Montesquieu, Liberalism and the Critique of Political Universalism

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Dissertation submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy in the Department of Political Science in the Graduate School of Duke University

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ABSTRACT

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Abstract

In this dissertation, I advance a new interpretation of Montesquieu’s *Spirit of the Laws*. I argue that his liberal constitutionalism and his political anti-universalism are theoretically harmonious and mutually reinforcing elements of his political philosophy. But because Montesquieu’s thought is a species of the genus known as liberal theory, this interpretation of his thought also advances a theoretical and normative thesis: Liberal theory is not inherently or necessarily allied with projects of political universalism but rather possesses in-built resources for critiquing, educating and even resisting such projects. The dissertation makes this case through a critical analysis of Montesquieu’s *Spirit of the Laws*, its sources and its legacy. The unity of Montesquieu’s political philosophy becomes evident as we consider the ancient and modern intellectual influences and rhetorical purposes of his political particularism; his regime-pluralist understanding of political freedom and moderation; his account of liberal political culture; his treatment of political and social change; and the legacy of his liberal particularism in the work of Rousseau, Burke, Constant and Mill. As I suggest, this study represents a contribution to contemporary debates concerning liberal democracy’s global career and a challenge to common understandings of the essential character of modern liberalism.
Dedication

For Rachel
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I swear that this book nearly killed me;
I am going to rest now;
I shall work no more.

Montesquieu

I too am going to rest, at least for a couple of days, but not before thanking those who have helped to keep this study from taking as much out of me as Montesquieu’s big book seems to have taken out of him. I thank Jed Atkins, Brian Callanan, Nick Troester, Joel Schlosser, James Bourke, Ali Aslam, Ben Hertzberg, Jean Yarbrough, Jeremiah Russell, Owen Strachan, Asma Abbas, Bill Parsons, Paul Rahe, Hank Clark, Jim Ceaser, Céline Spector and David Schmitz for helpful comments and conversations that enhanced the quality and hastened the completion of this project. For the wisdom and energy she has invested into it, I am especially grateful to my attentive advisor, Ruth Grant. I am indebted as well to Michael Gillespie, Tom Spragens and Peter Euben for their good judgment and encouragement at early stages of the research, and to Jack Knight for his willingness to join the committee. Thanks are due to the Department of Political Science at Duke University and the H. B. Earhart Foundation for funding my graduate training. I am likewise grateful to the Program on Constitutionalism and Democracy at the University of Virginia for providing a final year of generous financial support—and good cheer.

On the subject of good cheer, there has been no steadier source of laughter and lively diversion during these years of writing than my beloved daughter, Fiona. And of course I owe an immeasurable debt of long standing to my parents for their care and support. Finally, thanks are due to my wife, Rachel Callanan, whose loving encouragement has been the sine qua non of this effort. I have dedicated the dissertation to her.

Abbreviations


ONE: Introduction

…One likes to establish elsewhere what is established at home.

Few serious political observers would claim that the American invasions of Iraq and Afghanistan were motivated solely by an aspiration to export liberal democracy. But fewer still would suggest that this was not among the reasons wrapped into cumulative arguments for the campaigns, especially in the case of Iraq. The wars themselves and the monumental difficulties that have attended state-building efforts in these nations have triggered, in some circles, a reconsideration of global democracy promotion by force or indeed, by any means whatever.\(^1\) These events have pressed upon us the question of liberal democracy’s limits and cultural preconditions. Is there a universal longing for western-style liberal democratic institutions? And if so, does a universal longing guarantee the existence of universal capacities to sustain these institutions? Does a commitment to liberal principles require a nation to seek the spread of liberal institutions to oppressed peoples? These are deeply controversial questions, particularly as they come on the heels of thirty years of liberal democratic expansion throughout the world.

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The final quarter of the twentieth century was a very good one for liberal
democracy. Democratically elected regimes supplanted authoritarian governments on
five continents as the third wave of democratization surged. In 1973, approximately 29
percent of all countries in the world were liberal democracies. By 2000, that number
had jumped to 45 percent.² Laurence Whitehead reminds us that during this period,
many observers came to regard the “universalization of liberal democracy as an almost
‘natural’ state of affairs… as everywhere from Albania to Zimbabwe was assigned a
position on a presumably unilinear continuum destined to converge on a pre-determined
‘end of history.”³ But in the first decade of the twenty-first century, just as state-
building efforts in Iraq and Afghanistan were taking their toll upon such exuberant
hopes, it became clear to careful observers that the third wave of democratization had
already crested and broken.⁴ From 2000 to 2010, the percentage of liberal democracies
in the world increased not at all.⁵ In fact, the final three years of that decade saw
modest declines in levels of political freedom, according to the most prominent scoring
agency.⁶ Larry Diamond announced the onset of a “democratic recession.”⁷ The end of
history seemed to tarry long.

³ Laurence Whitehead, “The International Politics of Democratization from Portugal (1974) to Iraq
(2003),” in The International Politics of Democratization: Comparative Perspectives, eds. Nuno
But on December 27, 2010, a young Tunisian produce vendor set himself afire outside the governor’s office, provoking a wave of protests that would culminate in the events of the Arab Spring. Revolutionaries promising democracy have successfully toppled the authoritarian governments of Tunisia, Egypt and Libya; major uprisings have occurred in Syria, Bahrain and Yemen. For many, these events provide fresh reason to anticipate the eventual triumph of liberal democracy as the universal regime, the foundation of a universal civilization.

Yet doubts persist. There is a recurrent worry that while any nation can hold one-off elections dutifully policed by international watchdogs or even adopt written constitutions, genuinely liberal democratic politics is simply not sustainable within some countries. The example of the Islamic Republic of Iran and the electoral successes of Hamas underscore the fact that elections do not reliably yield liberal governance. Similarly, we know that few regimes are as good as even their formal institutions: At one point while ruling his great country, Deng Xiaopeng’s only governmental office was as Honorary Chairman of the Chinese Contract Bridge Association. And this is of course to say nothing of those nations into which political

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8 Additionally, we can be fairly sure that free elections in Jordan would, at least in the short term, mean the transfer of substantial power to the Islamic Action Front, the political wing of the Muslim Brotherhood. It is likewise hard to imagine that electoral democracy in Saudi Arabia would quickly yield a regime more moderate than the current one, despite its grave deficiencies. On the phenomenon of illiberal democracy, see Daniel Bell, David Brown, Kashka Jayasuriya and David Martin Jones, *Towards Illiberal Democracy in Pacific Asia* (New York: St. Martin’s, 1995); Samuel P. Huntington, “After Twenty Years: The Future of the Third Wave,” *Journal of Democracy* 8.4 (1997), 3-12; Fareed Zakaria, *The Future of Freedom* (New York: W. W. Norton & Company, 2003).
liberty has never made even the most modest of beachheads. For these reasons and others, some have a hard time shaking the sense that the deck is stacked against liberal democracy in many corners of the globe, whether due to a lack of any experience with free institutions, a long enslavement to successive tyrannies, religious traditions hostile to political and civil liberties, or myriad other cultural impediments. Of course, when it comes time to name names, everyone goes silent. It is one thing to concede, in theory, that liberal democracy is not suitable for all peoples and at all times. It is quite another to say that what the future holds for China, or Iran, or Saudi Arabia is an interminable night of despotism.

To raise doubts about the progress of liberalism in the world offends against American optimism, to be sure; but it also runs afoul of more broadly liberal instincts. It is an affront to the meliorism that has long characterized liberal political thought. Since change in cultural institutions is relatively glacial, talk of cultural constraints upon the political liberalization is particularly troubling. As Steven Fish writes, “Nothing could be less heartening to democratic idealists than the notion that a particular religion is inimical to democracy. Religious traditions are usually constants within societies; they are variables only across societies.”9 Raising doubts about the progress of liberal democracy in the world is likewise an affront to the ethical universalism of liberal political theory. To suggest that self-government is out of reach for a people, or even more modestly to suggest that one people is less suited to free

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institutions than another, is to come dangerously close to reprising what Abraham Lincoln called the old arguments in favor of king-craft—arguments for affording men “as much allowance as they are capable of enjoying.” It is to come uncomfortably close to Calhoun’s view that self-government is not the natural right of all men but “the noble and highest reward bestowed on mental and moral development, combined with favorable circumstances.” In other words, when we speak of the cultural or ideational preconditions of liberal democracy, we seem to make common cause with a line of argument used within American democracy (and elsewhere) to constrict the circle of legal protection. And of course, more directly, we seem to suggest that the American character is, according to at least one metric, superior to the character of some other unspecificied set of nations.

That these normatively unappealing associations cause some to ignore the constraints upon worldwide political liberalization is a credit to their hearts but not to their intellects. The truths of liberal political philosophy may be self-evident. But it is equally self-evident that all peoples could not, tomorrow morning, begin to exercise and enjoy political and civil rights under institutions that give full effect to liberalism’s foundational truths. Even putting aside other cultural impediments, one can recognize that given decades or even centuries to do its worst, political oppression deprives a

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people of the opportunity to develop the capacities on which free institutions rely and
imparts in their stead habits of mind and heart that are often inimical to self-
government. Tyranny slowly “ruins” a people: that was the old way of putting the
matter, and it was certainly not an altogether unreasonable formulation.\textsuperscript{12} A history of
oppression often leaves a nation with pathologies that deeply complicate later efforts to
establish and maintain free government.\textsuperscript{13} To deny this is to deny something of the
horror of despotism itself. Oppressive, absolutist regimes not only abuse their subjects;
they leave their imprint upon the character, minds and passions of men. Though
perhaps not indelible, the imprint is not always easily effaced by foreign interveners or
even homegrown, charismatic revolutionaries.

If modern liberal statecraft could benefit from a clearer understanding of such
questions, this is doubly true of contemporary liberal theory. While the study of
democratization, political liberalization and regime change is a staple of comparative
politics research agendas in the United States, political theorists have remained
uncharacteristically quiet about these matters.\textsuperscript{14} As Robert S. Taylor recently

\textsuperscript{12} See for example Machiavelli, \textit{Discourses on Livy}, III.8. Of course, Machiavelli maintains that a
virtuous people is not \textit{easily} or \textit{quickly} corrupted and subdued by a tyrant.

\textsuperscript{13} The United States has experienced this first-hand as it has labored under the shadow cast by the
institutions of slavery.

\textsuperscript{14} Notable exceptions include Romand Coles, \textit{Beyond Gated Politics: Reflections for the Possibility of
Democracy} (Minneapolis: University of Minnesota, 1995); Ryan Hanley, “Enlightened Nation Building:
The Science of the Legislator in Adam Smith and Rousseau,” \textit{American Journal of Political Science} 52.2
Perspective,” in Barany and Moser (2009); Marc F. Plattner, “From Liberalism to Liberal Democracy”
\textit{Journal of Democracy} 10.3 (1999), 121-134; Robert S. Taylor, “Democratic Transitions and the Progress
of Absolutism in Kant’s Political Thought,” \textit{The Journal of Politics} 68.3 (2006), 556-570.
suggested, this relative silence may be attributable to contemporary political theory’s emphasis upon principles of justice or ideal theory, often to the exclusion of feasibility and implementation considerations.\(^{15}\) Indeed, just as scholars of comparative politics turned in earnest to the study of democratization in the 1970s and 80s, political theory was making a hard turn toward “realistically utopian” political liberalism.\(^{16}\) John Tomasi agrees that, “In the decades since Rawls, high liberals have become comfortable working at the abstract, identificatory level... The facility of high liberals at the level of political philosophy, however, has been matched by their increasing disengagement from more practical questions about feasibility.”\(^{17}\) In addition, it is true that some political theorists simply consider the research questions surrounding democratization to be more amenable to the methods of positive political science. Yet the phenomenon of regime change raises a tightly linked set of normative and positive questions that merits, and perhaps demands, attention from political theorists. This point was not lost on several of modern liberalism’s theoretical founders such as Kant, Mill and Tocqueville. Their reflections on democratization and liberalization join positive theorizing with moral argument in a manner uncommon within today’s carefully partitioned field of political science. But perhaps no classical liberal text reveals a mind more alive to the interlocking moral and empirical dimensions of regime change than


\(^{17}\) John Tomasi, *Free Market Fairness* (Manuscript, 2009), 4.
Montesquieu’s *The Spirit of the Laws* (1748). Indeed, the present study is written under the conviction that contemporary political thought and practice could derive significant benefits from a reconsideration of how and why Montesquieu marries a normative theory of liberal constitutionalism to a critique of universalism in politics.

This dissertation is a study of Montesquieu's political thought and intellectual legacy, but the argument has implications stretching well beyond matters of intellectual history. I argue here that Montesquieu's liberal constitutionalism and his critique of political universalism are theoretically harmonious and mutually reinforcing elements of his political philosophy. But because I take Montesquieu's work to be a species of the genus known as liberal theory, this interpretation of Montesquieu's thought also advances a theoretical and normative thesis: Liberal theory is not inherently or necessarily allied with projects of political universalism but rather possesses in-built resources for critiquing, educating and even resisting such projects. I will make this case through a critical analysis of Montesquieu's *The Spirit of the Laws*, its sources and its legacy. The analysis, as I will suggest, has important implications for our broader understanding of the essential character of liberalism as well as for the ethics and practice of global democracy promotion.

But these claims require further preliminary explanation.
I. Montesquieu’s Political Particularism

Charles-Louis de Secondat, baron de La Brède et de Montesquieu, was no prophet. But he seems to have spoken with mantic power when he pronounced that his *magnum opus* would be “more approved than read (MP, 1861).” While the triumvirate of Hobbes, Locke and Rousseau continue to attract both readers and blame, today Montesquieu draws few readers and little criticism. Students of politics are most often acquainted with his work through its influence upon the U.S. Constitution and the ratification debates. And indeed, since the publication of *The Spirit of the Laws*, the Anglo-American world has been most keenly interested in the sections of that work devoted to the separation of powers and federalism. But there is more to the book than these relatively well-known reflections on formal institutional design. The other great hemisphere of Montesquieu’s thought is his treatment of the relationship of formal institutions to place, national character and circumstance. The French reception of Montesquieu’s work has long focused more on these elements of his thought and less upon his institutional innovations. Theorists like Rousseau and Tocqueville became particularly interested in Montesquieu’s account of mores and manners. Durkheim and Aron saw in Montesquieu the seeds of modern sociology. ¹⁸ Specifically, Montesquieu argues that a variety of what he calls “moral” and “physical” causes within a nation—

including climate, mores and manners—act to define and to limit the range of political and legal institutions that a nation can reliably support. As a result, Montesquieu follows classical political thinkers in rejecting the possibility of a universal regime type or universal system of laws. Indeed, through his treatment of these “causes,” he warns against theoretical efforts to formulate a universal public law or generally applicable constitutional structure.19

This element of Montesquieu’s thought is sometimes confounded with or reduced to his speculations concerning the political effects of climate: Despotism where it’s hot, liberty where it’s not. But his treatment of climate, eye-catching as it is, constitutes just one part of his larger discussion of the relationship between laws and various environmental, cultural, social and economic factors in a country. In his treatment of these various “relations”—which “together form THE SPIRIT OF THE LAWS”—Montesquieu unpacks a principle of political sociology: The longevity and effect of a given law depends, in part, on the characteristics of the people and place it governs (EL, I.3, XIX, 21). That is, for every law X with purpose Y, a limited number of nations exist in which X is likely to endure and accomplish purpose Y. Legislators and state-builders ought to craft political and civil laws that “relate well” to the

characteristics of their particular country, he argues. They must adapt their normative aims to the non-ideal characteristics of people and place.

Scholarship on *The Spirit of the Laws* and *The Persian Letters* has noted the centrality of this aspect of Montesquieu’s thought. Catherine Larrère discusses his “external pluralism”; Fred Dallmyr admires his “anti-Jacobinism”; Diana Schaub (following Leo Strauss) highlights Montesquieu’s unwillingness to formulate a “universally valid public law”; Donald Kelley comments on his opposition to “abstract universalism”; Isaiah Berlin notes his skepticism toward “universal solutions”; David Lowenthal and Thomas Pangle remark upon Montesquieu’s opposition to “Lockean universalism” or “Lockean doctrinarism.”

Despite differences in nomenclature, these interpreters all refer to the same practical upshot of Montesquieu’s political sociology. I call this aspect of Montesquieu’s thought *political particularism*. To put it negatively, we can say that this family of principles constitutes a critique of *political universalism*.

The modifier “political” is an important one, because I mean to draw a bright line

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21 This study is the first to use this phrase to describe Montesquieu’s ideas, but Robert Lounay thus characterizes the views of earlier French legal humanists who influenced Montesquieu. Robert Lounay, “Montesquieu: The specter of despotism and the origins of comparative law,” in *Rethinking the Masters of Comparative Law*, ed. Annelise Riles (Oxford, UK: Hart Publishing, 2001), 36.
between ethical universalism and political universalism. Like many early modern liberals, Montesquieu is an ethical universalist: he believes that there are moral truths binding upon all peoples in all times. But he is not a political universalist: he denies the possibility of constructing, according to rational principles, a single model or mode of government that is best for all times and all peoples.

This particularistic sensibility lies near the center of Montesquieu’s political project. It is enshrined in the very title of his book. Unlike Plato and Cicero before him, he writes not the *Laws* or *On the Laws*, but *The Spirit of the Laws* (Or, *On the Spirit of the Laws*). The title contains an allusion with a distinction. The *spirit* of the laws is formed by the *relations* of laws to physical and moral aspects of a country (EL, I.3). On Montesquieu’s view, these relations (and not merely the laws themselves) should constitute the chief concern of the legislator or reformer.

The line of argument that leads Montesquieu to these relations commences in the third chapter of Book I of *The Spirit of the Laws*. Here, with little fanfare, he raises a fundamental question: What is the best political order? Into whose hands should we place the “strength of the whole society” (EL, I.3)? But the question then takes on a more distinctive tincture: Which government is most “in conformity with nature”? Following Algernon Sidney and John Locke, Montesquieu first refutes the paternal

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22 In this distinctly ethical sense, I would not deny that his “opposition to despotism indicates his subscription to a kind of universalism—albeit a moderate, liberal universalism.” Diana Schaub, “Of Believers and Barbarians: Montesquieu’s Enlightened Toleration,” in *Skepticism and the Origins of Toleration*, ed. Alan Levine (Lanham, MD: Lexington Books, 1999), 238.
power argument for the rule of one alone.\textsuperscript{23} When Sidney and Locke had dispensed with this argument, each turned to his central political principle—consent as the basis of legitimate rule.\textsuperscript{24} Once Montesquieu has similarly dispensed with the argument from paternal power, he turns to his central political principle. It is not rule by consent. He writes,

\begin{quote}
It is better to say that the 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 (EL, I.3).
\end{quote}

In response to his own question, Montesquieu refuses to say whether any particular form of government is “most natural.” He will offer no answer that abstracts from the diversity and complexity of the empirical world. He offers instead what we can only describe as a meta-answer. The naturalness of a particular government can be judged only as we compare its arrangement with the disposition of a particular people.\textsuperscript{25} This meta-answer bypasses all merely universalistic, if more direct, responses to political theory’s classic question. Indeed, it represents an implicit though unmistakable chastening of political philosophies that prescribe a universal set of legal and political institutions.\textsuperscript{26}

\textsuperscript{23} Montesquieu was a close reader of both Locke and Sidney. See EL, XI.6 and Montesquieu, \textit{The Persian Letters}, trans. George Healy (Indianapolis: Hackett Publishing, 2000), XCIV. Here, Montesquieu relies on an argument drawn from Algernon Sidney, \textit{Discourses Concerning Government} (1704), II.5.

\textsuperscript{24} John Locke, \textit{Second Treatise}, §6-7; Sidney, \textit{Discourses Concerning Government}, ch. 2

\textsuperscript{25} The French \textit{disposition} can mean either disposition in the sense of character or simply physical position. So the term can comprehend the “moral” as well as the physical.

\textsuperscript{26} See 2.II.4 below.
Theorists of paternal right had employed the standard of “conformity with nature.” Theorists of consent suggested that political authority was artificial in the sense that it was not simply an extension or reflection of the family. But for them, a government’s legitimacy still depended on its conformity to a universal natural standard. Montesquieu adopts the formulation familiar to both sides—“in conformity with nature”—but he insists upon a more complex understanding of the nature of nature. When theorists of paternal right appealed to nature, they appealed to what was common among men. Nature was uniform. Locke understood consensual political orders to be in conformity with nature because such orders best reflect the universal moral facts of natural equality and natural freedom. Nature was, again, uniform. When Montesquieu makes the same appeal, he invokes a different conception of nature. Nature is a manifold. A government that is according to nature must somehow strive to reflect moral facts rooted in our common human nature, as we shall see. But it must also reflect what is distinctively “natural” to each nation in the sense of second-nature or “disposition”—what Jean Bodin, before Montesquieu, had called “la nature de chacune nation.”

Of course, Montesquieu does not explicitly deny the existence, in theory, of a common standard for judging regimes. Rather, he tells his reader that it is “better to say” that the most natural government is the one that relates well to the disposition of the people (EL, I.3). It is less dangerous to say this than to answer the question of

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natural government in a way comparable to Locke or Sidney’s response. To propose theories of “natural government” without attending to the diversity of human societies threatens to give license to unwise and, as we will see, effectively illiberal projects of political universalism. Montesquieu will praise a particular kind of politics later in *Spirit,* but as the work opens, he declines to follow his (proto-)liberal predecessors in outlining any universal prescriptions.

As we try to understand the nature and purpose of Montesquieu’s political particularism, it is instructive to keep in mind his intended audience. *The Spirit of the Laws* is a work written for men of letters, but it is also written for men of political action—would-be reformers, statesmen and legislators. That the politically powerful and ambitious were among the intended audience is beyond dispute. In his *Pensées,* Montesquieu modestly notes that *The Spirit of the Laws* “would not be useless in the education of young princes, and would perhaps be worth more to them than vague exhortations to govern well, to be great princes, to make their subjects happy—which is the same thing as exhorting a man who does not know the first propositions of Euclid to resolve some nasty geometry problems (MP, 1864).” There is significant anecdotal evidence to support the view that Montesquieu hoped for his work to be read at court. He originally contemplated a dedication to the Prince of Wales.  

English throne. He had earlier sent his Considerations to the same young prince. In a letter to a friend, he boasted that the King of Sardinia had read Spirit and had ordered his young son, the Duke of Savoy, to make a study of it. Montesquieu found this particularly encouraging since he had been informed that “his Royal Highness the Duke of Savoy is blessed with an exalted genius, lively conception, and solid judgment to a wonderful degree.” Perhaps most interestingly, Montesquieu urged his friend and admirer, the Abbé de Guasco, to accept a position as tutor for the young archdukes of Austria, and he briefly suggested the contours of a good curriculum for the training of princes: A young prince must be taught history, but he must learn to “consider it as a philosopher.” Montesquieu no doubt hoped that Spirit would be of some use in this project. In addition, he had familiar relationships with King Stanislaus of Poland and Prince Eugene of Vienna. And of course, he had a natural audience among political men in France since he himself had served as president á mortier of the Parlement of Bordeaux—among the highest judicial posts attainable under the Ancien Régime. In short, Montesquieu’s personal ties alone would have given him reason to expect that Spirit might exert some influence in the courts of Europe.

30 Shackleton, Montesquieu, 366, 62.
33 Montesquieu to the King of Poland, undated, Complete Works, Vol. IV, 103; King of Poland to Montesquieu, undated, Complete Works, Vol. IV, 103-104; Montesquieu to Abbe de Guasco, Complete Works, Vol. IV, 38-39; Montesquieu to Abbe de Guasco, October 4, 1753, Complete Works, Vol. IV, 76
Despite appearances, Montesquieu does not aim simply to dissuade would-be reformers from initiating political change. Rather, he aims to help them to discern when political change is required, how it should be pursued, and what kind of knowledge is required to pursue it beneficially. As he opens *The Spirit of the Laws*, he explains how he believes his book will effect his readers’ thinking on the subject of political change: “Each nation will find here the reasons for its maxims, and the consequence will naturally be drawn from them that changes can be proposed only by those who are born fortunate enough to fathom by a stroke of genius the whole of a state’s constitution (EL, Preface).”

We will find reasons for our maxims. But it seems that our maxims are not fully reasonable in the sense of being perfectly right or good, since in the same breath, Montesquieu speaks of proposing changes. The reasons we will discover are explanations of causes. We will learn why things are thus and so. Understanding these reasons will not lead us to dismiss all proposed changes to our “reasonable” institutions but will rather lead us to recognize that beneficial changes can only be undertaken by those who can fathom by a stroke of genius the whole of their state’s constitution—and, by implication, the relationship of the constitution to culture and place. From *The Spirit of the Laws*, would-be reformers and revolutionaries will naturally draw the conclusion that because they operate within social wholes, projects of political and legal transformation must be tailored to—and therefore limited by—the particular and distinctive nature of the people whose lot they hope to improve.

34 Emphasis added.
But Montesquieu aims to equip reformers, not merely to warn them. This crucial point can be made particularly clear when we compare the character of his legal and political science with what J. G. A. Pocock calls the “theory of presumptive tradition.” Presumption theorists hold that received customs and traditional institutions must be presumed good or right because they bear the implicit approval of history, of generations. The goodness of a custom can be inferred from its endurance over time. It lasts because it works, and it works because it suits the people and circumstances. But why it suits them, we cannot say. Its suitability can “hardly be demonstrated.” On this view, we can only say why we presume it to be good (i.e., that is has lasted). There is no rational or scientific method of “proving that a nation has certain characteristics or that its laws suit those characteristics.” Consequently, and obviously, the theory of presumptive tradition yields a stout conservatism. What is important for our purposes is to recognize that this practical conclusion depends upon the view that reason is not capable of dealing with particulars—with what is distinctively French, Venetian or Frisian. Now, notice that the entirety of Montesquieu’s project consists in explaining the esprit of the laws—the mind or


rationale of laws. That is, he attempts to provide a rational, scientific account of why particular laws, institutions and customs exist here but not there. He attempts to explain what theorists of presumptive tradition simply presume. To some extent, this science has an effect similar to that of presumptive tradition: It pronounces, “Halt!” to hasty reformers. But unlike theories of presumptive tradition, the aim of Montesquieu’s approach is to furnish the kind of knowledge needful for reformers to enact beneficial changes in law and politics, changes suited to the people’s distinctive character and circumstances.

Montesquieu’s political particularism is not merely a theoretical teaching about the nature of politics, nor a simply conservative counsel of caution, but a practical doctrine to guide legislators.

II. Sources of Liberal Universalism

Montesquieu’s rejection of legal and political universalism runs afoul of many understandings of modern liberalism—perhaps even our own. Indeed, this element of his thought seemed to many of his contemporaries to be grossly inconsistent with his celebrated attacks on absolutism and despotism. Such frustration with Montesquieu’s anti-universalism was especially common among the generation of thinkers active around the time of the Revolution. Some turned sharply against Montesquieu on

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38 I believe that esprit in the work’s title bears a double reference. The first is to “mind,” a common translation for esprit. Montesquieu treats the mind of the laws by explaining the empirical reasons why particular institutions are what they are. But secondly, there is a reference to “spirit” in the sense of the spirit of a nation—a grand theme of the entire book, treated most directly in Book XIX.
account of what they perceived to be his neglect of universal justice. Condorcet, Pseudo-Helvetius and the Destutt de Tracy, with the enviable backing of Thomas Jefferson, remonstrated against the excessive homage Montesquieu seems to pay to backwards customs and unjust prejudices. According to Pseudo-Helvetius, Montesquieu had compromised with prejudice as an impressionable young man “with certain females, who, although advanced in years, have still some pretensions, and by whom he wishes to be considered polite and well-bred.” Against Montesquieu’s approach, Condorcet asserts the invariability principle in legislation:

As truth, reason, justice, the rights of man, the interests of property, of liberty, of security, are in all places the same; we cannot discover why all the provinces of a state, or even all states, should not have the same civil and criminal laws, and the same laws relative to commerce. A good law should be good for all men. A true proposition is true everywhere. Those laws which appear as if it were necessary they should be different in different countries, or exacted on objects which should not be regulated by general laws, consist for the most part of commercial regulations, or are founded on prejudices and habits which should be extinguished, and one of the best means of doing so, is to cease from giving them the countenance of the laws.

He protests that the spirit of the legislator should be that of justice, not of moderation as Montesquieu had announced in The Spirit of the Laws. And where is Montesquieu’s

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doctrine of political legitimacy? “Why has he not laid down some principles which would enable us to discriminate among the laws flowing from a legitimate power, and those which are unjust, and those with are conformable to justice?” Pseudo-Helvetius agrees that Montesquieu has piled up subtle distinctions between the various forms of governments but failed to recognize that there are really only two kind of regimes: “the good and the bad.” Of course, what most raised these thinkers’ ire were not the theoretical errors of Spirit but rather the fact that when applied to France, Montesquieu’s approach lent support not to the radical transformation of the Ancien Régime but rather to its reformation along traditional constitutionalist lines, as they believed. They wished to see unjust institutions yanked up, root and branch, whereas Montesquieu, the vintner, seemed to prescribe a far more modest regimen of pruning and grafting. In the terms of this study, they were clearly convinced that Montesquieu had not succeeding in demonstrating that a commitment to legal and political particularism could be conjoined with a robust respect for the universal demands of human liberty and political justice. Were they right?

While these criticisms may be short on philosophical sophistication, it is certainly true that there are several sources of real theoretical tension between political particularism of any stripe and liberal political theory in some, though not all, of its incarnations. As we have already intimated above, these sources of tension include

liberal conceptions of citizenship and liberal formalism; liberalism’s distinction between the public and private domain; liberalism’s ethical universalism; and liberalism’s emphasis upon political legitimacy. Each of these elements of liberal thought exerts theoretical pressure upon thinkers and practitioners to sideline the question of liberal government’s prerequisites.

As an empirical matter, some suggest that liberal institutions demand little of citizens and therefore “fit” a remarkably wide variety of circumstances and peoples—even Kant’s rational devils. Liberal regimes are thought to be unlike ancient republics, which required a thick set of credentials for membership and participation. On this view, liberal political science takes men as they are and relies upon skillfully designed institutions to manage conflict between passionate and self-interested human beings. These institutions are successful and stable because they are built upon low and sturdy assumptions about our common nature. This minimalist anthropology and thin conception of citizenship is linked to liberal formalism—the view that justice is done when the appropriate procedures and legal formalities are followed. Critics frequently argue that liberal formalism tends to encourage neglect for substantive justice and actual outcomes. By the same token, we can see how this theoretical preoccupation with procedures and formalities can lead to a neglect of the importance of inputs.

These elements of liberal thought are, in turn, related to a third that similarly pushes some liberals in the direction of political universalism. The liberal commitment to limited government—or in its “highest” formulation, the liberal commitment to
neutrality with respect to comprehensive doctrines—often entails an effort to keep the political domain analytically separate from cultural and otherwise non-political domains. Sometimes this comes in the form of a public-private distinction; at any rate, all liberal theories hold that some domain of human activity is off-limits to political authority. This normative element of liberal thought tends to exert theoretical pressure upon us to ignore or downplay, as an empirical matter, the causal relationships obtaining between our public and non-public identities. For if we find that liberal political institutions are not neutral in their unintended effects upon cultural life; or if we find that certain private ways of life and thought, though not legitimate objects of punitive legislation, are obstacles to liberal political development, then liberalism’s hygienic barrier between public and non-public or the political and non-political is in jeopardy. In this way, normative commitments exert theoretical pressure upon good liberals to “take no view” of the “background culture.”

Liberals often lack and avoid acquiring a “theory of interface” between politics and culture, as John Tomasi has argued. Without a theory of interface, it is easy for liberals both to ignore the “spillover” of political values into cultural life (the subject of Tomasi’s complaints) and to overlook the preconditions of those political institutions themselves. Here, then, is an additional source of tension between political particularism and normative liberal theory.

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Fourthly, modern liberals move from the classical mode of political theory—which aims to identify the best regime and, in turn, its inferior but more practicable counterparts—to a political theory of legitimacy. On one hand, theories of legitimacy seem to provide ample room for diverse regimes by leaving questions of regime type and constitutional design to statesmen. Locke distinguishes between the “well-ordered commonwealth” and the legitimate government; a government can be legitimate without being well-ordered. But on the other hand, political legitimacy, or Lockean “political power,” comes to us as a binary criterion: either you have it or you don’t. In Aristotelian political science, one can speak intelligibly of a regime approximating the best. In the idiom of Lockean political theory, it is theoretically awkward to say of a regime that it approximates legitimacy. Moreover, even the regime-pluralism that appears to characterize Locke’s thought is qualified by his distinction between taxation and legislation, and his consequent insistence that only the people’s representatives can legitimately levy taxes. It would seem that any modern regime must have a significant democratic element in order to pass the legitimacy test.

Thus, while the content of liberal political legitimacy may be thinner than the constitutive elements of Aristotle’s ideal city, the former does not admit of

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48 Furthermore, since liberty and life are species of “property,” Ruth W. Grant suggests that the requirement of representation for taxation is “a large opening wedge… toward a requirement for a representative body for many purposes.” Grant, *John Locke’s Liberalism*, 97, n. 63.
approximation as readily as the latter. Liberal theories of legitimacy, in this way, limit the range of options available to the legislator and can push theorists and practitioners in the direction of political universalism.

Finally, and perhaps most importantly, liberalism’s ethical universalism often begets political universalism. Liberals have traditionally held fundamental human rights and the principles of justice to be universal. For some, this suggests the need for uniformity in legal protections and constitutional forms both within and across different nations. As we have seen, this way of thinking was especially evident in the Marquis de Condorcet’s critique of Montesquieu: Since justice and the rights of man are everywhere the same, why shouldn’t laws be the same? While Condorcet gives this criticism a sharper edge than other early modern liberals might have allowed, his view illustrates a deep source of tension between political particularism and liberalism.

By virtue of their approach to citizenship, formalism, neutrality, legitimacy and ethical universalism, many strains of liberal thought bend decisively in the direction of political universalism.

III. Montesquieu’s Liberal Political Particularism and Its Implications

Set against this theoretical and historical background, the significance of Montesquieu’s political particularism appears most vividly. Montesquieu is a liberal.49

He favors principled limits on political power; he argues for rights of conscience and religious toleration; he insists upon the rights of the accused, judicial formalities to defend the innocent, and moderate criminal penalties for the convicted; he adumbrates a doctrine of the rule of law; he condemns slavery; he points out the pacific effects of commerce; he sees the security of individual life, liberty, property and honor as the appropriate ends of moderate, humane government; and in a brilliant exercise of *Theorie der Praxis*, he sketches a model of constitutional government designed to protect these ends.

But as I have suggested, the marriage of liberalism to political particularism has often appeared to be an awkward one, beset by theoretical strains. This is reflected even in the scholarship on Montesquieu’s *Spirit of the Laws*: while commentators tend to focus alternatively on elements of his liberal constitutionalism or his political sociology, they rarely attempt to understand how these two hemispheres of his thought fit together theoretically and rhetorically.  

Some have gone so far as to suggest that

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50 Isaiah Berlin comes closer than any other study to offering an account of this kind. Speaking of the “common libertarian purpose” of Montesquieu’s constitutionalism and anti-uniformism (157), he suggests that Montesquieu’s liberalism is rooted an aversion to uniformity (monism) and that uniformity is the hallmark of both despotism and political universalism (148-158). This is correct and helpful, but in his brief discussion, Berlin does not consider the importance of Montesquieu’s account of liberty, his regime-pluralism or his theory of political change in explaining the “common libertarian purpose” of
Montesquieu’s normative liberalism has “no intrinsic relationship” to his critique of universalism in politics or his political sociology. Most simply never pose the question. In short, we lack a clear and extended account of the relationship between these central elements of Montesquieu’s political philosophy.

I provide such an account in this study. I argue that despite the apparent affinity between modern liberalism and political universalism, Montesquieu’s particularistic science of politics and his liberal constitutionalism are theoretically harmonious and mutually reinforcing orientations. Central to this argument is my contention that Montesquieu’s political particularism does not merely enter into his philosophy as a prudential afterthought. Prudence plays a role in his art of politics, but when he warns against universal political solutions, he speaks from within the moral logic of his own liberalism and not on behalf of merely prudential concerns alien to it. The unity of Montesquieu’s political philosophy becomes evident as we consider the intellectual sources and rhetorical purposes of his political particularism (Chapter 2); his regime-pluralist understanding of political freedom and moderation (Chapter 3); his account of liberal political culture (Chapter 4); his treatment of political and social change (Chapter 5); and the legacy of his liberal particularism in the political writings of Jean-Jacques

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Rousseau, Edmund Burke, Benjamin Constant and John Stuart Mill (Chapter 6).

Though imperfect on many fronts, Montesquieu’s political thought provides us with a model of liberal theory that rejects legal and political universalism without need of hermeneutic or ironic turns.\textsuperscript{52}

Especially important to this argument is the claim that Montesquieu’s art of politics cannot simply be reduced to traditionalist conservatism. Alongside his warnings regarding hasty institutional innovation, he sketches an approach to political and cultural change that is specifically designed to operate within the bounds of his liberal and particularist commitments. Montesquieu’s thought contains an \textit{immanent} and not external critique of liberalism.

The argument of this study is significant because it sheds new light on a seminal text in the history of political philosophy. But more than a solution to an interpretive problem, the theoretical interdependence of Montesquieu’s liberalism and political anti-universalism is noteworthy because it challenges the common tendency to associate the whole of Enlightenment political thought with rationalistic and universalistic approaches to the art of politics that overlook the ways in which place, culture and history must complicate the instantiation of normative principles.\textsuperscript{53} While many


\textsuperscript{53} Take as representative the claim of Jürgen Habermas that “the project of modernity formulated in the 18th century by philosophers of the Enlightenment consisted in their efforts to develop… \textit{universal morality and law}.” Jurgen Habermas, “Modernity versus Postmodernity,” in \textit{After Modernity}, ed. Malcolm Waters (London: Routledge, 1999), 5-16. John Gray similarly ascribes to Enlightenment liberalism the intention of constructing a “universal civilization” modeled on rational, secular and
Enlightenment liberals displayed a preference for the “nakedness and solitude of metaphysical abstraction,” Montesquieu’s particularistic art of politics finds firm moral grounding in his commitment to political liberty. This suggests the need for a more variegated understanding of the essential character of early modern liberalism and Enlightenment political thought.


design. This challenge is particularly worth considering as it comes from the father of modern constitutional design. The cultural preconditions of modern constitutional regimes—with representative institutions and separation of powers—may not be as “thick” or exacting as the preconditions of classical republican regimes, but it does not follow from this that no preconditions exist beyond rational self-interest. Self-interestedness does not render men unfit for liberal constitutional government, as it might for the classical republican of virtue. But equally true is the proposition that a people’s rational self-interest alone cannot suffice as the foundation for liberal politics—not even in the most skillfully designed, carefully balanced political system. The goods promised by liberal institutions can only be realized in the presence of suitable customs, mores and received examples. This is among the chief lessons to be gleaned from Montesquieu’s liberal science of politics.

Moreover, and perhaps even more importantly, Montesquieu’s treatment of political change, human custom and human psychology furnishes fresh reasons to take seriously the claims of the political culture school. On his view, liberal reformers are obligated by their own principles—properly understood—to attend to the relationship between culture and political institutions. His approach does not foreclose the possibility of radical political transformation even in nations with illiberal cultures, but

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55 For the contours of this debate in the study of comparative politics, see Mark I. Lichbach and Alan S. Zuckerman, eds., *Comparative Politics: Rationality, Culture, and Structure* (Cambridge: Cambridge University Press, 2009), chapters 4-6.
especially in such cases, he urges reformers to judge the methods of political liberalization by a moral standard implicit in his account of liberty.

