues that complex procedures are at least as vulnerable to abuse as simple ones (*Poland* 207). Hence, whereas Montesquieu wants the courts to be run by professional judges, capable of making "an art of reasoning itself" (*SL* 6.1), Rousseau wants ordinary citizens to exercise full judicial responsibilities. If the laws are few and clear, as they should be, judging requires only "good sense, justice, and integrity" (*SC* 202; see also *Poland* 207-8). Indeed, for Rousseau, virtually all public service positions should be held as temporary appointments on the way to a higher or lower position, according to the integrity of one's service, rather than permanent professions (*Poland* 208, 214-15, 222-36; see also *Corsica* 150-51). No one should be a career politician or a specialized administrator.<sup>50</sup>

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<sup>50</sup> For example, Rousseau argues that members of any tribunate should be replaced at fixed intervals (*SC* 211-12; *Poland* 188). Lund uses this argument to throw light on what he regards as

In sum, Montesquieu and Rousseau recommend very different sorts of constitution. For Montesquieu, the notion of sovereignty (including popular sovereignty) should be left behind; representation should supersede democracy; and independent judges and civil servants should work beyond the view of the people to improve the laws. According to Rousseau, by contrast, popular sovereignty should be institutionalized; representation should be strictly limited or avoided altogether; and simple citizens should be constantly on their guard against administrative innovations.

But what accounts for these differences? Both Montesquieu and Rousseau recognize the psychological importance of “freedom.” Montesquieu calls it “that good which makes for the enjoyment of other goods” (*MT* 1574). Rousseau calls it “the first of all goods” (*Emile* 215). Indeed, Susan Shell has noted that “[m]ore than any thinker preceding him, Rousseau placed human freedom at the center of his concerns.”<sup>51</sup> As we will see, however, Montesquieu and Rousseau describe freedom in quite different ways.

### *Two Concepts of Freedom*

#### Freedom as Tranquility

Freedom as Montesquieu presents it is nothing more than the sentiment that one’s person and property<sup>52</sup> are secure: “Political liberty in a citizen is that tranquility of spirit which

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the excessive power of the U.S. Supreme Court. *Rousseau’s Rejuvenation of Political Philosophy*, 264-66.

<sup>51</sup> Shell, “Rousseau on Nature, Freedom, and the Moral Life,” 125.

<sup>52</sup> “The sole advantage that a free people has over another is the security each individual possesses that a single individual’s whim will not take away *his property* or his life,” Montesquieu writes in his private notebook (*MT* 32, emphasis added). In *The Spirit of the Laws*, he also stresses the importance of property: “When a man is faithful to the laws, he has satisfied what he owes to the prince. He must at least have this house as an asylum” (*SL* 12.23). Having noted that certain kinds of taxes require that houses be constantly searched, he says, “Nothing is more contrary to liberty” (*SL* 13.7). Louis IX’s legal reforms furthered “the security of persons

comes from the opinion each one has of his security” (*SL* 11.6; see also 12.1). This feeling of “tranquility” should not be confused with pure serenity or *ataraxia*. For Montesquieu, the free citizen’s “tranquility” is perfectly compatible with the experience of extreme passions, including extreme ambition,<sup>53</sup> and also including extreme uneasiness about the maintenance of security in the future. Among a “free people,” in fact, the citizens “would believe themselves in danger even at the safest moments” (*SL* 19.27). But they would fear that the danger was just around the corner, not that it had already arrived. They would consider themselves basically safe with respect to their fellow citizens, including especially those citizens with the power to administer punishments. According to this view, one’s freedom is defined by the existence of reliable and reasonable laws, not by the extent of one’s participation in shaping those laws. Montesquieu’s political thought is therefore hardly republican, let alone democratic.

This new understanding of freedom explains, first, why Montesquieu can discard the old notions of citizenship and sovereignty. In the Montesquieuian view of freedom, it should not matter to anyone whether, as a citizen, he has a vote in a legislative assembly – a vote which, after all, is unlikely ever to be decisive. One is free “only because one is governed by civil laws” (*SL* 26.20), whatever the source of those laws. And this means

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*and goods,”* he adds later (*SL* 28.38, emphasis added). The importance of property is implied also by Montesquieu’s claim that in a state governed by reasonable laws, “a man against whom proceedings had been brought and who was to be hung the next day would be freer than is a pasha in Turkey” (*SL* 12.2). The thought is presumably that the man about to be hanged can at least be confident that his property will be disposed of in accordance with his wishes, whereas the pasha could be hanged tomorrow and would have no assurance about the distribution of his property, if he could truly be said to have any property at all (compare *Considerations* 117).

<sup>53</sup> “To ask for men in a free state who are bold in war and timid in peace is to wish the impossible. And, as a general rule, wherever we see everyone tranquil in a state that calls itself a republic, we can be sure that liberty does not exist there” (*Considerations* 93; see also 189). Cf. Pettit: “Montesquieu represents someone who holds that things can be organized so that without any tumult, without any hue and cry, we can ensure the smooth functioning of the republic: the smooth functioning of the moderate society, as he would put it, in which liberty and tranquility is assured for all.” *Republicanism*, 251.

that, in principle, full political liberty is available to individuals under monarchies as well as republics.<sup>54</sup>

Political liberty, for Montesquieu, is not tied to civic participation: “the power of the people has been confused with the liberty of the people” (*SL* 11.2). Republics “are not free states by their nature” (*SL* 11.4). Freedom is nothing more than the freedom to live comfortably within the bounds of law, bounds which should be wide, since the austere virtues demanded of self-governing citizens are by definition superfluous. (Only a certain moderation within the ranks of the ruling class is necessary: *SL* 3.4, 5.8). “The sole advantage that a free people has over another is the security each individual possesses.... A subject people who had that security, whether well- or ill-founded, would be as happy as a free people” (*MT* 32).<sup>55</sup>

For all his criticisms of the worst Roman emperors (see, e.g. *Considerations* 121, 130, 138, 146, 149), in Montesquieu’s judgment the peaks of Roman history – not merely in terms of glory but in terms of individual liberty – seem to have been the century of “the good emperors” (*SL* 5.18). He writes in his *Considerations on the Romans* that Nerva was distinguished by his “wisdom,” and that it was “a blessing” to be born during the reign of Nerva’s adoptive son Trajan: “nothing was so fortunate or so glorious for the

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<sup>54</sup> Douglass notes the similarity between Montesquieu and Hobbes on this point. “Montesquieu and Modern Republicanism,” 708. Cf. Pettit, who places Montesquieu in a decidedly anti-Hobbesian tradition of republicanism. *Republicanism*, 20. For an interpretation of Montesquieu as a defender of “liberal monarchism” rather than “liberal republicanism,” see de Dijn, “Was Montesquieu a Liberal Republican?” Unlike de Dijn, I doubt whether Montesquieu believed monarchical honor had a future, given its foundation in prejudices of station (*SL* 3.7). Nor do I see a clear distinction between what de Dijn (unlike Montesquieu) calls “liberal republicanism” and “liberal monarchism”: cannot a liberal monarchy have its own versions of representation and cannot a liberal republic blur the executive and legislative powers?