IV. Outline of the Dissertation

Voltaire called *The Spirit of the Laws* a “labyrinth without a clue.” Isaiah Berlin branded it a “shapeless amalgam of disquisitions.”56 Whatever the merit of these charges, I should like to escape similar censure, so here I provide a brief outline of the dissertation. It is divided into five substantive chapters, plus a conclusion. Each chapter further unfolds or advances the two leading arguments: first, that Montesquieu’s liberal constitutionalism and his critique of political universalism are theoretically harmonious and mutually reinforcing elements of his political philosophy; and second, that liberalism is not inherently or necessarily allied with projects of political universalism but rather possesses in-built resources for critiquing, educating and even resisting such projects.

In Chapter 2, I examine the ancient and modern sources of intellectual inspiration for Montesquieu’s political particularism. I argue that a consideration of universalism and particularism in the work of sixteenth- and seventeenth-century jurists can help explain why Montesquieu saw no incongruity in his embrace of liberal constitutionalism on the one hand and his rejection of universal political solutions on

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the other. Turning next to his ancient sources, I argue that Montesquieu draws conspicuously upon Plato, Aristotle and Cicero—classical republicans, as he understood them—in order to develop the doctrine of political particularism. He employs the particularistic elements of classical political particularism in order to argue that the classical republic of virtue is unsuitable for modern states, thus clearing a way for suitably modern regimes of liberty. In other words, I argue that he turns classical political science against the classical republican ideal, effectively opening space for liberal constitutional government. This account of Montesquieu’s ancient and modern sources begins to bring into focus the liberal purposes of his particularistic art of politics.

After considering the sources of Montesquieu’s political particularism, I turn to Montesquieu’s liberalism and provide an account of his theory of the liberal constitutional regime in Chapter 3. I argue that Montesquieu’s liberalism is regime-pluralist. A normative vision of free and moderate government emerges in *Spirit*, and the liberty and moderation at the heart of this vision are attainable within a wide variety of regime types. A careful comparison of Montesquieu’s two regime typologies lends firm support to the regime-pluralist thesis, and this view is further confirmed by a consideration of the indeterminate nature of his normative foundations. These foundations support a compelling critique of despotism, but they lead to no determinate conclusions about the precise composition of correct regimes. This regime-pluralist conception of liberal government frees liberal reformers and statesmen to seek political
change consonant with the customs, character and received examples of a people. Put simply, Montesquieu’s liberalism is especially open to political particularism because his liberalism is regime-pluralistic.

Of course, according to Montesquieu, even a regime-pluralist conception of liberal government by no means eliminates the need for an account of “the customs of a free people (EL, XIX.27),” or what I will call liberal culture. In Chapter 4, I reconstruct Montesquieu’s account of the constituent elements of a liberal culture. I argue *The Spirit of the Laws* develops a rich “theory of interface,” a conception of the interpenetration that occurs between our ostensibly political and non-political selves or our public and non-public identities. The patterns of authority, ideas and moral habits forged in ostensibly “non-political” departments of human experience inevitably wend their way into the political domain, and vice versa. Though they extend toleration to many ways of life, liberal governments nonetheless rely in some measure upon elements of liberal culture for their initial establishment and maintenance.

But if this is so, then what of nations lacking the elements of liberal culture? We turn in Chapter 5 to an analysis of his account of political change, a subject we will have already broached peripherally in our account of liberal culture. I argue that within Montesquieu’s treatment of political change, the common theoretical provenance of his liberalism and political particularism becomes most readily discernable. Montesquieu’s liberal particularism gives shape to a two-fold approach to the problem of liberal

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political transitions. First, he warns that attempts to establish liberal institutions within an illiberal culture can produce an experience of popular political disquiet analogous to the fear found in despotic states. Here I emphasize the role of his psychological conception of political liberty as the moral foundation of both his liberalism and his political particularism. On Montesquieu’s view, the goodness of free government lies partly in its effects upon the thoughts and passions of citizens. When citizens are prepared to receive and sustain it, free government promotes “the liberty of the citizen” defined as an “opinion of one’s security” and a “tranquility of spirit” within the citizen (EL, XI.6). It expels the species of fear that dominates men’s souls in despotic nations. But when a people is not culturally and socially prepared to receive free political institutions, direct attempts to establish such institutions will likely produce an experience of political disquiet and fear—a “tyranny of opinion”—comparable to the psychological experience of men and women in truly tyrannical states (EL, XIX.3).

But as I argue, secondly, he sketches an approach to political liberalization designed to avoid both this experience of political fear and the need for illiberal cultural legislation. This approach represents a means of escaping the “trilemma of liberal political change” that confronts friends of liberty as they consider the prospects for reform in historically despotic nations. Like dilemmas, trilemmas have horns. The first horn is quietism or extreme conservatism in the face of despotism; the second is a rationalistic, universalistic and narrowly institutional pursuit of political change that ignores the cultural preconditions of “better laws” (EL, XIX.2); the third is the pursuit
of direct cultural transformation through the coercive power of the state. Montesquieu finds these choices unacceptable. Though not morally unambiguous, indirect means of liberalizing culture, including the encouragement of commerce, represent potential ways of escaping the trilemma of liberal political change. The *doux commerce* thesis (the view that commercial activity makes men gentler and therefore fit for mild government) emerges as a liberal solution to a liberal problem. This account of Montesquieu’s approach to political change is the summit of this study; from here, one can most plainly see the ambition of the whole.

Penultimately, we set our sights on the legacy of Montesquieu’s political particularism (Chapter 6). Here I show that Montesquieu’s *Spirit of the Laws* served as a point of departure for several thinkers who would follow him in attempting to join a modern liberal theory of politics to a particularistic art of statesmanship. His approach had a life beyond the pages of *The Spirit of the Laws* in the thought of Rousseau, Burke, Constant, Mill and others. Their critical appropriations of Montesquieu’s thought serve to highlight the strains that can attend a marriage of liberalism with particularism, but ultimately I argue that these strains do not derive from any necessary theoretical animus between modern liberty and political particularism itself. I especially stress that Montesquieu’s liberal particularism collapses neither into liberal imperialism nor traditionalist conservatism. It stands.

Finally, in the Conclusion, I reconstruct the argument of the whole, address one liberal and one anti-liberal objection to Montesquieu’s approach, and briefly outline this
study’s implications for contemporary politics, especially with regard to international democracy promotion and nation-building.

V. A Note on Method

It will now be obvious that Montesquieu’s *Spirit of the Laws* is the focus of this dissertation. I do not undertake equally extensive analyses of his two other published works, *Persian Letters* and *Considerations on the Causes of the Greatness of the Romans and Their Decline*. *Spirit* was by far his most important publication, as evidenced both in the time he invested in it (“my whole life,” or at least two decades, as compared to a few months for the *Persian Letters*\(^{58}\)) and in the attention subsequent political thinkers have paid it. His final effort, *The Spirit of the Laws* represents Montesquieu’s mature thought, and its level of theoretical sophistication far exceeds his other works. For these reasons, it is appropriately the centerpiece of this study. But where they illuminate or complicate the arguments of *Spirit*, I will draw upon his other published works as well as his *Pensées*, a collection of random thoughts, half-finished essays and notes that never made it into *The Spirit of the Laws*. I will likewise draw upon earlier manuscript versions *Spirit* and Montesquieu’s *Defense of the Spirit of the Laws* (1750) as they shed light on the meaning of the final published text.

In seeking to understand the arguments of *The Spirit of the Laws*, we will often consider the work in its immediate historical context—eighteenth-century France. I will frequently attempt to situate Montesquieu’s claims with reference to French political, legal, economic and social history. But I also take Montesquieu seriously when he avers that his book is “written for no state.” Instead, “It is written for all men (MP, 1865),” and perhaps even for all time. We would be mistaken if we construed *The Spirit of the Laws* as just another sally in the battle over the *Ancien Régime*. We have the encouragement of the author himself to view his work in the context of other great works of political philosophy. Montesquieu declares that when he compares his work with the writings of “great men in France, England and Germany,” he does not lose courage (EL, Preface). He likens himself to the artist Corregio, who declared upon beholding Raphael’s majestic *St. Cecilia*, “And I too am a painter!”

So we will not treat Montesquieu as merely a combatant in a localized eighteenth-century debate. But even less will we treat him as a combatant in a twenty-first century debate. Instead, this study of Montesquieu’s political thought is meant to challenge our own assumptions about the essential character of liberal political theories

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59 I agree with Johnson Kent Wright’s assessment that the last century of scholarship on Montesquieu’s *Spirit of the Laws* has done little to illuminate Montesquieu’s relationship to long-standing debates concerning the French constitution. Johnson Kent Wright, “A Rhetoric of Aristocratic Reaction? Nobility in *De l’Esprit des Lois*,” *The French Nobility in the Eighteenth Century*, (University Park, PA: Pennsylvania State University Press, 2006), 227. This study offers some contributions along these lines.

60 Montesquieu hopes “that seven or eight hundred years from now, there will arrive a certain people for whom my ideas will be very useful (MP, 1940).”
and to provide us with fresh resources for understanding contemporary problems of liberal statecraft in the world.
TWO: The Sources of Montesquieu’s Political Particularism

It is better to say that the 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.


As God wished to separate us from Italy by a high thrust of mountains, so also he separated us in our mores, laws, nature and disposition.

Étienne Pasquier, *Les Lettres*¹

Or do you think that regimes somehow come into being “from oak and stone”? Isn’t it rather from the character of the people in the city, which tip the scale, as it were, taking the rest with them?

Plato, *Republic* 544e²

Montesquieu is a political particularist. He rejects the view that any one form of government or law code is best, suitable or possible in all nations and for all ages. For political theorists, this means that one must not separate regimes and laws from the particular cultural, social and physical factors that shape and sustain them. For founders and reformers, this means that one must not establish legal and political institutions that poorly fit the character and circumstances of a people. Nations must be culturally prepared to receive political and legal innovations, and such innovations should be designed with the distinctive character of the people in view. These ideas form the core of Montesquieu’s political particularism, and they animate his most important work, *The Spirit of the Laws*.

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As I have already suggested, this political outlook runs afoul of certain understandings of modern liberalism. While liberalism is not essentially or necessarily wedded to political universalism, most liberals hold natural rights, fundamental human interests and the deliverances of reason to be everywhere the same. For some, this suggests the need for uniformity in legal protections and constitutional forms across different nations. Diana Schaub contrasts Montesquieu’s approach with that of Hobbes and Locke:

His political science is much less doctrinaire, legalistic, and universalistic than that of Hobbes and Locke. Hobbes and Locke sought to elaborate a universally valid public law—a constitutional law meant to be applicable to every possible society, that is, if it wants to be a legitimate and stable society. Montesquieu, however, is interested not so much in the law as in the spirit of the law, or really the many different spirits animating the many different codes of laws. Political life is marked by variety, due to the variety of circumstances, and that fact affects political theory decisively.3

Condorcet saw this same divergence and chastised Montesquieu for his rejection of political universalism: “A good law should be good for all men. A true proposition is true every where.”4

While Hobbes, Locke and Sidney influenced several important elements of Montesquieu’s political thought, the sources of inspiration for his political particularism surely lie elsewhere. In this chapter, I will show that sixteenth- and seventeenth-century

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3 Diana Schaub, Erotic Liberalism (Lanham, MD: Rowman and Littlefield, 1995), xi.
debates over French civil law and constitutionalism represent the proximate inspiration for Montesquieu’s concern with the relation of laws to history and culture. However, as I will demonstrate, Montesquieu also developed his political particularism in conversation with three ancient sources: Plato’s *Laws*, Aristotle’s *Politics*, and Cicero’s *On Duties*.

This chapter is not merely an exercise in source criticism or *quellenforschung*. Instead, I will argue that by understanding Montesquieu’s intellectual debts and points of reference, we can begin to see more clearly why he regarded his liberal constitutionalism to be in concord with political particularism. I will make this case both with respect to Montesquieu’s ancient and modern sources.

In the first section of this chapter, I will argue that in the writings of sixteenth- and seventeenth-century French jurists, absolutism—and not constitutional restraint—was linked with exaggerated appeals to abstract rational principles, claims of universal justice, natural law and uniformity. By contrast, opponents of absolutism—early constitutionalists—hitched their defense of liberty and limited power to ideas of national particularity, local usage and native custom. These earlier debates over the French constitution not only constitute a source for Montesquieu’s particularistic approach but also a precedent for seeing this approach as compatible with and even integral to a normative theory of limited government. In short, I will show that if we view Montesquieu’s thought as continuous with these older jurisprudential debates, the union of particularism and liberalism appears altogether natural.
In the second section of the chapter, we will turn to more distant but equally consequential sources. I will argue that Montesquieu’s political particularism represents a self-conscious recovery of important aspects of classical political thought, but that Montesquieu undertakes this recovery in order to overturn the classical republican ideal as he understands it. In the first sub-section, I briefly sketch Montesquieu’s general approach to ancient thought and offer an account of what I shall call classical political particularism in the works of Plato and Aristotle. I then show how Montesquieu, operating within the Platonic-Aristotelian framework, as he understands it, seeks to undermine the classical republican ideal. From here, I turn to Montesquieu’s creative appropriation and politicization of Cicero’s four-personae theory. I show that he relies upon Cicero’s ethic as he develops certain critical aspects of his political particularism. As with Plato and Aristotle, so with Cicero, Montesquieu draws on what he understands to be classical republican thought in order to suggest the unsuitability of classical republican institutions for modern peoples. It was a bold move.

This chapter makes an historical and interpretative contribution inasmuch as it affords us a better understanding of Montesquieu’s seminal work and its relationship both to classical thought and French constitutionalist thought. While several previous studies have linked Montesquieu’s Spirit of the Laws to the particularistic moods of seventeenth-century French jurisprudence, these studies have neglected to disclose the
most important element of Montesquieu’s debt to this tradition—that is, the union of anti-universalism and anti-absolutism.⁵

As for the ancient sources, while scholars have often noted the resemblance between Aristotle’s Politics and Montesquieu’s Spirit of the Laws,⁶ extended analyses of the nature of Montesquieu’s debts to and departures from the Aristotelian mode are lacking. As David Carrithers recently stated, no scholar has to date undertaken a thorough comparison of Aristotle’s and Montesquieu’s political thought.⁷ While I make no such boast regarding this little study, I hope to move the ball forward.⁸ Similarly, with regard to Montesquieu’s ties to Platonic political thought, it is remarkable indeed

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⁸ My argument can be usefully contrasted with that of David Carrithers, who argues that the “sociological orientation of Montesquieu’s thought is a key aspect of his modernity.” He continues, “If [Montesquieu] had one foot in the modern world where his philosophy of law was concerned, however, he had the other foot in the ancient world. Juxtaposed to his sociological perspective on law-making was a much more traditional conception of laws as mirroring justice writ large in the universe (12-13).” Of course, I wish to suggest that it is precisely what Carrithers calls his sociological perspective that Montesquieu owes partly to the Ancients. David Carrithers, “Introduction: Montesquieu and the spirit of modernity,” in Montesquieu and the spirit of modernity (Oxford: Voltaire Foundation, 2002). Also by way of contrast, see Andrea Radusanu, “Montesquieu on Moderation, Monarchy and Reform,” History of Political Thought 31 (2010): 283-308, who seeks to cast fresh doubt upon “the view that Montesquieu embodies the spirit of Aristotelian prudence in eighteenth-century France (285).” The present study provides fresh support for this very view.
that while he refers to the *Laws* more frequently than to any other work of political theory, whether ancient or modern, there exists not a single scholarly treatment of the relationship between Plato’s *Laws* and Montesquieu’s “*Laws.*” Finally, while several commentators have attempted to find philosophical affinities between Cicero’s *On Duties* and Montesquieu’s unfinished *Treatise on Duties,* I contend that the really interesting Ciceronian legacy is in *The Spirit of the Laws.* No previous scholarship has noted the remarkable ways in which Montesquieu’s reflections upon Cicero’s four-personae theory seem to have shaped his account of the general spirit—an important element of his particularistic theory of politics.

But I also want to emphasize that this chapter’s significance and purpose reaches beyond these interpretative matters. My argument demonstrates that Montesquieu’s political particularism provides theoretical and rhetorical backing to his liberalism. So far from being at odds with his commitment to modern regimes of liberty, his rejection of univeralism in politics is consistent with the French constitutionalist thought of the previous century and allows Montesquieu to criticize his contemporaries who are too enamored of the classical republic of virtue, a regime he believes to be ill-suited to modern European nations. He thus clears space for the modern constitutional regime. This reminds us that while liberalism is often seen as inherently allied with rationalistic and universalistic approaches to the art of politics, at least one incarnation of Enlightenment liberalism was midwifed by a profoundly particularistic sensibility.

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9 Montesquieu often referred to *Spirit* as “my Laws” in his notebooks.
I. Political Particularism and Early French Constitutionalist Thought

We heirs to the long history of both western liberalism and anti-liberalism are often unsettled upon encountering Montesquieu’s political philosophy. Montesquieu is certainly not the only early modern liberal who challenges the stylized categories and tidy associations that comprise our conventional understandings of liberalism, but he surely presents one of the most profound challenges. Montesquieu’s liberalism puts the accent upon local usage and particular histories. While modern liberal theory is often thought to be rooted firmly in the soil of natural right (“primary nature”), Montesquieu’s science of politics seems equally anchored in habit and custom (“second nature”). If modern liberalism seems resolutely transnational in its ambitions and therefore sanguine about the global export of free institutions, Montesquieu’s art of legislation breeds suspicion concerning non-native sources of good law. Similarly, if modern liberalism seems to beget a will to legal and political uniformity, Montesquieu’s liberalism seems to stress an inner connection between institutional uniformity and despotism. In short, a return to Montesquieu’s liberalism tends to disturb the theoretical associations bequeathed to us by three centuries of development in liberal and anti-liberal thought.

But if we approach The Spirit of the Laws not in light of these associations but rather in the context of sixteenth- and seventeenth-century French legal theory, we find

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that Montesquieu’s liberal particularism follows the arc of earlier constitutionalist thought. In the sixteenth and seventeenth centuries, absolutism—and not constitutional restraint—was linked with appeals to abstract rational principles, claims of universal justice, natural law and uniformity. By contrast, opponents of absolutism tied their defense of limited government to national particularity, local usage, custom, and resistance to so-called “written reason” inscribed in foreign (that is, Roman) law. While the purpose of this section is not to trace out in detail the influence of individual French legists and jurists upon Montesquieu, I will argue that an appreciation of the general contours of earlier debates over the French law allow us to understand why Montesquieu considered his theory of liberal constitutionalism to be perfectly harmonious with the particularist note echoing throughout *The Spirit of the Laws*, and indeed, his entire corpus.

By the time Montesquieu set to work on *The Spirit of the Laws* in the 1730s, a new naturalism had become well-established in the language of European political thought. Both arguments for absolutist government (e.g., later Pufendorf and Hobbes) and arguments for liberal constitutional restraints (e.g., Locke) were founded primarily upon natural law.¹¹ But throughout most of the sixteenth, seventeenth and even the early eighteenth century in France, constitutionalist works that argued for the need for

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restraints upon the crown were written not in the idiom of nature but of custom. French constitutionalists availed themselves of the genres of history and legal commentary to make the case for limited government. They appealed not to universal truths for all men and all times but rather to the particular and immemorial laws and customs of the French nation. These appeals to the ancient constitution and customs of the nation were certainly not unique to France. As J. G. A. Pocock has shown in his ground-breaking study, *The Ancient Constitution and the Feudal Law*, this mode of argument was even more prevalent in England, preeminently in the works of Thomas Coke. Likewise, the Scottish and the Dutch had their own tales of ancient constitutions. Common to most English and French varieties of ancient constitutionalism was the belief that their governments had originated with pre-modern barbarian regimes. This line of thought culminated in the myth of the Gothic polity, the view that the governments of France, Spain, England, and other nations derived from the government of the antique Germans famously described in the *Germania* of Tacitus. While this “Gothic myth” is often attributed to Montesquieu, he inherited a

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14 George Buchanan, *Rerum Scoticarum* (1582); Hugo Grotius, *De Antiquitate reipublicae Batavicae* (1610).

15 By the eighteenth century, the Gothic myth was intimately associated with English Whiggery. In 1721, Viscount Molesworth defined a “real Whig” as “one who is exactly for keeping up to the Strictness of the true old Gothic Constitution.” Ralph E. Giesey and J. H. M. Salmon, “Editor’s Introduction,” in François Hotman, *Francogallia* (Cambridge: Cambridge University Press, 192), 125.
long-standing discourse in French constitutionalist thought that viewed the monarchy of France as an organic growth whose germ lay in the forests of the Germany.

It was the absolutists in France who were at first most eager to reach for appeals to natural and otherwise abstract foundations. Of course constitutionalists would in time defeat absolutists on this field of battle. But even as late as the early eighteenth century, Montesquieu saw a connection between abstract universal theory and despotism. Indeed, in the *Pensées*, he says of despotic governments, “It is only by dint of *philosophy* that a sensible man can support them (MP, 885).”\(^\text{16}\)

In its English and French instantiations, the practical thrust of ancient constitutionalism was to imply (if not to announce explicitly) that the present regime had illegitimately shed its ancient limits and so imperiled the people’s ancient liberties. The presumption was that if the ancient constitution could be discovered it would have normative authority. Though most writers did not explain exactly why the ancient constitution was normative for contemporary politics, some suggested that its authority lay in its conformity with the character of the people.\(^\text{17}\) The fundamental laws of the kingdom of France were customary in nature—emanations from practice rather than the work of intelligence or will. These fundamental laws had developed gradually and had been retained because they suited the character of the people as no *imposed* law could ever claim to do. Writing later in the seventeenth century, Boullainvilliers captures the

\(^{16}\) Italics added.

\(^{17}\) Others suggested custom’s authority lay in its immemorial standing or in the tacit consent of the people.
spirit of the earlier constitutionalism when he claims that limited monarchy was consistent with the free “natural character” of the French people. The early constitutionalists did not stress the importance of what is natural in the primary sense of universal human nature but rather what is natural in the secondary sense of custom and habit—“second nature.” Indeed, for some, natural law thinking was suspect as it was tied to pagan Rome, the eventual home of execrable tyrants. Writing as historians and jurists, but not as philosophers, they showed no contempt for rummaging about in “old parchments, or musty records” for the rights of Frenchmen.

While The Spirit of the Laws is often thought to stand in the theoretical stream that originates with Leviathan and flows through the Second Treatise, we can better understand why the marriage of normative liberal constitutionalism and a robustly particularistic art of politics makes sense to Montesquieu when we view his thought in its French constitutionalist context. The tradition he inherited never saw itself as discerning a universally valid public law; to the contrary, it framed the case for constitutional constraints in terms of our character, our custom and our fundamental laws. When we view the political and legal controversies of late sixteenth- and early

18 “The French were naturally a free people, as well by their natural character, as the primitive right they had of chusing their princes,” he writes. Boulainvilliers, An Historical Account of the Antient Parliaments of France, or States-General of the Kingdom, Vol. 1, trans. Charles Forman (London, 1739), 38-39.

19 Giesey and Salmon, “Editor’s Introduction,” Francogallia, 32.

20 “The sacred rights of mankind are not to be rummaged for, among old parchments, or musty records. They are written, as with a sun beam, in the whole volume of human nature, by the hand of the divinity itself; and can never be erased or obscured by mortal power.” Alexander Hamilton, “The Farmer Refuted,” The Papers of Alexander Hamilton, Vol. 1, ed. Harold C. Syrett (New York, Columbia University Press, 1961), 124.
seventeenth-century France at an even higher resolution, this point becomes clearer still. While the primary points of contention in these controversies concerned the nature and extent of kingly power (especially vis-à-vis parlements, the Estates General and lesser magistrates), the larger debate often took the shape of subordinate and now-forgotten skirmishes concerning more specific legal problems. In particular, three such problems serve to reveal the theoretical fault lines in a way that is especially helpful for understanding the context of Montesquieu’s own liberal particularism. These closely related and often overlapping problems include, first, the question of the utility and authority of Roman law in France; second, the question of whether and on what basis the king had authority to abolish customs; and finally, the matter of codifying and redacting the customary law of Paris and the provinces.

As French legal humanism grew and underwent important transformations throughout the sixteenth century, advocates of absolutism deployed elements of Roman law to support their cause. Constitutionalists took note and developed a deep resistance towards the use of Roman public law in determining the powers of the monarchy. The French legal writers divided themselves between the mos gallicus (ancient constitutionalism) and the mos italicus (which looked to Roman law as its guide). When constitutionalists appealed to the institutions of the antique Franks or

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Germans, their analyses were invariably offered as an alternative to the Romanists’ approach. By the final quarter of the sixteenth century, these battle lines were rather clearly drawn: Absolutist theory and practice was a disease of Italianate origin.

While the controversy partly concerned the application of Roman private law in courts of adjudication, the chief concern for constitutionalists was the use of Roman public law in defining the powers of the king. The analogy of the king of France to the Roman emperor (princeps) served as the key pivot point for the use of Roman law to support absolutism in France. Eventually, this analogy would be backed with the explicit claim that the king of France legally assumed the power of the imperium Romanum in Gaul when the Gauls (at that time Roman subjects) acceded to his rule.22 With this equivalence, Romanist jurists opened the floodgates of absolutist public law doctrine. Justinian’s Code assigned to the emperor merum imperium—total power including the right of giving laws. This power could be attributed to the King of France.23 Similarly, frequent appeals to the Roman doctrine of princeps legibus solutus est, found in the Digest, permitted Romanist jurists in France to argue for the elevation of kingly authority above the settled laws of the realm.24 Applied to France, the Roman principle of quod principi plaucit habet legis vigorem aided jurists in breaking with the traditional medieval understanding of the king as a mere judge and executive, not

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22 This view received its most elaborate expression in the work of Abbé Dubos and its most elaborate refutation in Montesquieu’s *Spirit of the Laws*.

23 Church, *Constitutional Thought in Sixteenth Century France*, 55.

possessed of legislative powers. In short, “There was a deliberate and well-nigh complete fusion of Roman and French interpretations causing the practical identification of the French king and Roman princeps.”\textsuperscript{25} Naturally, then, absolutists were able to condemn any institution that did not accord with Romanesque princely power as the product of usurpation by the nobility and localities.

By contrast, constitutionalists were eager to point out the advantages of French law and custom over Roman public law. As early as 1515, Claude de Seyssel emphasized the superiority of the Parlement of Paris over comparable Roman institutions. Under French customary law, royal acts “are subject to the judgments of the Parlements, not touching obreption and subreption only, as it is with other princes according to the Roman law, but also with respect to legality and illegality.”\textsuperscript{26} Unlike the Comitia Curiata or the Senate of the Roman Empire, the Parlement of Paris could refuse to enforce a royal ordinance if they judged it inconsistent with the fundamental or otherwise long-standing laws of the realm, even if the ordinance bore no hint of fraud. On Seyssel’s understanding, imperial senators could only block enforcement of an enactment if they had evidence that it was fraudulent. Throughout the sixteenth century, constitutionalist jurists would frequently rehearse this favorable comparison of

\textsuperscript{25} Church, \textit{Constitutional Thought in Sixteenth Century France}, 9.

French to Roman institutions. To opponents of Roman public law in France, it was yet another example of the superiority of French custom and law to Roman practices.

Advocates of limited monarchy rejected Roman influence not simply on the grounds of the practical merits of French law but also, and emphatically, on the basis of the superior fit of French law to French society. François Hotman’s *Anti-Tribonian* (1567) was among the earliest bold statements of constitutionalist distaste for Roman law. There is nothing more useless to Frenchmen, he declared, than the study of Roman law. The Roman model violated the complexions and humors of the French people, constructed as it was for nations radically different from our own. In many ways, Hotman’s position was the logical conclusion of an earlier, non-political trend in French humanist thought that emphasized the great differences between French and Roman ideas and culture. Following Hotman, Étienne Pasquier, author of the seminal and subtly constitutionalist *Recherches de la France* (1596), declared that, “As God wished to separate us from Italy by a high thrust of mountains, so he separated us in all things, in manners, laws, character and humors.” Similarly, Bernard Automme protested against the folly of Frenchmen turning to foreign law codes compiled in Constantinople without any knowledge to their own nation: “Justinian never set foot in

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28 François Hotman, *Antitribonian, ou, Discours d'un grand et renomme iurisconsulte de nostre temps sur l'estude des loix* (St. Étienne, Fr.: Universite de Saint-Étienne, 1980), esp. ch. 2-3.


Most jurists were, like Guy Coquille, open to consulting Roman law as one source of legal science, but never as enforceable law to take the place of custom, the true law of the realm. Frenchman must never be “slaves, imitators or worshippers” of foreigners. While Romanists appealed to Justinian’s Code as written reason—the embodiment of universal rational principles valid in France and at all times—constitutionalists rejected this appeal to what was foreign and putatively universal in favor of a native liberty.

Montesquieu inserted himself into this centuries-old debate when he penned his devastating critique of the Abbé Dubos’ *Histoire critique de l’établissement de la monarchie française dans les Gaules* (1734), in which Dubos had asserted that the kings of the Franks had received the undiluted authority of the *imperium Romanum* when the Gauls summoned them to rule. But I wish to suggest that the Romanist-Germanist controversy is important not primarily for the light it sheds upon the closing books of *Spirit* on feudal law but rather for what it reveals about the intellectual context of the entire work. Montesquieu inherited a constitutionalist tradition that was hostile to the transplantation of law and deeply concerned with discovering a liberty appropriate to a particular people.

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31 Kelley, *Human Measure*, 204.
32 Kelley, *Human Measure*, 205.
33 Kelley, *Human Measure*, 204.
As J. G. A. Pocock has insightfully suggested, implicit in the rejection of Roman law was a rejection of the idea that good legal and political institutions are purely the product of human intelligence and will.\(^{34}\) On the Germanist-constitutionalist account, the reason French customary law suited the French people so well was that it had grown up by organic use, tacit consent and adaptation. There was no man “\textit{chi ordinó}” the monarchy of France, as Machiavelli had suggested, and this was the source of its great strength.\(^{35}\) Such a sensibility resonates with Montesquieu’s political particularism. While the role of legislator certainly features prominently in \textit{The Spirit of the Laws}, one of the chief purposes of the work is to warn the legislator that he must be capable of understanding, as in a single stroke, the entire genius of a people and its customs before proposing new institutional innovations. Moreover, the constitutions Montesquieu praises— the Gothic and the English—were not dependent on any single human will or intellect for their establishment and development. While more sanguine than his constitutionalist predecessors about the potential for human intelligence to produce political masterpieces (EL, V.19; MP, 577), he still retains a substantial dose of the caution evidenced in early constitutionalist critique of Roman law.\(^{36}\)

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\(^{34}\) Pocock, \textit{Ancient Constitution}, 18.

\(^{35}\) Commenting on Machiavelli’s seemingly naïve assumption that a single man ordered the institutions of France, de Maistre remarked, “\textit{Je voudrais bien le connaître.}” Pocock, \textit{Ancient Constitution}, 19.

\(^{36}\) The irony is of course that while Roman public law came to French jurists as “written reason” in the \textit{Corpus Juris Civilis}, the Roman constitution itself was mostly unwritten and the product of customary usage—the \textit{mos maiorum}. In fact, on Montesquieu’s view, the Roman regime was in its political prime \textit{during} its “imperceptible” transition from a monarchy to a republic in the sixth century B.C (EL, XI.13). In other words, even Roman liberty was not exactly “by design.”
This controversy over Roman public law fed directly into a second legal problem of the sixteenth century, the disputed matter of the king’s authority to abolish custom. Romanists argued that just as the Roman emperor could abolish local customs according to the Code and Digest, so also the King of France retained authority over the custom of the kingdom and its provinces. Most constitutionalist jurists, such as Chasseneuz, defended the integrity of custom, holding that royal letters could not do away with provincial usages. By contrast, absolutists also began to appeal more strenuously and frequently to higher law—natural and divine—to back up royal abrogation of customary law. They suggested that the king could nullify local customs that were inconsistent with higher law. Rebuffi argued that the king was bound by custom only when it accorded with natural law and reason; Tiraqueau asserted that he was bound by custom only if it was backed by divine law; in his De la sagesse, Charron protested that the diverse customs of the provinces did not embody true justice and wisdom but were rather arbitrary usages and should be judged according to abstract criteria. In short, the absolutists were far more eager to ground their arguments on universal, natural and abstract grounds. William Farr Church characterizes the intellectual current this way:

As the [sixteenth] century progressed, the tendency became more and more to interpret legal problems in terms of natural and divine law rather than the customary law of the land. This increased emphasis upon the

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37 Digest, Lib. XLVII, Tit. XII, Leg. III (de sepulcro violato); Code, Lib. VIII, Tit. LIII, Leg. 2 (quae sit longaconsuetude). See Church, Constitutional Thought in Sixteenth Century France, 103.

38 Franklin, Jean Bodin, 13.
upper brackets of the scale... exercised an unmistakably devitalizing influence upon the older constitutionalism; for when many of its crucial aspects, such as the essence of customary law and the legal limitations upon the king, were interpreted purely in terms of abstract values, there was certain to occur a change in the qualities ascribed to the legal foundations of the state... Such a use of universal principles by the legists served as a vital factor in the rise of absolutism.39

Armed with august universal principles, absolutists pushed against both the radical constitutionalism of Hotman and the traditional constitutionalism of the previous century, both of which emphasized the authority and suitability of our customs. Like the debate over Roman law, this consequential skirmish further illustrates why there was an almost instinctual affinity in early modern French jurisprudence between, on the one hand, defenses of liberty and appeals to the particular, and on the other hand, defenses of absolute power and appeals to the universal.

The debate over the king’s authority to abolish custom played an integral part in a third legal controversy—the problem of codifying custom. Like all of continental Europe, the provinces of the medieval France were governed by a patchwork of different customs. There were not two lordships governed alike in every point of law. A “prodigious diversity” reigned, Montesquieu writes (EL, XXVIII.45). Though less significant earlier efforts had been made to record customs, it was in the early sixteenth century that the most far-reaching efforts got underway to codify and, in the process, to correct and to unify the customs of the provinces. There was little denying the benefits of clarifying, untangling and streamlining the customs. Everyone recognized that there

were many abuses in need of removal. But as became clear when the work of codification commenced, a push toward greater uniformity in customs would inevitably lead to an expansion of the powers of the crown. This is because prior to codification, the authority of custom was not thought to derive from the royal will. But codification was, as J. G. A. Pocock rightly suggests, an “act of sovereignty, an assertion that the ruler’s will and reason were superior even to ancient custom.” Codification took place at the behest of the king; the king prescribed the procedures that were to be observed in the depositions when the content of custom was set forth; and only the crown could authorize redactions, as Montesquieu points out with no hint of either approval or disapproval (EL, XXVIII.45). As the customs were recorded, they were corrected on the basis of abstract criteria of justice and Roman legal principles. In this context, it became altogether natural to see custom as beneath the king. Since he imparts his authority to it as a legislator, he can abrogate it at any time. The identification of royal ordinances with the authority of custom was therefore increasingly common. In short, the movement to make the customs of France more uniform and rational—using the emended and redacted customs of Paris as the model—fueled the rise of absolutism. It is little wonder, then, that despite later associations of Enlightenment thought with the will to legal uniformity, Montesquieu’s liberalism should have entailed a suspicion toward uniformity in laws and institutions.

40 Church, Constitutional Thought in Sixteenth Century France, 35, 311.
41 Pocock, Ancient Constitution, 25.
In situating *The Spirit of the Laws* in its French constitutionalist context, my aim is not to suggest that Montesquieu wishes to wage afresh all the battles of the sixteenth and seventeenth centuries, or even that he specifically shared the old constitutionalist worries about Roman law and codification. Instead, I wish more generally but also more consequentially to suggest that for Montesquieu, the theoretical and practical affinities between liberal constitutionalism and political particularism would have appeared perfectly evident. For two centuries, partisans of limited government found themselves defending variety, particularity, local usage, habit, custom and *our* law against uniformity, universality, abstract rational principles and alien law. When we understand the French jurisprudential context of Montesquieu’s particularistic sensibility, we can begin to make sense of the kinship between it and his normative liberalism.

But an additional body of thought fed into and formed this element of his political philosophy. Montesquieu found in ancient political science a species of particularism even more sophisticated and well-developed than that of the French jurists. Of course, unlike French jurisprudential particularism, ancient particularism was not itself tied to constitutionalism. But in Montesquieu’s hands, the principles of the Ancients served to lay the groundwork for the defense of modern liberty.
II. Classical Political Particularism and the Critique of Classical Republicanism

1. Montesquieu and Antiquity

To establish Montesquieu’s rich familiarity with Plato’s *Laws*, Aristotle’s *Politics*, and Cicero’s *On Duties* is no difficult task. In preparation for writing *The Spirit of the Laws*, Montesquieu acquired two French copies of the *Politics*, in addition to the Greek and Latin texts already in his library. He prepared a notebook devoted to the *Politics*; it was at least one hundred pages in length, perhaps longer. Evidence for his acquaintance with Plato’s *Laws* is no less considerable. In *Spirit*, he cites it more often than any other work of political philosophy. And his notebook on the *Laws* may have been even thicker than the *Politics* notebook: it was at least one hundred and seventy-five pages in length. Like most scholars in eighteenth-century Europe, Montesquieu was also well acquainted with Cicero’s *On Duties*. In possession of both a Latin text and a French translation, Montesquieu began but never completed his own *Treatise on Duties* (1725), taking inspiration from Cicero’s work (MP, 924).

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43 Shackleton, *Montesquieu*, 265. See MP, 907, where Montesquieu mentions *Laws* III (along with the *Politics*) as a source of information on ancient republics. He clearly saw the city of Magnesia as more or less continuous with other ancient republics—whether republics in deed or in speech.

44 Desgraves and Volpillhac-Augier, eds., *Catalogue de la bibliothèque de Montesquieu à La Brède*, 238. See MP, 1263.
Montesquieu’s study of these texts contributed to the development of his political particularism. He not only adopts and adapts classical political particularism, but in fact turns the particularistic features of classical political science against the classical republican ideal itself, as he understands it. Following Plato, Aristotle and Cicero, Montesquieu argues that regimes must be fashioned to fit the character of the people. Against the backdrop of this classical principle, he suggests that the antique republic of virtue is out-moded, unsuitable for modern European states and incompatible with the character of modern peoples. Montesquieu thus employs the principles of ancient political science in order to undermine its substantive political ideal.45

Even beyond his interest in these three major works of ancient political thought, Montesquieu was a serious student of classical literature, history and philosophy. At times, Montesquieu’s reflections on the Ancients recall Hobbes’s vituperations against “Aristotelity” and the “obscure Language of the Schoolmen.”46 In his Pensées, he declares that Plato’s dialogues are “a tissue of sophistries (MP, 211).” As for Aristotle, it was “gratuitous for us to have taken up [his] jargon, and I don’t know that we have ever gained anything by it (MP, 21).” Montesquieu complains that there was “no one

45 While several commentators have noted a subtle effort to undermine classical republicanism in Spirit, they have failed to appreciate Montesquieu’s use of a classical sensibility in undertaking this critique. See, for instance, Pierre Manent, City of Man, Trans. Marc LePain (Princeton: Princeton University Press, 1998); Pangle, Montesquieu’s Philosophy of Liberalism; Annelien de Dijn, French Political Thought from Montesquieu to Tocqueville: Liberty in a Levelled Society (Cambridge: Cambridge University Press, 2008), 28ff.
46 Hobbes, Leviathan, IV.46-47.
up until Descartes who did not derive his entire philosophy from the Ancients (MP, 50).” For so long, scholars have been mere “copyists” of the Ancients. In this light, we understand better Montesquieu’s preoccupation with originality.\footnote{See MP, 105.} He had at first selected a line from Cicero’s \textit{Laws} as the epigram for \textit{The Spirit of the Laws}—“Law is the right reason of god.” This line, perhaps, suggested too great an indebtedness to past natural law thinkers. Instead, he finally settled upon the line from Ovid: \textit{“Prolem sine matre creatum.”}\footnote{“An offspring made without a mother.”}

Yet despite his penchant for originality and his scorn for copyists of the Ancients, he was in many ways an admirer of ancient thought. Again in his \textit{Pensées}, he writes, “I admit my taste for the Ancients. That Antiquity enchants me, and I am always led to say with Pliny: ‘It is to Athens that you are going. Respect their gods (MP, 110).’\footnote{Montesquieu cites the Letter of Pliny the Younger to Valerius Maximus. In the context of this particular letter, Pliny alludes to the Greeks’ contributions moral and political thought and practice: “[Greece] is the land that provided us with justice and gave us laws.” Pliny, \textit{Letters} 8.24.} And in the quarrel of the Ancients and the Moderns, Montesquieu confesses no loyalty toward the latter. Rather, he says, the quarrel “makes me see that there are good works among the Ancients and the Moderns (MP, 111).”\footnote{CF. MP, 102, 1315. In MP, 1424, he suggests that the discoveries of the Ancients outnumbered those of the moderns. Since the decline of the Romans and Greeks, “men have become a cubit shorter (MP, 1268).” See Christophe Martin, “Une apologétique ‘moderne’ des Anciens: la querelle dans les \textit{Pensées},” \textit{Revue Montesquieu} 7 (2003-2004), 67-83.} In short, Montesquieu’s notebooks reveal a robustly critical affinity for ancient thought, and in
The Spirit of the Laws, we find that this critical affinity extends to ancient political philosophy.

2. Classical Political Particularism

Montesquieu adopts certain key elements of the Platonic-Aristotelian approach to what we can call (with an explanation to follow) character and politics. In the Laws and Politics, Plato and Aristotle address questions of character and politics within a common theoretical framework. Here, I will sketch the basic elements of their approach. My account is a simplification, but I think this is pardonable, because I undertake it with a view to isolating the elements of their thought that Montesquieu drew upon most deeply. We can summarize the Platonic-Aristotelian approach in the following way. First, character and mores—what we loosely call “cultural” institutions—together with physical circumstances, influence the form of political organization that is established and sustained in any given nation. The sub-political is political in effect. Second, each form of political organization corresponds to cultural and psychological characteristics that help to establish and maintain it. These two empirical propositions give rise to two practical principles of statesmanship. First, the legislator must adapt his institutions in order to comport with, though not simply to reflect, the character of the people. In other words, careful consideration of these empirical realities should shape the way in which normative values are instantiated in law and constitutional design. Second, the legislator must prepare a people’s character
to support and sustain political institutions. Together, these two empirical propositions and two practical principles comprise the core of classical political particularism.

In the *Politics*, Aristotle famously describes the *politeia* as both the arrangement of offices in a city as well as the *bios* of a city—the city’s way of life.\(^{51}\) The character or *êthos* of the people is constitutive of the regime. Aristotle explains that the “character [êthos] peculiar to each constitution usually safeguards it as well as establishes it initially.”\(^{52}\) A democratic character safeguards and establishes a democracy; an oligarchic character safeguards and establishes an oligarchy. The people’s *êthos* is a “cause” of the form of government. It circumscribes the range of appropriate options available to the statesman.\(^{53}\) The statesman must therefore “introduce the sort of organization that the people will be easily persuaded to accept and be able to participate in.”\(^{54}\)

Furthermore, Aristotle suggests that a “mismatch” of *êthos* and constitution often produces a disjunction between provisions of law and *de facto* governance. That is, even if a constitution is *de jure* oligarchic, the *de facto* governance of the city may be democratic if the “custom and training” of the people so incline the city. The reverse is also true: “In other places… the constitution is more democratic in its laws, but is

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\(^{54}\) Aristotle, *Politics*, 1289a1-2; 1292b11-21.
governed in a more oligarchic way as a result of custom and training.” In the idiom of modern political science, we would say that formal political institutions do not solely determine how actors exercise power within a regime; cultural and ideational factors exert a significant influence. A people’s moral character and capacities shape and limit the quality and extent of their participation in the regime. The conduct of politics in two cities could vary widely even if they shared identical constitutional arrangements. When the student of politics confines his inquiry to forms of government in the abstract, without reference to particular peoples, he has neglected these fundamental realities. He has ignored the indissoluble link between politics and culture.

This aspect of Aristotelian political science finds root not only in the common, implicit Greek understandings of the regime, but also in Plato’s political thought, especially his Laws. This is not to say that we should consider Plato’s other explicitly political works—especially the Republic—to be at odds with the Aristotelian thesis. Indeed, Rep. 8 is an exploration of the suggestion that regimes arise not from “oak or rock” but “from the character [ek tôn êthon] of the men in the cities.” But it is no

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55 Aristotle, Politics, 1292b11-21.  
57 Plato, Republic, 544d. Translation is mine. See Donald Lutz, Principles of Constitutional Design (Cambridge: Cambridge University Press, 2006), 186-187, on how one’s method of reading the Republic determines how one understands Plato’s position on the question of matching a regime to a people. If one reads the Republic ironically, then Plato is in fact making a point about the folly of not accommodating regimes to the nature of man in general and a people in specific.
exaggeration to say that this thesis and its implications preoccupy the interlocutors in the *Laws*. As Plato scholarship has long understood Magnesia of the *Laws* to represent a regime more attainable than the *Republic*’s Kallipolis, the differential attention to these themes across the two dialogues comes as no surprise.

Early in the *Laws*, the Athenian stranger criticizes his own project, suggesting that its realization would require an “opportune circumstance.”\(^{58}\) They had been talking as if they were “molding a city and citizens from wax.” But in reality, men willing to tolerate the proposed laws “may not be found.” This theme recurs throughout the dialogue; the Athenian stranger reminds his interlocutors that the laws or form of government must match the circumstances and the people for which they are intended. Just as the finest sculptor may be limited by his medium, so the prudent founder is limited by the particular character and circumstances of his people. Their regime must be proper to men rather than to “gods or the children of gods.”\(^{59}\) But more than this, the regime must be appropriate for a particular *kind* of men, in a particular place. The Stranger notes, “Some places differ from one another in their tendency to breed better or worse human beings, and such factors should not be defied when one makes laws.”\(^{60}\) The legislator’s efforts are unlikely to succeed if he “defies” human diversity—if he makes laws for a universal human type or blindly assumes that a regime suitable for

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\(^{58}\) Plato, *Laws*, 745e-746b.

\(^{59}\) Plato, *Laws*, 739d.

\(^{60}\) Plato, *Laws*, 747d.
another people will cause his own to flourish. An “intelligent lawgiver” will acquaint himself with the particular features of his people and place and try to “formulate laws that are appropriate,” not simply good or just in the abstract.

Both Plato and Aristotle therefore reject the possibility of a universal regime type or universally appropriate system of laws. Like characters and circumstances, constitutions and laws must be diverse and varied. At the core of classical political particularism lies a basic, empirical insight: a people’s character—its moral disposition—shapes the organization and exercise of political power in the city. Each form of political organization corresponds to cultural and psychological characteristics that help to establish and maintain it. On the Platonic-Aristotelian account, students of politics must be students of “social and political wholes,”61 for the arrangement of ruling offices is not independent of the people’s moral habits, their understanding of justice and their way of life. On the basis of this foundational empirical claim, both Plato and Aristotle suggest that the legislator must adapt his institutions and laws in order to comport with, though not simply to reflect, the character of the people. In other words, they suggest that careful consideration of the empirical relationship between “culture” and “politics” should shape the way in which normative values are instantiated in law-making and constitutional design.

61 This helpful language is from Daniel Mahoney, The Liberal Political Science of Raymond Aron (Lanham: Rowman and Littlefield, 1992), 3.
Montesquieu’s political particularism represents a recovery of this classical approach. But this recovery is in service of an overcoming of the classical republican ideal, as Montesquieu understands it. In this section, I will argue that Montesquieu’s substantive critique of the classical republican regime relies explicitly upon the Platonic-Aristotelian framework that I have outlined above. Montesquieu enlists Platonic-Aristotelian particularism as he calls into question the suitability of classical republican politics for modern times, modern peoples and modern mores. This critique of the classical republic, as I have suggested, is integral to his case for liberal constitutional government—a more appropriate form of political organization for modern nations.

First, a preliminary note on translation is in order. Montesquieu’s Greek was poor, so he relied upon French and Latin editions of Greek works. This fact is worth mentioning, because it alerts one to the difficulty of identifying the points at which Montesquieu alludes to Platonic-Aristotelian concepts. This is especially true in the case of his treatment of mores. Previous commentators have not sufficiently considered the roots of his concern with mores (moeurs), a concept central to his political particularism. The term comes from the Latin for “the custom of the elders” (mos maiorum). It was the preferred Latin translation of the Greek êthos (character) in the

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62 Shackleton, Montesquieu, 265.
Hellenistic period. More significantly, the term was carried into French translations of the *Politics*—translations that Montesquieu used. Loys Le Roy renders *éthos* alternatively as mores (*meurs*) and custom (*coustume*) in his 1568 edition. Nicole Oresme repeatedly renders *éthos* as “mores or customs” (*les meurs ou la coustume*) in his 1374 translation. Montesquieu obtained and studied these editions while preparing to write *The Spirit of the Laws*. This suggests that when he discusses the relationship between moeurs, coutumes and lois, and when he indicates, for instance, that democratic moeurs establish and sustain democratic regimes, we should be alive to possibility that Montesquieu is speaking the language of Aristotle’s *Politics* as he received it.

This language and related concepts provide the theoretical equipment for Montesquieu’s critical treatment of classical republicanism. He understands the laws of Lycurgus and Plato (an actual law-giver and a philosophical lawgiver) to represent Greek republican government (EL, IV.7). Indeed, he sees the regime of Plato’s *Laws* as the “correction” and even the “perfection” of Lycurgan Sparta (EL, IV.6, VII.16). In his *Pensées*, he further suggests that the regime of Plato’s *Republic* closely resembles

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64 Loys Le Roy, *Politiques d’Aristote* (1568), Bk. VIII, ch. 1. “Car il faut dresser la police selon chacune republique, ayant chacune ses propres meurs, qui ont accoustrumé de la maintenier & establir du commecement. Comme la democratie les meurs popoulairs, & l’oligarichie oligarchiques: & tousiours la meilleure coustume est cause de la meilleure republique.”

65 Nicole Oresme, *Politiques d’Aristote* (Philadelphia: American Philosophical Society, 1970 [1374]), Bk VIII, ch 1, 339. Oresme offers this gloss: “For if as several say, some men are naturally suited from one constitution and others for another.”
the Sparta regime. Thus for Montesquieu, Plato’s political thought represents the enhancement and completion of Greek (especially Spartan and Cretan) republican politics.\footnote{This republicanism characterized Athens until its virtue “ceased” (EL, III.3). See Thomas Pangle, Montesquieu’s Philosophy of Liberalism (Chicago: University of Chicago Press, 1973), 65-66.}

The republican regimes of the Greeks are not simply a subset of republics. They are rather the nearest, purest approximations of republican government as an ideal type. They are “singular institutions” [institutions singulières], in contradistinction to “ordinary institutions” [institutions ordinaires].\footnote{EL, IV.6-7, XII.30 n. 84, XXIII.7; see also XIX.21.} This description is neither an accolade nor a slur. It implies the peculiarity and inimitability of Greek republican regimes. Like the “singular man” whom Montesquieu describes in his Pensées, singular institutions are “bizarre (MP, 52).” Just as an ordinary person could not imitate the “thoughts and actions” of a “singular man” without “betraying and diminishing himself,” so also ordinary peoples cannot live under singular institutions (MP, 52). Few peoples could sustain singular republican institutions. Montesquieu aims to show that modern European peoples are not among these few.

Of the many “singular institutions” of the Greek republicans, none interests Montesquieu more than their regulations regarding commerce and money. He is not a straightforward critic of the Greek republican limitations on inter-state trade and silver. Indeed, he praises the “wisdom” and “genius” of Lycurgus, Minos and Plato. Given the right conditions, their institutions “can be good (EL, IV.7).” Restrictions on commerce
are in fact necessary to maintain the kinds of regimes of virtue they envisioned.

Limitations on trade and travel insulate a people from the corrupt mores of foreign peoples (EL, XX.1). Likewise, Montesquieu agrees with the Ancients that silver and gold tend to

…fatten the fortune of men beyond the limits nature has set for it, to teach men to preserve vainly what has been amassed vainly, to multiply desires infinitely and to supplement nature, which has given us very limited means to excite our passions and to corrupt one another (EL, IV.6).

Money “must be banished” from singular republics (EL, IV.7). In short, Montesquieu endorses the view that trade and wealth can corrupt the mores and the constitution of “singular” republics.

But of course, his views on commerce and political life do not end here. While these limits on money-making are entirely appropriate for Greek republics, they should find no home in large, modern states. In Book IV, Montesquieu suggests that the “extensive business” of states populated by numerous peoples makes the Greeks’ singular institutions unworkable. In such states, efforts to “inspire virtue,” to educate a people as a “family,” are doomed to fail (EL, IV.6). Later, when he takes up commerce as a subject in its own right, Montesquieu offers new reasons to dispense with Greek objections to commerce—reasons that transcend the small republic thesis. He writes,

Commerce has spread knowledge of the mores of all nations everywhere; they have been compared to each other, and good things have resulted from this.
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 softens barbarous mores [adoucit les moeurs barbares], as we see every day (EL, IV.1).

Here again, we see Montesquieu adopt the Platonic-Aristotelian view: commerce can indeed “ruin mores” (EL, IV.1). He does not argue that commercial society is ethically or politically superior per se. But when a people lacks pure mores—as do the vast majority of peoples—then laws favoring commerce can be both ethically and politically expedient. The same law can have different effects upon different peoples, depending upon their particular character and circumstances. The laws of commerce are no exception. The classical view of commerce applies only to a particular subset of peoples—those with pure mores. Moreover, Montesquieu does not present this argument as a revision of the classical view. On the contrary, that commerce corrupts pure mores “was the subject of Plato’s complaints.” In other words, one can embrace the classical view of commerce in its context and yet endorse the doux commerce thesis with all its political implications. Commerce is bad for Sparta and Magnesia but not for England and France. In this way, Montesquieu transforms the classical critique of commerce into a merely contingent critique. This element of the classical republican ideal is not wrong, but it is inapplicable in modern times. As Plato suggests in the Laws, diversity in national character “should not be defied when one makes laws.”

Montesquieu merely applies this principle to the Greeks’ own singular restrictions.

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68 Plato, Laws, 747d.
concerning commerce and so relegates these restrictions to the dustbin of republican history.

Just as Montesquieu appeals to Plato in order to argue that commerce is neither ethically nor politically ruinous for “ordinary” peoples, so he turns to the *Laws* to suggest that the other institutions of Magnesia—the city of the *Laws*—are unsuitable for commercial societies. In a chapter concerned with civil judges, he turns to Plato’s discussion of the effects of maritime commerce.

Plato says that, in a town where there is no maritime commerce, half the number of civil laws are needed, and this is very true. Commerce brings into a country different sorts of peoples, a great number of agreements, kinds of goods, and ways of acquisition (EL, XX.18).

Montesquieu cites *Laws* 8. In *Laws* 8, the Athenian Stranger explains that in Magnesia, the people will find sustenance from the land alone; they will not rely upon maritime trade. The absence of maritime commerce “makes things easier” for the law-giver; the city will need “half as many laws.”

Why? The Stranger explains the lawgiver can “just say good-bye to most of what pertains to shipowning, wholesale trading, retail merchandising, innkeeping, custom duties, mining, loans, compound interest, and tens of thousands of other such things.” In other words, a city without maritime commerce needs fewer laws because it is host to fewer activities. Yet before offering this more mundane explanation, the Stranger explains that the non-commercial city will “need

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70 Plato, *Laws*, 842d.
only half as many laws, or even far less than half, and the laws are more fitting for free human beings.”71

The significance of this line is not lost on Montesquieu. Rather than focusing upon the greater number of activities in commercial states, his gloss on the passage gives central place to the Stranger’s mention of human types. Commercial societies require twice as many laws not simply because they are home to more activities, but because they are home to more types of human beings. “Commerce brings into a country different sorts of peoples,” Montesquieu explains.72 He understands that the Stranger’s focus is not merely upon activities but upon sorts of men. Maritime commerce introduces into the city human beings who are not “free” in the Stranger’s sense—men with servile minds and corrupt characters for which the laws of Magnesia are a poor fit. The isolated Magnesians can maintain pure mores and live under laws “fitting” for their homogenous, distinctively “free” character. But commerce breeds cosmopolitan diversity and renders nations less capable of sustaining the “singular institutions” of the Greek republic. Montesquieu invites readers to hear the message from Plato himself: One cannot simply export “singular institutions” to large commercial societies, filled with diverse human types (“different sorts of people”). In this way, Montesquieu allows Plato to chasten his latter-day republican disciples, who seek to resurrect the pure republics of the Ancients within the heart of modern

71 Plato, Laws, 842cd.
72 Italics added.
commercial states. He implies that the classical republic of virtue is inappropriate and unsuitable for peoples such as us. Just ask Plato.

This engagement with Plato turns fundamentally on the question of civic education and civic miseducation, broadly conceived. Like Plato, Montesquieu holds that a people must be formed or educated for political institutions, and he is keenly aware of his affinity with Plato on this point. His treatment of Plato's views on musical education not only reveals the Platonic influence upon his conception of the relationship between politics and culture but also illuminates the roots of the *doux commerce* thesis in his thought. In Book IV of *The Spirit of the Laws*, Montesquieu argues that “the laws of education should be relative to the principles of the government (EL, IV).” This consideration of education appears early in the book. Indeed, it is the first “relation” Montesquieu takes up after he has outlined his theory of the nature (Book II) and principle (Book III) of each government. This early attention to education suggests that Montesquieu is, at least formally, tracing the concerns of the Ancients. In Book IV, he surveys the various forms of education appropriate to each type of government, and it is here that Montesquieu discusses the “singular institutions” of the Greek republics.

The book culminates in an “Explanation of a paradox of the Ancients in relation to mores” (EL, IV.8). The paradox finds its boldest expression in Plato’s *Republic*: “Plato is not afraid to say that no change can be made in music which is not a change in the constitution of the state.” Though Montesquieu and the modern editors do not provide a citation, the passage he has in mind is from *Rep. 4*, where Socrates warns,
For they must beware of change to a strange form of music, taking it to be a danger to the whole. *For never are the ways of music moved without the greatest political laws being moved*, as Damon says, and I am persuaded.

…[T]here is no harm, were it not that little by little this spirit of license, finding a home, imperceptibly penetrates into manners [τὰ ἑθῆ] and customs; whence, issuing with greater force, it invades contracts between man and man, and from contracts goes on to laws and constitutions, in utter recklessness, ending at last, Socrates, by an overthrow of all rights, private as well as public.⁷³

Music shapes the citizens’ mores (ἔθος) and customs, and these mores shape the constitution. Montesquieu thus calls our attention not merely to the Ancients’ views on music, but more broadly to the ancient view of the relationship between mores and the constitution, the ἔθος and the politeia, or character and politics. The ancient teaching on music lies near the heart of classical political particularism.

Montesquieu calls this teaching a paradox because it ascribes political importance to a facet of human life that seems in itself thoroughly apolitical. But he explains that Plato was not alone in his adherence to it:

Aristotle, who seems to have written his *Politics* only in order to oppose his feelings to Plato’s, nevertheless agrees with him about the power of music over mores. Theophrastus, Plutarch, and Strabo, *all the Ancients*, have thought likewise. This is not an opinion proffered without reflection; it is one of the principles of their politics. It is thus that they gave laws; it is thus that they wanted cities to be governed (EL, IV.8, emphasis added).

Music shapes politics via mores. That mores influence and sustain regimes is the unstated middle term. The influence of mores upon laws and constitutions is,

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Montesquieu realizes, an even more basic principle of “their politics.” Having outlined these strange views, he announces his intention to explain them—to show the rationality of the Greeks’ concern with the politics of music. But Montesquieu’s explanation illuminates his own political principles as much as it illuminates the politico-cultural principles of the Ancients.

He reminds readers that Greeks regarded work for pay as unworthy of free men. They believed that handicraft, commerce and even agriculture degraded human character. These views put the Greek regimes in a “very awkward position.” As Montesquieu explains, “One did not want the citizens to work in commerce, agriculture, or the arts; nor did one want them to be idle (EL, IV.8).” The solution to this apparent dilemma lay in gymnastics and other activities related to war. Here, Montesquieu surely has in mind the Spartan regime as well as Plato’s Kallipolis. These exercises, he explains, lead to still another problem. They were “appropriate for making people harsh and savage” and therefore “need to be tempered by others that might soften the mores [adoucir les moeurs].” While the exercises aroused men’s “roughness, anger, and cruelty,” musical education made the soul “feel softness [la douceur], pity, tenderness and sweet pleasure.” Musical education did not inspire true virtue, according to Montesquieu, but it counter-balanced the effects of gymnastics and cultivated in the people the habits of heart necessary to sustain singular political institutions.

Montesquieu thus concludes that the Ancients’ interest in the political effects of music was not the product of superstitious folly. Musical education was fully
reasonable in the context of Greek republics. While modern states may find other ways to prepare a people for modern regimes, the musical education of the Ancients represented a valid application of a basic principle Montesquieu himself endorses: “the character peculiar to each constitution usually safeguards it as well as establishes it initially.”\(^7\) In his reflections on this Greek paradox, Montesquieu imparts a lesson about not only the politics of music but the politics of mores generally.

This discussion of the “paradox of the ancients” demonstrates Montesquieu’s serious engagement with classical political particularism. But it also points to Montesquieu’s departure from the substance of ancient political thought, even as he retains the formal elements outlined in above. Montesquieu insists that the principal effect of the musical education of the Ancients was “gentleness” or “softness.” Music “softens mores [adoucir les moeurs]” and makes the soul “feel softness [la douceur].” This is the same language Montesquieu uses later, in Book XX, to describe the effects of commerce upon mores (EL, XX.1). Like the musical education of the Greeks, commerce breeds “gentle mores [moeurs douces]”; it “softens barbarous mores [adoucit les moeurs barbares].” Commercial activity exposes a nation to the customs of other nations, and men are led to compare their parochial mores to those of foreign peoples. Gentleness (la douceur) is among the “good things” which have resulted from the act of comparison. This cosmopolitan gentleness is distinct from the gentleness of soul that Montesquieu associates with musical education in Book IV. Commerce cures

“destructive prejudices”—prejudices that serve as the foundation for harsh, illiberal mores. Montesquieu seems to have in mind a gentleness resembling tolerance. Commerce exposes a nation to diverse human types and eventually softens a people’s response to unconventional ways of life. It prepares a people not for the singular institutions of the Greeks, but for what Montesquieu calls “free government”—a well-balanced, law-governed regime of limited powers (EL, XI.6). In a surprising turn, Montesquieu thus suggests that commerce is to the free institutions of the moderns what musical education was to the singular institutions of the Ancients. It is fitting, therefore, that he offers an “Invocation to the Muses” as he begins his reflections on commerce (EL, XX). “Give my spirit the calm and gentleness [la douceur] that now flee from me,” he beseeches. Commerce becomes the musical education of the moderns.

But Montesquieu’s engagement with the classical republican ideal is not limited to his discussion of commerce. Many other singular institutions of the Greeks, beyond their limitations upon economic activity, appear unsuitable for modern states. His approach to these other institutions mirrors his approach to the restrictions upon commerce. He explains that the restrictions were reasonable given the character and circumstances of Greek republics, but that they are unsuitable to other forms of political organization. The political principles are not, as the Greeks themselves acknowledge, generalizable. One finds this approach in Montesquieu’s discussion of Plato’s views on
venality—selling political posts—and civic surveillance. Citing the *Laws*, Montesquieu turns to his leading Greek republican:

> Plato cannot endure such venality. ‘It is,’ he says, ‘as if, on a ship, one made someone a pilot or a sailor for his silver. Is it possible that the rule is good only for guiding a republic and bad in all other life employments?’ But Plato is speaking of a republic founded on virtue, and we are speaking of monarchy. Now, in a monarchy, where, if the posts were not sold by a public regulation, the courtiers’ indigence and avidity would sell them all the same, chance will produce better subjects than the choice of the prince. Finally, advancing oneself by way of wealth inspires and maintains industry, a thing badly need in this kind of government. (EL, V.19)

Again, Montesquieu does not contradict the Platonic view directly. Rather, he pushes this view to the margins on the basis of his political particularism, itself inspired by Plato. Laws must be fitted to the character and circumstances of a people, as well as to the regime type. Civil and political laws appropriate for a republic of virtue may not suit a monarchical state. As in his discussion of commerce, Montesquieu here seems to suggest that his view is no departure from that of Plato: “Plato is speaking of a republic of virtue.” The authority of Plato is no argument against venality in monarchical states. Thus Montesquieu again employs the formal principles of political particularism in overturn the substance of classical republicanism.

The republican emphasis on civic surveillance meets with a similar treatment in the same chapter (EL, V.19). Republics of virtue must have censors, since virtue can be destroyed not only by crimes but also by “slackness in love of the homeland, dangerous examples, seeds of corruption” and other elements for which laws cannot account. But
in monarchies, virtue need not be so vigorously maintained. Honor suffices to maintain monarchy, and it naturally has “the whole universe as a censor.” The office of the censor was not unreasonable for republics of virtue, but it is unsuitable for the modern monarchy, a form of government the Ancients did not understand (EL, XI.8).

The same is true of civic surveillance in other forms. Montesquieu later explains that Plato wanted citizens punished if they neglected to alert and aid magistrates when they witnessed wrongdoing. “This would not be suitable today,” he explains. Instead, modern states have established the office of public prosecutor to keep watch: “It acts, and they are tranquil (EL, VI.8).” The republics of Plato, Lycurgus and Minos assumed that citizens paid “singular attention” to each other (EL, III.7); but in large, diverse commercial states, legislators can make no such assumption. The principles of political particularism—principles Montesquieu attributes to the Greek republicans—lead Montesquieu to reject the institutions of civic surveillance so central to the classical ideal.

A subtle but unrelenting line of argument runs throughout Montesquieu’s treatment of ancient republican thought. Gradually and deliberately, he shows that the political and civil laws of the Greeks have no place in modern politics, however reasonable they may have been for certain ancient cities. More remarkable than this, he turns to the Ancients themselves to build his case. In an important sense, Montesquieu claims the mantle of the Greeks. He is the true heir to the most basic principle of classical statesmanship. In contradistinction to self-styled civic republicans, who would
revive the institutions of the Greeks in modern states, he follows the Ancients in recognizing that place and character limit the range of suitable options available to the prudent legislator. Montesquieu effectively breaks with the classical republican ideal even as he works within the framework of classical political particularism. In so doing, he prepares his readers for an alternative, more authentic form of political liberty suitable to large, heterogeneous societies that are short on the virtue of the Greeks.

4. States are People, Too: Montesquieu’s Politicization of Cicero’s Second Persona

Montesquieu’s admiration for Cicero was profound and long-lived. Among his earliest works was a Discourse on Cicero (1717). Later, he would begin but never complete a work on duties modeled upon Cicero’s On Duties. To Fitz-James, he writes, “… I devised the plan of writing a work on duties. The treatise on Duties (de Officia) by Cicero had enchanted me and I took it as a model.”75 Though unfinished, and now mostly lost, Montesquieu had presented pieces of it to the Bordeaux Academy in 1725. In short, he had a non-trivial interest in Cicero’s moral and political philosophy. In his Pensées, he renders a verdict on the Roman: “Cicero, in my view, is one of the great minds that has ever existed: a soul always beautiful when it was not weak.”76

The sparse surviving fragments of Montesquieu’s Treatise on Duties do not afford us a clear picture of how Cicero’s On Duties might have shaped his moral

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76 MP, 73.
philosophy. But in *The Spirit of the Laws*, one finds echoes of an important element of Cicero’s moral theory. Especially in Book XIX, Montesquieu draws upon the insights of Cicero’s four-personae theory in order to explain and defend his political particularism. The Ciceronian teaching originally concerned only individuals, but Montesquieu politicizes this teaching and applies it to nations.

Cicero develops his four-personae theory in Book I of *On Duties*. It is a normative theory of moral choice—a “method of finding out our duty”—that directs the chooser to consider his four “roles” or personae as he makes moral decisions. Each role represents a normative reference point to which the chooser should look as he seeks to act in keeping with seemliness (decorum), an aspect of the honorable (honestum). The four roles include first, the role given by common human nature; second, the role given by my individual nature; third, the role imposed upon me by chance and circumstance; and fourth, the role given by my own decision and will. The first two roles are natural: “We have been dressed by nature for two roles.” When I am faced with a moral choice, I must first ask, “What actions best comport with my nature as human being, possessed of rationality and sociability?” This role is common to all men. What is good for me as a human being is good for you as a human being. But the second role is distinguished on precisely this point. When I consider the second role, I ask, “What actions best comport with my individual nature—my spirit, character,

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talents, disposition, capacities?” On Cicero’s view, every moral chooser must consider his individual nature as a normative point of reference. It is this second role that interests Montesquieu, and we shall return to it.

After his discussion of the two natural roles, Cicero hastens to add the other two. When faced with a moral choice, I ought to consider the limits that chance and circumstance have placed upon my options. I must also consult my own will and decisions. This means asking both, “What do I prefer?” and, “How do my past decisions constrain the range of choices presently open to me?” Chance and will constitute the third and fourth personae.

As Cicero concisely unfolds this theory of moral choice, he pays greatest attention to the second persona. The first persona holds lexical priority over the second, but the second nonetheless seems to require a good deal more explanation. This is no surprise, for as Christopher Gill notes, the general emphasis in ancient ethics was upon “defining an ideal pattern of human nature”—that is, getting straight the duties of first persona. The four-personae theory’s “stress on the value of retaining one's own, particular, characteristics” is therefore “especially striking” and requires further explication.

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79 Cicero, On Duties, I.115.
81 Gill, “Personhood and Personality,” 178.
The introduction of the second persona—most likely by Panaetius—represents a complication of the traditional Stoic ambition of living *naturae congruentes*. For the purposes of human moral choice, Cicero suggests that nature is both one and many. To follow nature, I must follow both common human nature and my individual nature. Cicero explains that “just as there are enormous bodily differences… similarly there are still greater differences in men’s spirits [*animis*].” He provides some initial examples. Some men are naturally jolly, others naturally serious. He focuses upon dispositional aspects of the second persona and stresses the moral indifference of these diverse traits: They “do not in the least deserve censure.” Each must “hold on to what is his as far is it is not vicious, but is peculiar to him.” Even if it means passing up a way of life that is better in the abstract, we must “follow our own nature” and “measure our own by the rule of our own nature.” Cicero warns against imitation and emulation: “You cannot preserve [an evenness of life] if you copy someone else’s nature and ignore your own.” Just as wise actors “do not choose the best plays, but those that are most suited to themselves,” so I should be willing to chose a way of life that is fitting for me.

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82 In *On Duties* I and II, Cicero follows a work on duties by Panaetius, a second-century Stoic. Panaetius’ work is now lost.


whether or not it is best in itself or most admired. When I act otherwise, I “fight against nature” and seek the unattainable.

There is good reason to believe this account of the second persona exerted a significant influence upon the development and articulation of Montesquieu’s political particularism. Montesquieu politicizes the second persona. Cicero’s theory of individual moral choice furnishes the categories for Montesquieu’s theory of political choice. Just as Cicero suggests that each individual must “hold on to what is his” and follow his individual “spirit,” Montesquieu suggests that a legislator must not contravene the distinctive spirit or character of his people. Particularly in Book XIX of *The Spirit of the Laws* (which contains Montesquieu’s most important treatment of regime change), the language and structure of Montesquieu’s defense of political particularism strongly suggests the influence of Cicero’s approach.

In order to bring out the affinities between Montesquieu’s Book XIX and Cicero’s text, it is helpful to consider Philippe Goibaud du Bois’ French translation of *On Duties*, or *Les Offices*. Montesquieu had a copy this translation in his library at La Brède, and while he knew Latin, it is not unreasonable to suppose he would have had recourse to what was at the time a recent edition in his own tongue with side-by-side

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89 Cicero, *On Duties*, I.110. “For it is appropriate neither to fight against [particular] nature nor to pursue anything that you cannot attain.”

90 Desgraves and Volpillhac-Auger, eds., *Catalogue de la bibliothèque de Montesquieu à La Brède*, 238.
Latin text. Below, I will refer occasionally to this Du Bois translation in order to highlight the resonances between the language of Spirit and Les Offices.

Book XIX of The Spirit of the Laws is entitled, “On the Laws in their relation with the principles forming the general spirit [esprit générale], the mores and the manners of a nation.” Here, Montesquieu argues for the need to match political and legal institutions to the spirit of the people.\footnote{Montesquieu also speaks of “national character” in this book. In this connection, it is worth keeping in mind that Du Bois repeatedly translates Cicero’s “natura” as “caractères” in the discussion of the second persona.} Just as Cicero counsels against individuals following a single, uniformly best plan of life, so Montesquieu counsels against such a will to uniformity in statecraft. For Cicero, acting in accordance with one’s nature means, in part, acting in accordance with one’s distinctive “spirit” or animus (as Du Bois rendered it, esprit). Montesquieu’s discussion of the esprit générale is reminiscent Cicero’s admonition. More remarkably, Montesquieu adduces examples of “general spirits” that mirror Cicero’s first set of examples of “different spirits.” Montesquieu follows Cicero when he selects, as his primary illustration, the difference between national gaiety and national gravity. In explaining the second persona, Cicero had pointed out that some men are naturally jolly, while some are naturally serious; neither type deserves censure for following his nature. Lucius Crassus had a lot of wit, while Gaius Caesar was more studied. Socrates was “pleasant and humorous” while Pythagoras was serious (Du Bois: “serieux”) and without any gaiety (Du Bois: “nulle gayeté dans l’esprit”). Marcus Scaurus was exceptionally seriousness (Dubois: “fort
grave”) while Gaius Laelius was extremely jolly (DuBois: “beaucoup... de gayeté”). Immediately after defining the “general spirit,” Montesquieu provides quite similar examples to the same end and employs language like to that of Du Bois translation. He explains that the French have a “sociable humor” and take joy in life. He warns, “If one gives a pedantic spirit to a nation naturally fully of gaiety [naturellement gaie], the state will gain nothing (EL, XIX.5).” Like the French, the Athenians were also fully of gaiety (gaieté), in contrast to the “grave, serious [grave, serieux]” Spartans (EL, XIX.7).

Nothing is particularly impressive about these examples, save their remarkable resemblance to the initial examples of different spirits in Cicero’s On Duties, especially as translated by Du Bois. This supports the view that Montesquieu is self-consciously applying Cicero’s second persona to the nation. The argument, structure and language of Montesquieu’s discussion of the general spirit suggest this connection. Moreover, one suspects that the allusions would have been particularly more obvious to Montesquieu’s contemporaries than they are to today’s readers. The former were likely to be familiar with “Tully’s Offices,” which ranked among the most widely read ethical works on the Continent and in England during the seventeenth and early eighteenth centuries.⁹²

Montesquieu clearly understood his theory of distinctive national spirits and characters to be analogous to conceptions of individual human natures. At one point, he

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in fact appeals explicitly to a conception of individual “natural genius” to support his admonitions to legislators: “The legislator is to follow the spirit of the nation when doing so is not contrary to the principles of the government, for we do nothing better than what we do freely and by following our natural genius (EL, XIX, 5).”\textsuperscript{93} The subordinate clause invokes to the individual experience of following one’s “natural genius” in order to support a political application of the same underlying principle.\textsuperscript{94}

And as we saw above, Montesquieu’s discussion of singular institutions in Book IV tracks closely with his treatment of the singular man in the \textit{Pensées} (MP, 52). Just as few men should attempt to imitate the singular man, so also few nations should seek to imitate the singular institutions of the Greeks (EL, IV, 6-7). This suggests that the analogy of individual character to national character was familiar to Montesquieu.

Finally, we must recall the question that initially motivates his examination of the relations of the laws: What form of government is most in conformity with nature (EL, I.3)? Montesquieu’s response pluralizes nature. He writes, “It is better to say that the 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 (EL, I.3).” For a government to be in conformity with nature, it must do more than simply conform to

\textsuperscript{93} Commenting on this passage, James W. Ceaser observes, “The \textit{natural} here is given a second meaning, not as a universal, common standard that applies to all individual beings…but as an inner impulse from which grows something specific to each being.” James W. Ceaser, \textit{Liberal Democracy and Political Science} (Baltimore: Johns Hopkins University Press, 1990), 66.

\textsuperscript{94} The analogy only goes so far, as Montesquieu knows. Unlike “natural genius” or Cicero’s second persona, the general spirit is formed not only by \textit{natural} attributes alone but laws, custom and habit.
universal natural rules. It must also conform to the particular nature of a people, place and time. Montesquieu thus asserts the manifold nature of nature in contradistinction to reigning social contractarian conceptions of nature. This theoretical move mirrors that of Panaetius and Cicero, who complicate of the traditional Stoic ambition of living in accordance with a common human nature (naturae congruentes). Cicero brings the idea of a particular nature to bear upon individual moral choice, and Montesquieu brings the corollary to bear upon political choice.

Cicero’s moral theory contributes to the development and formulation of Montesquieu’s political particularism—a sensibility he deploys against the classical republican ideal. Though Montesquieu understood that Cicero’s republicanism was not identical to that of the Greeks, he certainly counted Cicero among the ranks of classical republicans (EL, XVIII.1). Thus here again we find that Montesquieu arms himself with political principles derived from classical republican thought even as he argues against the instantiation of the classical republican ideal in modern politics.

III. Conclusion

When taken as a whole, The Spirit of the Laws may indeed be “a work without a mother.” But Montesquieu’s political particularism is not Fortune’s child. In the theoretical development and rhetorical deployment of this doctrine, Montesquieu incurs debts to the jurisprudential debates of early modern France as well as the political and

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95 EL, Epigram.
moral thought of Plato, Aristotle and Cicero. In this chapter, I have traced out the nature of these debts and indicated the ways in which an understanding of Montesquieu’s influences can shed light on the relationship of his normative liberalism to his critique of political universalism.

Trained in law and seated for a time on the bench, Montesquieu would have been well-acquainted with two hundred years of subtle and not-so-subtle controversy over French public law, the use of Roman law in France, codification and custom. In the midst of the debates, constitutionalism became intimately linked to the particular, the customary, the local, and the concrete. By contrast, absolutism became associated with the universal, the natural, the foreign and the abstract. These categories would wend their way into Montesquieu’s own theoretical imagination, and this accounts in part for his marriage of political particularism and liberal constitutionalism. A quick glance back at the history of the debate over French law would confirm the view that a robust defense of limited government was perfectly consistent with an analytical and practical insistence on relating laws and institutions to the “disposition of the people (EL, I.3).”