<sup>55</sup> Pangle notes that “a very important portion of what Montesquieu defines as ‘liberty’ can sometimes be achieved even in despotism, insofar as despotism becomes commercially and economically reasonable.” *The Theological Basis of Liberal Modernity*, 111-12.

great Roman people” (*Considerations* 145, 141). Trajan’s successor, Hadrian, was a man of “valor” who “established military discipline,” he notes (*Considerations* 145-46, 151). Of Antoninus Pius and his successor, finally, he declares: “Nothing can make us forget the first Antoninus except the man he adopted – Marcus Aurelius. We feel a secret pleasure within ourselves in speaking of this emperor; we cannot read his life without experiencing a kind of tenderness. Such is the effect it produces that we have a better opinion of ourselves because we have a better opinion of men” (*Considerations* 145). The reigns of the two Antonines were “were happy and tranquil” (*Considerations* 151). In *The Spirit of the Laws*, Montesquieu actually declares: “Let us momentarily lay aside the revealed truths; seek in all of nature and you will find no greater object than the Antonines” (*SL* 24.10). This liking for post-republican Rome clearly sets Montesquieu apart from those thinkers who hold that an apolitical existence is a stunted one and that to confine political responsibilities to an elite is to deprive the people of something of great value. When he says, “Nothing was more fatal to Roman liberty” than the laws passed by Augustus and Tiberius which treated certain writings as the equivalent of high treason (*SL* 12.13), he implies that more enlightened emperors might have preserved the essence of liberty in Rome, and by analogy that more enlightened monarchs might still preserve the essence of liberty in France without any transformation in the direction of democracy.<sup>56</sup>

“It is true that in democracies the people seem to do what they want,”

Montesquieu says, “but political liberty in no way consists in doing what one wants. In a state, that is, in a society where there are laws, liberty can consist only in having the

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<sup>56</sup> Tellingly, he calls the Empire at its worst “a kind of irregular *republic*, much like the aristocracy of Algeria, where the army, which has sovereign power, makes and unmakes a magistrate called the dey” (*Considerations* 152, emphasis added).

power to do what one should want to do and in no way being constrained to do what one should not want to do” (*SL* 11.3). In other words, political liberty means not being prevented from doing things that are allowed (or indeed demanded) by positive and natural right, and not being forced to do things that are against positive and natural right. The latter is especially important to Montesquieu, presumably because being forced to do something is more likely to constitute a direct threat to one’s sense of security: it is the difference between being force-fed and merely being deprived of one’s preferred food (see *SL* 29.16 end), or the difference between being ordered to marry a particular person against one’s will and being deprived of the chance to marry the person of one’s choosing (see *SL* 23.7-8). Hence, “Liberty consists principally in not being forced to do a thing that the law does not order” (*SL* 26.20).

The Montesquieuan understanding of freedom as tranquility also explains the desirability of empowering representatives and judges, who (owing to their superior enlightenment) are more likely to protect security by sanctioning enlightened laws. In fact “the citizen’s liberty depends principally on the goodness of the criminal laws,” Montesquieu claims, and the goodness of those laws is among the possible subjects of “knowledge” (*SL* 12.2). Specifically, “It is the triumph of liberty when criminal laws draw each penalty from the particular nature of the crime” (*SL* 12.4).<sup>57</sup>

Notwithstanding his keen interest in the freedom of citizens from coercion and excessive punishment, however, Montesquieu cannot be understood merely as a proponent of “negative” or “modern” liberty,”<sup>58</sup> for the simple reason that the security he

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<sup>57</sup> See Callanan, “Liberal Constitutionalism and Political Particularism,” 597.

<sup>58</sup> As Pettit observes, “[Benjamin] Constant’s modern liberty is [Isaiah] Berlin’s negative liberty, and his ancient liberty – the liberty of belonging to a democratically self-governing community – is the most prominent variety of Berlin’s positive conception. Modern liberty is being left to the



thinks it incumbent upon governments to provide includes the security of material wellbeing: “A few alms given to a naked man in the streets does not fulfill the obligations of the state, which owes all the citizens an assured sustenance, nourishment, suitable clothing, and a kind of life which is not contrary to health” (*SL* 23.29). And this explains his insistence that liberty consists partly “in having *the power* to do what one should want to do” (*SL* 11.3, emphasis added). He is hard-headed enough to recognize that if one is to be a law-abiding citizen, one’s basic material needs must be satisfied.

Given Montesquieu’s reduction of freedom to the feeling of tranquility, it is possible for him to believe that modern, security-focused constitutionalism offers a harmony between the governing class and the majority. Under this liberal constitutionalism, as Montesquieu presents it, members of government truly gain more from the laws than they would from any subversion or corruption: “the laws favor them as men” (*SL* 11.6). “[M]onarchs who live under the fundamental laws of their state are happier than despotic princes, who have nothing to rule their people’s hearts or their own” (*SL* 5.11). Rulers are not only more secure under strong and reasonable laws (*SL* 8.6-7, 12.10), but they have more opportunity to attain “glory” (*SL* 5.12, 5.14, 12.23). Likewise, ordinary people benefit because they are able to lead secure lives with a minimum of burdensome political participation. Excused from the obligation to be constantly assembled for deliberation, they are allowed to live somewhat more naturally, focused on their private enjoyment and gain. Far removed from the austerity of republican Rome or Sparta, in France one can taste a habitual “joy in life” (*SL* 19.5). In England, more soberly, one is always “busy with one’s own interests” (*SL* 19.27).

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rule of your own private will, ancient liberty is sharing in the rule of a public, democratically determined will. The modern ideal is characteristically liberal, the ancient characteristically populist.” *Republicanism*, 18.

As Pierre Manent has observed, “In a political regime ordered in this way, life consists mainly of *economics* and *culture*.”<sup>59</sup> According to Montesquieu, it was disadvantageous for the republican Romans that “the form of their government drew them away from commerce” (SL 21.14), to say nothing of culture. Laws in Rome were designed to prevent citizens from being “seduced by domestic cares, by kindness, and by *the happiness of a complete life*” (SL 19.25, emphasis added). Thus, while it would be fair to say that freedom for Montesquieu partly entails non-domination or “an absence of mastery by others,”<sup>60</sup> his preoccupation with the ills of despotism could hardly be called a distinctively “republican” concern, let alone a “neo-Roman” one.

### Freedom as Independence

Rousseau does not equate freedom with the feeling of basic tranquility. After all, he points out, one can have that kind of feeling in a well-run prison (SC 134). Nor does he equate freedom with power. “I have *never* believed that man’s freedom consists in doing what he wants,” he says (*Reveries* 56, emphasis added). And this could make him seem like Montesquieu, for whom freedom “in no way consists in doing what one wants” (SL 11.3). But Rousseau goes on to say, quite unlike Montesquieu, that freedom – freedom as he has *always* understood it – consists in “never doing what [one] does not want to do,” hence acting only in accordance with one’s desires (*Reveries* 56; see also 51-52;

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<sup>59</sup> Manent, *A World Beyond Politics?*, 17 (emphasis in original). Consider Ackerman’s defense of the relatively detached American citizen: “While her passivity as a citizen doesn’t invite admiration in itself, her life may have many other valuable aspects. It is these other values and interests, she explains, that *appropriately* distract her from a single-minded concern with the public good of the nation as a whole – her work, her family, her friends, her religion, her culture, all weaving together to form the remarkable patchwork of American community life.” *We the People*, 305-6 (emphasis in original).

<sup>60</sup> Pettit, *Republicanism*, 22.