With regard to Montesquieu’s ancient sources, this chapter confirms the view that *The Spirit of the Laws* seeks to dethrone the classical republican ideal and to replace it with a more authentically modern regime. But I argue for new way of

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understanding this accomplishment. In Montesquieu’s great work, the victory of modern constitutional regimes over the classical republic represents the victory of classical political particularism over the substantive elements of ancient politics. In this way, we see that both rhetorically and theoretically, Montesquieu understood his anti-universalism to be an integral part of his case for a liberal European future.

This also suggests that one purpose of Montesquieu’s système de politique was to show modern proponents of classical republicanism that their aspirations ran afoul of their ancient teachers’ meta-principles. Montesquieu may well have meant for Harrington’s followers to hear this admonition (EL, XI.6). But more likely, understanding the enduring appeal of the classical republic of virtue, he sought to warn later generations of political thinkers and actors against allowing the charm of ancient political institutions to overwhelm sound political judgment based upon the realities of the modern condition. It is, then, little surprise that some French Revolutionaries harbored hostility toward Montesquieu’s works. In his Spirit of the Laws, liberal constitutional regimes eclipse the classical republic, not simply by virtue of their superior justice, but also by virtue of their superior fit with the modern world. It is to Montesquieu’s conception of the liberal regime that we now turn.
THREE: The Liberal Regime

Political liberty concerns moderate monarchies just as it does republics, and is no further from a throne than from a senate. Every man is free who has good grounds to believe that the wrath of one or many will not take away his life or possession of his property.

Montesquieu, *Mes Pensées*, 884

The purpose of this chapter is to elucidate Montesquieu’s understanding of the liberal regime. Rousseau was correct when he wrote that Montesquieu failed to develop “principles of political right” akin to what we find in the *Social Contract* or the *Second Treatise*. Montesquieu did not set out to construct, at a comfortable remove from the warp and woof of the empirical world, a systematic *a priori* standard for judging regimes and institutions. But his political thought is far from value-neutral, and when the one collects and assembles, as Montesquieu himself never attempted to do, the normative elements and suggestions within his great work, one finds an unmistakeable concern for political right. “Normativity” resides within Montesquieu’s *Spirit of the Laws*, but it is diffused throughout and embedded within a comprehensive science of politics and law (Montesquieu’s main concern, according to Rousseau). These diffuse normative judgments have institutional implications. Commentators have widely recognized that despotic government serves as a negative model in Montesquieu’s political thought; decent political orders will resist all the tendencies that make

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1 This entry is entitled “On Political Liberty.” It contains elements of an unfinished essay on the subject.
despotism what it is. But Montesquieu’s many detractors, defenders and expositors, in the realms of both theory and practice, have long debated the precise nature of the regime or regimes that receive his imprimatur. Which regimes and laws can sufficiently protect both political liberty and the range of human goods threatened by despotism?

With a tolerable degree of simplification, we can divide the scholarly dissensus on this matter into roughly three schools of interpretation. The first school recognizes Montesquieu’s great admiration for the English constitution but holds that his liberal constitutionalism admits of a wide range of decent regimes, including constitutional monarchy. According to this school (we shall call its view the *regime-pluralist reading*), his proximate goal for his own nation of France was a reformed monarchy, which he believed was capable of providing sufficiently robust protections for liberty and security.

By contrast, the *monarchical reading* argues that Montesquieu regards

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monarchy, tempered by a powerful nobility, as superior to the other political forms.\(^5\)

The early republican critics of *The Spirit of the Laws*—among them Thomas Jefferson and the Destutt de Tracy—detected in the acclaimed work a dangerous “predilection for monarchy” that was infecting Atlantic political thought and practice.\(^6\) A modified

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version of this line of interpretation cropped up again in the middle part of the twentieth century, as commentators suggested that Montesquieu was a “feudal reactionary,” the leading spokesman for the “noble reaction” against Bourbon absolutism, and the author of a “handbook of aristocratic belief.” On this view, his fundamental aim was to bring about a restoration of the power of nobility within the Old Regime. But still, like Jefferson and Tracy, these commentators held that Montesquieu’s regime of choice was monarchy. If the reactionary interpretation sees the regime-pluralist thesis as an overly liberal reading of Montesquieu, the third school (we shall call its view the liberal republican thesis) rejects the regime-pluralist thesis for its failure to appreciate the rigidity of Montesquieu’s liberal commitments. The leading American voice in this school of interpretation is Thomas Pangle, and the view has been recently reasserted by Diana Schaub, Sara MacDonald and Andrea Radasanu. They argue that


Montesquieu’s praise of monarchy is belied by subtle criticism of the same throughout *The Spirit of the Laws* and that his true intentions are best understood in light of these critical concerns. On this view, Montesquieu saw monarchy as insufficiently hospitable to liberty and security. He therefore sought a gradual but definite transition from the Old Regime to a regime more like the English model. By implication and sometimes explicitly, scholars who hold this view distinguish Montesquieu’s political science from the prudential flexibility of Aristotelian statesmanship.\(^9\)

The view I articulate in this chapter has most in common with the regime-pluralist thesis. While a number of scholars have endorsed this interpretation in passing, the literature contains no sustained effort to defend this view and integrate it into a broad account of Montesquieu’s normative political theory. In the present chapter, I argue that a normative vision of free and moderate government emerges in *Spirit* and that the liberty and moderation at the heart of this vision are attainable within a wide variety of regime types. A careful comparison of Montesquieu’s two regime typologies lends firm support to the regime-pluralist thesis, and this view is further

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confirmed by a consideration of the indeterminate nature of his normative foundations. These foundations support a compelling critique of despotism, but they lead to no determinate conclusions about the precise composition of correct regimes. While I grant the claim of the liberal republican school that Montesquieu believes the English regime can boast of significant net advantages over traditional monarchy, I argue that the relative disadvantages of monarchy (and other regimes not cast exactly upon the English mold) are not so great as to exclude them from the family of moderate and effectually free regimes. Indeed Montesquieu’s view of the proper ordering of political communities is best understood as a function of his secondary distinction between moderate and despotic regimes, which overlays his initial tri-fold typology.

Because Montesquieu holds that a wide variety of regimes can secure human liberty, his normative liberalism is especially amenable to a particularistic art of politics. The reason is simple: Liberal reformers and founders have a range of options from which to choose as they seek to design political institutions and laws suitable to circumstances, history and character of a people. So as this chapter offers a detailed analysis of Montesquieu’s conception of the liberal regime, we gain insight into the complementary character of his normative liberalism and his political particularism. This is a critical point to remember in the course of our analysis below.

Before turning to the task in earnest, it is necessary first to appreciate Montesquieu’s mode of normative political theory. By this I mean the way in which

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11 Cf. Williams, “Political Ontology.”
Montesquieu understands his own task as he seeks to address politics from a moral (but not merely moral) point of view. To what question is his normative political theory an answer? A failure to understand what is distinctive in Montesquieu’s mode of inquiry will hamper any effort to understand the character of his conclusions.

1. Mode of Normative Political Theory

The main tradition of pre-modern political philosophy aimed to identify a best regime and in turn to point toward imperfect but more practicable alternatives. The tradition of political philosophy that begins with Hobbes and includes Locke, Rousseau, and some later liberal thinkers aimed not to identify the best regime but rather a basic standard of political legitimacy against which all claims to political power can be measured. Their primary question is not how men may be best governed but rather what can justify the government of men. Does Montesquieu’s political thought find its home in either of these two modes of normative political theory? Does he tack in the direction of the pre-modern tradition as he turns his attention toward the regime and away from the efforts to establish a measure of political legitimacy?

We find in Montesquieu’s published works no explicit account of the legitimate origin or foundation of political power. At times, he identifies moral restrictions on political power that correspond to the Lockean limits on the extent and ends of political

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12 Of course, some of these thinkers at times engaged in a mode of analysis similar to the classical mode, but it was not their primary mode. See for instance Locke on “well-ordered commonwealths.” John Locke, *Two Treatises of Government*, ed. Ian Shapiro (New Haven: Yale University Press, 2003), §12.
power. Criticizing Peter the Great, he writes, “The law is not a pure act of power; things indifferent by their nature are not within its scope (EL, XIX.14).”13 Similarly, in his second book on liberty, he writes, “Laws are charged with punishing only external actions (EL, XII.11).” Law has a scope and a charge; when a positive regulation transgresses the scope or deviates from the charge of law, it looses its character as law and assumes the character of an “act of power.” But in Spirit, this is as close as Montesquieu comes to employing the explicit language of legitimacy. Even if these doctrines pass muster as doctrines of legitimacy, they are measures of the legitimacy of legal enactments but not of regimes or rulers themselves. It therefore seems reasonable to conclude that Montesquieu’s mode of normative political analysis does not turn upon the question of legitimacy.14

13 Cf. EL, XII.4; Montesquieu, Mes Pensées, trans. Henry C. Clark (Indianapolis: Liberty Fund, forthcoming), 815. Future citations of this work will appear in the text as “MP” followed by entry number.

14 But see Catherine Larrére, “Les typologies des gouvernements chez Montesquieu,” Études sur le XVIIIe siècle, ed. Jean Ehrard (Clermont-Ferrand: Association des publications de la Faculté des Lettres, 1979), 87-103. Larrére’s reading of EL presents an interesting alternative. She argues that despotic governments are non-states, much as deviant regimes in Aristotle’s Politics are not actually regimes. Despotic governments are not states but the corruption of states, monarchical and republican alike: “Ils représentent la destruction continue de toute domination politique et ce d’autant plus que la deuxième typologie révèle la convergence du despotisme et de l’anarchie (p. 100).” This suggests a distinction between true political power and the corruption of political power. Larrére suggests that Montesquieu presses this distinction at the opening of Book XI, where he quietly and for the first time defines a “state.” He writes, “In a state, that is [c’est-à-dire], in a society where there are laws… (EL, XI.3).” Larrére’s reading is supported by Montesquieu’s blurring of the ancient distinction between laws and regimes in the opening of EL (I.4). Rather than laws and regime, there are civil laws and political laws. The latter form the government or regime (I.3). Thus one need not treat the regime and the laws in separate treatises, as do Cicero and Plato. This suggests that a government without laws (written or unwritten) is not a government in the strict sense.
But Montesquieu likewise provides no account of the unqualifiedly best regime as we find in classical political philosophy. Even the famous chapter on the constitution of England is clearly not an attempt to limn the outline of a regime “most ideal...if there were no external obstacles.”¹⁵ In fact, just when Montesquieu seems about to embark on an experiment in ideal theory, he vigorously resists this temptation. A remarkable passage in his discussion of the English constitution illustrates the point. He writes, “As, in a free state, every man, considered to have a free soul, should be governed by himself, the people as a body should have legislative power; but, as this is impossible in large states and is subject to many drawbacks in small ones, the people must have their representatives do all that they themselves cannot do (EL, XI.6, italics added).” Montesquieu gives us a glimpse of how a perfectly just legislative power might be constituted (“the people as a body should have the legislative power”). This follows from the nature of man: his soul is free, and he therefore should by right govern himself.¹⁶ But Montesquieu hastily closes off this route to ideal theory in order to make concessions to accident and human irrationality (“impossible in large states... subject to many drawbacks in small ones”). These concessions are built into his model of the best

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¹⁶ We should not allow Montesquieu’s relatively weak language here (“considered to have a free soul”) leave us with the impression that he is not making a serious philosophical claim. He holds that man’s “soul” or “spirit” frees him from the strict physical determinism of the natural world (MP, 1266). Spinozistic materialism “destroys liberty in me,” he complains. Intelligent beings “act by themselves” by nature; they do not “consistently follow their primitive laws (EL, I.1).” Montesquieu makes a conceptual distinction between this kind of liberty—“philosophical liberty”—and political liberty (EL, XII.2). See Sharon Krause, “Despotism in *The Spirit of the Laws*,” Montesquieu’s *Science of Politics*, eds. Carrithers, Mosher and Rahe, 256.
actual regime; he clips every insight of ideal theory that appears impracticable in the face of human limitations. No model of the best possible or “simply best” regime is ever permitted to emerge.

Does Montesquieu then jettison the political science of the “unqualifiedly best” but retain what is, on Aristotle’s view, the second task of political science—the search for the best constitution for “most cities and most human beings”? The chapter on the English constitution suggests that this may be exactly the approach that Montesquieu adopts. But while the function of the English constitution in The Spirit of the Laws is similar in many ways to the function of the best practicable regime in Aristotle’s Politics, there are two important distinctions. First, the text of Spirit offers no support for the view that the English regime is the best for most or many peoples of the world, as is Aristotle’s middle constitution according to the Politics. It is not a regime “in which most [states] can participate” in the proximate future. Second, as will become clear in §II below, what is worthy of imitation or approximation in the English example is not the regime itself but rather certain features of the regime. Montesquieu offers the English constitution as a model (“modèle,” EL, XI.7) to provide guidance primarily about the distribution of power, not the composition of the ruling element. The English model points to certain manner of multiplying and organizing the ruling element, whatever its composition may be.

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18 Aristotle, Politics, 1289a1-2; 1292b11-21.
Montesquieu does of course praise the composition of the ruling elements in the English regime, but the leading virtues of the regime can be approximated without replicating this composition. We can see this most clearly when we consider Montesquieu’s comments on the Gothic government of the early Middle Ages. The English regime is a “fine system” (EL, XI.6) but the Gothic government was the “best kind of government men have been able to devise” and the most “well-tempered” (EL, XI.8). The composition of the ruling elements in this regime was not identical to that of the English regime, but like the English regime, these elements were plural and were organized so that power could check power “by the arrangement of things.” Montesquieu’s high praise of Gothic government therefore supports our understanding that the English regime in its entirety is not a model for imitation. Rather, the points especially fit for imitation are those particular features that make the English regime, like its superior Gothic ancestor, well-tempered and conducive to liberty. This consideration weakens analogy of Aristotle’s middle constitution to Montesquieu’s English constitution, for Aristotle’s middle constitution stands a model for understanding who should rule while the English constitution is primarily a model of how to organize and distribute power.

Recognizing these important distinctions, we should note that the English regime of liberty, like the best practicable regime, serves as a model of well-ordered government that is attainable by people without extraordinary levels of virtue.\textsuperscript{20} Moreover, it admits of approximation, and regimes that approximate it more closely are better and further from the negative exemplum, despotism (EL, XI.7).\textsuperscript{21} Montesquieu’s mode of normative political analysis thus shares more in common with the classical mode than the modern mode. But in Spirit, the best actual regime supplants Aristotle’s best possible and best practicable regimes.

As Montesquieu concludes his chapter on the English constitution, he makes a point of contrasting his mode of normative political analysis with that of James Harrington, who hewed more closely to the classical mode. “Harrington… has also examined the furthest point of liberty to which the constitution of a state can be carried,” he writes (EL, XI.6, italics mine). Montesquieu has examined exactly what Harrington examined—“the furthest point of liberty.” But Harrington made two errors. First, he misunderstood liberty. Second, he followed the classical mode of normative political theory too faithfully and therefore failed to look for liberty in the ancient

\textsuperscript{20} Aristotle, Politics, 1295a27.

\textsuperscript{21} Spector argues that “la critique du pire régime se substitue en effect à la détermination du meilleur régime.” Céline Spector, “Quelle justice? Quelle rationalité? La mesure du droit dans L’Esprit des lois,” in Montesquieu en 2005, ed. Catherine Volpilhac-Augé (Oxford: Voltaire Foundation, 2005), 229. Similarly, Binoche argues that Montesquieu aims to provide a “political negative” rather than a positive model. Betrand Bincohe, Introduction à De l’esprit des lois de Montesquieu (Paris: Presses universitaires de France, 1998. But clearly Montesquieu provides more than a negative exemplum. He uncovers the meaning of despotism, points the way to its alternative and suggests several concrete forms that this alternative might take. See also Manent, City of Man, 12-17.
English constitution. He built “Chalcedon with the coast of Byzantium before his eyes (EL, XI.6).”

Now this charge requires more explanation than Montesquieu provides, since in many ways Harrington is an unlikely target for such a criticism. Published in 1656 under Cromwell’s Protectorate, Harrington’s *Oceana* is superficially a utopian work, but the utopian regime is in fact modeled on the English regime under Cromwell. 22 Montesquieu clearly knows this to be the case, for he writes that Harrington “saw only the republic of England (EL, XXIX.6).” Thus the problem is not so much that Harrington has created an “imagined republic.” Instead, the problem is that he has modeled his *Oceana* on an actual regime (the English Republic) that was itself modeled upon rational or theoretical principles rather than upon the traditional English constitution and its forerunner, the Gothic constitution. This is how we must understand Montesquieu’s famous “coast of Byzantium” remark. He alludes to an episode from Herodotus’ *Histories*. 23 When Persian general Megabazos learned that Chalcedon had been founded seventeen years before Byzantium, he criticized Chalcedon’s Greek founders for failing to recognize that just across the Bosphorus lay land fit for a grander and more powerful city—the eventual seat of Byzantium.

Harrington failed to see that before his eyes was a constitution with far greater potential

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than the upstart and short-lived republic of England. Montesquieu recognizes that Harrington could not, in 1656, have seen the post-1689 English constitution that is the subject of Book XI.6—this is Byzantium itself. But Harrington should have seen that the traditional English constitution—the unimproved coast of Byzantium—had potential to become a very impressive regime indeed. Montesquieu’s criticism leaves Harrington, a self-styled follower of “ancient prudence,” standing in the place of the ancient founders of Chalcedon, who were Greeks of Megara. In this way, Montesquieu embraces the realism of post-Machiavellian political theory, but he nonetheless favors a mode of political analysis which shares more in common with classical regime-based approach than it does with the nascent modern discourse of political legitimacy.

II. Liberty and Moderation in the Constitution

Because the regime is the fundamental unit of analysis in Montesquieu’s political theory, it is natural for us to turn to Montesquieu’s typology of regimes in an effort to discern his normative design. But here we are initially confronted with more questions than answers, for in contradistinction to the Aristotelian typology, Montesquieu’s primary typology is not neatly divided between “correct” and “deviant” types. Moreover, as scholars have widely noted, Montesquieu’s Spirit of the Laws contains not one but two typologies of regimes. First, mainly in Books II and III, he outlines a three-fold typology (republican, monarchical and despotic). But by the end of Book III, he has begun to speak of “moderate governments” in opposition to
“despotic governments.” He seems to divide the entire political universe into these two categories. Finally, in Book XI, he speaks of “free states” for the first time. Scholars have exerted significant effort attempting to determine the normative implications of Montesquieu’s classification system. They have focused especially on his prominent three-fold typology. Few have sought to offer clear accounts of the relationship between Montesquieu’s two typologies and his discussion of “free government” in Book XI. In particular, considerable confusion remains with regard to Montesquieu’s view of the nature of moderate government; the connection between moderate government and free states; and the connection between the three primary regime types and the standards of liberty and moderation (e.g., is republican/monarchical government free and/or moderate?). The relative lack of self-conscious scholarly exploration of these questions is puzzling, for the categories of “moderate” and “free” are at the center of Montesquieu’s normative project. We cannot fully understand this project without understanding how he employs these categories.

What is moderate government? Or, more broadly, what is the meaning of Montesquieu’s “second” typology of regimes (moderate vs. despotic)? Near the close of Book V, following three ambiguous references to *gouvernement modéré*,

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24 Ehrard argues that the first typology is merely a mask and that the second typology reveals Montesquieu’s true polemical purposes. Jean Ehrard, *L’idée de nature en France à l’aube des lumieres*, (Paris: Flammarion, 1970), 292. See also Prélot, who argues that the regime classification ends up as a binary division between “les régimes qui n’ont pas la liberté pour objet” and “les régimes qui ont pour but la liberté” (131). But he has missed the real binary division, that of moderate government versus despotism.
Montesquieu finally defines the term by means of a sharp contrast with despotism. He writes,

In order to form a moderate government, 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 that chance rarely produces and prudence is rarely allowed to produce. By contrast, a despotic government leaps to view, so to speak; it is uniform throughout; as only passions are needed to establish it, everyone is good enough for that (EL, V.14).

In moderate governments, political power is plural. These powers must be combined, but not united; they must be tempered by one another and by regulations (EL, XI.6, p. 160); they must have some ability to resist or balance each other. A moderate regime consists in what Montesquieu calls “un système”\textsuperscript{25}—an “equilibrated political system in which power holders check other power holders.”\textsuperscript{26}

On Montesquieu’s view, monarchy is the only form of government that is moderate by definition: “Intermediate, subordinate, and dependent powers constitute the nature of monarchical government (EL, II.4).”\textsuperscript{27} Later, he puts the case a bit more simply: “no monarch, no nobility; no nobility, no monarch.” Monarchy is the government of one by fixed and established laws. In the absence of intermediate powers, “nothing can be fixed,” and the regime therefore becomes by definition despotic rather than monarchical. Fundamental laws assume the existence of both sites of

\textsuperscript{25} Cf. MP, 831, 892, 918 and 935.

\textsuperscript{26} Mosher, “Monarchy’s Paradox,” 163. Kuhfuss argues that Montesquieu’s theory of moderate government represented an important step in the politicization a concept that was traditionally ethical in its application. Walter Kuhfuss, Massigung and Politik (Munich: Fink, 1975).

\textsuperscript{27} Intermediate powers might include towns, nobles and clergy with ecclesiastic jurisdictions (EL, II.4).
institutional resistance to keep the king within the bounds of the law as well as “mediate channels through which power flows (EL, II.4).” In monarchies, political power is therefore necessarily plural, though not all powers are equal. The monarch is the “source of all political and civil power (EL, II.4).” In political conflicts, he typically “prevails by tipping the balance and is obeyed (EL, III.10).” Yet though dependent and subordinate, the intermediate powers are capable of a certain kind of resistance. “Just as the sea, which seems to want to cover the whole earth, is checked by the grasses and the smallest bits of gravel on the shore, so monarchs, whose power seems boundless, are checked by the slightest obstacles and submit their natural pride to supplication and prayer (EL, II.4).” As the “principle” or “spring” of monarchical government, honor within the monarch allows the intermediate powers to temper his power. Likewise, the honor of the intermediate powers provides motivation for their defense of ancient prerogatives (EL, III.8).  

Some commentators have suggested that, like monarchy, republics are also “moderate” governments on Montesquieu’s view. They see the relationship between the three-fold typology (republican, monarchical and despotic government) and the two-fold typology (moderate and despotic government) as being fairly straightforward: Republics and monarchies are “moderate” governments; despotism is the same in the

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28 See Mosher, “Monarchy’s Paradox,” 183-192, for an excellent discussion of the historical context of Montesquieu’s theory of intermediate powers.
first and second typology. There is some evidence for this view in text of the *Spirit.*  

At times, Montesquieu seems to indicate that republican government is moderate (EL, VI.2, VIII.8). But neither democratic nor aristocratic republics are necessarily moderate according to Montesquieu’s definition of these regimes. Republican government is simply “that in which the people as a body, or a part of the people, have sovereign power (EL, II.1).” Rule by fixed laws and balancing institutions are not essential to the nature of republican government, as they are to monarchical government. Why, then, does Montesquieu seem to assimilate republics into the category of “moderate government”?

To answer this, we must understand a significant shortcoming in Montesquieu’s methodology, noted by several scholars. Montesquieu has a tendency to move seamlessly between a world of ideal or deductively-constructed types to the empirical world. As ideal types, republics are indeterminate with respect to the criterion of moderation. But empirically, on Montesquieu’s view, republican constitutions usually incorporate some balancing or distribution of powers. It is only after the process of

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29 “The danger is not when the state passes from one moderate to another moderate government, as from a republic to a monarchy, or from a monarchy to a republic (EL, VIII.8)”; “The cession of goods is naturally admitted in moderate governments, but especially in republics (EL, V.15)”; “In monarchical and moderate states, the power is limited by its very spring, I mean by honor, which, like a monarch, reigns over the prince and his people (EL, III.10).”


31 Of course, some republics are manifestly immoderate, such as Venice and other aristocracies of Italy. “In the Italian republics, where the three powers are united, there is less liberty than in our monarchies (XI.6, p. 157).”
corruption has begun that power begins to be consolidated. The people put aside senates, magistrates and judges. The penultimate result is what Montesquieu calls a “despotism of all (EL, VIII.6).” But the despotism of all is less a kind of regime than it is stage in the decline of democratic republics into the despotism of one (EL, VIII.2). It is fleeting. For this reason, Montesquieu sometimes ignores this transitional form of republican government and speaks as if republican government were, like monarchy, inherently moderate. When he does so, he has moved from speaking of ideal types to speaking of empirical generalities.33

Republics can be either moderate or despotic in the sense of the second typology of regimes. Monarchies are necessarily moderate. Despotic governments are what they are. The normative project of The Spirit of the Laws is in part to bring moderation to immoderate governments and preserve the moderation of already moderate governments. But of course Montesquieu’s normative project does not end here. Arguably his most important books from a normative point of view, Books XI and XII take up not moderation but liberty as their grand theme. Montesquieu speaks of “free states” and “laws that form liberty in relation to the constitution” and the citizen (EL,

32 Larrére is correct when she suggests that the “despotism” of the first typology is not the despotism of the second typology, for the despotism of the second typology consist in the rule of one (“Les typologies des gouvernements chez Montesquieu,” 96).

33 For a different view, see Anne Cohler, Montesquieu's Comparative Politics and the Spirit of American Constitutionalism (Lawrence: University Press of Kansas, 1988), 75-85. What I have said of democratic republics is true also of aristocratic republics. Healthy aristocracies are characterized by “a lesser virtue, moderation” that renders the ruling class “equal at least among themselves” and induces nobles to “repress” themselves as a body. They act as tempering and regulating forces against one another, as “many monarchs” (EL, VIII.5). But when this personal moderation is absent, the nobles are as “many despots,” and the state is in decline.
XI.1). What is the relationship between Montesquieu’s project of political moderation and his favorable discussion of the “free state” of England in Books XI and XII? What is the relationship between free government and moderate government?

Montesquieu initially seems to suggest that monarchy is the only inherently “free” regime at the outset of Book XI. Since monarchy is also the only inherently moderate form of government, this would suggest that free government is simply a new name for moderate government. He writes,

Democracy and aristocracy are not free states by their nature. Political liberty is found only in moderate governments. But it is not always in moderate states. It is present only when power is not abused, but it has been eternally observed that any man who has power is led to abuse it; he continues until he finds limits. Who would think it! Even virtue has need of limits.

So that one cannot abuse power, power must check power by the arrangement of things. A constitution can be such that no one will be constrained to do the things the law does not oblige them to do or be kept from doing the things the law permits him to do (EL, XI.4).

Since Montesquieu insists that democracy and aristocracy are not free “by their nature,” some have concluded that he means to suggest that monarchy is free by its nature.34 But it is difficult to reconcile this interpretation with Montesquieu’s clear assertion that political liberty “is not always in moderate states (EL, XI.4).” Free governments clearly form a subset of moderate government. Free constitutions are, like all moderate

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34 Pangle writes, “Montesquieu carefully refrains from saying that monarchy is ‘not free by its nature.’ By this silence he implies that monarchy is free by its nature (113).” But what Pangle gives with one hand he takes with the other, for he proceeds to note that monarchy must not be “a truly free regime” on Montesquieu’s view, for a truly free regime “would require at least some combination of republican egalitarianism with a more rational balance of power (114).” Pangle, Montesquieu’s Philosophy of Liberalism.
constitutions, characterized by multiple centers of political power. As in all moderate constitutions, powers are distributed rather than simply consolidated in free states. But for a state to be “free,” its distribution must be of a specific kind. Specifically, all three powers—the legislative, the executive and the power of judging—must be distributed amongst different hands. This three-fold distribution of power, which we call separation of powers, is best suited to preserve rule of law and to maintain political liberty. For Montesquieu, England (a republic that “hides under a monarchy”) is the lone contemporary example of such a constitution (EL, V.19). When a monarch wields two of the three powers, as “in most kingdoms of Europe (EL, XI.6),” the government may remain moderate—and may even promote a “spirit of liberty” (XI.7)—but it is not fully free. When the three powers lie in the hands of a single man or body of men, the state is despotic (EL, XI.6).

Yet as Montesquieu explains later in Book XI, some modern European monarchies resemble free states. While moderate monarchies do not “have liberty for their direct purpose,” they aim at glory and this glory results in a “spirit of liberty” that can “perhaps contribute as much to happiness as liberty itself (EL, XI.7).”\textsuperscript{35} Though the distribution of power in continental monarchies differs from that of the English constitution, the distribution in each monarchy “approximates” political liberty. If they

\textsuperscript{35} England is not a monarchy. It is a “republic concealed under the form of a monarchy (EL, V.19).”
did not approximate liberty, they would “degenerate into despotism.” Subordinate, dependent and intermediate powers resist, regulate and temper the power of the king in a way analogous to the balancing that occurs between the equal and independent powers within the English constitution. All moderate governments thus at least approximate the features of free states, and free states push to an (admirable) extreme the balance and complexity that characterizes all moderate governments (EL, V.14).

In sum, all free governments are moderate governments; not all moderate governments are free governments; all moderate governments approximate the political

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36 But see De Dijn, Political Thought in France, who argues that the English model was “the opposite of monarchy” because it was characterized by the absence of intermediary powers (25). On De Dijn’s view, Montesquieu intends to caution against replicating English centralization in France. It is certainly true that the disappearance of sub-national political powers in England was of concern to Montesquieu (EL, II.4, pp. 18-19). But it is equally clear that Montesquieu believes that separation of powers at the national level, as found in the English constitution, is a mighty bulwark against insecurity and abuse of power. The plural centers of political power at the national level in England perform a role similar to the intermediary and sub-national powers in a well-formed monarchy. So the English regime cannot be said to be the “opposite of monarchy.” De Dijn’s analysis is also misleading when she suggests that Montesquieu believes English liberty to be “highly fragile” because of the excessive centralization of political power. In the relevant passage (II.4, pp. 18-19), Montesquieu does not say that English liberty is fragile, but rather if the English lost their liberty at the national level (that is, if the three powers were consolidated), they would become the most enslaved race on earth because they would lack all intermediary powers—especially local institutions—to mediate the newly consolidated power of the center. This is a serious concern, though it does not imply that England’s constitutional liberty is “highly fragile,” but only that the English lack what one might call the “double security” of separation of powers and robust sub-national sites power (Federalist 51).

37 In the opening paragraphs of his chapter on the English constitution, Montesquieu suggests that most monarchies of Europe are moderate because a body other than the prince wields the judicial power. Moderate governments effectively deprive the prince of one of the three powers: free governments ensure than no single body holds any one power completely (EL XI.6, p. 157). See Albert Postigliola, “Sur quelques interpretations de la ‘séparation des pouvoirs’ chez Montesquieu,” Studies on Voltaire and the Eighteenth Century, 154 (1976): 1759-1775, for distinction between separation and distribution of powers. Cf. Charles Eisenmann, “L’Esprit de lois et la separation des pouvoirs,” Cahiers de philosophie politique, (Reims: Ousia, 1985), 3-66.

38 In this sense, the free regime is extremely moderate, whereas the merely moderate regime is only moderately moderate.
liberty found in free governments. This suggests that, on Montesquieu’s view, there
does indeed exist a plurality of decent regimes. They admit of a general rank ordering:
all things being equal, free regimes are better than merely moderate regimes. But just
as in Aristotelian political science, when one is forced to operate under the constraints
of certain circumstances or “on the basis of certain assumptions [pros hupothesin],”\textsuperscript{39} a
regime that ranks lower on the general normative hierarchy may rank higher on the
particular normative hierarchy of regimes for a \textit{particular people}. Often, for instance,
circumstances may require that a political reformer move a regime further in the
direction of a decently moderate monarchy even though the free regime of the English
is superior in itself. Thus Montesquieu retains the fourth task of Aristotelian political
science, with its charge to determine the best for a particular city.\textsuperscript{40}

The examples of the most well-balanced regime (the Gothic) and the regime
with extreme liberty (the English) are not intended to establish a binary or black-and-
white distinction whereby all regimes not cast in their mold appear as illiberal or
insufficiently conducive to personal liberty and security. Montesquieu does not intend
to put to shame other moderate regimes. On the contrary, he writes, “I do not at all
think that one government ought to make other governments repulsive (MP, 934).” In
\textit{Spirit}, he explains that

The inconvenience is not when the state passes from a moderate
government to a moderate government, as from a republic to a

\textsuperscript{39} Aristotle, 1296b5-10.

\textsuperscript{40} Aristotle, 1288b28-33.
monarchy, or from a monarchy to a republic; but when it falls and throws
itself from a moderate government to despotism (EL, VIII.8).

The distinction between moderate and despotic government is the axial distinction in
the *Spirit of the Laws*, and there exists a wide range of attainable, decent regimes within
the family of moderate governments.

This view of Montesquieu’s institutional preferences is confirmed just where we
might expect a putative *monarchomach* to speak his true mind—in his unpublished
notebooks. In the *Pensées*, one often finds Montesquieu preoccupied with comparisons
between the French and English regimes. One commentator suggests that in *Spirit,*
Montesquieu is “flattering the existing conservative sentiments in favour of monarchy”
when he speaks of it approvingly, but we cannot similarly explain away his praise of
monarchy in the notebooks.41 For instance, there he writes,

> 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. A subject people who had that security, whether well- or ill-
founded, would be as happy as a free people…

> This security of one’s condition is not greater in England than in France,
and it was scarcely greater in certain ancient Greek republics which, as
Thucydides says, were divided into two factions. Since liberty often
generates two factions in a state, the superior faction mercilessly exploits
its advantages. A dominant faction is not less terrible than a wrathful
prince. How many individuals have we seen lose their lives or their
property during the recent disturbances in England! It is useless to say

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that one needs only to remain neutral. For who can be sane when the whole world is mad? Not to mention that the moderate man is hated by both parties. Moreover, in free states, the common people are normally insolent... As for the rest of it, I count for very little the happiness of arguing furiously over affairs of state and never uttering a hundred words without pronouncing the word liberty, or the privilege of hating half the citizenry (MP, 32).

Here, even the current degenerate French monarchy seems to compare favorably to England, since the English regime has not yet fully eliminated the problem of majority tyranny. For our present purposes, it is simply important to note that this passage and others like it tell against the view that Montesquieu harbors profoundly anti-monarchical sentiments that went underground when wrote *The Spirit of the Laws*.

Elsewhere in the *Pensées*, Montesquieu comments, “[I]t must be concluded that political liberty concerns moderate monarchies just as it does republics, and is no further from a throne than from a senate. Every man is free who has good grounds to believe that the wrath of one or many will not take away his life or possession of his property (MP, 884).” 42 Here, Montesquieu identifies liberty with security or the sense of security, and on the basis of this identification defends the place of monarchy alongside other decent and moderate regimes. 43

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42 This entry, entitled “On Political Liberty,” is somewhat confused. But the quoted portion does appear to carry the same meaning as the statements in MP, 32, for just as in entry 32, Montesquieu turns to a comparison between the wrathful prince and the “rabid” dominant faction.

43 So far are these passages from suggesting the Montesquieu favored the English regime exclusively that they in fact give the impression that he had no preference for one over the other. But in EL, the preference for the English regime seems clear (see EL, XI.7), and my argument does not deny this. See also the *Notes sur Angleterre*, where Montesquieu writes, “At present, England is the freest country in the world; I don’t except any republic. I say free, because the prince lacks the power to inflict any wrong imaginable upon anybody at all, since his power is controlled and limited by statute. But, if the lower
Still, those inclined to read Montesquieu as a determined critic of monarchy insist that monarchy not only fails to meet the formal criteria of “free government” (this I have acknowledged) but also fails to emerge from Montesquieu’s analysis as a truly moderate government. Radasanu declares monarchy “a moderate government in a very attenuated sense.”\textsuperscript{44} The ideal type of monarchical government is not, according to her version of the liberal republican thesis, a regime in which powers are truly “put it in a position to resist another (EL, V.14).” This argument turns on Montesquieu’s famous description of the nature of monarchical government, to which we have referred above. There, he argues that “intermediate, subordinate and dependent powers” constitute the nature of monarchical government. He emphasizes this string of modifiers by repetition in the very next line: “I have said intermediate, subordinate, and dependent powers; indeed, in a monarchy, the prince is the source of all political and civil power \textit{[la source de tout pouvoir politique et civil]} (EL, II.4).”\textsuperscript{45} Radasanu seizes upon this description of the king as the source of all power. If the power of intermediate bodies is simply house were to become master, its power would be unlimited and dangerous.” Montesquieu, “Notes on England” in Iain Stewart, “Montesquieu in England: his ‘Notes on England,’ with Commentary and Translation,” \textit{Oxford University Comparative Law Forum} 6 (2002) at ouclf.iuscomp.org. See also Charles Dedeyan, \textit{Montesquieu et Angleterre}, 31, regarding the dispatches of the Comte de Brogle, French Ambassador to England. During Montesquieu’s visit to England, De Brogle asked Montesquieu to stop lavishing such high praise upon the English constitution in the company of the Queen and at the French Embassy.

\textsuperscript{44} Radasanu, “Montesquieu on Moderation, Monarchy and Reform,” 286
\textsuperscript{45} The earlier versions of II.4 referred only to “intermediate powers.” Montesquieu clarified by adding “subordinate” and/or “dependent” at three different points in the text. Montesquieu, \textit{Oeuvres Complètes de Montesquieu}, Volume III, ed. Catherine Volpilhac-Augé (Oxford: Voltaire Foundation, 2008), 23.
derivative in a monarchy, how could such a state satisfy the requirements of moderate government? How can a power check its source?\textsuperscript{46}

This objection reasonably assumes that there can be no meaningful checks and balances within a hierarchy. It is one thing to expect three powers to resist \textit{one another} if they share a \textit{common} source, as in the U.S. Federal Constitution. It is quite another matter to expect any number of powers to be able to resist a power that is their very source. Rivers flow downstream. As Radasanu points out, and Mosher acknowledges, the king must have the last word in one way or another.\textsuperscript{47} The king “prevails by tipping the balance and is obeyed (EL, III.10).” But even before examining Montesquieu’s account of monarchy in greater detail, we might turn to an unlikely place—the American regime—for clues as to how a power might check its source. Specifically, Madison’s argument for the Senate in Federalist 63 speaks directly to this apparent paradox. He writes,

\begin{quote}
I shall not scruple to add, that such [a Senate] may be sometimes necessary as a defense to the people against their own temporary errors and delusions. As the cool and deliberate sense of the community ought, in all governments, and actually will, in all free governments, \textit{ultimately prevail} over the views of its rulers; so there are particular moments in public affairs when the people, stimulated by some irregular passion, or
\end{quote}

\textsuperscript{46} Radasanu writes, “[I]n moderate governments there ought to be more than one source of power such that one power is strong enough to check another.” But Montesquieu never says that there must be more than one \textit{source} of power in a moderate state. Below, I show why we should take Montesquieu at his word when he suggests that power can check power even in a state where there is only one ultimate source of power. By way of further contrast with my view, see MacDonald, Althusser and de Dijn, all of whom suggest that checks and balances are not at work in monarchy. MacDonald, “Problems with Principles: Montesquieu’s Theory of Natural Justice,” 120; Althusser, \textit{Politics and History}, 97; De Dijn, \textit{Political Thought in France}, 25.

\textsuperscript{47} Mosher, “Monarchy’s Paradox,” 218.
some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn. In these critical moments, how salutary will be the *interference* of some temperate and respectable body of citizens, in order to *check the misguided career*, and to suspend the blow meditated by the people against themselves, until reason, justice, and truth can regain their authority over the public mind?  

In the U.S. Constitution the people are (to appropriate Montesquieu’s language) the “source of all power civil and political.” All organs of the American republic derive their powers “directly or indirectly from the great body of the people,” and as Madison insists in No. 63, the will of people can “ultimately prevail” over its elected ministers, just as the king in Montesquieu’s monarchy can “prevail by tipping the balance.” The power of the Senate is, like the *pouvoirs intermediaries* in a monarchy, formally “subordinate” to and “dependent” upon the people. And yet on Madison’s view, the Senate is able to check and suspend (though not finally thwart) the will of the people. Madison understood that neither “some power altogether independent of the people” nor a “will independent of the society itself” would be strictly necessary to check the will of the sovereign people.  

Similarly, while the will of Montesquieu’s despot produces “its effect as infallibly as does one ball thrown against another,” the will of the monarch does not follow a similar course, due in no small part to the

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50 James Madison, “Federalist No. 51” in *The Federalist Papers*, 293.
intervening influence of the *pouvoirs intermediaries*—subordinate and dependent though they be (EL, III.10). One can think of Madison’s Senate as a republican analog of monarchy’s intermediate ranks—a power able to check its source. In this unlikely way, the American example can perhaps help clarify what is for many commentators an ambiguity or contradiction in *Spirit*.

Even as he acknowledges their formal subordination and dependence, Montesquieu freely uses the language of “checking” or “stopping” (*d’arrêt*) to describe the work of intermediate powers in monarchical government (EL, II.4, 18). This is the same language he employs to describe the operation of the free government generally and the English constitution in particular (EL XI.4; XI.6, 160, 162). As his simile in II.4 suggests, he recognizes that the intermediate bodies *appear as nothing* when compared to the monarch, who wields “la soveraine puissance (EL, III.2).”

Monarchs, “whose power seems so boundless [*paraît sans bornes*], are checked by the slightest obstacles” just as “the sea, which seems to want to cover the whole earth, is checked by the grasses and the smallest bits of gravel on the shore (EL, II.4).”

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51 It is worth noting that Montesquieu never ascribes “le puissance absolue” to the monarch. This is particularly striking in light of Montesquieu’s certain acquaintance with Bodin’s definition of sovereignty: “La souveraineté est la puissance absolue et perpetuelle…” (*Republique*, Book I, chapter XI). Mosher argues that if we “assume the words mean what they say” in EL II.4 (“the prince is source of all power civil and political”) then we must conclude that Montesquieu has ascribed Bodinian sovereignty to the king (“Monarchy’s Paradox,” 175). “Bodin and Montesquieu are in agreement,” he writes (179). But it is remarkable indeed that Montesquieu no where employs the key terms in the Bodinian definition of sovereignty, and it may be that he considers “puissance absolue” to be an inapt description of the real but tempered sovereignty of true monarchy. Likewise, Montesquieu continues to employ “puissance arbitraire” as an unqualified term of opprobrium. The monarch may be the source of all civil and political power, but this does not mean that either the power itself or its mode of application is unlimited.
Montesquieu acknowledges that the monarch’s power appears to be without limit, both empirically and perhaps within the ideal type he has fabricated. But whatever la soveraine puissance might entail, it does not entail boundless or limitless power (puissance sans bornes).\(^\text{52}\) Despite appearances, the subordinate, dependent and intermediate powers can act as efficacious checks upon royal authority.

In the *Pensées*, we find Montesquieu explaining why one can expect the intermediate powers to restrain the monarch, despite the formally contingent and limited nature of their authority. He writes, “Even though the Parlements of France do not have much authority, this does not keep them from doing good. Neither the ministry nor the prince wants to be disapproved by them, because they are respected. Kings are like the Ocean, whose impetuosity is often curbed, sometimes by the grasses, sometimes by the stones (MP, 589).” Even the weakened provincial parlements of France, having suffered abuse at the hands of the House of Bourbon, retain some ability to “do good.” It is worth noting here that Montesquieu does not ascribe the power of the parlements to the good will, deference, self-restraint or virtue of the prince. It is his very “impetuosity” they sometimes curb.\(^\text{53}\) This passage illuminates Montesquieu’s rather cryptic prose in II.4, where he explains that the monarchy’s royal council is ill-suited to act as a “depository of the laws.” A council of royal ministers “does not sufficiently

\(^{52}\) Montesquieu uses “borner” and “limiter” similarly, if not interchangeably, in Book XI (EL, XI.6, p. 162; XI.11).

\(^{53}\) This tells against Radasanu’s view that the checks Montesquieu outlines assume a virtuous king. “Montesquieu on Moderation, Monarchy and Reform,” 295.
have the people’s trust: therefore, it is not in a position to enlighten them in difficult times or to return them to obedience (MP, 589).”

Enlighten them to what? The juxtaposition of “enlighten them” and “return them to obedience” gives a clue. The depository of the laws—in France, it was the parlements—enlightens the people by speaking against the innovations and abuses of the king. These abuses are the source of “difficult times.” The parlements are able to curb the impetuosity of the king by speaking to and against the king (indeed, “parler,” to speak, appears to be the origin of their name). Their authority is limited and formally contingent. But they are respected, Montesquieu maintains in the passage from the Pensées. They enjoy the respect of the people, whom they “enlighten” when royal malfeasance arises. As the protests of the parlement serve as a signal to the people that the king is violating the fundamental laws of the state, their subsequent approval of a king’s actions is able to “return them to obedience (MP, 589).” Here is the informal source of their power to limit the king.

54 Italics mine. In an earlier draft, Montesquieu flatly states that the council “does not have” the trust of the people. Montesquieu, Oeuvres Complètes de Montesquieu, Vol. III, 25.

55 Mosher, “Monarchy’s Paradox,” 188.

56 Of course, the implication is that if the King were to continue in his abuses or were to dissolve the parlements, then the people would not be “returned to obedience.” This suggests that the King needed the support of the parlements in order to prevent a revolution. The events leading up to the French Revolution support this understanding of the role of the parlements. The decisions of Louis XV and Maupeou to purge of the provincial parlements and replace of the Parlement of Paris hastened progress toward the Revolution, and Louis XVI’s restoration of the parlements in 1774 was not sufficient to forestall it. See James B. Collins, The state in early modern France (Cambridge: Cambridge University Press, 1995), 253-254. See also Bruce Chauveau-Maulini, “La notion de monarchie tempérée dans les remonstrances des parlements au XVIIe siècle: Montesquieu et l’idéologie de robe,” Annales (Paris: Institute Michel Villey, 2006) 197-242. On the Montesquieuian nature of parlementary remonstrances
As a student of French legal history, Montesquieu was well-acquainted with the concrete ways in which the parlements had served to check the king’s impetuosity even while the parlementary magistrates understood their body as “an agent of administration created by the king.”\textsuperscript{57} Indeed, it is only in French history before the House of Bourbon that we can expect to find a reasonably complete picture of how Montesquieu believes intermediate powers might function to maintain a moderate kingship. He makes clear in his \textit{Pensées} that the French regime in the eighteenth century has all but completely razed its constitutional fences. The “public law” of his day is only the “feeble and wretched remnants of our laws, which arbitrary power has been able to hide up to now, but which it will never be able to annihilate except with its own demise (MP, 1183).” The French monarchy had not completely erased its former boundaries, but the earlier French constitutionalism was barely discernable.

Montesquieu points to the death of Charles VII in 1461 as the “last day of French liberty (MP, 1302).” Though there would be a brief rebirth of moderation in the person of Louis XII (r. 1498-1515), the reign of Louis XI (1461-1483) was a source of

\footnotesize{leading up to the Revolution, see Jacob Levy, “Montesquieu’s Constitutional Legacies,” in Kingston (2009), 125-127.}

\footnotesize{\textsuperscript{57} William Farr Church, \textit{Constitutional Thought in Sixteenth Century France} (Cambridge: Harvard University Press, 1941), 155. That the parlements were finally and formally agents of the king and part of the royal administration was the view of not only the absolutists in the sixteenth century, but also of the constitutionalists themselves. Only with the rise of Frondeurs, such as Claude Joly, did this view face a serious challenge. Montesquieu argues that the feudal lords were also believed to hold authority by consent of the king. He explains, “[T]hey consented that their tenure came from him (MP, 1302, p. 522).”}
irremediable degradation within the French monarchy. The Universal Spider, as was his nickname, “abolished the towns’ privileges, made the Nobility anxious, eliminated offices or reduced their prerogatives (MP, 1302).” He attacked the intermediate ranks. Therefore, in seeking examples of the kind of practices Montesquieu has in mind, we must look not to seventeenth- and eighteenth-century practices of the increasingly consolidated French monarchy. Rather, we must look to the practices common in the fifteenth century and surviving (despite the damage done by Louis XI) into the sixteenth century. Here we can see in practical terms how Montesquieu understood the tempering and balancing work of intermediate ranks within monarchy.

“The king cannot do everything he is able to do,” he writes in paradoxical fashion (MP, 1225). The meaning of the paradox is laid bare in the practices of the traditional French monarchy, and one need look no further than the work of the parlements. In traditional constitutionalist thought and practice, the parlements were empowered by the crown to administer the king’s justice. In this work of administration, they could check the prince from whom they derived their authority. First, they could and did hear cases against the king himself, and they often ruled against the king. It was the dominant view of constitutionalist and absolutist writers alike that a subject could bring and win a suit against the king. The bases of these

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58 Francois Hotman also dated the decline of the regime to the usurpations of Louis XI.


60 Church, Constitutional Thought, 132-133.
suits were manifold. A king might be brought to trial for an act inconsistent with settled law or custom—the law of his predecessors or, more often, the customs of the land, particularly the customary rights of the people or local usage. In addition to their roles as judges in litigation against the king, the parlements acted as a “depository of the laws,” to borrow Montesquieu’s language in II.4. Theirs was the decision of whether to register an edict or ordinance of the king as law. Registration was not automatic. In theory the parlement could, and in practice they did refuse registration on several grounds. The traditional basis for the refusal of registration was an enactment’s inconsistency with the body of prior law or custom. (Some argued, in addition, that the parlements were empowered to block registration on the basis of an enactment’s inconsistency with general standards of “justice and equity.”) Montesquieu, président à mortier of the Parlement of Bordeaux, explains this practice more elegantly than any modern historian:

It is the Parlement that knows all the laws made by all the monarchs, that has learned their sequence, that has known their spirit. It knows whether a new law perfects or corrupts the immense volume of other laws, and it says: things are thus, it is from there that you must begin; otherwise, you ruin the whole work. It says to the Prince, you are a legislator, but you are not all the legislators; you do indeed have all the laws executed, but you have not made all the laws. They were before you, they are with

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61 The Parlement of Paris could register enactments as laws of France, but the provincial parlements’ registration was necessary for the act to be binding in the provinces.

62 This natural law standard, though a seemingly higher bar, was often in practice a less exacting standard. It allowed the king to argue for registration of a law that was inconsistent with prior law but consistent with general standards of equity and justice. Thus absolutists favored the natural law standard while constitutionalists argued for strict adherence to customary law. See Church, Constitutional Thought, 139-144 and Chapter 1, §II above.
you, they will be after you. You have added your will to that of all the others and your successors will respect your will in the same way. You will be in the body, you will make up a part of it, and you will be subject only to the Empire of time (MP, 2266).63

Montesquieu’s remarkable gloss on registration suggests that the Parlement speaks for the authority of the bygone kings as a check against the innovations of the living. In this sense, the Parlement declares that the reigning prince is “not all the legislators.” Its task was to ensure that the king’s acts were consistent with the spirit of the whole body of French law. When parlement disapproved of a law, the members would issue a remonstrance (intoning, “Non possumus, non debemus”64), and they would initiate negotiations with the crown.65 If no satisfactory compromise was reached, the king could either relent or force registration of the act through a lit de justice, in which he presided over the court himself. The lit de justice was the last word; Mosher is right when he suggests that having the last word is the ultimate meaning sovereignty. But the lit de justice had major drawbacks. The members of parlement, in their capacity as judges, could allow the forcibly registered law to fall into disuse. Moreover, they could and did openly protest the use of the lit de justice, both by marking forcibly registered

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63 Montesquieu does not indicate whether custom and fundamental law derive authority from the people (Church, Constitutional Thought, ch. 2 and 3). Rather than intervene in the long-standing debate about the origin of custom’s authority—a debate that greatly occupied the attention of earlier French constitutionalists—Montesquieu instead asks a more practical question: What institutions are capable of constraining the king so that custom and law (whatever the source of their authority) can have an effectual hold upon him?

64 “We cannot, we ought not.”

65 Franklin, Jean Bodin, 5.
laws as “de mandato expresso” and through publicly calling attention to the overuse of this nuclear option. 66 Most importantly, many held that forcibly registered acts would perish with the king, they could never attain the status of perpetual laws of the realm and were instead mere personal orders of the king. 67 They would be obeyed, but not forever. In addition to all of this, as we have seen, Montesquieu subtly suggests that the threat of parlementary disapproval was made even more serious by their ability to “enlighten the people” if the king pursued a determined course of innovative abuses (EL, II.4). 68 Despite the widespread understanding that the parlements were instruments of royal administration, they provided what can only be described as a check upon the freedom of the king. Though imbued with la soveraine puissance, he did not enjoy puissance sans bornes. The king could not do everything he was able to do.

These traditional constitutional arrangements were corrupted in time. The parlements, together with other intermediate ranks within the French monarchy, found themselves progressively stripped of their prerogatives and functional independence throughout much of the sixteenth and seventeenth centuries. 69 But this example of corruption did not suggest to Montesquieu that monarchy was an unacceptable or

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66 Church, Constitutional Thought, 136, 148; 152-155; Franklin, Jean Bodin, 5.
68 See MP, 1253, p. 483. Here Montesquieu seems open to revolution.
69 See Church, Constitutional Thought, 177-179.
insufficiently moderate regime, as some have argued. He admits that monarchy is prone to degenerate into “the despotism of one” (MP, 1893; EL, VIII.6). But democracy likewise threatens to degenerate into the “despotism of all” (MP, 1893).70 Even the English constitution “will perish,” Montesquieu predicts at the close of XI.6. “Since all human things have an end, the state of which we are speaking will lose its liberty... when legislative power is more corrupt than executive power.” Montesquieu is not a prophet of perpetual progress; behind him and before him he sees the “constant ebb and flow of empire and liberty” in human history (MP, 100).71 In this light, to predict the eventual decline of a regime is not to damn it but simply to indicate its participation in the fundamental character of all human things. Radasanu is certainly correct when she suggests that Montesquieu believes the English regime to be likely to endure and preserve liberty longer than any traditional European monarchy.72 The “last sigh of liberty will be heaved by an Englishman,” he once reassured an English

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70 He writes: “Monarchy usually degenerates into the despotism of one; aristocracy into the despotism of several; democracy into the despotism of the People (MP, 1893).” Schaub points to Usbek’s remark in the *Persian Letters* (#102) as evidence that Montesquieu believed monarchy to be a highly unstable form of government (Schaub, 136). But it is problematic to read Usbek as Montesquieu’s mouthpiece here, for in the same passage he goes on to argue that republics are the only sanctuary of “honor.” Clearly, this is not Montesquieu’s own view.

71 This does not mean human prudence cannot act to secure liberty, only that its work will always be temporary. Cf. MP, 1917.

72 Radasanu, “Montesquieu on Moderation, Monarchy and Reform,” 292. In his unpublished, fragmentary history of France, Montesquieu writes the following, after commenting upon the eighth-century reign of Pepin the Short: “Through this very system... it was inevitable that the Crown engulf everything in the end, for it had a right to everything, and it had to happen that everything would end up being swallowed up by it like the rivers in the Ocean (MP, 1302).” Of course, this inevitable process took almost nine centuries to unfold, and even still Montesquieu seems to hold out hope of forestalling it. The attribute of impermanence does not condemn a regime. Cf. Sharon R. Krause, “The Uncertain Inevitability of Decline in Montesquieu,” *Political Theory* 30 (2002), 702-727.
correspondent. But the example of the traditional French monarchy’s decline, even when compared to the potentially longer life of the English regime, is for Montesquieu no grounds to place monarchy as outside the circle of decent regimes. Nine hundred years was not a bad run.

Monarchy can be a sufficiently long-lived, balanced constitution. Its moderation does not rely on the “virtue of kings,” but rather upon the king’s desire to preserve his reign and his honor. Love of honor may lead one to rise above the pettiest vices, but a virtue it is not. We therefore cannot accept the strict liberal-republican understanding of Montesquieu’s position on monarchy, for it makes a regime-monist of a regime-pluralist.

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74 See MP, 100. And of course, it is not clear that Montesquieu thinks the decline is irreversible.
75 Radasanu, “Montesquieu on Moderation, Monarchy and Reform,” 295: “The trick is to avoid depending on the virtue of kings by devising a system of government where the institutions make it very difficult for any one party to gain the definitive upper hand.”
76 What I have not yet addressed is Radasanu’s important claim that Montesquieu’s praise of commerce is inconsistent with this praise of monarchy, since commerce is a threat to honor. As she herself suggests, Michael Sonenscher has resolved this seeming paradox. Monarchical honor can survive in commercial society so long as nobles and the court are barred from commercial activity (EL, XX.21-22). This is exactly what Montesquieu recommends. It is an interesting suggestion coming from a nobleman and vintner who engaged enthusiastically in the wine trade. Radasanu, “Montesquieu on Moderation, Monarchy and Reform,” 298; Michael Sonenscher, Before the Deluge: Public Debt, Inequality, and the Intellectual Origins of the French Revolution (Princeton and Oxford, 2007), 167; Paul B. Cheney, Revolutionary Commerce: Globalization and the French Monarchy (Cambridge: Harvard University Press, 2001), 68-69.
77 Some adherents to the liberal-republican thesis find in The Spirit of the Laws a hidden design of replacing the Ancien Régime with a regime more like the English paradigm. I have not sought to disprove this hunch, and strictly speaking, it is not inconsistent with what I have argued. The foregoing discussion removes some of the reasons for thinking Montesquieu looked for such a transformation, but it is certainly possible that even while (as I maintain) the Montesquieu regarded monarchy as a decent and
III. Liberty and Moderation in the Laws

Montesquieu does not limit his normative political theorizing to questions of constitutional forms. This is nowhere more evident than in the second book on liberty (XII). Book XI considers the constitutional forms conducive to political liberty. About this we have said much above. But Book XII, often neglected by commentators, considers civil laws that “favor” liberty (EL, XII.1). An account of political liberty that consists merely in a discussion of constitutional forms is incomplete because, “It can happen that the constitution is free and that the citizen is not (EL, XII.1).” And more importantly, “The citizen can be free and the constitution not. In these instances, the constitution will be free by right and not in fact; the citizen will be free in fact and not by right (EL, XII.1).” These seeming contradictions pivot upon Montesquieu’s distinction between “the liberty of the citizen” and “the liberty of the constitution.” I will take up these two sides of liberty in greater detail in Chapter 5, but for now it suffices to understand that this distinction is an analytical device Montesquieu uses to resist the view that regime type alone determines the quality and degree of liberty that a citizen will enjoy. In a sense, the distinction represents a de-politicization of the concept of political liberty, for it now appears that political liberty is as much a function of law and culture as it is of politics in the narrow sense. In concrete terms,

moderate regime, he may have believed that in time something closer to the best actual regime could be best for France.
Montesquieu means to argue that even if a citizen does not live under a fully free 
constitution (with three separated powers), that citizen may yet experience actual liberty 
(security and tranquility of spirit) due to the presence of certain legal protections, 
mores, manners and precedents—none of which are tied by necessity to a particular 
regime type. Similarly, even though he lives in a state with a free constitution, a man 
may not enjoy liberty (security and tranquility of spirit) due to the lack of certain legal 
protections, mores and precedents. 78 This turn in the argument opens up even greater 
space for Montesquieu’s regime pluralism, for the legal protections he outlines may find 
a home in monarchies, republics and mixed regimes alike. He shows that reformers can 
work within a range of existing constitutional structures in order to cultivate liberty. 79 
At the same time, the book further specifies and gives determinate shape to the meaning 
of political liberty as a normative aim.

Montesquieu opens the first substantive chapter with a remarkable superlative: 
Knowledge of “the surest rules one can observe in criminal judgments” is “of more 
concern to mankind than anything else in the world” (EL, XII.2). It is more important 
than even knowledge of constitutional design, because criminal judgments are the locus

78 Among Montesquieu’s aims is certainly to resist the civic republican conflation of liberty with popular sovereignty. See EL, XI.2; Paul A. Rahe, Republics Ancient and Modern, Vol. II (Chapel Hill, NC: University of North Carolina Press, 1994), 211.
79 Indeed, an earlier title for Book XII was, “The relation of the laws with liberty in the different governments, and what they can do in order to favor the spirit of liberty.” Later in this book, Montesquieu shows how to “put a little liberty in despotic government (EL, XII.29).” Moderate states can hope to gain more than a little liberty from the right laws.
of contact between the state and the individual. Here and only here does the state touch individuals and threaten them with loss. Montesquieu continues in this emphatic tone: “Liberty can be founded only on the practice of this knowledge (EL, XII.2).” The “surest rules” refer to three aspects of criminal justice: First, the rules delineate what should count as an act worthy of criminal penalties; second, they decide how a citizen should be tried for a crime; finally, they determine the nature of appropriate penalties. In each case, it is a question of limiting state power and even limiting the abuse of state power by private citizens. Like Book XI’s treatment of the “liberty of the constitution,” Book XI’s account of “liberty of the citizen” is finally an argument for limits on power.

Montesquieu’s discussions of what should count as a crime mingles with his consideration of appropriate penalties. There are four categories of “crime.” Each crime should be punished, but the agent and method of the punishment should be determined by the nature of the offense. First, in “crimes concerning religion,” where there is no violation of public tranquility or security, there is “no criminal matter” (EL, XII.4). (Here we have the interesting category of crimes that are not criminal matters, carefully calibrated so as not to appear to vindicate heretics.) These non-criminal crimes must be punished according to the nature of the offense. The religious offender, be he a heretic or magician, must meet with a religious punishment—either excommunication or some lesser ecclesiastical penalty (cf. EL, XI.5). Second, in

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80 After speaking of the judicial power in EL, XI.6, Montesquieu writes, “The two other powers may be given instead to magistrates or to permanent bodies because they are exercised upon no individuals, the one being only the general will of the state, and the other, the execution of that general will.”
crimes against public and individual continence, Montesquieu suggests that fines may be appropriate, though the majority of the penalties he names are, in Mill’s language, only “the spontaneous consequences of the faults themselves”—shame, infamy and social isolation (EL, XI.4). Later, he carefully rejects severe punishment, such as burning, assigned to homosexual acts (EL, XI.6).

Crimes against public tranquility and crimes against security (third and fourth) merit the application of heightened penalties. In the former case, penalties must be sufficient to restore the public peace. In the latter, the state is permitted to act in a truly retributive fashion. Here, Montesquieu cautions against the use of capital punishment for robbery; it is “more natural” to reserve capital punishment for crimes against the life of another. Likewise, physical penalties and imprisonment for debtors are rejected (EL, XII.21). Within this framework, penalties for thoughts and speech and writings have no place (EL, XII.11-13). Laws must punish “only external actions.” Speaking may be an action, but speech “frequently has no meaning in itself.” Its meaning depends so completely on tone and context that it is impossible to judge in court, and when freedom of speech is absent, not even a “shadow” of liberty remains (EL, XI.12).

As important as these rules limiting the definition and punishment of crime, Montesquieu’s greatest preoccupation is what we might call criminal procedure—how a citizen may be tried for a crime. He recommends a limitless array of limits designed to

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promote liberty understood as tranquility of spirit (EL, XI.6). To limit a private citizen’s ability to abuse another through the use of state power, enact penalties for perjury; employ a public prosecutor or enact severe penalties for frivolous private indictments; require at least three witnesses to convict; do not admit testimony from slaves, children or anonymous accusers; do not employ special extra-judicial commissions to try particular offenders (EL, XII.2, 20, 3, 15, 6, 24, 22, cf. VI.8).

Earlier in his chapter on the English constitution, he had already endorsed the right to petition for a writ of habeas corpus (EL, XI.6, p. 159), and before that, he had opposed the use of torture to extract confessions (EL, VI.17). These are among the “best possible laws” concerning criminal judgments; in states with laws such as these, “a man against whom a proceeding has been brought and who was to be hung the next day would be freer than is the pasha in Turkey (EL, XI.2).”

Liberty means that the integrity of my life and limb is not contingent upon the pleasure of another.

As he unfolds this science of criminal judgments, Montesquieu makes no distinctions between forms of government in the first seventeen chapters. Chapters 18-21 then specifically address laws for criminal judgments in republics, and chapters 22-28 address monarchies. The purpose of these regime-specific chapters is to indicate that each regime can be home to particular threats to liberty. For instance, the modes of accusation common to republics and monarchies can threaten liberty: the absence of a public prosecutor can threaten liberty in a republic (EL, XII.19, 20; VI.8), while the use

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82 Generals and governors in Persia, a despotic regime according to Spirit, were called “pashas.”
of anonymous accusers and domestic spies can threaten liberty in a monarchy (EL, XII.23-24). But Montesquieu does not make these distinctions so as to attribute any marked advantage to one regime over another. Both types can adopt and follow liberal criminal laws, avoid pitfalls peculiar to their natures, and thus secure the “liberty of the citizen.”

This is not the first time in Spirit that the président á mortier takes up the subject of criminal law. In Book XII Montesquieu examines criminal laws in relation to political liberty, but in Book VI, he had examined criminal laws in relation to the three forms of government. In this earlier treatment, one finds many of the features of liberal criminal law attributed to monarchies and republics alike. After describing the absence of due process in despotism, Montesquieu writes,

But in moderate states, where the head of even the lowest citizen is esteemed, his honor and good are removed from him only after long examination; he is deprived of his life only when the homeland itself attacks it; and when the homeland attacks his life, it gives him every possible means of defending it…

One can see that there must be at least as many formalities in republics as in monarchies. In both governments, formalities increase in proportion to the importance given to the honor, fortune, life, and liberty of the citizens (EL, VI.2, italics added).

83 It is instructive to compare the character of liberal criminal laws in Book XI with republican and the monarchical criminal laws described in Book VI. The republican criminal laws of Book VI are as close to the liberal criminal laws of Book XII as are the monarchical criminal laws. Still, it is worth noting that the nature of republican government is to judge according to the precise text of the laws (V.13), which is a feature of free government according to Book XI. But this does not necessarily suggest that historical republics have done a better job of upholding the rule of law, only that “textualism” is more consistent with the logic of republicanism. Here I follow C. P. Courtney’s view that Montesquieu holds to a priori method of making deductions from a regime’s nature and principle. “Montesquieu and Natural Law,” esp. 53-57.
As one compares this chapter from Book VI with the argument of Book XII, one finds that the categories of “moderate” and “free” merge to some extent. Like the procedural requirements for laws of liberty in Book XII, moderate government’s judicial formalities described in Book VI serve as barriers between state power and the accused. And here we find that criminal laws in republics are not by nature any more liberal than the criminal laws of monarchical governments. Contrary to the view that republican political forms suffice to preserve liberty, Montesquieu insists that republics require “at least as many” judicial formalities as monarchies. Popular sovereignty alone cannot protect the innocent individual from loss, and Montesquieu suggests that republics may in fact require more formalities than monarchies. But moderate and liberal criminal procedure lies within reach of republics and monarchies alike.

In debating which regime type Montesquieu considers sufficiently liberal, previous scholars have not appreciated the way Book XII’s treatment of criminal law tends to sideline the contest among regimes and to concentrate the reader’s attention upon a mode of reform distinct from constitutional renovation. Montesquieu acknowledges as much in the opening section of the book: “[A]s in most states liberty is more hampered, countered, or beaten down than is required by their constitutions, it is

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84 One finds this not only in the chapter on the simplicity of criminal laws but also in the chapters on the severity of punishments (EL, VI.1, 2, 9).
85 The distinction between the liberty of the citizen and the liberty of the constitution may be a solution to a seeming contradiction in the *Pensées*, where monarchy seems to be sometimes free, sometimes not. See MP, 599 and 884.
well to speak of the particular laws that, in each constitution, can aid or run counter to the principle of liberty of which each government can admit (EL, XII.1).”

Liberalization does not always require constitutional change. Monarchies or republics that lack the liberal criminal protections can achieve meaningful advances in liberty by adopting these protections without first altering their constitutions. Montesquieu emphasizes this point by giving equal billing to constitutional design (Book XI) and criminal law (Book XII) in his discussion of liberty. Indeed, it is in part because criminal law stands on all fours with constitutional design in Montesquieu’s liberalism that his system of politics can admit of a robust regime pluralism.

The themes of Books XI and XII are limit and complexity. Montesquieu’s liberalism is a liberalism of limits, and these limits come mainly in the form of complex arrangements of the three powers and within the judicial power itself. By contrast, boundlessness, simplicity and uniformity characterize despotic government. “When a man makes himself more absolute, his first thought is to simplify the laws,” and we can add, the constitution itself (EL, VI.2). But liberty makes its home only in a complex matrix. Montesquieu’s claim is not that complexity in constitutional processes or criminal procedure produces exceptionally just outcomes. In a free state, the wrong-doer will sometimes go free, and a wise policy may not survive two houses of the legislature and the executive veto (or le roi and le parlement). But the honor, property, life and liberty of all citizens will be more secure when a series of mediations stands between the “strength of the whole society” and the individual (EL, I.3). In monarchies,
republics and mixed regimes alike, institutional complexity is the best fence against political oppression.

IV. Foundations

While Montesquieu’s political thought has certainly had its detractors over the centuries, his legacy has fared relatively well in the last one. While committed critics of thinkers like Hobbes, Locke, Rousseau and Hegel have never been in short supply, today one is hard-pressed to find a strident critic of Montesquieu. Moreover, many contemporary political theorists from diverse traditions seem to find something of value in his thought. From the previous century, one thinks of Oakeshott, Berlin, Aron, Arendt, Shklar and Wolin, each of whom seriously and quite favorably treated of Montesquieu’s political theory.\(^8\) Even critics of liberalism (from the Right and the Left), who might with relish wag a finger at Locke or Kant, often find in his thought something redeeming. And of course, liberals like him too. Perhaps more than any other major modern thinker, Montesquieu appears as a theorist from whom we can borrow an insight or two without feeling we have committed ourselves to an entire

system of politics. That *The Spirit of the Laws* seems open to philosophical gleanings should highlight something about the nature of the work: Montesquieu’s political teachings are rarely if ever explicitly tied to comprehensive and transcendent foundations. Indeed, this led Hannah Arendt (an admirer) to suggest that Montesquieu was alone among the great modern theorists in his belief that a transcendent foundation was unnecessary.\(^8\) It is obvious that in contradistinction to Locke and Hobbes, Montesquieu does not attempt to ground his political teaching upon a demonstrative moral science. His normative political theory certainly does not “proceed according to the model of mathematics,” as does John Locke’s.\(^8\) He does not begin with explicit assumptions about nature, the good, or the right and from thence construct an argument for a particular political outcome. Yet his theory is also not without moral and philosophical foundations. The foundations are there, but they are often inexplicit,\(^9\) and their connection to Montesquieu’s normative political teaching is usually unstated. It therefore seems natural for the present discussion to follow rather than precede our account of free and moderate government in *Spirit*. For if we begin with a statement of the foundations and then move on to conclusions and casuistry, we leave the false impression that this is how Montesquieu’s normative political theory proceeds and

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thereby risk missing what is distinctive about the place of philosophical foundations in his thought.

Montesquieu allows his first principles to remain in the shadows for at least two primary reasons. First, he has serious doubts about the efficacy of straightforward, foundational moral argument in politics. As he writes in the opening line of his unpublished *De la politique*, it is “useless to attack a policy by showing how it is repugnant to morality, reason, justice, as these kinds of speeches persuade everyone and affect no one.”90 Instead, he recommends “the circuitous route”—a detour—by which the writer show the political actor “how little utility” he derives from his immoral policy.91 In the *Pensées*, he similarly argues, “It is not by speechifying that despotism must be attacked, but by making clear that it tyrannizes the despot himself (MP, 1432).”92 We might say that the task is not to show that despotism is *unreasonable* but that it is *irrational* in the instrumental sense. The prince must be shown that he weakens himself as he attempts to consolidate power. Montesquieu explains, “I will say to Princes: ‘Why do you exhaust yourselves so much to extend your authority? Is it to increase your power? But the experience of all countries and all times makes clear that you are weakening it (MP, 1991).’” This statement indeed anticipates much (though not all) of the case against despotism in *Spirit*. Montesquieu aims to show that

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90 Montesquieu, “*De la politique*,” *Oeuvres Complètes*, Vol. VIII, 511. The translation is mine.
91 On Montesquieu’s readers in high places, see section 1 of Chapter 1 above.
92 In teaching that tyrants only tyrannize themselves, Montesquieu is following the example of commerce, which is itself slowly showing princes that what were “formerly called *coup d’état*” are actually self-defeating imprudences (EL, XXI.19).
despotic modes of governing produce an impotent state, and often cycles of revolution. Though the despot’s will “should produce its effect as infallibly as does one ball thrown against another,” thoroughly despotic institutions do not meet with obedience.\textsuperscript{93} Japan, the archetypical despotism in \textit{Spirit}, has “powerless” laws (EL, VI.13). The fear that sustains despotic governments eventually “wears down”; imaginations become “inured” to ever crueler penalties (EL, VI.12). Despots lose control and laws are violated with impunity. Paradoxically, constitutional government and the rule of law greatly empower the government \textit{within} its limited sphere: “The king of England is actually more absolute than the Sultan,” because in England the citizens consistently obey the law (MP, 1992).

This lack of faith in direct, systematic appeals to \textit{la morale} and \textit{la justice} stems from a basic psychological insight that shapes the whole of Montesquieu’s political thought, both in form and substance. Self-interest, the lust for power and other human passions can be managed, redirected, canalized and offset by competing passions; but they will rarely hear and follow the lonely voice of reason. In what is perhaps the most moralistic chapter of his great work, Montesquieu takes on the persona of a Spanish Jew to argue against the persecution of Jews. The Jew makes moral and theological arguments for toleration. Of this “very humble remonstrance,” Montesquieu writes, “I believe it is the most useless [work] that has ever been written. When it is a question of

\textsuperscript{93} Italics mine. This “should” must be distinguished from a “shall.” Despotism government, if it is to endure, should produce reflexive obedience in its subjects. But it eventually loses the capacity to do so.
proving such clear things, one is sure not to convince (EL, XXV.13).” If one fails to be moved by the self-evident cruelty of religious persecution (and despotism), icy moral logic will avail little. We should therefore be surprised to find any work comparable in form to the Second Treatise issuing from the study at La Brède.

In addition to these doubts about the efficacy of demonstrative moral argument, Montesquieu also has theoretical reasons for avoiding an explicit discussion of his moral foundations. As The Spirit of the Laws opens, he raises a question that seems to presage a robust natural law argument concerning the best regime. Which government, he asks, is “most in conformity with nature” (EL, I.3)? For the modern natural law tradition and the ancient tradition of natural right, to claim that a government is natura is to say that it accords with something universal—the requirements of human flourishing, human nature itself, the nature of being, and so on. Montesquieu himself, as I will argue below, has an understanding of universal human nature and the human good that grounds his normative political theory. But as I have suggested he refrains from introducing this universal foundation explicitly. Instead, he turns to an alternate conception of nature. The government most according to nature is the government that “best relates to the disposition of the people for whom it is established (I.3).” Nature has become particular; this is not the nature of man, of homo simplex, but the nature of particular men, bounded and shaped by the topical and the transitory.94 The question is no longer what distinguishes man from non-man (“human nature”) but rather what

94 See Chapter 2 above.
distinguishes communities of men from other communities of men. “What is natural is what is unique to each being, with a ‘being’ in politics now referring not just to an individual person, but also—and especially—to collectivities, such as nations and civilizations.” Montesquieu here turns to particular nature and eschews universal nature not because he lacks a conception of universal nature but because a bold corrective is in order. Undue focus upon universal nature de-politicizes the work of the normative political theorist; he becomes merely an ethicist and ceases to be political. A failure to consider the role of particular nature in the development of a normative theory of politics means that the resulting theory is unlikely to be useful in the real world or, worse still, may prove dangerous inasmuch as it invites attempts to fit recalcitrant particular natures into the molds dictated by a theoretical account of universal nature. In order to correct this excess, Montesquieu refrains from making explicit the universal moral grounds of his liberalism.

Having addressed the reasons for Montesquieu’s decision to relegate his foundations to the shadows, we must briefly examine the substance of those foundations. Unlike other prominent early modern thinkers, whose thought proceeds from a very slim set of axial claims regarding nature, Montesquieu’s liberalism finds root in a variety of theoretical grounds. First, though not merely a social contract theorist, Montesquieu endorses a version of the theory. While some cite the criticism of

95 James W. Ceaser, Designing a Polity (Lanham, MD: Rowman and Littlefield, 2010), 36.
96 Regarding customary history as a foundation in Montesquieu’s political thought, see Ceaser, Designing a Polity, 31-37 and C. P. Courtney, Montesquieu and Burke (Oxford: Basil Blackwell, 1963), 25.
state-of-nature theory in the *Persian Letters* as reason to dismiss this possibility, the character of Usbek does not reject social contract theory itself. Rather he points to the failure of state-of-nature theorists to recognize that human society predates any contract and has its origin in the primeval institution of the family. Twice in his *Pensées*, Montesquieu introduces the idea of the social contract by first stipulating that human communities began under paternal power in the household (MP, 1267, 1318). As he argues in his unfinished *Treatise on Duties* (1725), when children reached maturity and their fathers died, *conventional* political power replaced the natural paternal power.

Families became divided; the fathers, once dead, left collaterals independent. It was necessary to unite by convention and to do by means of civil laws what natural right had done at the outset...

Chance and the imagination of those who entered into conventions established as many different forms of government as there were peoples—all of them good, since they were the will of the contracting parties (MP, 1267).