*Confessions* 357, 536-37).<sup>61</sup> And so the contrast with Montesquieu, who argues that liberty “*in no way* consists in doing what one wants” (*SL* 11.3, emphasis added), is clear. If Rousseau does not go so far as to say that freedom means being able to do *everything* one wants, this is only because some of what one wants may be impossible and because the pursuit of some desires may require giving up others. But if all one’s desires were attainable and internally consistent, then freedom would mean following one’s inclinations without constraint: “The truly free man wants only what he can do and does what he pleases” (*Emile* 215). Freedom, then, is precisely independence from constraints. Law may be necessary for security, but this is precisely because law is a limit on everyone’s freedom.

This tension between freedom and law explains Rousseau’s recourse to popular sovereignty as the foundation of political life. The question that leads Rousseau to embrace popular sovereignty is the following: what would have to be true for a political community to exist such that the members maintained their freedom even while being protected by law? Or as he poses the problem: “Find a form of association that defends and protects the person and goods of each associate with all the common force, and by means of which each one, uniting with all, nevertheless *obeys only himself* and remains as free as before” (*SC* 138, emphasis added). The only way in which this problem might be solved is the “social contract,” through which each individual would freely agree to obey the laws of the community so long as he himself became and remained an indivisible part of that community. Through the social contract, the individual becomes a member of a particular community; if the government of that community merely executes the laws,

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<sup>61</sup> Cf. Melzer *The Natural Goodness of Man*, 102; Rosenblatt, *Rousseau and Geneva*, 255-56; Vaughan, “Rousseau as Political Philosopher,” 113; Viroli, *Jean-Jacques Rousseau*, 11

and if the laws record the “general will” of the community, and if each individual considers himself an indivisible part of the community, then political life – life under law – is free from the point of view of each member of the association.

Rousseau understands that these conditions are never perfectly satisfied. In spelling out the terms of the social contract, he is clearly describing an ideal – what *ought* to be the case in every political community but what can never be fully realized anywhere. Certainly he puts no stock in the existence of a literal social contract in any actual state (*GM* 88-89).<sup>62</sup> Yet he insists that the ideal is approximated in every actual political community to the extent that it is a free political community rather than an aggregate of individuals held together by force. While the terms of the social contract “may never have been formally pronounced,” he says, they are “everywhere tacitly accepted and recognized” (*SC* 138). Thus, some communities come closer to meeting the conditions of perfect freedom than others. For example, Rousseau seems to think France less free than Geneva (*LWFM* 233; *SC* 143), Geneva less free than England (*LWFM* 287-91; *SC* 139n), and England less free than republican Rome (*LWFM* 233; *SC* 192). Political freedom is always a matter of degree: the more faithfully the government executes the laws, and the more the laws are connected to the actual will of the citizenry, the freer the community.<sup>63</sup> Hence a smaller community is freer than a larger one, other things being equal, since citizens have more control over the laws when the population is relatively small, meaning that the laws are a better fit and that the government needs less repressive force in order to enforce them (*SC* 167-68).

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<sup>62</sup> Cf. Vaughan, “Rousseau as Political Philosopher,” 42, 45-6.

<sup>63</sup> See also Lund, *Rousseau’s Rejuvenation of Political Philosophy*, 237.

In this light, it becomes easier to grasp Rousseau's objection to representation and to the entrenchment of an independent administrative class. As Montesquieu himself is at pains to point out, representatives are never simply representative; they have their own opinions and their own interests. While Rousseau never denies that some of these distinct opinions and interests may produce relatively enlightened laws, the more important consideration for him is that representation necessarily widens the gap between the citizen and the law. And it does so not only to the extent that laws passed by representative legislatures violate the demands of majorities, but also to the extent that representation – precisely when it does not offend majority opinion – encourages ordinary citizens to detach themselves from attending to the laws and thereby opens the door to future abuses in the face of a passive citizenry. The use of a representative legislature is analogous to the use of mercenary soldiers; both may be attractive in the short to medium term, but they are nonetheless indications of the spread of a kind of psychological withdrawal from the community (*SC* 191-92). “Repose and freedom appear incompatible to me; it is necessary to choose” (*Poland* 170). Likewise, the legal reforms of professional judges and administrators may be good in themselves – Rousseau agrees with Montesquieu both that severe punishments are usually a mistake (*PE* 147) and that “the spirit of freedom consists above all in the precise respecting of proportions” (*PE* 164; see also *LWFM* 188) – but the empowerment of an independent judicial-administrative class entails a further widening of the gap between the laws and the people, hence a diminution of freedom. This explains Rousseau's low opinion of England's professionalized judiciary (*Poland* 207).

Even in the best case, however, political life can only provide imperfect freedom. That is, even in a well-tempered democracy, the feeling of freedom depends upon a questionable sentiment that one really is “an indivisible part of the whole” (SC 139). Then and only then can it be true that “each man who obeys the sovereign obeys only himself” (*Emile* 653). If that were true, one would be asserting one’s freedom – the condition of not having to act against one’s desires – precisely by obeying the law. But if a citizen is really only obeying himself, then he can release himself from his obligation at any moment, since his desires can change at any moment (SC 145); and if he is in fact obeying someone or something else, he is compromising his freedom. Thus, for practical purposes, the best a founder can do is instill a sort of conviction in citizens that they are each essential parts of the community that authorizes the law. And this conviction must be provided by persuasion rather than rational argument, since it is not strictly true (SC 155-56).<sup>64</sup> Civil men must be “in chains” (SC 131). Certainly, under a free constitution one is permitted either to attempt to change an especially onerous law or to withdraw from the political community – based as it must be upon a contract rather than a dictate, no one is obliged to join or remain with any specific polity.<sup>65</sup> But attempting to change even a single law is a burdensome and uncertain project. And withdrawing from one’s polity is hardly a realistic choice for most people: “an inhabitant can be kept in the country against his will by family, goods, the lack of a place of refuge, necessity, or

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<sup>64</sup> Cf. Douglass, *Rousseau and Hobbes*, 142-43.

<sup>65</sup> “There is only one law that, by its nature, requires unanimous consent. That is the social compact. For civil association is the most voluntary act in the world” (SC 200).

violence; and then his sojourn alone no longer presupposes his consent to the contract” (*SC* 200n).<sup>66</sup>

As a good citizen, Rousseau tries to downplay these problems by suggesting (like Montesquieu: *SL* 11.3) that “independence” and “freedom” are very different things, with the latter being available only under positive laws.<sup>67</sup> “Many attempts have been made to confuse independence and liberty,” he writes. “These two things are so different that they are even mutually exclusive. When each does what he pleases, he often does what displeases others, and that is not called a free state” (*LWFM* 260; see also 234, 237, 301; *PE* 146; *PF* 28; *SD* 4, 8). There is truth in this, of course: if everyone in an ordinary community did just what they pleased, it would not be a free state. But one’s being able to do as one pleases does not logically entail everyone else being able to do as they please. Moreover, in principle one could be part of a very small community in which everyone did just what they pleased without seriously displeasing anyone, and this would surely be called free (*Emile* 522, 526; see also *Corsica* 135; *SC* 198). Indeed, if it is true, as Rousseau says, that liberty consists “in not being subject to someone else’s [will]” and “in not subjecting someone else’s will to yours” (*LWFM* 260-61), it follows that liberty is maximized only in that kind of small community, since in every full-scale political community one will be subject directly to the will of the administration, and since the very existence of such an administration is likely to awaken a desire for dominion in many people (*SD* 62; *LWFM* 261n). It is therefore fallacious to insist, as Rousseau does,

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<sup>66</sup> Waddicor is mistaken in his claim that Rousseau “rather optimistically claimed that since the community is formed only of the contracting individuals, it cannot go against their ‘volonté générale,’ and that they remain as free as they were in the state of nature.” *Montesquieu and the Philosophy of Natural Law*, 88.