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97 Usbek argues, “I have never heard a discussion of public law which did not begin with a careful examination of the origin of societies; this seems to me ridiculous. If men did not form societies, if they sought solitude and shunned one another, one would want to discover the reason for this and find out why they lived in isolation; but they are all born connected to one another; a son is born close to his father, and remains with him: there we have a society, and also its origin.” Montesquieu, *The Persian Letters*, ed. Andrew Kahn (Oxford: Oxford University Press, 2008), #91, 125-126. But just pages later in Letter 104, Usbek states, “[I]f a prince, far from making his subjects happy, wants to overwhelm and destroy them, the basis for obedience ceases; nothing binds them, nothing attaches them to the prince: and they re-enter the state of natural freedom.” Courtney judiciously warns against reading the *Persian Letters* as a “treatise on morals or jurisprudence,” but he concludes from Usbek’s remarks that Montesquieu was not yet “completely convinced by the arguments of the modern natural law thinkers” and therefore “remained within the tradition of skepticism.” On Courtney’s view, in the four years that elapsed between the publication of the *Persian Letters* (1721) and Montesquieu’s work on the *Treatise on Duties*, he had become “an unequivocal supporter of natural law, both in its early form as elaborated by the Stoics and Cicero, as well as in its more modern form as elaborated by Grotius, Pufendorf and Barbeyrac. Courtney, “Montesquieu and Natural Law,” 46-49. Cf. Victor Goldschmidt, “L’état de nature dans L’Esprit des Lois,” in *Anthropologie et politique: Les principes du système de Rousseau* (Paris: Vrin,1974) 189-217.
As a foundation of Montesquieu’s normative political theory, social contract theory does not yield any determinative model regime. Indeed, in his few words on the social contract, he insists that it is perfectly consistent with regime pluralism (“many different forms…all of them good”). Without leading him to any particular conclusions about the right ordering of political communities, Montesquieu’s social contract theory yields a rejection of despotism. This emerges most clearly in his critique of the Hobbesian conception of the social contract.\textsuperscript{98} He writes,

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. Thus, Hobbes has forgotten his principle of natural law: \textit{Pacta esse servanda}. The people have authorized the prince under conditions, they have established him under a convention. He must observe it, and the prince represents the people only as the people have wanted or are reputed to have wanted him to represent them. (Besides, it is false that the delegate has as much power as the one who delegates, and no longer depends upon the latter.)\textsuperscript{99}

Contra Hobbes, Montesquieu sees the social contract as limited and conditional. The social contract is not a source of arbitrary power; the limits of political authority are set by the (putative) intentions of the contracting parties. This strongly suggests that, in Montesquieu’s view, absolute government could never issue from a social contract.


\textsuperscript{99} MP, 224.
Montesquieu seems to have contemplated placing in *Spirit* a robust statement of social contract theory. “This is good for the *Laws,*” he wrote in a note appended to entry 1267 (quoted above) in the *Pensées.* He decided against it. But as Mark Waddicor has carefully shown, the marks of his contractarian commitments appear at several places in the text. At the outset of *Spirit,* Montesquieu relies explicitly upon the *Origine juris civilis* of modern natural law theorist Giovanni Vincenzo Gravina when he defines the political and civil state as a union of all individual strengths and a union of individual wills, respectively—a contractarian definition of the state (EL, I.3). He argues that slavery is “against nature” because “all men are born equal (EL, XV.7)”; he approvingly quotes Cicero’s claim that the city was established “only in order for each one to preserve his goods” (EL, XXVI.15). Finally, he suggests that government begins once “men have renounced their natural independence to live under political laws.”

Marred by a stunning error, the Cambridge edition of *The Spirit of the Laws* has men renouncing “their natural dependence [sic] to live under political laws (EL, XXVI.15).” (It is certainly noteworthy that this important allusion to state of nature theory has been completely obscured for two decades in the only modern English edition of *Spirit.*) As Waddicor suggests, these passages and others are evidence that Montesquieu never abandoned his contractarian framework.

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100 This translation of XXVI.15 is my own.

Montesquieu’s contractarian commitments clearly underlie his judgments against despotism and in favor of free and moderate government.¹⁰²

This of course does not mean that Montesquieu is merely a social contract theorist. Social contract theory constitutes an important moral referent in his normative political thought, but it does not stand alone. Montesquieu holds to a broader conception of human nature or human dignity that informs and grounds his critique of despotism and his praise for moderate regimes. He explicitly refers to “la nature humaine” exactly six times in Part I of *Spirit*. Every time he uses this phrase, it serves as the basis for an attack upon despotism.¹⁰³ Despotism “causes appalling ills to human nature” (EL, II.4); in view of the evils of despotism, “it seems that human nature would rise up incessantly” against it (EL, V.14); reading of the severe penalties of despotic governments, “we feel with a kind of sorrow the ills of human nature” (EL, VI.9); despotic princes “trifle with human nature” (EL, VII.9); human nature “suffers insults” and “affronts” in despotic nations (EL, VIII.9, 21). These repeated appeals to human nature are not mere rhetoric. Though Montesquieu never fully develops a theory of human nature, we can piece together a convincing picture of what he seems to have in mind when he assails despotism as an insult to humanity.

¹⁰² Others have argued that the hints of natural law thinking in EL are incompatible with the otherwise non-metaphysical nature of the work. See P. Martino, “De quelques résidus métaphysiques dans L'Esprit des lois,” *Esprit* 75 (1983), 35-48.

¹⁰³ I have been unable to find any previous study which notes this consistent function of the concept of human nature in Part I.
In Book I, chapter 3, Montesquieu sketches a partial theory of “the laws of nature,” which are “so named because they derive uniquely from the constitution of our being.” Here, he derives three laws of nature from three feelings or sentiments that would be universal to pre-social man, and one natural law from the common human capacity for knowledge.\textsuperscript{104} First, the natural feelings of inferiority and fear would lead men to refrain from attacking one another; from this would spring the first natural law, to seek peace. The natural feeling of hunger and thirst would lead to the feeling of weakness, inspiring a second natural law—seek nourishment. Signs of mutual fear would lead men to fear less and thus to approach one another. The natural feeling of pleasure in encountering another animal of the same species and the opposite sex would lead to a third natural law—the “natural entreaty [\textit{prière}]” between men and women (EL, I.3). Montesquieu’s language makes clear that he has in mind the voluntary sexual union of man and woman. A fourth natural law, to live in society, would spring from both the general pleasure of encountering other members of the same species and from the bond human beings share as knowing and not merely feeling animals.\textsuperscript{105} Here Montesquieu’s account of natural law, and so of the “constitution of man,” trails off, and he moves on to a discussion of positive law. How can this rather thin conception of

\textsuperscript{104} These laws are not dictates of reason, in the Hobbesian sense, but natural desires. See Schaub, 26.

\textsuperscript{105} Celiné Spector is incorrect when she suggests that the natural laws in I.2 derive solely from man’s “\textit{animal ou sensible}” nature, that is, from his “\textit{désir de conservation, antérieurement au développement de la raison.}” The desire to enter society derives in part from man’s capacity for knowledge as an intelligent being. Spector, “\textit{Quelle justice? Quelle rationalité? La mesure du droit dans L’Esprit des lois},” 223.
human nature serve as a basis for criticizing despotism? Unlike Hobbes and Locke, Montesquieu does not spell out for us how, if at all, his initial sketch of man in the state of nature relates to his normative political conclusions. He leaves it to the reader to connect the dots, in keeping with his conviction that “one must not always so exhaust a subject that one leaves nothing for the reader to do (EL, XI.20).”

There is much for the reader to do. Several connections between these natural laws and the deficiencies of despotism present themselves. When Montesquieu introduces the first natural law—the desire for peace—he immediately distinguishes it from the desire for “empire and domination (EL, I.3).” The desire for domination is not natural, or at least not as natural, as the desire for peace; anticipating Rousseau, Montesquieu criticizes Hobbes for introducing later corruptions of human nature into the state of nature. Despotism is an affront to human nature, we might say, inasmuch as it fails to reflect the original human desire for peace without subjection; despotism aims at and delivers a kind of “tranquility,” but “this is not peace, it is the silence of the towns that the enemy is ready to occupy (EL, V.14, p. 60).”

With respect to the second law of nature (the desire for nourishment), we need not look far in Spirit for the argument that despotism leads to poverty (EL, V.15, XVIII.3, XX.3, XXXIII.28). The third natural law also meets with opposition and perversion in despotic nations. In nations desolated by despotic rule, poverty curtails men and women’s willingness and ability to start families (EL, XXXIII.28). In addition to this, despotic government keeps women “in extreme slavery”; if possible, they are
enclosed in seraglios. This is far from the “natural entreaty” inscribed in the natural law (EL, I.3). Human nature is oriented towards willing sexual union. In despotic government, one finds force and slavery in the relations between men and women.

Finally, the fourth natural law is to unite or to live in society. Government is not the same as society, and under despotistic government, there is little resembling genuine society. Men live in isolation from one another; even love within families is threatened (III.29; V.14, p. 63). Hidden away in seraglios, women in particular are completely shut out of anything that can be considered true society. In an under-appreciated passage on friendship in the Pensées, Montesquieu anticipates the Tocquevillean critique of mass society. He explains that in the Roman Republic,

…Citizens were linked to citizens by all sorts of chains: they were bound together with their friends, their enfranchised, their slaves, their children. Today, everything is abolished, right down to paternal power; every man is isolated. It seems that the natural effect of arbitrary power is to particularize all interests.

In the meantime, those ties that detached man from himself to attach him to another brought forth great deeds. Without that, everything is vulgar, and there remains only a base interest that is properly speaking merely the animal instinct of all men (MP, 1253, italics mine).

The degenerating French monarchy, while no Persian principate, had already begun to show evidence of despotism’s anti-social influence on its subjects. Human nature is oriented toward genuine unity, but in France Montesquieu sees the onset of fragmentation and atomism. Under the arbitrary power of a prince, fear invades all hearts; one sees “no more trust, honor, love” (EL, VI.5). In sum, despotism opposes
and distorts the natural human orientations toward peace, nourishment, consensual sexual union and sociality. Even relying upon the rather limited picture of human nature in I.3, we can begin to understand much of what Montesquieu means when he says that despotism insults and trifles with *la nature humaine*.

But human nature amounts to more than this slim set of four stable desires, important though they be. Man is also born with a complement of radical capacities or potentialities, the development of which depends upon his physical and social environs. This is part of what Montesquieu has in mind when he calls man “that flexible being”: human nature is characterized by a significant degree of indeterminacy (EL, Preface).106 If man should fail to develop his potentialities, he descends to level of beasts; if he develops them, he rises toward the ranks of “intelligences superior to man (EL, I.1).” Despotism guarantees his descent. Indeed, its perpetuation requires his descent, for a despot cannot rule over elevated souls. Foremost among the radical capacities within human nature is the capacity to acquire knowledge. While man in the state of nature may not be possessed of much knowledge, he has the radical capacity to attain it. But despotic government relies upon a benighted populace, for “extreme obedience assumes ignorance in the one who obeys (EL, IV.3).” Indeed, though man is by nature an intelligent, sensible and physical being (EL, I.1), his intelligence or rationality atrophies under despotic government as he is conditioned to respond only to fear and want.

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106 In *MP*, 1622, Montesquieu observes that prejudice can change “the entire character of human nature.” He continues, “This is what makes man so difficult to define.”
Similarly, men are born with the capacity to acquire moral virtues. Montesquieu says nothing of the virtues in his account of man in the state of nature, but the radical capacity for virtue is present in man from birth. Despotic government must resist the development of virtue, or even pseudo-virtue born of honor-seeking. When he addresses the subject of moral education in despotic states, Montesquieu approvingly cites Aristotle’s view that there are no virtues “proper to slaves (EL, IV.3).” Moderate government may not actively cultivate the life of virtue, but it at least opens “a larger space” for the exercise of the virtues that bring “greatness” (grandeur) to the “soul” (l’âme) (EL, V.12). Despotism cannot abide excellence of any kind. “Despotic government constrains the talents of subjects and great men, just as the power of men constrains the talents of women (MP, 596).” The despot actively seeks to purge what is high or exceptional and therefore threatening to his suzerainty. Moreover, the nation’s permanent state of fear so paralyzes man psychologically that the possibility of higher pursuits is all but completely foreclosed. Finally, this diminishment of man is intensified by the social atomization discussed above. Absent friendship and bonds of affection, there is nothing to detach man from his base self-interest, a passion that never produces truly “great deeds” (MP, 1253). Despotism ensures that man, whose flexible nature is capable both of elevation and of degradation, descends to the level of the beast. It is in this sense that Montesquieu can claim that despotism becomes “so to speak, naturalized” (naturalisé) (EL, V.14, p. 63; cf. XV.7). Despotism’s greatest

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107 Montesquieu seems to be aware that he is using the verb naturaliser in a new way—with significant
insult to human nature is not merely that it opposes man’s natural desires, but rather that it finds and exploits within man’s flexible nature the capacity to become less than man.

While despotism is condemnable in part because it degrades man’s nature and stunts the development of his natural capacities, Montesquieu never boasts that free and moderate government directs man toward the perfection of his nature. There is indeed a streak of perfectionism in his normative political thought, but it is merely what we might call a negative perfectionism: When a political form makes of a man something less than a man, it places itself outside the bounds of decent regimes. But a regime need not aim to perfect human nature in order to be praiseworthy or acceptable. England certainly does nothing of the kind. Human laws “enact about the good,” not the “best” (EL, XXVI.2), and even religious law should not aim at perfection, since “perfection does not concern men or things universally (EL, XXIV.7).” Even if there is a single highest form of human flourishing (this Montesquieu never directly addresses), no actual form of political organization is capable of directing all men to this end, and efforts to do so invariably terminate in a kind of affliction in body and soul (EL, V.2). As Shklar comments, free and moderate government is not a “heaven at the opposite pole of the hell of despotism.” 108 There is a studied asymmetry to Montesquieu’s normative political thought. The good citizen and the good man may never be the

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same, but we must at least insist that no regime order itself such that to be good citizen is to be a good beast.

V. Conclusion

Two and a half centuries after the publication of *Spirit*, there remains deep scholarly dissensus concerning the institutional implications of Montesquieu’s political thought. I have argued that a normative vision of free and moderate government emerges in *Spirit* and that the liberty and moderation at the heart of this vision are attainable within a wide variety of regime types. I have also argued that Montesquieu’s regime pluralism is evident in a careful comparison of his two regime typologies and can be inferred from the indeterminate nature of his normative foundations. These foundations support a compelling critique of despotism, but they do not support an exacting, determinate standard concerning the composition of correct constitutions. All free and moderate regimes are not alike. Some constitutions, like those of the English and the Goths, are freer, more moderate, and therefore better than others. Still, there exists a wide variety of moderate regimes which will respect “the head of even the lowest citizen (EL, VI.2).” Monarchies, republics and mixed regimes can approximate the tripartite distribution of powers and protect the liberty of the citizen through sure rules of criminal justice.

Practically, this regime-pluralistic conception of the liberal regime means that founders and reformers enjoy considerable flexibility in shaping and reshaping the
political institutions. If they determine that republican institutions poorly suit a particular people, they can pursue a monarchical liberty proper to the people’s “disposition.” Because Montesquieu holds that a wide variety of regimes can secure human liberty, his normative liberalism is especially amenable to a particularistic art of politics.

While it is helpful at this point to have clarified Montesquieu’s institutional preferences, there is inevitably an incompleteness to such an effort, for as I have argued in Chapter 2, Montesquieu more than any other early modern thinker insists upon holding together the two parts of the Aristotelian conception of the regime. There is something notably un-Montesquieuian about an effort to dwell upon the arrangement of offices without accounting for the way of life to which they adhere. In the next chapter, I shall remedy this deficiency.
FOUR: The Elements of Liberal Culture

If, by chance, a prince had taken it into his head in those days to talk about unlimited authority and despotic power, he would have made his whole army laugh, and he would have been viewed as insane.”
- Montesquieu, Mes Pensées, 699

When in Pegu, a Venetian named Balbi was brought to the king. When the latter learned that there was no king in Venice, he laughed so much that he began to cough and could scarcely talk to his courtiers.
- Montesquieu, The Spirit of the Laws, XIX.2

What customs, beliefs and qualities of character support liberal politics? The present chapter takes up this question. In the real world, political institutions and laws are always part of a larger social and political whole. On Montesquieu’s view, every political order must draw support from a suitable cultural substructure, and liberal government is no exception. While the cultural and circumstantial constraints upon the establishment and maintenance of liberal government are not as restrictive as those of the classical republic of virtue, they are nonetheless real constraints. Consequently, theoretical analysis and practical manipulation of political institutions must never be divorced from a serious consideration of orientations or dispositions of mind by which political institutions are maintained.

Montesquieu’s position bears a striking resemblance to the classical conception of the regime, as I have argued in Chapter 2. But it likewise calls to mind the view of the “political culture school” within contemporary Anglo-American political science.
An alternative to rationalist theories of politics, this approach emphasizes the effects of political culture (“a people’s predominant beliefs, attitudes, values, ideals, sentiments, and evaluations about the political system of their country and the role of the self in that system”\footnote{Larry Diamond, Developing Democracy: Toward Consolidation (Baltimore: Johns Hopkins University, 1999), 163. Almond’s initial formulation defined political culture as the “particular pattern of orientations to political action”; Gabriel Almond, Comparative Political Systems (Princeton: Princeton University Press, 1956), 396.}) upon political outcomes (e.g., regime type, regime change, political stability, democratic consolidation). Like Montesquieu, the political culture school would predict that when formal political institutions are changed without corresponding changes in the political culture, the institutional changes are likely to be short-lived. At such times, the political culture school would expect that “the long-run effects of attempted revolutionary transformation will diverge considerably from revolutionary intentions and resemble more the pre-Revolutionary condition of society.”\footnote{Harry Eckstein, “A Culturalist Theory of Political Change,” The American Political Science Review 82 (1988), 800.} The effects might include “political extremism, ritual conformity, retreatism, rebellion, intransigence, regression or other unintended outcomes.”\footnote{Werlin’s gloss on Eckstein’s culturalist theory of political change. Herbert H. Werlin, “Political Change and Political Culture,” The American Political Science Review 84 (1990), 249.} These are some of the ill effects of failing to take political culture seriously.

But Montesquieu’s cultural concerns go beyond the narrow bounds of political culture. When he speaks of la manière de penser, les exemples des choses passées, les moeurs, les manières, or la disposition du peuple, he is not simply referring “to beliefs,
attitudes, values, ideals… about the political system.” These elements of culture are not always directly about politics, though they are of deep political import. They contribute to what Eckstein has called “the distinctive, variable set of ways in which societies normatively regulate social behavior” or what Inglehart calls “a system of basic common values that help shape the behavior of the people in a given society.” Montesquieu is not merely a theorist of political culture; he is a theorist of politics and culture. As will become clearer as we proceed, he offers both a political theory of culture and a culturalist theory of politics.

Culturalist theories of politics are often said to suffer from three serious defects. First, some complain that culture and political culture are impossibly difficult to define. For this reason, testing cultural explanations is a fool’s errand. Some critics even suggest that the ambiguity of the concept of culture provides cover for intellectual laziness: When we cannot explain a particular political outcome, we conclude that culture must be the culprit without articulating a compelling causal logic.6 Second,
culturalist theories are said to obscure the importance of politics, or genuinely political explanations for political outcomes. Third, many argue that culturalist theories of politics cannot adequately explain political change. If culture is assumed to be relatively stable or “glacial,” then political continuity is the expected state of affairs. Contemporary theorists of political culture have attempted to respond to these objections, and our purposes do not require a rehearsal of their responses. But what is worthy of note here is that Montesquieu’s theory of politics and culture suffers from none of these putative defects.

First, he does not rely on a broad category of “culture” but rather turns to a spectrum of more specific “moral causes”—mores, manner, received examples, religion—which comprise part (though perhaps not all) of what modern culturalist theorists might gather under the umbrella concept of culture. Second, Montesquieu certainly does not discount the importance of political and legal causes in explaining

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10 Of course, I repeatedly refer to “culture” as I reconstruct Montesquieu’s political science. Montesquieu’s mores, manners, maxims of government, received examples, etc., are all part of what is intended by those who use the catch-all language of culture. At times Montesquieu himself refers to these things summarily as “customs”—things we do, think, believe and emulate because we are accustomed to doing, thinking, believing and emulating them. In other words, he sees a common thread uniting these “moral causes,” and so do I. As long as our analysis makes clear the distinctions between these “elements of culture,” the use of a shorthand term like “culture” is tolerable. So mea culpa—but not maxima.
political outcomes, as I will demonstrate in Part V below. Like the Ancients, he repeatedly highlights the relationship of reciprocal causality that obtains between political institutions and culture. A partisan of no narrow school or camp, Montesquieu shares much in common with more integrative approaches to the study of political change that recognize culture as one of several important forces in political life.\(^\text{11}\)

Third, Montesquieu’s political science manages to incorporate cultural variables without denying the possibility of political transformation. His recognition of the salience of cultural variables does not leave him unable to account for political change. Rather, it suggests to him the propitious preconditions for beneficial political change. His approach leaves considerable room for both political agency and cultural change as a forerunner to political change, as I shall discuss in detail in Chapter 5.

But for the present chapter, the goal is more modest. As I have said, here I wish to examine what Montesquieu takes to be the likely cultural preconditions\(^\text{12}\) of free and moderate government—the form of politics I have described in detail in the preceding chapter. What kinds of customs, beliefs and qualities of character directly support liberal politics? Before turning to this question, I must advert to three features of this chapter. First, in answering the question at hand, the chapter will of necessity examine the cultural conditions that support despotistic government, for one can reasonably infer


\(^{12}\) More precisely, we can say that Montesquieu offers an account of cultural \textit{constraints} upon political liberalization.
that these same conditions may hinder the establishment and consolidation of the moderate forms of rule. Secondly, the chapter will not present an entirely comprehensive account of Montesquieu’s understanding of the preconditions of liberal politics; instead, I will focus on the elements of liberal culture that garner the most explicit emphasis in *The Spirit of the Laws*. Finally, as I have suggested above, Montesquieu is not unaware of the fact that political institutions themselves can profoundly shape the mores, manners and beliefs of citizens. Culture is not just a constraint upon politics; it is also sometimes an effect of politics. Where appropriate, I will highlight Montesquieu’s recognition of this reciprocal causality.

Just as his concern with liberal culture anticipates the developments in the political culture school, so too Montesquieu’s approach calls to mind contemporary debates in liberal political theory concerning the cultivation of liberal virtues, capacities and dispositions. In response to both the putative failure of Rawlsian liberalism to address these questions convincingly and the power of MacIntyre and Sandel’s critical efforts, liberal theorists in the last twenty years have attempted to recover a theory of liberal virtue and liberal *cultivation*. Rather than merely articulating the abstract principles that good liberal citizens must accept, these scholars have attempted to

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describe the capacities that many or most citizens must possess in a healthy liberal polity. The aims of *The Spirit of the Laws* do not lie far from this project, but the approaches can be distinguished in at least two important ways. First, Montesquieu does not confine his account of liberal culture to a discussion of moral and intellectual virtues (e.g., respect, judgment, reciprocity). As he asks what is necessary to achieve the liberal citizen, he casts a wide analytical net that extends to passions, mores, manners and beliefs. He sets his gaze upon almost every domain of human life. In this respect, his account suggests that forming a people fit for liberal government requires more than the cultivation of so-called liberal virtues. But it also requires less. The liberal culture that emerges from Montesquieu’s account is less admirable and lofty than what we might find in a national character marked by Macedo’s “liberal virtues.” Montesquieu’s liberalism puts the accent upon preventing abuses of power, not promoting public reasonableness or distributive justice as ultimate ends. This means that for the liberal citizen, the bar is lower. A liberal political culture yields men and women vigilant about preventing abuses of power and reluctant to abuse power themselves.

A second difference is this: Montesquieu affords nearly as much attention to the task of understanding the creation of “the customs of a free people” as he affords to the task of explaining their political effects and importance (EL, XIX.27). Throughout *The Spirit of the Laws*, the recurring pattern of analysis is first to consider the causes or determinants of cultural variable X, and then to consider the political effects of cultural
variable X. For instance, Montesquieu seeks to understand the political effects of the relations between the sexes: What are the political effects of polygamy, the enclosure of women and male-dominated social orders? But before answering this question, he treats the causes as effects. What are the causes of polygamy, the enclosure of women and male domination? This is why Spirit often appears to be a study in the formation of culture. In the treatment below, I will attempt to reflect something of the scope of Montesquieu’s social scientific ambitions.

For this reason, the current chapter is not organized according to discrete elements of a liberal culture. Rather, I follow Montesquieu back to the causes of causes. In Part I, I examine the ways in which physical causes—especially geography and climate—can shape a people’s character, habits and way of life so as to incline them toward political servitude or political liberty. In Part II, I turn to Montesquieu’s understanding of the political effects of sexual inequality and the condition of women. Parts III and IV treat the role of religion and commerce in forming a liberal (or illiberal) culture. These sections follow the progression of The Spirit of the Laws, and they move inward from the outside—from the environment (I), to the household (II), to the activity of the body and soul (III, IV). Finally, in Part V, I qualify what has come before by showing that free political institutions themselves contribute to the formation of liberal culture.

Throughout this rather lengthy tour of the sources of liberal culture in The Spirit of the Laws, I argue that, on Montesquieu’s view, the boundaries between political and
non-political spheres of human activity are thoroughly pervious. Unlike most contemporary liberal theorists, Montesquieu has a rich “theory of interface,”¹⁴ a well-developed conception of the interpenetration that occurs between our political and non-political selves or our public and non-public identities. The patterns of authority and moral habits forged in ostensibly “non-political” domains inevitably wend their way into the political domain, and the inverse proposition holds true as well. Having surveyed Montesquieu’s wide-ranging treatment of the elements of liberal political culture, we find ourselves in a better position to understand his approach to the even more difficult question of liberal political transitions (Chapter 5), and with this, to more fully appreciate the relationship between his normative liberalism and his political particularism.

I. Climate, Terrain and ‘the character of the spirit’

Montesquieu conducted the first and, we may hope, the last political science experiment using a sheep’s tongue. This tongue was bisected, and half was frozen. He observed that the papillae on the frozen half were “considerably diminished” and had “slipped beneath their sheaths (EL, XIV.2).” He then let the frozen half thaw and watched as the papillae began to enlarge and the secondary papillae (“little brushes”) began to reappear. Since these papillae, Montesquieu speculated, are the principal organs of taste, this confirmed his hypothesis (developed in advance of the ovine

experiment) that cold air make sensations less vivid (EL, XIV.2). Cold air also acts upon the circulatory and digestive systems, making blood circulate at a more rapid pace and causing men to draw the thickest juices from their food. These physiological effects lead to marked differences between men’s characters and passions.

Men in colder climates are stronger physically, and therefore more courageous, more confident, more frank, less suspicious, less vengeful and less sensitive to pleasure and pain (EL, XIV.2-6). Hot climates produce men driven by the desire for pleasure and the fear of pain. Their physical weakness leads to enervation of the spirit, passivity, laziness, a deficit of effort and a lack of “noble enterprise” (EL, XIV.2-3). Heat “inclines men to rest (EL, XIV.5),” while cooler climes lead men to action. Northern peoples are marked by impatience; they are unwilling to play the patient, to be acted upon (EL, XVII.3). As Montesquieu’s treatment of climate unfolds, it becomes clear that this is the fundamental distinction he wishes to make.

Modern science does not support Montesquieu’s theory of climate and character. His physiology of fibers and juices is quackery. But history has not obliged us by making all wisdom come from thinkers fully acquainted with twentieth century biology, and our embarrassment over Montesquieu’s barnyard dissections does not free us from

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15 But it is not racist quackery, despite frequent insinuations to this effect. For these insinuations, see for instance, Ivan Hannaford, Race: The History of an Idea in the West, 199; and Paul B. Miller, Elusive Origins: The Enlightenment in the Modern Caribbean Historical Imagination (Charlottesville, VA: University of Virginia Press, 2010), 11. In fact, the theory has no racial element whatsoever. Montesquieu thought that if a brood of English babies were relocated to the sunny south, they would acquire the vices native to that climate. “[E]ven the children of Europeans born in the Indies lose the courage of the European climate (XV.3, cf. XV.8).” The theory is not racial because there is not a whiff of Lamarckianism in Montesquieu’s understanding of heredity.
the need to ask if there is something of enduring insight in his reflections on “physical causes” and character. If we dispense with the claim that climate makes men active or passive, what remains is the claim that these dispositions—toward action or rest—have political implications. To say that hot air makes men passive and lazy may be not be edifying; but less fantastic is the view that a human being oriented toward action is more likely to demand and preserve political liberty than is a passive character. Just as J. S. Mill would argue that a people characterized by “extreme passiveness” and “indolence” are unfit for representative government,\(^\text{16}\) Montesquieu maintains that a people oriented toward daring action are unlikely abide despotism (EL, XVII.2). Such peoples are more difficult to subjugate, whether by a tyrant or a conqueror, because they are relatively unafraid of death, inclined to vigilance and not easily discouraged by the hardships one encounters in resisting the all-too-human tendency of rulers to amass power. Such peoples do not so prize peaceful order as to accept it when offered by a despot.

A people’s orientation to action or, alternatively, their passivity is also a product of their terrain, another important “physical cause” featured in Spirit.\(^\text{17}\) Inhabitants of fertile countries are inclined toward passiveness, laziness and softness because there a subsistence living is easily maintained. Nature seems to say, “Take your rest and be


\(^{17}\) Unlike the argument concerning climate, Montesquieu’s analysis of the effects of terrain is not at all physiological. He assumes that all men seek nourishment and asks, What qualities of character are more likely to develop among a people for whom a subsistence living is obtained only with difficulty?
well.” She spoils by her plenty.  Men of barren countries, however, are inclined toward “l’industrie et l’activité (EL, XXI.3).” They are accustomed to exertion and inured to work (EL, XVIII.4). Such peoples do not allow nature to act upon them, but they rather act upon nature. They nearly adopt what Hegel might have called a negative attitude toward nature. They understand that their preservation is by no means a gift of nature but rather a hard-won product of work. In the south, “nature gives,” but in the north, “liberty procures” (EL, XXI.3; cf. XVIII.4). Southern peoples survive by nature, northern peoples by art. A political consequence of this difference comes into clear view when we recall that despotism, while contra naturam from the perspective of human nature, seems at the same time to come from the hand of nature. Moderate government is a “masterpiece of legislation that chance rarely produces and prudence is rarely allowed to produce,” but despotic government “leaps to view.” “[A]s only passions are needed to establish it, everyone is good enough for that (EL, V.14).” To create a regime of liberty is to act upon nature. Northern peoples are compelled by necessity to do just this, and eventually they become accustomed to it. But southern peoples, habituated to relate passively to nature, will likely accept whatever comes from its hand. In political terms, this usually means accepting the simplicity of despotic rule.

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18 Tocqueville followed Montesquieu closely on the question of terrain. In the opening chapter of Democracy in America, on “The Physical Configuration of North America,” Tocqueville contrasts the nature’s brilliant plenty in the West Indies with nature’s gray austerity in rocky New England. He pushes Montesquieu’s line of thought a step further, speculating that the cheerful beauty of fertile countries leads men into such a state of comfort that they feel no need to employ their intelligence to prepare for the future. It is enough for the senses to enjoy the present. See Tocqueville, Democracy in America, 26-27.
as it leaps to view. Implicit in this line of analysis is the view that a people’s habitual modes of relating to power in the natural world will influence the way they understand and respond to power in the domain of politics.

This orientation toward nature is also shaped by the experience of natural needs. Montesquieu argues that northern peoples are more likely to demand liberty because they have more natural needs than southern peoples. Presumably, he means to suggest that they require better housing, clothing, agricultural equipment, and the like. Northern peoples have “many needs and few of the comforts of life (EL, XXI.3).” In the north, nature is stingy when allotting resources but lavish in its imposition of needs. But this multiplication of needs is politically advantageous, for it induces northerners to demand the liberty they require to produce and to accumulate the goods they need. “The northern peoples need liberty, which procures for them more of the means of satisfying all the needs nature has given them (EL, XXI.3).” The needs of southern peoples can be met under the rule of a despot because their needs are relatively few and therefore require no complex coordination, little accumulation of capital and no supplementation from foreign sources (international commerce). As southern Europeans can “easily do without wealth, they can do even better without liberty (EL, XXI.3).” But coordination,

19 Cf. MP, 577.
20 This is of course not to say that Montesquieu counsels acquiescence in the mores encouraged by hot climates. The wise legislator (whether secular or religious) must resist the inclination to passivity. Montesquieu warns strenuously against the enculturation of nature in such cases. That is, he cautions against cultural institutions that simply reflect, and so reinforce, the deficiencies of nature. In this connection see especially EL, XVII.1-3. An insightful treatment of this problem can be found in Melvin Richter, “An Introduction to Montesquieu’s ‘An Essay on the Causes That May Affect Men's Minds and Characters,’” Political Theory 4 (1976), 132-138.
accumulation and trade are more necessary for northern peoples with their many needs. They must therefore have a lower tolerance for rent-seeking despots. Liberty understood as security is the precondition for the vigorous life of action and industry required to preserve resource-poor nations.

Thus as in Montesquieu’s discussion of climate, so in his discussion of terrain, his ultimate interest is not the formation of character by physical causes but rather the political effects of character. Even if we reject Montesquieu’s argument concerning the physical causes of the kind of active character he describes, his hypothesis concerning character and political institutions remains. Peoples habituated to and therefore naturally oriented toward a life of action are inclined to resist despotism with greater energy and resolve. A certain level of impatience with respect to the natural world, a learned unwillingness to be acted upon by one’s environment, carries over into the political world. Here the seeds of despotism fall upon sterile ground.

II. Hearth and Court, Household and City

On Montesquieu’s view, one of the most politically consequential elements of culture is the organization of the household and the status of women. Two of the thirty-one books that make up The Spirit of the Laws are substantially devoted to “the woman question.” This may seem unremarkable, but when compared to other leading early modern or Enlightenment political theorists, Montesquieu appears keenly and even uniquely interested in understanding politics in light of “the natural bifurcation of
humankind into sexes.” While a concern with the political implications of sex and sexual difference can be said to predominate in his Persian Letters, his concern with these subjects in Spirit is less all-consuming though perhaps equally intense. In the two books that I have mentioned—Book VI on “sumptuary laws, luxury and the condition of women” and Book XVI on “domestic slavery”—as well as in a handful of other key sections of the work, Montesquieu is clearly aiming to account for and draw out the implications of what he believes to be an empirical verity: political freedom is, generally speaking, coincident with the social liberty of women, and political servitude is generally coincident with the subordination and strict confinement of women. There appear to be subterranean connections between the domestic and political spheres.

Now in Book XVI, the third in a series of four books studying the various effects of climate, Montesquieu attempts to explain the subordination of women as, in part, an effect of climate. Just as we have seen above, Montesquieu insists upon treating every cause of variation in political institutions as an effect as well. Climate, he speculates, affects the nubile age, and variation in the nubile age accounts in part for variation in the condition of women and the social (in)equality of the sexes (XVI.2). But if Montesquieu’s theory of nubility has lost its plausibility, his reflections on the political importance of “domestic government” seem not to be so far-fetched.22

21 Schaub, Erotic Liberalism, xi.

22 See especially M. Steven Fish, “Islam and Authoritarianism,” World Politics 55 (2002), 4-37, who argues that the treatment of girls and women in Islamic nations explains why these nations are “democratic underachievers.” For a different view, see Daniela Donno and Bruce Russett,
He sketches out three connections between a nation’s politics and the condition of its women. First, he makes clear in both *The Persian Letters* and *Spirit* his belief that the liberty of women to interact socially and to maintain relationships with others outside the household results in the liberation of vanity. Men and women alike now desire to impress and allure. Vanity produces new needs—or rather, new desires for unnecessary goods. Each person “is a spectacle for another,” and each hopes to please the spectator (EL, XIX.8). A thousand unnecessary arts are required to satisfy these wishes. One thinks of the inestimable number of artisans, merchants and traders that make possible, and are made possible by, a single night of festivities in the *Galerie des Glaces* at Versailles. As Montesquieu writes, “A woman takes it into her head that she should appear at a gathering in a certain dress, and from that moment fifty artisans can sleep no more nor find leisure to drink and eat (LP, 106).” Vanity serves as an engine of commerce—not the only engine nor perhaps the best, but a mighty one nonetheless.23 “Fashions are an important subject; as one allows one’s spirit to become frivolous, one constantly increases the branches of commerce (EL, XIX.8).” An impressive source of economic stimulus, social communication between the sexes produces greater “communication between peoples”—interstate commerce (EL, VI.11, XIX.8). As Part IV will show in greater detail, Montesquieu sees great political good in this promotion

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23 See the distinction between economic commerce and luxury commerce in EL, XX.4.
of commerce. The emancipation of women from “domestic servitude” promotes liberty in part through opening new avenues for commercial activity.

This first connection has been fairly well understood by previous scholars and receives extended analysis in Diana Schaub’s *Erotic Liberalism*. But it is not the whole of the story. There are two additional ties between the domestic and political spheres, and neither of these connections has received significant attention from scholars. This is no doubt because Montesquieu’s account of the first link is most explicit and prominent. But the others are no less interesting, and they are perhaps even more illustrative of the common thread running throughout Montesquieu’s analysis of the preconditions of liberal government.

There exists, on his view, a kind of resonance between the domestic sphere and the political sphere that the legislator ignores at his peril. Here is a point at which we must be keenly aware of Montesquieu’s sense of reciprocal causality. On his view, we learn in our home life certain lessons about the nature of authority, peace and submission. We learn them not didactically but through experience, through living them. The patterns of authority established in the domestic sphere leave their stamp upon us; they “stamp spirits” and “impress all hearts,” to borrow language from a related context (EL, XIX.17, 19). These patterns shape the way in which we conduct ourselves in the political sphere. The corollary is also true. In our role as citizens and subjects, we are habituated, often unwittingly, to distinctive modes of relating to our
fellows and to authority. We develop habitual ways of understanding peace, cooperation, order and conflict. These lessons from the political realm have a way of seeping back into the domestic sphere. In short, our political selves and our domestic selves are not altogether separate.

Commenting specifically upon life in despotic nations, Montesquieu writes, “Each man follows the spirit of the government and brings to his home what he sees established outside of it (EL, VII.9).” In despotic states, this will mean the enslavement and enclosure of women. Subjects of despotic states keep their wives away from society for fear that they will simply be noticed, which is a dangerous thing in itself. “A government that has not the time to examine the conduct of its subjects is suspicious of it simply because it appears and makes itself felt (EL, XVI.9).” The enclosure of women is part of the business of laying low. Additionally, men see established outside the home a kind of power that keeps order through severity and fear; this species of power every man “brings to his home,” where he too rules harshly. Montesquieu explains, “In a government in which one requires tranquility above all and in which extreme subordination is called peace, women must be enclosed (EL, XVI.9).” No peace without subjection—this maxim of despotic society comes to dominate around the hearth. Here despotism’s habits and patterns of authority become perhaps more deeply embedded and engrained than they are within the political sphere itself. The

\[\text{24} \quad \text{Cf. Tomasi, \textit{Liberalism Beyond Justice}, 26-39.}\]
\[\text{25} \quad \text{Tocqueville, \textit{Democracy in America}, 291.}\]
staying power of despotism may in no small measure be attributed to its ability to “go domestic.”

The causal arrow also runs the other way. Shaped by life under a despotic state, the habits and patterns of authority in the domestic sphere reinforce those of the political sphere and thereby constrain potential progress toward political reform, moderation or liberalization. The selves formed around hearths in despotic states are poorly suited for participation in and maintenance of more moderate regimes.

Montesquieu argues,

In a republic, the condition of the citizens is limited, equal, gentle, and moderate; the effects of public liberty are felt throughout. Empire over women would not be as well exercised; and, when climate required this empire, the government of one alone was the most suitable. *This is one of the reasons it has always been difficult to establish popular government in the East.*

When a man wields absolute power over his wife (or wives), when he governs her harshly and by means of fear, and when he orders his home on the assumption that peace entails subordination, such a man is unlikely to be a good democratic citizen. The same is likely true of citizenship in any moderate government. While the condition of citizens in a traditional monarchy may not be equal, it is similarly “limited,” “gentle” and “moderate” and therefore at odds with the patterns of authority established around the despotic hearth. Montesquieu does not provide an elaborate analysis of exactly how such a domestic sphere can impede political progress. This he leaves largely to his

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26 EL, XVI.9, italics added.
readers. What seems clear is that he believes that the great mass of men are incapable of living divided lives, that they will inevitably harmonize their domestic and political lives, and that the mores and habits forged in the domestic sphere are recalcitrant and can forestall changes in the political sphere. In short, as Tocqueville would later say of the domestic and political spheres, “These things hold together.”