<sup>67</sup> Derathé points out the apparent similarity between Montesquieu and Rousseau on this issue. “Montesquieu et Jean-Jacques Rousseau,” 384-85.

that “there is no liberty without laws,” even if it is true (as he says in the same sentence) that there is no liberty “where someone [else] is above the laws” (*LWFM* 261).<sup>68</sup>

Rhetorical obfuscation of this kind is an act of decent citizenship, inasmuch as it bucks up the spirits of citizens to believe that they are at their freest when they are voluntarily obeying or courageously upholding the laws. At one point, Rousseau goes so far as to claim that only in becoming a citizen does one become “a man,” that is, a fully free human being (*SC* 141).<sup>69</sup> But the linking of freedom to law is not theoretically justified, or at least it is not theoretically justified by Rousseau. To the contrary, he suggests that it requires “celestial inspiration” and “marvels” to believe in a law that simultaneously ties us down and liberates us (*PE* 145-46).<sup>70</sup> This is not to say that the association between law and freedom is wholly misleading. To live under the protection of laws is surely to be freer than to live under a master. But to live under laws is still a second-best solution. Even in the *Second Discourse*, an intensely political work, Rousseau allows himself to use “independence” and “freedom” interchangeably (*SD* 57).<sup>71</sup>

For Rousseau, then, the political problem is insoluble. Although he sometimes gives the impression that citizens in a law-bound state are perfectly free, since the laws

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<sup>68</sup> It is fallacious, that is, unless by “laws” Rousseau means to include even the impersonal laws of nature – as he goes on to say, “[I]n the very state of nature man is free only under cover of the natural law that commands everyone” (*LWFM* 261). But then the point would be merely tautological: there is no human freedom without the conditions that support the existence of human life.

<sup>69</sup> This is commonly taken to be Rousseau’s genuine opinion. See, e.g., Rosenblatt, *Rousseau and Geneva*, 246-47; Strauss, “Seminar in Political Philosophy: Rousseau,” 73.

<sup>70</sup> Cf. Krause, “Two Concepts of Liberty in Montesquieu,” 89; Reisert, *Jean-Jacques Rousseau*, 3.

<sup>71</sup> Given that civil freedom is more limited than natural freedom, whereas civil proprietorship is more secure than the natural “right” of the first occupant (*SC* 141-42), it is not surprising that in Rousseau’s view private property – not freedom – is the genuine foundation of the body politic (*Emile* 653; *PE* 157, 159, 163, 164-65, 170; *SC* 144n).



“merely record our wills” (SC 153), he is aware that what we will in our capacity as citizens does not always accord with what we will as private individuals, individuals who naturally prefer ourselves, our families, our friends, and our connections to the abstraction that is the community. One *would* be fully free as a citizen if the laws dependably coincided with one’s desires. But this is impossible, given the nature of law (*Emile* 654; SC 145, 170-71, 173).<sup>72</sup> And to the extent that we retain our natural attachment to freedom, we tend to resist even laws that *are* genuinely good for us, insofar as we regard them as external compulsions. Hence Montesquieu is misguided in his view that human beings are “at bottom reasonable” (SL 28.23). Nor is resistance to externally-imposed rules simply irrational: even the wisest general rules do not always produce good results, given the variability of circumstances (*Beaumont* 31n). For these reasons, to say that “[e]very condition imposed on each by all cannot be onerous to anyone” (*LWFM* 261) is simply untrue.

Although these difficulties cannot be removed, Rousseau suggests, they can be mitigated by more direct citizen participation in politics, which helps to do three things. First, more citizen participation helps to forestall the introduction of laws that offend the opinion of broad swathes of the population. Second, it helps to maximize the sense that the established laws are the citizens’ own rather than burdens imposed by someone else. And third, it helps to keep the government subordinate to the laws by encouraging citizens to reward and punish members of government according to the integrity of their service.

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<sup>72</sup> Compare Aquinas: “[S]ome are subject to the law as the coerced to the power coercing. And in this respect, only the wicked, not the virtuous and righteous, are subject to the law. For what is coerced and forced is contrary to the will. But the will of the virtuous is in accord, and the will of the wicked in discord, with the law. And so only the wicked, not the virtuous, are subject to the law in this respect.” *Treatise on Law* (Q. 96, Art. 5, co.), 59.

Notwithstanding his association with “positive” or “ancient” liberty, then, Rousseau’s defense of popular sovereignty is clearly inseparable from his concern with a thoroughgoing version of “negative” or “modern” liberty, that is, being (or feeling oneself to be) free from interference.<sup>73</sup> But Rousseau cannot be assimilated to the camp of “negative” or “modern” liberty, either. He would deny that the two things can, in practice, be severed. The “rights of citizens” stand or fall with “national freedoms,” he insists (*SD* 64). The Romans, who came close to perfecting the democratic constitution, also “stood out over all the peoples of the earth for the deference of the government toward private individuals and for its scrupulous attention to respecting the inviolable rights of all members of the state” (*PE* 153).

Likewise, Rousseau is distinguished from Philip Pettit’s “republican” tradition by his insistence that every good government must have the *capacity* for abuses of power lest it be too weak to execute the laws. “To enjoy non-domination,” Pettit has said, “is to be in a position where no one has that power of arbitrary interference over me and where I am correspondingly powerful” (1997, 69).<sup>74</sup> Rousseau argues, by contrast, that the risk of arbitrary interference is intrinsic to the possibility of good government (hence the *problem* of government). One can give a government “a thousand shackles to keep it in

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<sup>73</sup> Cf. Berlin, “Two Concepts of Liberty,” 162-63.

<sup>74</sup> See also Skinner: “It may be that the community is not as a matter of fact governed tyrannically; its rulers may choose to follow the dictates of the law.... Such a state will nevertheless be counted as living in slavery if its capacity for action is *in any way* dependent on the will of anyone other than the body of its own citizens.” *Liberty before Liberalism*, 49 (emphasis added). Compare Rousseau’s more hard-headed view: “It is certain that the right of property is the most sacred of all the rights of citizens, and more important in certain respects than freedom itself.... On the other hand, it is no less certain that the maintenance of the state and the government requires costs and expenses. And since anyone who grants the end cannot refuse the means, it follows that the members of the society should contribute some of their goods to its upkeep. Moreover it is difficult to assure the property of private individuals on the one hand without attacking it on the other, and it is not possible for all the regulations concerning inheritance, wills, and contracts not to constrain the citizens regarding the disposition of their own goods, and consequently regarding their right of property” (*PE* 157-58).

its path,” he acknowledges, but that means that “if it does not decline toward its fall, it does not go toward its end either” (*Corsica* 123). Excessively restrained and divided government produces the “anarchy” or “many petty despots,” not genuine freedom (*Poland* 187). Just as clearly, Rousseau is distinguished from Quentin Skinner’s “neo-Roman” tradition by his critique of representation.<sup>75</sup> “It is very noteworthy that in Rome, where the tribunes were so sacred, it was never even imagined that they could usurp the functions of the people,” Rousseau remarks, “and that in the midst of such a great multitude, they never tried to pass a single plebiscite on their authority alone” (*SC* 193).

### *Conclusion*

Montesquieu’s liberal constitutionalism is founded upon a belief that most laws are good because they are basically reasonable (i.e., favorable to security), and are capable of becoming more reasonable with the progress of enlightenment. As he puts it, “Law in general *is* human reason insofar as it governs all the peoples of the earth; and the political and civil laws of each nation should be only the particular cases to which human reason is applied” (*SL* 1.3, emphasis added).<sup>76</sup> If the aim of *The Spirit of the Laws* is to help readers cure themselves of their prejudices (*SL* Preface), this is to be done principally by sorting out the truly necessary “laws of morality” (*SL* 1.1) both from the faults that do not rise to

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<sup>75</sup> Skinner discusses the goodness of representation according to “neo-Roman” thinkers in *Liberty before Liberalism*, 31-35.

<sup>76</sup> The fact that Montesquieu devotes an entire book to the genesis and reform of the Voconian law, which ran counter to the “natural feelings” of fathers, suggests that he regards the tension between natural feelings and established laws (as distinct from despotic decrees) as unusual and in need of explanation (*SL* 27). His general tendency is to show that apparently arbitrary laws comport with the needs and sentiments of the people concerned. Even the manifestly “unjust” usages of “proof by combat and proof by hot iron and boiling water” among the Germanic tribes corresponded so well to their mores that the laws “were more unreasonable than tyrannical” (*SL* 28.17). As Montesquieu says, “I began by examining men, and I believed that, amidst the infinite diversity of laws and mores, they were not led by their fancies alone” (*SL* Preface).

the level of crimes (*SL* 12.4, 26.24) and from the things that legitimately vary from place to place (*SL* 14.1, 29.18). For Montesquieu, law is an almost unalloyed good, akin to life, liberty, and property (*SL* 15.2, 24.1, 24.3). Thus, it is to the advantage of rulers themselves to be subjugated by all but the most foolish laws (*SL* 5.11-14, 8.5-7, 8.21, 11.6, 12.23, 13.13-14; cf. 12.10).<sup>77</sup> This explains why, in Montesquieu's view, man-made law does not require super-rational veneration in order to be respected (*SL* 26.2).

For Rousseau, by contrast, law must always have a harsh aspect because it must often clash with our natural desire to pursue our private good, as well as our natural desire not to have to act against our desires. Thus a healthy political community requires much more widespread and active psychological investment in order to maintain itself, even if this popular investment leads to less enlightened political decisions (*GM* 114; *SC* 164). To the extent that we regard freedom as a good, Rousseau points out, we regard it as something that goes beyond a sense of security; we want not to be under any compulsion at all. But this demand is incompatible with law, unless law is also a product of our own will. Hence, Rousseau's apparently utopian defense of democracy turns out to be anti-utopian, insofar as it is more unflinching about the problem of law than Montesquieu's apparently clear-headed liberalism. Rousseau supports popular rule not because of the inherent dignity of political participation<sup>78</sup> but because popular rule is the

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<sup>77</sup> As Spector notes, "This argument about the enlightened self-interest of the monarch is constant in *The Spirit of the Laws*, breaking with the tradition of mirrors of princes which privileged exhortation to virtue." *Montesquieu: Liberté, droit, et histoire*, 103.

<sup>78</sup> In fact Benjamin Constant, the herald of "modern" liberty, evinces more belief in the intrinsic worth of political participation than does Rousseau, the supposed defender of "ancient" liberty. "Political liberty," says Constant, "by submitting to all the citizens, without exception, the care and assessment of their most sacred interests, enlarges their spirit, ennobles their thoughts, and establishes among them a kind of *intellectual equality* which forms the glory and power of a people." "The Liberty of Ancients Compared with that of Moderns" (emphasis added). There is no suggestion in Rousseau that political participation establishes intellectual equality.

best means of approximating the correspondence between individual wills and the general will, between the will of “the people” and the will of “the sovereign” (*SD* 4). One indication of the difference is that Rousseau calls “assuring public prosecution of crime” and “regulating discussions of interest between private individuals” – that is, criminal law and commercial law – “two objects that should be of the least importance in the legislation of a well-constituted State” (*PF* 31), whereas Montesquieu regards criminal law as the object of most importance (*SL* 12.2) and commercial law as a matter of very high importance indeed (*SL* 20.7, 20.12, 21.18). The maintenance of popular veneration for the law as such has a much more important role in Rousseau’s thought than does either the means of criminal punishment or the regulation of contracts.

In the final analysis, Rousseau follows through certain aspects of Montesquieu’s own thought more carefully than Montesquieu himself does. Republics tend to inspire a certain kind of “gentleness” among citizens, Montesquieu observes, because each at least “seems” to have given himself this form of government (*SL* 5.15). “[M]en care prodigiously for *their* laws and *their* customs,” he affirms (*SL* 26.23, emphasis added; see also *Considerations* 108-9). And if freedom is measured not simply by the attainment of security but by the citizen’s “opinion” of his security, as he says (*SL* 11.6, 12.1), then a citizen is unlikely to be free while he recognizes himself to be living under laws decreed by someone else, be it a gentle monarch or an elected representative. Montesquieu suggests as much when he argues that a state is tyrannical in which the laws – however enlightened or well-intentioned – are experienced by the people as an alien imposition (*SL* 19.3). And even if political elites make the effort to behave in “a spirit of the moderation,” with “modesty and simplicity of manners,” “blend[ing] with the people,

dress[ing] like them, and shar[ing] all their pleasures with them,” the people may still not “forget their own weakness,” as Montesquieu expects they will (*SL* 5.8). After all, he himself seems to endorse the view that in “a free state” everyone who is “considered to have a free soul” – that is, everyone not hobbled by extreme poverty<sup>79</sup> – “should be governed by himself” (*SL* 11.6).<sup>80</sup>

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<sup>79</sup> Cf. Krause, who thinks Montesquieu has free will in mind. “Two Concepts of Liberty in Montesquieu,” 95. But Montesquieu notes that in England the vote is not extended to those “whose estate is so humble [*ceux qui sont dans un tel état de bassesse*] that they are deemed to have no will of their own” (*SL* 11.6). Goyard-Fabre insists that those “deemed to have no will of their own” are “the mentally ill and those condemned by *droit commun*, not the poverty-stricken.” “L’idée de représentation,” 9 n. 33. But elsewhere Montesquieu says, “[E]ven in popular government power should not fall into the hands of the common people” (*SL* 15.18). By “common people” (*bas peuple*), he surely does not mean to denote “the mentally ill and those condemned by *droit commun*” (when would this be a serious risk?) but precisely “the poverty-stricken.” The suggestion is that such people cannot be counted on to act with anything but short-term gain in mind, given their material straits. See also *SL* 6.1: “Another result of the prodigious multitude of slaves [under despotic governments] is that scarcely anyone has a will of his own.”  
<sup>80</sup> “Ironically,” says Krause, “the subjective experience of political liberty ... closely resembles *indépendance*, or ‘doing what one wants.’” “Two Concepts of Liberty in Montesquieu,” 90. Sher suggests that Montesquieu “never fully relinquished” the idea of “liberty as autonomy.” “From Troglodytes to Americans,” 380. According to Keohane, “Montesquieu’s political liberty is not the same as independence, acting as one pleases, but neither is it quite separate. Good laws preserve at least an illusion of independence, a basic sense of freedom of movement and lack of constraint on the part of individuals within the polity.” “Virtuous Republics and Glorious Monarchies,” 391.