Finally, the enclosure of women and the separation of the sexes deprive men of the salutary influence of feminine company and the contagion of what we might call the feminine virtues. Montesquieu suggests that this deprivation is politically disadvantageous. The physical weakness of women “gives them more gentleness [douceur] and moderation, which, rather than the harsh and ferocious virtues, can make for a good government (EL, VII.17).” For this reason, he argues, government by women is not “against nature” (EL, VII.17).

This claim is important in its own right, but what is notable for our purposes is that while men may be inclined to “harsh and ferocious virtues” by nature, the feminine virtues do not come naturally to them. Yet when men and women are permitted to meet and keep company socially, a kind of moral cross-fertilization may take place. Montesquieu seems to suggest that men’s characters may become more gentle in nations that “allow communication between

28 Cf. LP, 206.
people,” that is, between the men and women (EL, XVI.11). He will later describe commerce, that other font of la douceur, as the communication between peoples. Communication between the sexes, like communication among the nations, softens our characters, and this can make for good government. Just as communication among nations through commerce makes their customs and habits more alike, as Constant would later point out,\(^{31}\) so the communication between the sexes tends to render men and women more alike.\(^{32}\) Montesquieu suggests that on balance, communication between the sexes leads to gentler men, rulers and citizens.\(^{33}\)

There is no strictly deterministic relationship between the domestic and political spheres, but neither are they independent of one another. Powerful and dynamic relations of reciprocal causality unite these two spheres of activity. Experience in each shapes the character of the other. This is necessarily so because the same beings that inhabit the one also inhabit the other. Humans are “flexible beings” but perhaps not so flexible that they can live according to one pattern of authority by day and another by night (EL, Pref.). For this reason, political actors cannot afford to ignore the relationship between the domestic and political spheres. Liberal reformers and

\(^{31}\) Constant, *Political Writings*, 325.

\(^{32}\) “The two sexes spoil each other; each loses its distinctive and essential quality (EL, 19.12).”

\(^{33}\) “Courage, and the military virtues generally, have at all times been greatly indebted to the desire which men felt of being admired by women: and the stimulus reaches far beyond this one class of eminent qualities, since, by a very natural effect of their position, the best passport to the admiration and favour of women has always been to be thought highly of by men.” Mill, “On the Subjection of Women,” in *On Liberty and Other Essays* (Oxford: Oxford University Press, 1998), Ch. 1.
statesman, in particular, will take heed of the domestic constraints upon the establishment and maintenance of liberal politics.

III. Judging Shadows and Abysses: Religion and Liberal Culture

“The pious man and the atheist always speak of religion; the one speaks of what he loves and the other of what he fears,” writes Montesquieu at the opening of his second book on religion (EL, XXV.1). He does not always speak of religion: Two of the thirty-one books in The Spirit of the Laws are devoted to the subject. And it is clear in his analysis of religion’s political and social consequences that he can be said neither to love it simply nor to fear it simply. He charts a middle course. Some ecclesiastical writers on politics insisted that Christianity was the indispensable foundation of good government. By contrast, Pierre Bayle seemed to suggest that a nation of atheists would form the soundest foundation for just and stable political life. Common to Bayle and ecclesiastical writers was the view that truth and utility are united. Right views about ultimate things would yield salutary social and political

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34 Of course religion receives attention in many of the sections not specifically devoted to it. And some readers might consider Book XXVI to be primarily about religion; that would make three of thirty-one.


36 For the view that Bayle was an atheist, see Gianluca Mori, Bayle: philosophe (Paris : Honoré Champion, 1999), 189-204, and Kenneth Weinstein, “Pierre Bayle's Atheist Politics” in Early Modern Skepticism and the Origins of Toleration, ed. Alan Levine (Lanham, MD: Lexington Books, 1999), 197-224. Weinstein reads Bayle as Montesquieu read him: “Bayle sees the society without religion as the most stable solution to the violence endemic to political life in the 17th century (197).” See also MP, 1946, in which Montesquieu tries to refute one of Bayle’s atheistic arguments.
consequences. Montesquieu has no such faith in the value of truth. On his view, “It is less the truth or falsity of a dogma that makes it useful or pernicious to men in the civil state than the use or abuse made of it (EL, XXIV.19).” He aims to “examine the various religions of the world only in relation to the good to be drawn from them in the civil state (XXIV.1).” One might also add that he examines irreligion itself in relation to the good to be drawn from it in the civil state. In contrast to recent accounts of religion in *The Spirit of the Laws*, I will argue that his approach is thoroughly moderate.\(^\text{37}\) He is no Bousset, to be sure; but he is also no Bayle. On his view, religion generally, and Christianity in particular, can be a significant source of support for free and moderate politics, especially when stripped of destructive or anti-social prejudices.

The first substantive chapter of Montesquieu’s first book on religion is an attack on Pierre Bayle, who as we learn was wrong to rank atheism above idolatry. Speaking in Bayle’s voice, Montesquieu paraphrases his argument: “‘I should prefer… for one to say of me that I do not exist, than for one to say that I am a wicked man (EL, XXIV.2).’” But the problem with this argument is that it approaches the question from God’s point of view rather than from the point of view of social utility; such is the

\(^{37}\) Pangle, *The Theological Basis of Liberal Modernity*; Clifford Orwin, “‘For Which Human Nature Can Never Be Too Grateful’: Montesquieu as the Heir of Christianity,” in *Recovering Reason: Essays in Honor of Thomas Pangle* (Lanham, MD: Lexington Books, 2010); Robert C. Bartlett, *The Idea of Enlightenment: A Post-mortem Study* (Toronto: University of Toronto Press, 2001); and Diana Schaub, “Of Believers and Barbarians: Montesquieu’s Enlightened Toleration,” in *Skepticism and the Origins of Toleration*, ed. Alan Levine (Lanham, MD: Lexington Books, 1999), 225-248, each place the accent upon Montesquieu’s critique of certain religious institutions and beliefs, but they afford scant attention to the benefits that religion continues to confer in Montesquieu’s analysis. Orwin’s is the most balanced treatment of the three, but even his study recognizes only religion’s historic rather than ongoing political benefits. Schaub acknowledges Montesquieu’s “view that religion, once properly pruned, can be an aid to good government” but offers little by way of explanation (238).
essence of Montesquieu’s retort. While believing a certain man exists has no social consequences, believing in God is useful from a social and political point of view. Montesquieu anticipates the counter-argument from Bayle: Useful indeed, if you want religious war and persecution. He responds,

To say that religion gives no motive for restraint because it does not always restrain is to say that the civil laws are not a motive for restraint either. It is to reason incorrectly against religion to collect in a large work an enumeration of the evils it has produced, without also making one of the good things it has done. If I wanted to recount all the evils that civil laws, monarchy, and republican government have produced in the world, I would say frightful things (EL, XXVI.2).

At no point in his rejoinder to Bayle does Montesquieu refer to the truth of Christianity or the errors of atheism. For the purposes of Spirit, the question in evaluating each form of (ir)religious belief is not the belief’s truth content but rather its “conformity with the good of society (EL, XXIV.1).” It is a question of understanding how man’s experience as homo orans affects his experience as homo politicus. Whether the truth is atheism or Christianity or neither, one must put aside the truth in order to examine squarely the political utility of religion. For atheists like Bayle, this would mean

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38 This is a well-settled view in the scholarship: Montesquieu instrumentalizes religion, judging beliefs and practices on the basis of their ability to moderate political power. See especially Lorenzo Bianchi, “Histoire et Nature: La Religion dans L’Esprit des Lois,” in Le Temps de Montesquieu, eds. Michel Porret and Catherine Volpilhac-Augier (Geneva: Droz, 2002), 289-304.


40 He declares, “[I]n this work, I am not a theologian (EL, XXIV, 1).” In other works, he did treat of religious doctrine as a theologian. Montesquieu worked for twenty-five years on an eighteen-page summary of “all we know about metaphysics and theology (MP, 939).” His Pensées also contains some experiments in philosophical theology and even Biblical exegesis (e.g., MP, 839, 845, 1096, 1138, 1176, 1266, 1338, 1715, 1945, 2095 and 2164). See Robert Shackleton, “La religion de Montesquieu,” in Actes du Congrès Montesquieu (Bordeaux: 1956), 287-294.
openness to the possibility that though all religions are false, some are politically more useful than irreligion. For Christian thinkers, this would mean openness to the possibility that Christianity is not an unalloyed or comprehensive political good and that non-Christian religions may be politically beneficial. Emancipated, if only for a moment, from concern with theological truth, the political scientist seeks to understand the effectual political truth concerning all religions, including false religions—even if all religions fall into this category. “Just as one can judge among shadows those that are the least dark, and among abysses, those that are the least deep,” so one can judge among prejudices and superstitions the most politically advantageous (EL, XXIV.1).

Having launched his argument through his critique of Bayle, Montesquieu turns to a topic that both his contemporaries and our own would expect to see treated early in a discussion of religion’s political effects—a comparison of Christianity and Islam. The title suggests that “moderate government is better suited to Christian religion, and despotic government to Mohammedanism [Que le gouvernement modéré convient mieux à la religion chrétienne et le gouvernement despotique à la mahométan] (EL, XXIV.3).” This chapter’s title is not as unambiguous as it might initially appear. Moderate government is “better suited” to Christianity, but this is only a comparative. Moderate government is better suited to Christianity than to Islam—which may not be saying much. Whether there is a perfect match in absolute terms, Montesquieu never says. We must also note that Montesquieu here speaks of “the Christian religion,” not of the church or Christendom. Indeed, the grand distinction between Book XXIV and
Book XXV is that the first promises to treat “the laws in their relation to the religion established in each country” while the latter promises to treat “the laws in their relation with the establishment of religion of each country” (italics added). By means of this playful transposition, Montesquieu distinguishes between a religion (“the religion established”) and the institutional form of a religion (“the establishment of religion”).41 This distinction is important to keep in mind, because what Montesquieu says of “the Christian religion” may not be true of its particular institutional instantiations.

Montesquieu offers three explanations for why moderate government is “better suited to” Christianity than it is to Islam. First, the gospel commends gentleness and therefore stands opposed to “despotic fury (EL, XXIV.3).” Second, Christianity forbids polygamy. Montesquieu suggests that polygamous households—and especially polygamous royal households—require more barriers between them and the rest of the nation. They face constant threats of escape by women and invasion by other men. In this connection, we need only consider the role of eunuchs in guarding the women of The Persian Letters. Each household must become “a separate empire (EL, IV.3).” As a consequence of this distinction, Islamic royal households (which are often great seragios) tend to be shut off from rest of the world. But Christian princes are “less confined, less separated from their subjects, and consequently more human.”42

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41 That this is Montesquieu’s intended distinction is evident from his juxtaposition in XXIV.4 of “the orders for the establishment of religion” and “Christianity itself.”

42 Cf. EL, XIX.8. Elsewhere, Montesquieu points to additional reasons why Christian citizens are less separated from one another than peoples of the East. These reasons include regular public worship (with
means they will be more likely to see themselves as subject to the law, like everyone else.

Third and finally, Montesquieu writes that “among Christians religion makes princes less timid and consequently less cruel (EL, XXIV.3).” This last explanation needs an explanation of its own, but it never receives one in the text. Why would Christianity render its princes less timid than Islam renders its princes? The interpretive problem receives an additional layer of complexity, but also a likely solution, as we turn to the earlier manuscripts, where Montesquieu originally wrote that “religion among Christians makes princes less bold and therefore less cruel (EL, XXIV.3).” Substituting “less timid [moins timides]” for “less bold [moins hardis]” is not a stylistic change. It seems that Montesquieu—who was apparently not so bold himself—simply changed the text prior to publication in order to avoid insulting to all Christian princes with the original back-handed praise. But this textual problem notwithstanding, the cumulative effect of Montesquieu’s account is to support the

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43 It may be that they are less timid because they are less cruel. Cruelty makes the attacker timid, fearful of counter-attack. This is evident in the example of Sannar, where the king’s children are all killed in favor of the one who mounts the throne.

44 Oeuvres Complètes (Voltaire Foundation), Vol. II, 653.
conventional view of his time that associated Islam with violent despotism and Christianity with humane government.\textsuperscript{45}

Not content with mere theory, Montesquieu offers a case study to provide empirical support for his claim. With its vast scale and hot climate, one would expect the Ethiopian empire to be ruled despotically, as are its neighbors. Yet the Ethiopian government is not despotic. Why? “[T]he Christian religion has kept despotism from being established there and has carried the mores and laws of Europe to the middle of Africa,” he explains.\textsuperscript{46} A social scientist by instinct, Montesquieu isolates the variable of interest. Holding constant other important variables (size, climate, terrain), he suggests that Ethiopia’s Christianity infuses its politics with a mildness alien to its Islamic neighbors, such as the brutally governed kingdom of Sannar.

Following this discussion of Ethiopia, Montesquieu praises Christianity for its gift of “a certain political right in government and a certain right of nations in war, for which human nature can never be sufficiently grateful (EL, XXIV.3).” Leaders are generally less harsh toward their people than in times past, and conquerors are less rapacious. As the chapter closes, Montesquieu seems to have offered a rather


\textsuperscript{46} Note that Christian mores are “European mores.” Diana Schaub (1999) argues that Montesquieu believed Christianity to be “founded on an objectional acquiescence to the vices of a particular climate, namely an excessively hot Middle Eastern climate (242). But in fact, he saw Christianity as fundamentally European (perhaps Hellenized and Romanized), and this is precisely why he believed missionary efforts to take the Christian religion to the balmy climates of Asia were likely to fail. Climate has “prescribed limits to the Christian religion (EL, XXIV.26).”
conventional account of the political superiority of Christianity over Islam. Yet he carries the discussion into the next chapter. There, he notes that Christianity “softens the mores of men,” unlike Islam which “continues to act on men with the destructive spirit that founded it (EL, XXIV.4).” An historical anecdote follows. We would expect it to be drawn either from the annals of Islamic politics or the history of Christian Europe. But remarkably, Montesquieu closes these reflections with an illustration from ancient (pre-Christian and pre-Islamic) history. It is worth quoting in full:

The history of Sabaco, one of the pastoral kings, is remarkable. The god of Thebes appeared to him in a dream and ordered him to put to death all the princes of Egypt. He judged that the gods were no longer pleased for him to reign because they ordered him to do things so contrary to their usual will, and he withdrew into Ethiopia (EL, XXIV.4).

The account is from the *Bibliotheca historica* of Diodorus Siculus, a Greek historian active in the first century B.C. On its face, the point of this story seems to be that religious impulses can sometimes encourage princes to do cruel things, but a good king would sooner believe the gods were displeased with him than believe they wanted him to act unjustly. How exactly does this tale advance Montesquieu’ s foregoing argument concerning Islam and Christianity? The only apparent connection seems to be that ancient pagan spirituality sometimes encouraged cruelty just as Mohammedan religion sometimes encourages cruelty. But this seems like a rather strained association, especially for an author in possession of a seemingly limitless fund of apt historical anecdotes.
Montesquieu closes this story of Sabaco’s abdication by remarking that Sabaco withdrew into Ethiopia. When we turn to the account of Diodorus (Montesquieu directs the reader there), we learn that Egypt’s King Sabaco was actually Ethiopian by birth. We also learn that Montesquieu got one major detail in the story wrong: the dream directed Sabaco to murder the priests, not the princes. But Montesquieu makes a point of recalling and mentioning the place of Sabaco’s retirement, a seemingly insignificant detail. Of course, Ethiopia has played an important role in his case for the political superiority of Christianity. “Ethiopian exceptionalism” provided empirical support for his argument about the political advantages of Christianity. And the two concurrent references to Ethiopia (in chapters 3 and 4) are the only references to Ethiopia in *The Spirit of the Laws*. Is the second mention of Ethiopia tied in any meaningful way to the first mention?

In the passage Montesquieu cites, Diodorus provides more interesting details about noble Sabaco, Egypt’s Ethiopian king. He “far surpassed his predecessors” in “piety and uprightness.” Diodorus backs up this praise:

A proof of [Sabaco’s] goodness may be found in his abolition of the severest one of the customary penalties (I refer to the taking of life); for instead of executing the condemned he put them in chains at forced labour for the cities, and by their services constructed many dykes and dug out not a few well-placed canals; for he held that in this way he had reduced for those who were being chastised the severity of their punishment, while for the cities he had procured, in exchange for useless penalties, something of great utility.47

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So the ancient Ethiopian king ruled more mildly, trading decapitation for the chain gang and public work crew. If we credit Diodorus’s later account of the Ethiopians (in Book III of the *Bibliotheca*), it seems that Sabaco merely acted in keeping with the ways of his people, whose kings were extremely mild toward their subjects. Ethiopian kingship was not hereditary but elective. The priests “first choose out the noblest men from their own number” and from these few the king was selected, they said, by the god.\textsuperscript{48} Thus chosen and honored as god-like himself, the king “both follows a regimen which has been fixed in accordance with the laws and performs all his other deeds in accordance with the ancestral custom.” He was careful to punish no one “contrary to the usage which has been approved among them from the beginning”—no unusual punishment. Furthermore, the king’s officers never executed a subject, not even for the most heinous of crimes. Instead, the king sent a token of death to the offender, who would then take his own life.\textsuperscript{49}

Perhaps we can chalk up to a coincidence Montesquieu’s off-hand, second mention of Ethiopia. But is it possible that Montesquieu recounts the story of Sabaco’s dream and return to Ethiopia in order to remind his readers of the pre-Christian state of political life in Ethiopia? If so, then the implication appears unmistakable. This subtlest of allusions to the mildness and political moderation of pre-Christian Ethiopia (“…and he withdrew into Ethiopia”) would be nothing less than an acknowledgement

\textsuperscript{48} Diodorus Siculus, *The Library of History*, III.5.

\textsuperscript{49} Diodorus Siculus, *The Library of History*, III.5.
that Ethiopian monarchy is not the fruit of Christianity alone. When we turn to the *Pensées*, this hunch is solidly confirmed. In entries 1796-1798, Montesquieu contemplates the nature of Ethiopian political mores. Entry 1796 is entitled, “Character of the Laws in Certain Climes.” Clearly, Montesquieu is working through the empirical puzzle presented by Ethiopia’s moderate government and blazing hot climate. Ethiopia has “more mildness” in government than any African country. In search of an explanation, he turns to ancient history and notes that two Ethiopian kings of Egypt—Sabaco and Amasis before him—abolished the death penalty in Egypt. This must have been the practice in Ethiopia itself, he speculates. Montesquieu quotes Diodorus’s account of the mild Ethiopian king who clipped off the noses of thieves in order to avoid imposing a capital penalty for theft. (The king, who had a sense of humor, resettled the thieves in Rhinocolura.) These brief reflections on the mildness of the Ethiopian kings of Egypt culminate in the following conclusion:

**MILDNESS OF PUNISHMENTS IN ETHIOPIA.** Mildness of punishments. Hanging or beheading. Sometimes loss of property, with prohibition against offering them anything to drink or eat, which makes them wander like beasts. The Emperor often extends grace. He is just; he believes that the exact justice meted out in this realm, and its administration, bring forth innocence in mores…

Notice, then, that in Ethiopia, the mildness of mores *has been from all time* (MP, 1798).\(^50\)

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\(^{50}\) Italics added. Like many other entries, 1796-1798 were written during the preparation of *The Spirit of the Laws*; “put in my laws,” he wrote atop the series.
The Ethiopia’s enigmatic moderation has pre-Christian roots, and the earlier account of Ethiopian exceptionalism in *Spirit* now seems incomplete. Montesquieu seems to have placed the story of Sabaco at the end of XXIV.4 in order to call attention to the fact that “in Ethiopia, the mildness of mores has been from all time.” When we return to XXIV.3 with this in mind, we readily notice the limited character of Montesquieu’s claims. He never ascribes to Christianity the full credit for Ethiopia’s political moderation. Rather, he more modestly observes that “the Christian religion has kept despotism from being established there (EL, XXIV.3).” Perhaps Ethiopian Christianity has kept despotism out simply by keeping Islam out. At any rate, Montesquieu seems to wish to qualify and to temper the conventional tendency to ascribe supreme political good to Christianity. On his view, it is superior to Islam from a liberal point of view. But it is no political panacea nor is it the *sine qua non* of moderate politics. The careful reader is encouraged to surmise that Christianity may not have been sufficiently potent to maintain moderate politics in Ethiopia if not for the people’s immemorially mild character. I do not suggest that by his nod to Sabaco, Montesquieu means to contradict the argument of chapter 3. But he does wish to qualify his praise of Christianity and to suggest the limits of his case for its political superiority.\(^{52}\)

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\(^{51}\) Italics added.

\(^{52}\) It is also important to note that Montesquieu sees some political benefits in virtually all religions with holy books. Respect for the rules and procedures contained in these books can serve as analogs—albeit paltry ones—for the rule of law, putting “a little liberty in despotic government.” Montesquieu explains, “It is suitable for there to be some sacred book that acts as a rule, like the Koran for the Arabs, the books
In this way, Montesquieu addresses the comparative benefits of Christianity and Islam, as his audience would have expected him to do in a book on the political effects of religion. But in the ensuing chapters, he turns away from the consideration of whole religions to discuss the political and social benefits of specific religious dogmas and practices. His primary concern is to understand how these dogmas and practices shape a people. Montesquieu’s commitment to liberty and political moderation guide his analysis from the beginning. First, he seeks to undermine extravagant practical doctrines that stand at cross-purposes with basic natural duties, the performance of which is required to sustain political societies. Related to this first aim is a second, namely, to critique religious dogmas and practices that habituate a people to passivity as opposed to action. Finally, Montesquieu attempts to identify dogmas and practices that most reliably incline a people toward morally decent living; religions conducive to liberal and moderate politics will facilitate the formation of an active and morally decent people.

In chapters 6-9, Montesquieu attacks what he calls laws of perfection. The proximate target is monastic Christianity, so he softens the blow by introducing his of Zoroaster for the Persians, the Veda for the Indians, the classics for the Chinese. The religion code replaces the civil code and fixes what is arbitrary (EL, XII.29).” Reverence for a wholly book may not remove absolutism from despotics regimes, but it can in some measure remove the arbitrariness of the regime. For this reason, the involvement of religious ministers (men of the book) in despotic government is to be encouraged. Holy books and holy men cannot cure a nation of despotism. Rather, they “force its nature without changing it (VIII.10).” They tame the “lion,” though he remains a lion (EL, XXIV.2). See Schaub, “Of Believers and Barbarians,” 234. In contradistinction to religion, natural right cannot so easily check the will of the prince, because the prince is “not assumed to be a man” subject to natural duties (EL, III.4). See also Sharon Krause, “Despotism in the Spirit of the Laws,” in Montesquieu’s Science of Politics, eds. David Wallace Carrithers, Michael A. Mosher, Paul Anthony Rahe (Lanham, MD: Rowman and Littlefield, 2001).
critique of monasticism as a critique of Bayle. Bayle was wrong to suggest that a “state formed by true Christians” could not continue to exist (EL, XXIV.6). Bayle’s error was to misunderstand the distinction between “the precepts of the gospel” and “their counsels.” Turn the other cheek—this is a counsel. Do not repay evil for evil—this is a counsel. Bayle elided the distinction between counsels and precepts and so assumed that a state formed by true Christians would studiously follow all the counsels. But when “the legislator, instead of giving laws, has given counsels, it is because he has seen that his counsels, if they were ordained like laws, would be contrary to the spirit of the laws (EL, XXIV.6).” With this statement, it becomes clear that Montesquieu is not merely criticizing Bayle; he is criticizing Christian writers who themselves often mistake the difference between counsels of perfection and precepts of the gospel. The latter can be followed as laws by the great mass of people, but the observance of the former must be left to “those who love perfection (EL, XXIV.7).”

Montesquieu opposes treating counsels of perfection as if they were laws. Often, these counsels of perfection require men to act against the natural inclinations that sustain the political community—namely, the inclinations to procreate and to defend the body. A more straightforward statement of this concern is found in chapter 7 of Book XXVI, entitled “That one must not decide by the precepts of religion when those of natural law are in question.” This chapter describes how the Abyssinians fast for fifty days at a time annually, and the “Turks do not fail to attack them after this fast.” The multiplication of religious laws and the transformation of counsels into laws,
threaten to run up against our obligations under the natural law. Moreover, since violating laws of perfection comes so naturally to us, an “infinity” of auxiliary laws must be imposed to keep the faithful from breaking the laws of perfection. Thus even when laws of perfection conflict with natural law obligations, they “tire the society” and distract from simpler and more basic duties.

Montesquieu very nearly suggests that religious laws should call men to account for nothing more than the most basic natural duties. Having laid the theoretical groundwork for this argument in XXIV.6-7, Montesquieu offers three religious groups (none of them Christian) as examples of this commendable approach. The people of Pegu “are not to kill, not to steal, to avoid immodesty, to cause no displeasure to one’s fellow man, and instead to do him all the good one can (EL, XXIV.8).” Similarly, the Essenes took a simple oath to “observe justice toward men, to do no harm to anyone even in order to obey, to hate unjust men, to keep faith with everyone,” and so on (EL, XXIV.9). In the original and bolder version of his discussion of the Essenes, Montesquieu contrasted them with “our monks,” whose tendency to aim too high causes them occasionally to miss morally minimally obligations. Finally, Montesquieu turns to the Stoics, who were occupied only with “working for men’s happiness and in exercising the duties of society (EL, XXIV.10).” This chapter rounds out Montesquieu’s case in favor of morally basic religious law even as it inaugurates his case for religious dogma and practices that incline men toward action.
He seamlessly incorporates this discussion of the Stoics into his treatment of religion. “The various sects of philosophy among the ancients could be considered as kinds of religion,” he pronounces glibly (EL, XXIV.10). The Stoic sect “alone knew how to make citizens; it alone made great men; it alone made great emperors.”

Montesquieu admires the sociability and orientation toward action inspired by Stoic philosophy. The Stoics were “born for society,” and they believed that “their destiny was to work for it (EL, XXIV.10).” The common thread running through Montesquieu’s earlier critique of laws of perfection and his praise of the Stoics is his conviction that religious laws must not run counter to man’s natural ends. This is evident in the next chapter, where he criticizes overly contemplative religions: “Men, being made to preserve, feed and cloth themselves, and to do all the things done in society, religion should not give them an overly contemplative life (EL, XXIV.11).”

(The manuscript first had men “being made for action.”) Like religious laws of perfection, contemplative religions are at cross-purposes with man’s and society’s natural ends. The Mohammedan practice of praying five times daily “forms them for speculation”; they become “speculative by habit.” A speculative people turns its eyes away from “all that belongs to this world.” For this reason, in Chapter 12, he insists that penances should come in the form of works rather than prayers. His fear is clearly that speculative habits will inevitably lead to political detachment, indifference and

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53 Italics added.

passivity as opposed to the impatient vigilance necessary for liberal citizens. Clearly, Montesquieu means his critique of Mohammedanism to extend to elements of Christianity as well. His argument recalls Machiavelli’s bolder sally in the *Discourses*.

The Florentine does not hide behind a critique of Islam:

> The old religion did not beatify men unless they were full of worldly glory... Our religion has glorified humble and contemplative men, rather than men of action. It has assigned as man’s highest good humility, abnegation and contempt for worldly things, whereas the other identified it with magnanimity, bodily strength and everything else that tends to make men very bold... But though it looks as if the world were to become effeminate... this undoubtedly is due rather to the pusillanimity of those who have interpreted our religion in terms of *l'ozio* and not in terms of *virtù*.\(^5\)

Unlike Machiavelli, Montesquieu does not lionize Roman paganism; he prefers the Stoics’ view that wealth and human greatness were vain things (EL, XXIV.10). To the extent that Christianity has devalued political glory just as Stoicism had done before it, Montesquieu has little complaint. But he does follow Machiavelli in lamenting Christianity’s tendency to trade action for political detachment, passivity, or *l'ozio*.

> “The political good…is always found between two limits (EL, XXIX.1).” If ancient paganism suffered from one excess, Christianity suffers from the other. Montesquieu’s aim is not a revival of pagan *virtù* but rather the cultivation of a moderate orientation toward action within the Christian world that preserves the gentleness engendered by

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\(^5\) Machiavelli, *Discourses*, II.2.
the best Christian mores. Religions dogmas and practices must form neither conquerors nor slaves but men who are impatient of incursions upon their life, liberty and property and will act to defend the same.

In contradistinction to the statecraft of men like Richelieu and Mazarin, Montesquieu’s reflections on religion and political utility are not guided by simple considerations of the “safety of the state.” While stability is part of the calculus, I have argued that his understanding of political utility is bound up with his commitment to free and moderate government. He does not write as a *raison d’état* theorist in his books on religion any more than in others sections of *The Spirit of the Laws*. This is particularly important to notice as we turn to his final measure of a religion’s utility: the religion’s power as a source of moral restraint. Just as his opposition to overly contemplative religious inclinations and excessively demanding religious rules stems from his concern with supporting liberal constitutional government, so also his interest in religion as a bridle upon men derives from his aversion to despotism. But this requires some explanation.

Following his discussion of contemplative religion (EL, XXIV.10-12), Montesquieu proceeds to consider the sources of religion’s power to restrain. He criticizes a wide range of dogmas and practices that he regards as corrosive of religion’s

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56 But see MP, 1606. Montesquieu suggests that paganism “afflicted” men less than both Christianity and Islam; he may be referring to the stricter moral regimen of these religions.

57 In a letter to Genevan pastor and Bible translator Jacob Vernet, Montesquieu encourages Vernet to keep the language of his translation “male and vigorous” like Michaelangelo’s David. Quoted in Adams, *The Huguenots and French opinion, 1685-1787*, 72.
moral force. After voicing support for active penances in XXIV.12, he argues that religions must not teach that all crimes are expiable; men must sense that grace has some limit (EL, XXIV.13). Religions must not teach the “dogma of the necessity of human actions” nor the “Mohammedan dogma of predestination”; men must believe themselves to be responsible agents (EL, XXIV.14). Religions also must not teach that simple amoral rituals (such as dying on the banks of the Ganges) can expunge penalties in the next life (EL, XXIV.14). Religious dogmas ought not engender in men a resolute certainty that they will enjoy eternal rewards, for this compromises the power of religious laws (EL, XXIV.14). Taken together, these views suggest that a politically useful religion will preserve some space for human responsibility and fear of punishment in the afterlife.

Now any political writer interested in merely keeping good order might be able to endorse views such as these. But Montesquieu does not reduce political utility to good order. He favors religions with robust power to restrain because he believes that when religious laws effectively repress anti-social vices, the severity of civil penalties may be diminished. The relationship works like so:

As religion and the civil laws should aim principally to make good citizens of men, one sees that when either of these departs from this end, the other should aim more toward it; the less repressive religion is, the more the civil laws should repress.

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58 See MP, 1945 for Montesquieu’s exegesis of Romans 9; he argues against predestinarian interpretations of Paul’s argument.
Thus, in Japan, as the dominant religion has almost no dogmas and proposes neither paradise nor hell, the laws, in order to supplement it, have been made with an extraordinary severity and have been executed with an extraordinary punctiliousness.\(^59\)

In *The Spirit of the Laws*, Japan represents the archetypical despotic regime.\(^60\) Here Montesquieu directly links the severity of its laws with the impotence of its religion. At the other end of the spectrum is England, whose mild civil penalties seem to require or assume the restraints of religion: “There is no nation that needs religion more than the English. Whoever is not afraid of being hanged has to be afraid of being damned,” Montesquieu quips in the *Pensées* (MP, 591). It is true that Montesquieu at one point suggests that there is “no religion” in England, but he is clearly referring to elites and not to the great mass of the people, most of whom are religious.\(^61\) In an important letter to the *English Gazette*, he chastised a writer who had attacked Christianity in England: “What can be the motive now for attacking revealed religion in England, where it has been so effectively purged of all destructive prejudices, as that it can do no hurt, but on

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\(^{59}\) EL, XXIV.14; italics added.

\(^{60}\) See Montesquieu, *Oeuvres Complètes*, Tom. VII, 791: “*Au Japon les loix les plus cruelles les plus vigilantes qu’il y ait dans l’univers.*”

\(^{61}\) In the *Notes sur l’Angleterre*, Montesquieu writes of the lack of piety among English elites: “No religion in England: four or five members of the House of Commons go to mass or to a sermon in the House; except on great occasions, when one arrives early. Whenever anyone refers to religion, everybody starts laughing. When one man said, in my presence, ‘I believe this as an article of faith,’ everyone began to laugh. There is a committee to review the state of religion; the project is regarded as a joke.” Montesquieu, “Notes on England” in Iain Stewart, “Montesquieu in England: his ‘Notes on England,’ with Commentary and Translation,” *Oxford University Comparative Law Forum* 6 (2002) at ouclf.iuscomp.org. Cf. MP, 854; EL, XIX.27, p. 330.
the contrary produces an infinite deal of good.”62 We can reasonably surmise that one of religion’s “infinite” benefits in England is its power to restrain anti-social vices, allowing civil penalties to be relaxed. In societies devoid of such sources of restraint, the hangman tends to pick up the clergyman’s slack.

This line of argument recalls one of the most basic elements of Montesquieu’s political science, his theory of the “principles” of various governments. Civil penalties in republics and monarchies are moderate because citizens of these states respond to “principles” or “motives that serve as restraints and so check many crimes (EL, VI.9).” These motives are love of the homeland, honor and shame. While such motives can sometimes serve as sources of resistance to power,63 in healthy moderate governments they more commonly function as motives for obedience to the law. Such states therefore need not rely upon threats of brutal punishment to keep order. But where the potency of honor, shame and love of country is diminished, the rulers are more likely to rely upon violent penalties. In these situations, fear of violent death must “supply the defect of better motives,”64 to borrow an apt phrase from a different context. This kind of fear cripples men psychologically. And when fear of cruelty is the lone motive for

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64 The Federalist, No. 51.
obedience, the penalties must continually increase in severity because the spring “wears
down” and “the imagination becomes inured” to the each new penalty (EL, VI.9). Of
course, when a state relies primarily upon fear of violence, it has been lost to despotism.

Against this backdrop, we can better understand Montesquieu’s discussion of
religion and civil penalties. The right kinds of religious beliefs can, like love of the
homeland and love of honor, render the constant threat of brutal civil punishment
unnecessary for the maintenance of order. Put simply, religion can promote the kinds of
mores that allow a magistrate to brandish the sword less ferociously. Though religion is
not itself a principle or motive of any particular government, it can act in ways
analogous to the other moderate principles, tempering the severity of criminal
penalties. Montesquieu of course recognizes that religious beliefs have often had
precisely the opposite effect. But he insists that it is “to reason incorrectly against
religion to collect in a large work a long enumeration of the evils it has produced
without also making one of the good things it has done (EL, XXIV.2).” He suggests
that religious commitments can serve as valuable cultural supports for moderate
government. As I have argued, religions that favor liberty are, on Montesquieu’s

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65 This argument is found in various forms in the writings of the Anti-Federalists. For example, Charles
Turner pleads, “May religion, with sanctity of morals, prevail and increase, that the patriotic civilian and
ruler may have the sublime, parental satisfaction of eagerly embracing every opportunity of mitigating the
rigors of government, in proportion to that increase of morality which may render the people more
capable of being a law to themselves.” Herbert Storing, ed., The Complete Anti-Federalist (Chicago:

66 Here one might object that Montesquieu seems unreasonably to prefer one kind of fear (fear of God) to
another (fear of the sword). But as I will argue below, according to Montesquieu, it is not only fear but
also pride, hope and the senses that attach men to religion. Furthermore, Montesquieu may see fear of
view, those that do not aim so high so as to put their demands at cross-purposes with the natural human desires that sustain political communities; those that favor activity over passivity; and those with dogmas that encourage basically just conduct.

While this analysis has drawn widely upon various parts of Montesquieu’s works in order to reconstruct his approach to religion and political liberty, the elements I have discussed emerge primarily in Book XXIV. But conspicuously absent so far has been any mention of what most political observers would regard as the most important test of a religion’s “fit” with liberal regimes—that is, the religion’s tendency to encourage or to discourage practices of toleration toward other sects. So far we have considered Montesquieu’s views on religion and liberty without broaching this question, a question which looms large both for early modern thinkers as well as contemporary political observers concerned with the compatibility of Islam and liberalism. The critical importance of this dimension of the theologico-political problem is not lost on Montesquieu, and he reserves much of Book XXV (the second book on religion) to the matter.

What makes a religion and its adherents likely to tolerate fellow citizens who remain outside the fold? In Book XXV, Montesquieu subtly but persistently offers a simple answer: In general, the more intensely a people are attached to their religion, the less likely they are to be tolerant. Though he certainly recognizes that other factors can

God as less “terrible” and crippling than fear of the earthly despot because God is invisible (EL, XI.6). Fears are most vividly felt when the object of fear stands before us.

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contribute to a religion’s openness to toleration, the matter of simple attachment dominates his analysis. “People who have no temples have little attachment to their religion: this is why the Tartars have always been so tolerant (EL, XXV.3),” he explains. Unlike Locke, Montesquieu does not suggest that a religion’s teaching on toleration is the most important factor in determining its adherents’ willingness to live peaceably with non-adherents. His analysis seems to move the question back a step: Why does one religion support toleration while another does not? It turns out that whether a religion has a “practical doctrine” supporting or opposing religious toleration is largely epiphenomenal. In general, the intensity of attachment is determinative. Religions that engender more powerful attachments will be less tolerant, and they may forge practical doctrines to suit this impulse. Those that produce less ardent loyalty in followers will be more tolerant. This form of toleration—Diana Schaub has called it “barbarian toleration”—is rooted simply in a people’s attenuated attachment to its religion. When we view Book XXV in light of this socio-cultural observation, we can clearly discern the political importance of Montesquieu’s preoccupation with religious attachement.

In the opening pages of Book XXV, Montesquieu announces that not every religion gives men “equal motives for attachment.” From his somewhat oblique analysis

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67 For instance, see the discussion of religious laws concerning “indifferent things” in EL, XXIV.22.
68 See also EL, XXIV.10.
emerge roughly four sources of religious attachment. The first is man’s pride: Religions that appeal to pride forge attachments stronger than those that fail to do so. For instance, men are more intensely attached to religions that bar idolatry because the worship of a spiritual being engenders a feeling of self-satisfaction. The spiritual monotheist feels more enlightened than the coarse and backwards worshippers of metal and stone. Similarly, a doctrine of divine choice or election may heighten a people’s attachment to their religion, for it satisfies a man’s pride to regard himself as an object of divine preference. Finally, “magnificent” worship flatters men, particularly the very poor, leading to more powerful attachment to their religion. Montesquieu seems to suggest that “externals” such as grandiose architecture and brilliant vestments tend to make us feel important, engaging our pride (EL, XXV.2, 7).

The second source of attachment is our sensory nature. Man is a feeling creature (EL, I.1). He loves his religion more if it appeals to his senses and his “natural penchant for things that can be touched (EL, XXV.1).”  

Of course, herein lies the appeal of idolatry. But if non-idolatrous religion can somehow manage to appeal to man’s natural penchant for the sensory, it can engender great attachment in worshippers, since it is able to retain pride as a motive for attachment even while it superadds this sensory bond. Here at least, Montesquieu does not leave the reader to guess as to what religion he has in mind: “Catholics, who have more of this sort of

70 Cf. MP, 597.
worship than Protestants, are move invincibly attached to their religion than Protestants are to theirs (EL, XXV.1).”