## CONCLUSION

The disagreement between Montesquieu and Rousseau is not reducible to a case of empiricist realism versus doctrinaire romanticism. They agree that the basic end political life is not spiritual fulfillment but security and prosperity. They agree that the only governments capable of safeguarding these goods are law-bound or constitutional governments. And they agree that there is an infinite variety of legitimate forms of constitutional government. Their dispute centers on this question: Are rationalized political societies more or less likely to maintain constitutional governments?

Anyone familiar with the end of the *Persian Letters*, in which Usbek (who is in part a stand-in for the French monarch) orders a ruthless crackdown on his seraglio, can agree that Montesquieu is not a simple-minded prophet of progress. In his *Réflexions sur la monarchie universelle en Europe*, he suggests that “corruption” – in the sense of decay – is “necessary to all governments” (*RMUE* 29). And while there is a certain hopefulness about the direction of history in *The Spirit of the Laws*, it is a modest hopefulness: “[England] will lose its liberty; it will perish. Rome, Lacedaemonia, and Carthage have surely perished” (*SL* 11.6).<sup>1</sup> Nonetheless, according to Montesquieu, people can be expected to become better stewards of constitutional government over historical time. Despotism schemes are becoming ever harder to execute, he intimates: “The invention of printing, which has put books in everyone’s hands; the invention of engraving, which has

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<sup>1</sup> On Montesquieu’s awareness of the threats to English liberty, see Gonthier, *Montesquieu and England*, 88-92.

made geographic maps so common; and, finally, the establishment of newspapers all make men better acquainted with matters of general interest, and this enables them to become informed of secret activities more easily” (*Considerations* 199). “One has begun to be cured of Machiavellianism,” he says, “and one will continue to be cured of it” (*SL* 21.20). He speaks of the correct knowledge of criminal procedure, the knowledge that “is of more concern to mankind than anything else in the world,” as something that has been acquired in some countries, “and that *will be* acquired in others” [*que l’on acquerra dans d’autres*] (*SL* 12.2, emphasis added). Indeed, he maintains that “Reason has a natural empire; it has even a tyrannical empire: one resists it, but this resistance is its triumph; yet a little time and one is forced to come back to it” (*SL* 28.38).

Rousseau argues, by contrast, that the very structure of political life, in which members of government are entrusted with the means not only to enforce the laws but also to enhance their own power and thus eventually to break the laws with impunity, militates against lasting progress: “the vices that make social institutions necessary are the same ones that make their abuse inevitable” (*SD* 62). Alliances of the strong against the weak and the pursuit of narrow self-interest are natural temptations that are always just beneath the surface of civil society, he insists (*LWFM* 301-2). This is why he believes that, sooner or later, all governments tend to be co-opted by a small number of wealthy families, with the acquiescence of progressively more servile subjects (*SD* 61-62). And the attempt to make political life more rational will only aggravate the problem, he says: spreading the arts, sciences, and commerce will undercut the psychological foundation of active citizenship; tamping down patriotism will enable self-dealing in



good conscience; diluting popular sovereignty will produce high-handed rulers and recalcitrant citizens.

Until as recently as a decade ago, perhaps, Rousseau's skepticism about the "rationalization" of the world might have seemed eccentric. It might have seemed that the secularization of society had a lot of palpable upsides and very few downsides, that nationalism was something humanity had outgrown for the better, and that (barring the supposed epidemic of left-right "polarization") liberal constitutionalism had basically solved the political problem. Even then, however, there were clear reasons to hesitate. Most obviously, the collapse of Germany had demonstrated the fragility of constitutional government even in the most intellectually refined part of the world; and the persistent appeal of fascism and communism to significant numbers of comfortable citizens of liberal democracies in the West might have suggested that the underlying problem was more than economic. In addition, one might have been impressed by the extent to which the preservation of free states had depended upon the steadfastness of the West's relatively un-liberalized citizens. For that matter, fascism might well have prevailed in Europe had it not been for the efforts of religious, patriotic soldiers on the Eastern Front during the Second World War. And in the post-war period there had been a precipitous increase in the cultural prestige of science, technology, commerce, and the arts, as well as sustained attacks by public intellectuals on religion, just as there had been concerted efforts to substitute an ethos of "global citizenship" for the nationalistic spirit.

One might also have been impressed by the fact that the gap between the political authorities and the voting public was visibly widening. To take a simple illustration of the phenomenon: if legislatures had expanded, those expansions had lagged far behind

population growth. In 2008, for example, there were 535 voting members of the U.S. Congress for 230 million eligible voters, or one representative for about 430,000 eligible voters. By way of comparison, in 1932 there had been 531 voting members of Congress for 75 million eligible voters, or one representative for just over 140,000 eligible voters, a voter-to-legislator ratio more than three times better from the point of view of enfranchised citizens. Compounding the problem, the very point of elected legislatures was no longer clear: legislative power was quickly being turned over by representatives to largely unaccountable civil servants, judges, and trans-national bodies. The historical process of “democratization” – the intensifying passion for equality in all spheres of life – had not brought about any clear solidification of self-government. Declining voter turnouts, civic literacy scores, and newspaper readerships all suggested that a sense of resigned cynicism about politics had set in for many people by the mid-2000s.

Today, although our political communities may be reasonably safe and prosperous, and although they have made significant strides in the direction of justice, Rousseau’s doubts seem well-founded: in the light of secular Europeans’ passivity in the face of Islamic self-assertion, as well as their docile surrendering of civil liberties; in the light of the decline of the sense of civic responsibility among wealthy Americans, as well as the dwindling of volunteerism among middle-class ones; and in the light of the revolt of elites around the world against the morals, manners, and interests of the masses, as well as the attempt of the masses to revolt against the elites (by endowing other elites with more discretionary power).

Despite the attractions of secular and cosmopolitan societies, religion and patriotism do seem to be necessary in order to bridge the chasm between our naturally

narrow range of concerns and our obligations to the broader community. Even if a certain kind of passive obedience might be supported by calculations of long-range self-interest, a more active citizenship – a citizenship of the kind that Montesquieu himself recognizes as necessary for free states – will often demand of us things that are not obviously in our interest. Because good citizenship imposes genuine burdens, with no guarantee of a long-term payoff, it requires supports that are not fully rational. To put it in Rousseau’s language, people have to be “persuaded” to meet the demands of free government; they cannot simply be convinced or incentivized to do so.<sup>2</sup> This helps to explain Rousseau’s insistence on the goodness of rhetoric and “the language of signs” (*Emile* 490), which Montesquieu tends to denigrate (*SL* 11.15 end, 19.27; see also 28.1, 28.3, 30.24).

In his humanity, Montesquieu discourages legislators from trying to re-engineer our naturally insular, selfish proclivities. “[T]he government most in conformity with nature is the one whose particular arrangement best relates to the disposition of the people for whom it is established,” he declares (*SL* 1.3; see also *PL* 80). But Montesquieuian liberalism thereby fails to equip people for the decidedly unnatural sacrifices demanded by civil life. As Rousseau remarks, as if in a commentary on the author of *The Spirit of the Laws*: “[T]he wisest people, observing relations of suitability, form the government for the nation. Nevertheless, there is something much better to do, that is to form the nation for the government” (*Corsica* 123; see also *PF* 43). Rousseau defends religion and patriotism neither because he is blind to their risks nor because he wants political life to be more exciting but because he makes the attempt to derive the duties of citizenship from rational self-interest and finds that it cannot be done.

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<sup>2</sup> On the distinction between persuading and convincing, see Kelly, ““To Persuade Without Convincing,”” 321-35.

Moreover, despite the attractions of retreating into private life under liberal constitutionalism, it seems that the demands of self-government cannot be relaxed without opening the door to extensions of governmental power into ever new areas of ordinary life. The fact that Montesquieu, so far from being a naïf, was aware of an ever-recurring despotic tendency makes his failure of foresight on this point less rather than more excusable. Precisely in secure and prosperous communities, he says in *The Spirit of the Laws*, “it keeps coming to mind to take away the very government that produces the good that is communicated” (*SL* 13.12). “Because moderate government has produced remarkable results,” he observes, “this moderation has been abandoned” (*SL* 13.15).

And even when the law demands things that really are (or might plausibly be) in our interest, a good many people seem to be repulsed by the feeling of being pushed around by someone else. As Rousseau writes to his Genevan compatriots, “Every public effort that your interest demands ... is an effort that costs you and that you do not make willingly” (*LWFM* 293). In this respect, it seems, human beings are not essentially reasonable creatures (contra Montesquieu: *SL* 28.23). A more democratic kind of constitutionalism seems to be necessary not only to keep the authorities in check but also to give people the sense that they are in control of their own fates, or at least the feeling that their fates are not being dictated by human masters.

Contemporary liberals might therefore understand the upsurge of anti-establishment feeling around the world as a predictable result of the liberal constitutional order which, by design, affords much more freedom to the politically-connected few than to ordinary people. Secure as the way of life provided by this order may be for almost

everyone, Rousseau shows why it may nonetheless be experienced as unfree, all the more so as the rulers separate themselves visibly from the ruled in their manners and mores.

Montesquieu insists that “an infinity of abuses slip into whatever is touched by the hands of men” (*SL* 6.1) and he admits that, if mores can become freer, they can also become more despotic (*SL* 19.26). For this reason, he would probably not agree with the most uncompromising attempts to move full steam ahead with the program of liberalization in the current circumstances. General goals must be adjusted to particular circumstances, he not only acknowledges but insists. “Even liberty has appeared intolerable to peoples who were not accustomed to enjoying it. Thus is pure air sometimes harmful to those who have lived in swampy countries” (*SL* 19.2).

With this qualification, however, a Montesquieuian analyst might yet have reasonable grounds for confidence in the durability of constitutional government over the medium to long term. First, the recent wave of anti-establishment sentiment can be attributed partly to a period of peculiarly ham-fisted management on the part of Western elites. If the quality of political and intellectual leadership improves – and if, to use Montesquieu’s language, elites re-adopt a “spirit of moderation” (*SL* 5.8) – it might be possible to return to normalcy in the near future. Second, at least in the West, the anti-establishment movements have so far been quite well contained: opposition parties, independent legislatures, judiciaries, and civil services all seem to be intact. The “polarization” and “gridlock” that are so often taken to be distressing signs of disorder are in fact signs that the system is working as intended. Third, the most successful anti-establishment politicians have pursued fewer destabilizing changes in policy than many

analysts feared. Concrete shifts in the direction of economic nationalism, for example, have been quite modest.

Besides, Montesquieu suggests that we should expect political life, even at its best, to be full of dissatisfaction. Thus, his depiction of England – the prime example of a country where “laws rather than men” govern (*SL* 14.13) – is far from a portrait of delight. He points out, for instance, that the English suffer from “uneasiness,” not in spite of but because of their free system of government. The spirit of partisanship may help to keep the country politically conscious, even with its luxury and its attention to commerce, but the “empty clamors and insults” that come from the rival parties mean that the people “never know precisely whether or not they [are] in danger,” he says. Likewise, he remarks that people in free countries are “proud” but that this very pride tends to impede the ordinary aspects of sociability: individuals who regard themselves as self-sufficient tend to become “withdrawn” (*SL* 19.27). And, for all of his cheerfulness about commercialism, he is aware of its genuine drawbacks: “The spirit of commerce produces in men a certain feeling for exact justice, opposed on the one hand to banditry and on the other to those moral virtues that make it so that one does not always discuss one’s own interests alone and that one can neglect them for those of others” (*SL* 20.2).

If England stands for the best government, then, it also stands for the low ceiling of political life. Freedom is better than servitude, but it still leaves much to be desired. The English, Montesquieu says, live “in the very midst of happiness,” yet they kill themselves at a relatively high rate (*SL* 14.12). *The Spirit of the Laws* is meant “only to prove” that “the spirit of moderation should be that of the legislator” (*SL* 29.1). One sort

of “moderation” it imparts is a tempering of expectations about what political progress can actually accomplish.

On the other side of the coin, Rousseau turns out to be surprisingly respectful of modern liberalism. This may seem obviously false: Rousseau’s criticisms of England are well known. In the *Social Contract* he describes the English nation as “a slave” to its parliamentary representatives (SC 192). Elsewhere he says that England has lost its freedom to the monarchy (*Poland* 199-200). And he frequently refers to Englishmen as exemplars of modern corruption (*Poland* 171, 174-75, 179-80; *Emile* 164). But Rousseau also shows that representative government does in fact make room for a degree of popular participation. If citizens of representative democracies do not run to public assemblies, as the Romans did, it is certainly not the case that, as in despotisms, “no one likes to take even a step to go to them, because no one takes an interest in what is done there, because it is predictable that the general will won’t predominate” (SC 192). Hence Rousseau contrasts the people of England with the people of Asia and the Middle East: “England has never been as tranquil as it is today, and private individuals have never been so occupied, so conversant with the business of the nation. On the contrary look at the frequency of revolutions in the Orient, where the business of the government is always an impenetrable mystery for the people” (PF 27). Indeed, Rousseau seems to refer to England – the country “that protests most” – as “the best governed nation” (PF 43). “The better constituted the state, the more public affairs dominate private ones in the minds of the citizens,” he says in the *Social Contract* (SC 192). And in the same work, he declares that the English are the closest to freedom of all modern peoples (SC 139n). The

expulsion of James II is given as a clear example of the exercise of popular sovereignty (*SC* 146-47).

With respect to individual liberties, meanwhile, Rousseau calls attention to the fact that “every Englishman can defy the royal power; the lowest of the people can demand and obtain the most authentic reparation if he is offended to the slightest degree” (*LWFM* 288). In particular, he is impressed by the example of the English radical John Wilkes, who had published an attack upon King George III in 1763: “A violently satirical work is printed at London against the ministers, the government, the king himself. The printers are arrested. The law does not authorize this arrest, a public outcry is raised, they must be released. The business does not end there: the workers sue the magistrate in their turn, and they obtain immense damages and interest.” Rousseau suggests that if he (Rousseau) had “had the misfortune of displeasing the [royal] court” while in London, and if the authorities had “seized the pretext of one of my books in order to have it burned and to have a warrant issued for my arrest,” he “would have submitted a petition to Parliament claiming that [he] had been judged contrary to the laws,” and he “would have obtained the most authentic satisfaction.” More than this, an English judge who imprisoned him under these circumstances “would have been punished, perhaps discharged from office.” Conversely, if Wilkes had been a Genevan who wrote against Geneva’s government “a quarter” of what Wilkes did in fact say against King George, “I will not absolutely affirm that he would have been put to death, although I think so; but surely he would have been seized at the very moment, and very grievously punished in a short time” (*LWFM* 288-89).



Moreover, Rousseau's sketches of English character suggest that something very much like virtue ("the strength and vigor of the soul") exists in England: Englishmen are not just "quiet and taciturn," he says in the *Letter to d'Alembert*; they are also "hard and haughty" (*D'Alembert* 311).<sup>3</sup> "The history of England is full of proofs of the resistance that royal officers have made to their princes when they wanted to transgress the laws," he observes in the *Letters Written from the Mountain*. "See whether you [Genevans] will find among you many features of a similar resistance made to the Council by the officers of the state, even in the most odious cases?" (*LWFM* 291). Emile himself is compared to an English lord (*Emile* 663-64). And, if the particular kind of virtue that belongs to citizens is patriotism, then England stands out in this respect too. English people "love their country and its laws," Rousseau observes (*D'Alembert* 311; see also *Emile* 642).

Clearly, then, Rousseau is not simply depressive about modern societies. Nor is he wholly fatalistic about the advance of corruption; he does not present iron laws of civic decay.<sup>4</sup> The intrinsic tendency in a society is toward corruption, just as the intrinsic tendency of government is toward despotism, but there can always be countervailing tendencies brought about by wars, changes in public opinion, economic vicissitudes, and other unpredictable events. To take an extreme example, Rousseau recognizes that "there sometimes occur during the lifetime of states violent periods when revolutions have the same effect on peoples as do certain crises on individuals; when horror of the past is equivalent to amnesia, and when the state, set afire by civil wars, is reborn so to speak from its ashes and resumes the vigor of youth by escaping from death's clutches." He immediately adds, however, that "these events are rare; they are exceptions the reason for

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<sup>3</sup> This is supported by Rousseau's depiction of the Englishman Edward Bomston in *Julie*. See Shklar, *Men and Citizens*, 172-73.

<sup>4</sup> Cf. Vaughan, "Rousseau as Political Philosopher," 12.

which can always be found in the particular constitution of the exceptional state” (*SC* 158; see also *Poland* 182). More modestly, he does not rule out the possibility of revivals of religion and patriotism. Indeed, he seems to undertake for himself the task of stirring up such revivals through his own writings (*LWFM* 227; *Poland* 234).

It is not surprising that Rousseau’s name is still being invoked by anti-establishment movements more than two centuries after his death. In Italy, for example, the Five Star Movement has named its web platform for direct democracy after Rousseau. But contemporary populists might remember Rousseau’s circumspection about the preconditions for the most robust forms of democracy: a small population; a high degree of social and economic equality; and a spirit of public service so lively that professional politicians, administrators, and soldiers would be superfluous. Because we lack these preconditions, attempts at fundamental reform might easily exceed our capacities. Even by the mid-eighteenth century, Rousseau suggested, corruption had become the rule rather than the exception: “Few men have healthy enough hearts to be able to love liberty: all wish to command, and at that price none fear to obey” (*LWFM* 261n). And while Rousseau certainly acknowledges the possibility of fruitful democratic revolutions, he treats them as exceptions, insisting that they “cannot even occur twice for the same people” (*SC* 158). He therefore cautions his contemporaries not to expect to “see Sparta reborn in the lap of commerce” (*D’Alembert* 300).<sup>5</sup> Modernized peoples, he insists, would be much more easily fooled by demagogues in direct democracies (*SC* 198). Hence sophisticated Athens, so far from being an outstanding example of classical

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<sup>5</sup> Cf. Hampson, who maintains that “Rousseau remained wedded to a literal re-creation of Sparta.” *Will and Circumstance*, 50.

republicanism, was “a highly tyrannical aristocracy, governed by learned men and orators” (*PE* 144).

Another significant complication is that, although Rousseau may be led to his defense of popular sovereignty by the inner logic of freedom, he acknowledges that freedom must be supplemented and propped up by intelligence. The people in its essence is a “blind multitude” (*GM* 99; *SC* 154), he says, incapable of judging qualities of mind (*Poland* 177) and “easy to fool” (*Poland* 189; see also *EOL* 310; *SD* 54). However unimpeachable the public’s right to pass laws for itself may be, it often “wants the good it does not see” (*GM* 100; *SC* 154). Hence Rousseau’s insistence upon the desirability of a founding legislator who can persuade the people to accept good fundamental laws (*GM* 99-100; *SC* 154-56).<sup>6</sup> Hence also his stress on the government-sovereign distinction, which is meant not only to preserve the integrity of the sovereign people as lawmaker but also to preserve the legitimate powers of governmental officers, who should be distinguished by their probity *or enlightenment* (*Corsica* 132), and who should be allowed to make all kinds of vital judgments on a daily basis without the interference of ordinary citizens (*GM* 96; *LWFM* 248; *SC* 146, 149, 153; *SD* 6).<sup>7</sup> Hence, furthermore, his view that as a people becomes more corrupt (more narrowly self-interested), elites must develop expedients to hold them in check (*SC* 210). He approves of the fact that the Roman Senate used the auguries as a means of cooling down the populace (*SC* 207); and,

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<sup>6</sup> Meier, on the basis of Rousseau’s discussion of the legislator, concludes that Rousseau’s doctrine of popular sovereignty is purely rhetorical, that is, a publicly benign “teaching” rather than a true expression of his thought: “That Rousseau preserves the exceptional status of insight, and at the same time insists on the sovereignty of the people, is due to political prudence.” “On the Lawgiver,” 183. Cf. Robertson, “Rousseau, Montesquieu, and the Origins of Inequality,” 68.  
<sup>7</sup> Cf. Shklar, “Montesquieu and the New Republicanism,” 271: “The magistrates of the republic have basically only one task [according to Rousseau], to maintain equality, by the laws and by education.”

as we have seen, he approves of voting practices which favor the wealthier classes, practices which tend to increase the influence of the educated and which tend to moderate the influence of demagogic speakers. However genuine the claims of democracy may be, Rousseau indicates, they must be tempered by the claims of knowledge.

Finally, Rousseau insists that, at least in well-constituted states, the slide toward despotism is a matter of decades or centuries. If, as he says, the republic of Venice remained only in the “second stage” of corruption for more than five hundred years (*SC* 186n; see also 210), there may be more slack in our communities than meets the eye, especially given that England, the nearest equivalent to a modern liberal democracy in the mid-eighteenth century, seems to have represented a state far removed from the final point of corruption. As we have seen, Rousseau suggests that compared with every other European country, England is a model of active citizenship, individual liberty, and virtue. Even Rome – the “model of all free Peoples” (*SD* 4) – suffered from grave constitutional problems. Among other serious failings, Rome failed to distinguish rigorously between the sovereign and the government (*SC* 189, 208), neglected the principle that magistrates should have no special status in sovereign assemblies (*SC* 191), established the distinction between patricians and plebeians (*SC* 199), allowed the corrupt town tribes to predominate in many of the assemblies (*SC* 205), and excluded senators and patricians altogether from the assembly of the people (*SC* 209; *SD* 5). Despite all this, Rome enjoyed “five hundred years of glory and prosperity” (*LWFM* 292). Thus, Rousseau stresses the point that the best can be the enemy of the good: “[B]eware that for wanting to be too well, you might make your situation worse. In considering what you want to acquire, do not forget what you can lose. Correct, if possible, the abuses of your

constitution; but do not despise the one that has made you what you are” (*Poland* 170). In this respect, he is a good student of Montesquieu, who praises as “a fine speech that should be heard by all legislators” Solon’s answer, when asked if the laws he had given Athens were the best possible: “I have given them the best laws they could endure” (*SL* 19.21).

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