In addition to man’s sensible nature and his pride, he may be attached to his religion by sheer force of habit. Montesquieu explains that “one is attached to the things that continually occupy one (EL, XXV.2).” The more practices a religion imposes, the more a people will become attached to it. This basic insight explains why barbarian and savage peoples, “who were wholly occupied with hunting and warring,” were apt to change their religions with ease. They had little time to devote to religious practices and so were little attached. By contrast, agricultural peoples are more likely to establish temples (houses for the gods) as they remain in one place and build houses for themselves. With temples come priesthodds and a multiplication of religious practices. Thus while religion is not born with agricultural civilization, this development vivifies a people’s attachment to its religion and reshapes the religion itself. And when we recall that with heightened attachment comes diminished toleration for religious difference, we see that for Montesquieu, civilization and religious intolerance are born twins. The trick, it seems, is to find a way to restore within civilized nations the toleration that characterized barbarian societies.

Finally, Montesquieu points to hope and fear as sources of religious attachment. Religions that hold out the hope of heaven and leverage the fear of hell gain more devoted adherents. This also explains why religions with temples are more ardently
revered: Access to temples, where god meets man, affords men a place to “go and seek in him their fears or their hopes (EL, XXV.3).”

Pride, the senses, habit, hope and fear are the natural wellsprings of a people’s attachment to its religion. In Book XXIV, as we saw, Montesquieu suggests that not all religions are alike in their political utility, that is, in their tendency to support (or at least not oppose) the requirements of free and moderate government. But here in Book XXV, the focus is not so much on the actual content of the religion but rather the nature of religious attachment. It is to this matter that Montesquieu turns when he wants to address the problem of toleration, because a religion’s tendency to breed violence is not strictly a function of its doctrines (practical or otherwise) but of its ability to inspire burning zeal. This being the case, one cannot help but take note when Montesquieu proceeds to a discussion of the best means for “detaching the soul from religion” in Chapter 12 of Book XXV.

Three recent studies suggest that this chapter plays a critical role in Montesqueiu’s “anti-theological” project. Thomas Pangle, Robert C. Bartlett and Diana Schaub portray traditional religion as the enemy of political progress in The Spirit of the Laws.\textsuperscript{71} Pangle and Bartlett point to chapter 12 in Book XXV (“On penal laws”) as the “single most important passage” on religion in the volume because it holds the key to

understanding Montesquieu’s method of breaking the power of traditional religion. In the chapter, Montesquieu intones,

Penal laws must be avoided in the matter of religion. They impress fear, it is true, but as religion also has its penal laws which inspire fear, the one is canceled out by the other…

Religion has such great threats, it has such great promises, that when they are present to our spirits, no matter what the magistrate does to constrain us to abandon it, it seems that we are left with nothing when religion is taken away, and nothing is taken from us when religion is left to us.

Therefore, one does not succeed in detaching the soul from religion by filling it with this great object, by bringing it closer to the moment when it should find religion of greater importance; a more certain way to attack religion is by favor, by comforts of life, by the hope of fortune, not by what reminds one of it, but by what makes one forget it; not by what makes one indignant, but by what leads one to indifference when other passions act on our souls and when those that religion inspires are silent. General rule: in the matter of changing religion, invitations are stronger than penalties.

In context, Montesquieu has just finished discussing the sources of attachment to religion. Since he has clearly associated lukewarm religious attachment with toleration, it is reasonable indeed to suspect that he is favorably disposed to the “detaching” he describes in this passage. This is the intuition upon which Pangle and Schaub rely.

Montesquieu first examined sources of attachement; now he turns to sources of détachement. At the very least, he seems to suggest that when liberal reformers find a zealous religious group whose members oppose religious toleration, the finest course of

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73 EL, XXV.12; italics added.
action is not to restrict them by penal laws (as Locke seems to suggests) but rather to
attack them “by favor.” A sophisticated psychological insight underlies Montesquieu’s
counsel: Penalties for religious non-conformity “remind” the accused of religion.
Moreover, such penalties set into motion the very same passions that sustain religious
attachment: fear of death and hope of eternal reward (in this case, the martyr’s reward).
State persecution turns the wheels of religious devotion. In lieu of this counter-
productive course, Montesquieu appears to recommend stirring up other passions to
mute the passions of religion. 74 These are chiefly “hope of fortune” and a desire for the
“comforts of life (EL, XXV.12).”

Pangle, Schaub and Bartlett argue that Montesquieu has in mind the
encouragement of commerce as a font of these terrestrial passions. 75 While this
interpretation has considerable merit, Montesquieu’s contemporary readers likely did

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74 This is similar to Montesquieu’s approach to political change, which requires not the extermination of
old mores but inspiration of new ones. Common to this chapter and his discussion of political change is
the contrast between “inspiring” and compelling (EL, XXV.12, XIX.12, 14).
75 For an alternative view, see Boesche, “Fearing Monarchs and Merchants.” Boesche argues that
Montesquieu, anticipating Tocqueville, believed an inordinate desire for “comforts of life” could open the
way to despotism. In support of this view, see EL, V.17-18, where Montesquieu suggests that a desire for
“commodités de la vie” serves as a motive for action in despotic governments. Similarly, in MP, 1253, he
complains that arbitrary power produces in subjects an inordinate concern with self-interest. Consider too
the words of Jean Chardin, whose travelogues were an important source for Montesquieu. Chardin
writes, “As civil and as polished as [the Persians] are, nonetheless they do nothing out of magnanimity
[générosité], which is a virtue that one might say is unknown in the East. As fortunes and bodies are
enslaved by an utterly despotic and arbitrary power, hearts and minds are as well. They do nothing
except from interest, that is to say from hope [of reward] or from fear. And they have trouble conceiving
that there are countries where men serve or hold office out of simple virtue and without other
recompense.” Quoted in Young (1978), 398. If Montesquieu did indeed worry that commerce could
produce an inordinate desire for material comfort conducive to despotism, this lends additional
plausibility to my speculations below (Part IV) regarding religion’s role in tempering the spirit of
commerce. It is clear, however, that Montesquieu did not accept the classical view that merchants and
traders would not be willing to risk tranquility in order to contend for liberty. Compare EL, XVIII.2,
XXVIII.4 and the Letter to Domville (MP, 1960).
not regard the passage to be in any way connected to commerce. Instead, when the text recommends attacking religion “by favor” rather than “by threats,” readers would naturally think of the long (and recent) history in France of enticing Huguenots to convert to Catholicism through incentives. Though Pangle, Schaub and Bartlett miss it altogether, this practice was certainly within the compass of Montesquieu’s thoughts. A number of French Huguenots converted to Catholicism when offered exemptions from taxation, assistance paying debts or straightforward cash incentives for conversion. In 1676, Louis XIV established a special *Caisse des Conversions* from which to dole out handsome bonuses to new converts. Of course, the Sun King was ultimately of the opinion that one could catch more flies with vinegar than with honey, and so along with the incentives he imposed many more punishments and deprivations, culminating in the Revocation of the Edict of Nantes in 1685. In this context, Montesquieu’s mention of attacking religion “by favor” seems to refer in part to the use of financial enticements for religious conformity.

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76 Montesquieu’s wife, Jeanne de Lartigue, was a Huguenot, and he was called upon occasionally to act as an intermediary between the royal administration and aggrieved Huguenots. On Montesquieu’s relationship to the Huguenots, see Geoffrey Adams, *The Huguenots and French Opinion, 1685-1787* (Waterloo, ON: Wilfrid Laurier University Press, 1991), Ch. 5.


79 None of this is to suggest that Montesquieu approved of the practice of rewards for conversion. The argument of this chapter is that rewards are more effective than penalties in religious matters. But the moral purpose of the chapter is to persuade certain rulers—those who have a tin ear for explicitly moral arguments supporting toleration—that they should not use violence to achieve their ends. This chapter on
Still, a reasonable recognition of the historical context does not vitiate Pangle and Schaub’s interpretation. It seems entirely plausible that, in this chapter, Montesquieu also means to recommend the encouragement of commerce in order to weaken religious fervor generally. The language he employs in the relevant passage (“les commodités de la vie…l'espérance de la fortune”) resembles the language he uses earlier in connection with commercial enterprise (EL, XX.3, XXI.3, XX.6, XX.9). Encouraging members of illiberal religious groups to enrich themselves through commerce is one potential solution to the problem of religious strife. Montesquieu recognized that a state policy of toleration would not always be sufficient to ensure peace among religious groups; it would often prove useful to loosen religious attachments in order to form a people willing to embrace toleration. A people daily consumed with profit margins and trade flows tend to lack the psychological energy necessary to develop intense religious zeal, which is a precondition of intense religious hatred according to Montesquieu.


80 Here Montesquieu may have had in mind Huguenot merchants such as those of Bordeaux, who were the city’s most important and wealthiest traders until their exodus following the Edict of Fontainebleau. While this religious minority was party to the bloody wars of religion, after the Edict of Nantes many Huguenots became thriving merchants, living in peace the Catholic majority until renewed persecutions under Louis XIV. Warren Scoville, The Persecution of Huguenots and French Economic Development 1680-1720 (Berkeley: University of California Press, 2006), 255.
Moreover, if we think back to the sources of attachment to religion, we can see that commerce tempers each of them by redirecting them. In the first place, commerce can impart a love of frugality (EL, V.6) which seems likely to suppress the use of “magnificent externals” in worship that appeal to the pride and garner the attachment of worshippers (EL, XXV.2, 7). Similarly, while vanity attaches men to religions that preach divine choice and reject idolatry, commerce redirects vanity toward “fashions” (EL, XIX.8; XXV.2). Fear and hope of divine rewards—sources of religious affection—must compete with continual hope of profit and fear of loss (EL, XXV.3). Commercial life even seems to compromise religion’s ability to engender fervent attachments through the force of habit. While agricultural peoples live in seasons of rest, work and harvest, commercial peoples are continually busied with business. In this way they are like the hunter-gatherer barbarians whom Montesquieu describes as being “wholly occupied with hunting and warring (EL, XXV.2).” Since “one is attached to the things that continually occupy one,” commercial peoples would, like barbarians, be less attached to their religions (EL, XXV.2).

But how can one reconcile this apparent attack on religion with the earlier discussion of religion’s liberalizing function as a motive for obedience to law—a motive that renders needless the threat of brutal civil penalties? How can one reconcile it with Montesquieu’s claim that religion “produces an infinite deal of good” in
England? It is perhaps possible that Montesquieu means to show that commerce, since it can produce new motives for obedience to law, is a potent and less dangerous substitute for religion in the life of a free state. But this view is tenuous. It requires us to read *Spirit* as if the positions articulated later in the text invalidate those that come before. The view also fails to make sense of Montesquieu’s belief that the English, a commercial people, *continue* to derive infinite benefits from religion. More reasonable is the view that Montesquieu wishes to strip religion of some of its powers and to defund the sources of zealotry. He looks for a liberal state in which religion is sufficiently powerful to restrain vice but not powerful enough to breed antipathy and sectarian violence. He would see religion “effectively purged of all destructive prejudices”—this is how he describes religion in England—but certainly not purged of all prejudices, for some prejudices are mild, benign and even salutary.

It may be excusable to attack and undermine religion in Spain and Portugal (as he says in his letter to the *English Gazette*) but certainly not in a nation like England. While Pangle has called Montesquieu a “prophet of the religion of reason” over against revealed religion, this title would be more aptly applied to other *lumieres*, men more impatient of

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81 Montesquieu to Warburton, May 26, 1754, in *OC* III (Nagel), no. 714.

the human condition than was Montesquieu. He did not long for a world in which “God’s voice gradually ceases to be heard by human beings.” The better part of wisdom is with Céline Spector, who insists that Montesquieu was not an exponent of purely rationalized religion ("dans l’esprit de Locke... un christianisme purement ‘raisonnable’"). He did not look for the gradual disappearance of irrational prejudice, nor did he think such a development necessary for the maintenance of a healthy liberal politics. Properly constituted, the spirit of religion can be advantageously joined both to the spirit of liberty and, as we shall see, to the spirit of commerce.

IV. Commercial Society and Political Liberty

Montesquieu wrote The Spirit of the Laws from his castle in La Brède, just fifteen miles from the most consequential trading port in the kingdom of France. Situated along the banks of the deep Garonne River, the port of Bordeaux engaged in vigorous trade with New France, Spain and northern Europe. It was host to maritime commerce bound for and arriving from the Mediterranean via the Canal des Deux Mers,

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84 Pangle, The Theological Basis of Liberal Modernity, 103.


which connected the Atlantic to the Mediterranean, allowing traders to avoid the long and sometimes dangerous journey along the Barbary Coast. Advantageously situated, Bordeaux out-paced other French cities in maritime trade volume, and Montesquieu himself was no mere observer of the city’s extensive business. Significant quantities of wine from his own vineyards wound their way down the Garonne, destined for the tables in England, Holland and the French Antilles. It is in this context that Montesquieu devotes two now famous books of his magnum opus to the subject of commerce.  

1. Commercial Mores

The books are not in fact studies of commerce simply, but rather of laws in their relation to commerce. Like the books on religion that would follow them (and in early manuscripts, preceded them), the books on commerce and law are constructed with an eye to political concerns. Scholars often note that Montesquieu’s condensed discussion of the effects of commerce upon mores served as the chief modern source of the doux commerce thesis, the view that commercial activity softens the mores of a people, making them more polite, pacific and civilized. It is certainly true that Montesquieu

87 There are three if we count Book XXII on money.

espoused just such a view, but he also had a richer and more nuanced understanding of the relationship between commercial activity and political institutions.

The opening chapter of his first book on commerce contains a remarkably (perhaps excessively) concise account of the influence of commerce upon mores:

Commerce cures destructive prejudices, and it is an almost general rule that everywhere there are gentle mores, there is commerce and that everywhere there is commerce, there are gentle mores.

Therefore, one should be not surprised if our mores are less fierce than they were formerly. Commerce has spread knowledge of the mores of all nations everywhere; they have been compared to each other, and good things have resulted from this.

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 softens barbarous mores, as we see every day. (EL, XX.1)

The passage contains at least four different and largely unelaborated assertions about the effects of commerce on human character. Commerce cures destructive prejudice; it softens mores; it perfects mores; it ruins mores. The bases for these generalizations are both topical (if you look around the world, you find that commercial nations are less ferocious) and temporal (we Europeans are less ferocious than our pre-commercial forbears). In a footnote, Montesquieu adduces one lonely historical example of this process, that of the ancient Gauls: “Caesar says of the Gauls that the proximity and commerce of Marseilles has spoiled them so that they, who had formerly vanquished

thorough account of the pairing of la douceur with la commerce in the writings and translations of Burlamaqui and Barbeyrac.
the Germans, had become inferior to them (EL, XX.1, n. 2).” In the relevant passage from De bello Gallico, Caesar recounts how the once-noble Gauls had been corrupted by things tending to “luxury as well as civilization.”89 What is remarkable about this passage is that Montesquieu cites it specifically not as an example of softening mores but rather as an example of corrupting mores. (The footnote comes just after the statement, “Commerce corrupts pure mores.”) Softening was itself the mode of corruption; the Gauls were corrupted inasmuch as they were rendered less tough. As this example shows, the softening of mores is both a form of corruption and a form of perfection, depending upon the starting point. Montesquieu hints at this nexus when he comments that the laws of commerce perfect mores and ruin mores “for the same reason.”

His reference to Plato is, by implication, a reference to the classical republic, as I have discussed in Chapter 2. So Gallic society and Magnesian/Spartan society share something in common: They both have “pure mores,” which is to say, homogenous mores. Commerce shapes the “pure mores” of a previously non-commercial people because it is itself a form of communication. “The history of commerce is that of communication among peoples (EL, XXI.5).” As such, commerce causes “the knowledge of the mores of all nations to penetrate everywhere,”90 since it forces them to communicate with one another. At a minimum, this means that mores and manners

89 Julius Caesar, Caesar's Commentaries on the Gallic and Civil Wars (New York: Harper & Brothers, 1870), ch. XXIV.
90 EL, XX.1; translation is from Paul Rahe, Soft Despotism, 78.
will change, even if only gradually. “The more communicative men are, the more they change their manners (MP, 1980).” Inevitably, trade allows foreign mores to “penetrate” and to produce an adulterated national character. Uniformity and stability in manners and mores simply cannot be maintained when a life of foreign trade is allowed not only to the *perioikoi*, but to the Spartan citizen himself. True classical republics and true barbarian societies are closed to foreign influence; they relate to the outside world only by means of the spear and sword. But the advent of commerce represents a potent source of opening.

Now it is remarkable indeed that Montesquieu alludes to two forms of closed society (the barbarian and the classical republican) but omits mention of the third sort, despotism, which is after all the form of closed society that concerns him most. The absence of communication is a hallmark of despotic countries. “One is less communicative in countries where each man, whether a superior or an inferior, exercises and suffers an arbitrary power, than in those in which liberty reigns in all conditions (EL, XIX.12).” As we have noted, Japan serves as the archetypical pure despotism in *The Spirit of the Laws*, and Montesquieu regarded it as the most closed nation on earth. It was closed both to traders and missionaries, the two chief carriers of

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91 Cf. EL, XIX.12: “It is a maxim of capital importance that the mores and manners of a despotic state must never be changed; nothing would be more promptly followed by a revolution. For in these states, there are no laws, so to speak; there are only mores and manners, and if you overturn them, you overturn everything. . . . One is less communicative in countries where each man, whether a superior or an inferior, exercises and suffers an arbitrary power, than in those in which liberty reigns in all conditions. Therefore, one changes manners and mores less in them; manners that are more fixed are closer to laws: thus a princes or legislator must run counter to mores there less than in any other country in the world.”
foreign mores (EL, XXI.6; XIII.11). He clearly believed that pure despotism, like that of Japan’s Tokugawa shogunate, could not easily survive exposure to unfettered international trade. Like the classical republic of virtue, despotism relies upon a stable, unchallenged substructure of habits and beliefs. Commercial vessels, carrying new species of foreign values, threaten to upset the political ecology of the closed society. For classical republics, this means that civic virtue is threatened. In the case of despotic states, the danger is revolution. “[N]othing would be more promptly followed by a revolution” than a change in mores and manners within despotic nations (EL, XIX.12). This is because in such states, “there are no laws, so to speak; there are only mores and manners, and if you overturn them, you overturn everything (EL, XIX.12).” When peoples accustomed to submitting to despotic rule are exposed to the mores of foreign traders and the manners of life associated with the foreign wares they bring, it is impossible to keep these new mores and manners from altering—“corrupting” or “ruining”—the slavish way of life upon which despotic rulers rely. Plato believed a constant cycle of foreign merchants would threaten the coherent way of life in the virtuous city (“the subject of Plato’s complaints” and why he recommends Magnesia be situated far from the sea). For the same reason, Montesquieu sees in commerce a source of political hope inasmuch commerce may both establish and support a heterogeneity of values that hinders the consolidation of despotic rule.

Of course, Montesquieu alludes to other effects of international commerce in this same passage. While adulterating the pure mores of non-commercial peoples,
commerce tends to soften or make gentle for at least two reasons beyond the effects described above. In the first place, trade in luxury goods can introduce an austere people to the “comforts of life” and unnecessary forms of gratification. There is nothing particularly original about Montesquieu’s allusion to this topos of classical republican thought, and indeed it is not his emphasis. Instead, he emphasizes a second, more novel way through which commerce tends to promote la douceur: “Commerce has spread knowledge of the mores of all nations; they have been compared to each other, and good things have resulted from this [on les a comparées entre elles, et il en a résulté de grands biens] (EL, XX.1).” Commerce leads inevitably to the comparison of one’s own beliefs and way of life to those of other peoples. The “good things” or “great goods” produced by these constant comparisons are “our mores,” which are now “less fierce.” Here we seem to encounter a softness distinct from the decadent delicacy that classical republicans feared would result from commercial luxury. Montesquieu does not offer an elaborate account of how intercultural comparison produces this form of la douceur. How exactly does comparison mellow ferocious mores? And exactly who was the target of this now diminished ferocity—fellow citizens, foreigners or both? It is difficult to say with certainty what social-psychological processes Montesquieu

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92 Here it is worth recalling that traders were among Montesquieu’s most important sources for information about distant lands and peoples. For instance, he drew substantially upon the travel writings of diamond merchant Jean-Baptiste Tavernier and Huguenot jeweler Jean Chardin, who “befriended prominent Persians, knew the provinces as well as the capital, and always tried to get behind appearances.” Young (1978), 395.
sees at work.\textsuperscript{93} We can perhaps infer that he believes the habitual comparison of our mores to foreign mores tends, though not without exception,\textsuperscript{94} to confront us with the possibility that our way of life and belief are in some measure contingent; that foreign mores may possess a rationality of their own (cf. EL, XVI.4 on the reasons for polygamy); that the superiority of our way of life is not so invincibly clear as to make it universally recognized. In time, one would expect reflections of this sort to produce within a commercial people a greater sense of common humanity, a greater sympathy for peoples with alien mores, and so a new kind of softness, gentleness or tolerance.

In addition to this, Montesquieu’s own use of cultural comparison in the very pages of \textit{Spirit} suggests that he sees in this activity the potential to unmask the follies and evils of our culture. For instance, he employs the example of religious persecution in Japan to point out the hypocrisy of the (ferocious) Inquisition: “‘You complain…that the emperor of Japan had all the Christians in his states burned by a slow fire, but he will answer: We treat you, you who do not believe as we do, as you yourselves treat

\textsuperscript{93} Montesquieu’s mention of the comparison of mores is one of the most quoted and least explained passages in \textit{The Spirit of the Laws}. Even the recent studies by Pangle (2010) and Rahe (2009), which devote substantial attention to the role of commerce in \textit{Spirit}, offer no explanation of this process. Belissa suggests, “La dépendance construit un espace de réciprocité. Le commerce apprend la relativité des moeurs et des pratiques. Il contribue à l’extinction du préjugé.” Marc Belissa, “Montesquieu, \textit{L’Esprit des Lois} et le droit des gens,” in Porret and Volpilhac-Augier, \textit{Le Temps de Montesquieu}, 184.

those who do not believe as you do; you can complain only of your weakness, which 
keeps you from exterminating us and which makes it so that we can exterminate you 
(EL, XXV.13).” In this way, knowledge of foreign mores and practices (even vile ones) 
provides an opportunity for self-critique—an opportunity which, if taken, could 
diminish ferocity within a society. We can find this mode of moral discourse 
throughout Spirit, perhaps most powerfully in Montesquieu’s account of Eastern 
despotism. While the despotisms he describes are typically non-Western, the French 
reader will inevitably compare these Eastern despotisms to his state and see startling 
similarities. To compare our way of life to the standard of universal justice may be one 
way to cure destructive prejudices and ferocious mores, but it is not the only way. Like 
The Spirit of the Laws itself, commerce destroys many destructive prejudices by 
spreading “knowledge”—thus far a classic Enlightenment formulation. But 
remarkably, it is “knowledge of mores,” that is, knowledge of prejudice itself that is the 
remedy to prejudice.95 Here we see what is distinctive about Montesquieuian 
Enlightenment.

Destructive prejudice and ferocious mores are supplanted by la douceur, a 
quality of character Montesquieu frequently mentions in Spirit. He associates this 
gentleness or softness with moderate government, moderation and even fairness. 
Indeed, perhaps no other term is used as often to describe the tone and practices of 
moderate and free government (EL, V.15; VI.9; VII.17; X.9; XXII.25; XV.16; 

95 But compare EL, XV.3. On “destructive prejudices,” see also EL, XIX.27, 328.

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XXIV.15; cf. VIII.10). So when in Book XX Montesquieu finally announces that commerce produces “des moeurs douces,” the reader recognizes that the author has just drawn an unmistakable connection between commerce and moderate politics.

Now in the foregoing analysis, we have assumed that commerce merely transports preexisting mores of one people and place to another, for in XX.1, this is the function Montesquieu highlights. But as the argument unfolds in the ensuing chapters, we learn that commercial activity imparts moral habits and dispositions of its own. As chapter 2 opens, Montesquieu introduces an additional element of his doux commerce thesis: “The natural effect of commerce is to lead to peace. Two nations that trade with each other become reciprocally dependent; if one has an interest in buying, the other has an interest in selling, and all unions are founded on mutual needs.” Here he sketches a doctrine likely borrowed from his familiar acquaintance, the Abbé de St. Pierre.96 Gentleness between nations is attributed not to the influence of commercial mores but rather to the power of reciprocal interests—an additional source of peace among peoples.

Yet as Montesquieu continues, we find that this reference to St. Pierre’s teaching on the pacific effects of mutual dependence (only a single sentence) gives way to the real concern of the chapter, entitled “On the spirit of commerce.” He explains,

But if the spirit of commerce unites nations, it does not unite individuals in the same way. We see that in countries where one is affected only by

96 In MP, 1940, Montesquieu declares himself a “partisan” of the “sect” of the Abbé de St. Pierre (cf. 1718 and 1876).
the spirit of commerce [Holland], there is traffic in all human activities and all moral virtues; the smallest things, those required by humanity, are done or given for money.

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.

By contrast, the total absence of commerce produces banditry that Aristotle puts among the ways of acquiring. Its spirit is not contrary to certain moral virtues; for example, hospitality, so rare among commercial countries, is notable among bandit people (EL, XX.2).

Beyond merely carrying European mores to Asia and Asian mores to Europe, commerce makes a mark of its own upon the moral life of nations. Commercial men develop a feeling (sentiment) of justice, to which they are habituated by following their own interests in the business of buying and selling. Montesquieu suggests that justice pays in the marketplace; generally speaking, it is easier to make a living through honesty. There are of course splendid exceptions, but the moderately risk-averse (that is, the great mass of men) will be just in their commercial dealings because they know that a merchant who gains a reputation for dishonesty is ruined. In this connection, Montesquieu explains that the people of Marseilles had to be “just, in order to live among the barbarian nations that were to make their prosperity (EL, XX.5).” Self-interest leads traders and merchants to deliver all the goods or payments that are due, but no more. The regular observance of justice in the myriad mundane transactions of a commercial society gives rise to a sentiment for “justice exacte.” This is fully consistent with Montesquieu’s quasi-Aristotelian understanding of moral development,
which he adumbrates in the *Pensées*: “The means of perfecting justice is to make such a habit of it that it is observed even in the smallest things and that one bends to it even in one’s manner of thinking (MP, 220).” Self-interest leads commercial men to a thousand honest transactions, and somewhere along the way, a reasonably stable *sentiment de justice exacte* is born (EL, XX.2).

This sentiment is politically advantageous. All moderate governments rely upon the existence of sources of obedience or law-abidingness *other than* fear of violent punishment, and this commercial sentiment of justice is just such a motive. The regularity of commercial mores serves to restrain men, so the civil and criminal laws need not be so ferocious. This is why Montesquieu earlier remarks that the spirit of commerce produces order and rule (EL, V.6). Generally speaking, commercial society renders persons and property more secure by instilling the habits of justice.  

Montesquieu also believes that this turn toward justice has a dark side. The same forces that make a man as honest as a Huguenot also threaten to make him as cheap as a Dutchman. “This spirit of commerce makes everything a matter of calculation,” Montesquieu explains in the *Pensées* (MP, 810). The logic of commercial self-interest undermines the generous virtues. The sentiment of exact justice is a mean (thought perhaps not a golden mean) between banditry and generosity. In fact, in a

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97 Montesquieu may also have viewed commercial prosperity itself as generative of a new motive for obedience to the law. The very poor know only corporeal punishment; but men of property can be kept in obedience by threat of pecuniary penalties, which are more characteristic of moderate government (EL, VI.18). In this way, economic prosperity makes it possible to soften criminal penalties.
stroke of classic Montesquieuian irony, the extremes of banditry and generosity meet, because a people who fail to take seriously meum et tuum will both give and take freely. Bandits are often the best hosts. By contrast, commercial men learn to give to each his due—and not a penny more. The vivid sense of property rights inculcated through commercial activity appears to Montesquieu as both a blessing and a curse. As we acquire the minimal virtue of justice, the morally maximal virtues of charity, humanity, chivalry, liberality and hospitality tend to atrophy. One cannot help but see in this analysis a foreshadowing of contemporary debates regarding the liberalism’s putative addiction to justice and rights-talk. Of course, on Montesquieu’s view, the blame (or credit) for this obsession lies neither with liberalism nor with particular liberal innovators but with commercial society itself—a seedbed of liberal mores.

But Montesquieu’s discussion of the dark side of commercial mores represents more than a shoulder-shrugging attempt to acknowledge that there is nothing without loss. He sees real political danger in the invasive power of the spirit of commerce and calculation. Like democracy in Tocqueville’s political science, commerce influences aspects of our moral life that we would like to think are beyond its reach. The same commercial activities that breed just habits also tend to convince us that everything has its fair price. “[T]here is traffic [or trade] in all human activities and all moral virtues;

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the smallest things, those required by humanity, are done or given for money (EL, XX.2).” Just as Tocqueville asserts that the logic of democracy cannot be confined to politics, so Montesquieu argues that the logic of the market cannot be confined to the marketplace. The selves that inhabit the marketplace are the same selves that must, after all, inhabit the rest of society, including the political sphere. Montesquieu expresses this concern most clearly in the posthumously published Notes sur l’Angleterre: “The English are no longer worthy of their liberty. They sell it to the King; and, if the King gave it back to them, they would sell it to him again.”99 Ultimately, in the English case, Montesquieu seems to have concluded that this traffic in liberty would not doom the regime.100 But generally, this element of the moral life of commercial peoples represents at least a potential threat to political liberty, as the spirit of commercial calculation weakens passions (such as honor and love of country) that might keep a people from putting a price on their liberties.

99 Montesquieu, “Notes on England” in Stewart, “Montesquieu in England: his ‘Notes on England.’” Stewart suggests: “The reference is presumably to the civil list. Part of the settlement of 1689 had been an allocation of a fixed sum to the monarch for ‘civil’ (personal) expenses. The monarch then could and sometimes did use some of this money to bribe supporters.”

100 See the Letter to William Domville, contained in MP, 1960, where Montesquieu strikes a more sanguine note:

I am not saying that in the elections of members of Parliament, corruption has not also slipped in. But permit me to make some observations. It is the lowest part of the nation that gets corrupted. And if, in a borough or county, there are some leading figures who are corrupting, because they are themselves corrupt, and some lower-class people who are corrupted, one may nonetheless say that the middling sort is not, and that the spirit of liberty still reigns among them.

The corruption engaged in during your particular elections can only operate on a transitory matter—I mean the election of a Member of Parliament. It can only concern a clear thing—I mean the election of a Member of Parliament.

The letter came in response to William Domville’s letter of June 4, 1749 (Oeuvres Complettes, III, 1235-37), in which he had asked about sources of English decline.
Does Montesquieu offer a remedy for this problem? Is it somehow possible to retain the political benefits of commerce while shedding the undesirable elements of commercial mores? In the passage in question, he suggests that there is traffic in all human activities in countries where one is “affected only by the spirit of commerce (EL, XX.2; emphasis added).” In a footnote, we read simply “Holland.” Here the spirit of commerce reigns without challenge. But of course the implication is that in some states, the spirit of commerce may be mixed with or balanced by other “spirits” or moral influences, perhaps precisely in such a way as to mitigate the unwelcome effects of commerce while preserving its benefits. Though Montesquieu offers little in the way of elaboration along these lines, one thinks of his comments regarding the genius of the English in combining religion, commerce and liberty: “This is the people in the world who have best known how to take advantage [prévaloir] of each of these three great things at the same time: religion, commerce, and liberty (EL, XX.7).”

"These three things,” he writes in an earlier manuscript of this chapter, “are extremely linked in the spirit of this nation.” Is it possible that the spirit of commerce is checked by the spirit of religion in England? As I have argued above, Montesquieu suggests that commercial activity exerts a salutary influence upon the spirit of religion, mollifying the inclination

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101 Italics added. Rahe explains this cryptic statement in light of Montesquieu’s chapter on Henry VIII, who eliminated almshouses and monasteries as a spur to industry (Montesquieu and the Logic of Liberty, 231). “An infinity of idle people, gentlemen and bourgeois spent their lives running from monastery to monastery… After these changes, the spirit of commerce and industry became established in England (XXIII.29).” While this is a reasonable point of reference in understanding the statement, I do not think it exhausts Montesquieu’s meaning.

102 See Oeuvres Completes (Voltaire Foundation), Tom. 3, XX.7. Translation is mine.
toward religious zealotry. Similarly, perhaps one of the “infinite” benefits of religion in England is its tendency to temper the spirit of calculation by pointing toward higher considerations and so to keep men from putting a price upon “all human activities and all moral virtues.”

2. Commerce & Mobility

Despite Montesquieu’s ambivalence towards some elements of commercial mores, in the final analysis it is certain that he viewed commercial society as a fortuitous foundation for moderate government. While he saw reason for hope in the sentiments of justice and gentleness engendered by commerce, he suggests that its most consequential contribution to the formation of a liberal political culture lies in its ability to change what he calls the maxims of government by increasing the mobility of assets and persons. To fully understand this element of Montesquieu’s analysis of commercial societies, however, we must first turn to an unlikely place—his discussion of barbarian and savage peoples.

Savages and barbarians live in small nations or tribes and sustain themselves either through hunting or herding (EL, XVIII.11). It is among a barbarian people, the Goths, that Montesquieu and many of his contemporaries believed the constitutions of

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103 This anticipates Tocqueville’s hope that religion might serve as a ballast to the immoderate and politically dangerous taste for physical well-being in democratic times.
France and England had originated—the myth of the ancient Gothic constitution.\textsuperscript{104} He notes more generally, though, that many savage and barbarian peoples (not only the Goths) have enjoyed and presently enjoy “a great liberty” (EL, XVIII.11). Here, Montesquieu has in mind “the liberty of the citizen,” understood as security of life and property (EL, XI.6). Because non-agricultural peoples are \textit{errants} and \textit{vagabonds}, without any necessary attachment to the land, their leaders are unable to take their liberty from them (EL, XVIII.14). Because their property is movable, they are moveable. If any leader attempted to accumulate absolute authority among such a people, his subjects would slip through his fingers like sand, for they could simply “go and seek [liberty] with another leader or withdraw into the woods to live there with their family (EL, XVIII.14).” A despotic king could become, virtually overnight, a king without a kingdom. Despotic government proves nearly impossible to establish in these circumstances, and for this reason, it becomes scarcely imaginable in such societies. Speaking of the Goths in the \textit{Pensées}, Montesquieu writes, “[I]f, by chance, a prince had taken it into his head in those days to talk about unlimited authority and despotic power, he would have made his whole army laugh, and he would have been viewed as insane (MP, 699).”\textsuperscript{105} The Goths’ circumstances made absolute power unthinkable.

When citizens have access to a low-cost possibility of flight or exit, absolute


\textsuperscript{105} See also Montesquieu, “Réflexions sur la Monarchie Universelle en Europe,” in \textit{Oeuvres Complètes} II (Voltaire Foundation), Chap. X, 349.
government becomes quite literally a joke. For a few barbarian peoples, however, this flight is not possible. Montesquieu explains in a later chapter that the Tartars, a pastoral people, live on an “immense plain” with “no towns, no forests…few marshes.” The Tartars therefore enjoy “no place of retreat or defense” (“aucune espèce de retraite ni de defense”). Absolute authority easily spreads across the vast East European plain because it is unimpeded by forests, rivers or mountains, which can normally serve to check political authority. Consequently the Tartars do not enjoy barbarian liberty, and indeed they are “in political slavery (EL, XVIII.19).” Without a viable espèce de retraite, there is no credible possibility of flight. But for most herdsmen and hunters, the basic liberty to get up and go secures liberty of a higher order: “Among these peoples [who do not cultivate the land], the liberty of the man is so great that it necessarily brings with it the liberty of the citizen (EL, XVIII.19).” Of course, the establishment throughout northern Europe of agricultural civilization slowly eroded the barbarian foundations of liberty. Agrarian peoples are tied to the land, and the establishment of permanent settlements only further constrains a people’s practicable freedom of movement. They can no longer, like dissatisfied barbarians, “withdraw into the woods to live there with their family (EL, XVIII.14).”

Now it is in this context that we can appreciate Montesquieu’s understanding of commerce as a source of political moderation and liberalization. Commercial peoples possess moveable wealth (MP, 45; EL, XX.23). Because their goods are “further from the sovereign’s reach,” the peoples themselves are “more independent” politically (MP,
45). Commerce opens a way of returning to an approximation of barbarian liberty because it reestablishes freedom of movement that had blocked the possibility of despotic rule in barbarian society. This represents a kind of return to nature by means of the artifice of commerce, particularly in its modern incarnation. Remarkably, no scholarly literature demonstrates this connection. The link between _doux commerce_ and barbarian liberty is particularly ironic given that the benefits of commerce were widely associated with its _civilizing_ effects, as we see in EL, XX.1. On Montesquieu’s account, commerce renders us at once more civilized and more like the barbarians.

Modern commerce provides a liberty of movement far more extensive than the liberty secured by pre-modern commerce. The goods of traders and merchants have always been further from the sovereign’s reach than is the vast acreage of farmers, but even still a determined tyrant could extract the wealth of pre-modern commercial peoples. As Montesquieu explains in the crucial twentieth chapter of Book XXI, the princes of Europe effectively plundered the wealth of Jewish merchants in the Middle Ages. Under King John, “A Jew who had seven teeth pulled out, one each day, gave ten thousand silver marks on the eighth (EL, XXI.20).” The wealth of commercial men has always been easier to hide than real estate, but the right methods could unearth even hoarded silver.

In Montesquieu’s account, the great turning point in the history of commerce comes with the invention of letters of exchange (_lettres de change_). The letter or bill of exchange is a financial instrument, developed in Genoa and Florence during the late
Middle Ages and early Renaissance. Prior to its advent, merchants and traders saved and sent their wealth exclusively in the form of specie or goods. If a Florentine merchant wanted to acquire ceramics in Barcelona, he would send the requisite sum of gold or silver and would receive his goods in return. With the development of accounting in the fourteenth century, the same Florentine merchant could pay for the ceramics in Barcelona by simply crediting the account of the Spanish merchant in Florence, without any need for transfer of specie. It was in this context that bills of exchange were developed as a way to allow a third party to draw upon the Spanish merchant’s account in Florence. The early bills of exchange worked like so: Our Spanish merchant could purchase skins from a merchant in Genoa, and in lieu of payment in bullion, he could provide the Genoese trader with a notarized letter (eventually a simple formulaic “bill”) in which he recognized receipt of the merchandise and promised payment from his account in Florence, where he had a credit balance.¹⁰⁶ The Genoese trader could then present the bill of exchange at the Florentine firm for payment. These bills could be bought and sold; they allowed traders to keep vast wealth outside their own country; and they allowed merchants to quickly transfer great sums when circumstances demanded it. They were of course the forerunners to functionally identical devices such as paper currency and checks. While commercial peoples had always possessed a form of property more mobile than that of agricultural

¹⁰⁶ The whole transaction resembles a modern-day credit card transaction: I receive the merchandise, and I sign a receipt to authorize the merchant to draw upon my credit card account, where I have a credit balance. The merchant’s copy of the signed credit card receipt is analogous to the bill of exchange.
peoples, the invention of these instruments gave wings to their wealth. “Pregnant with thousands flits the scrap unseen.”

The new devices provided merchants and traders with unprecedented access to secure “épées de retrait” for their property (EL, XVIII.14). Montesquieu explains,

The Jews, proscribed by each country in turn, found the means for saving their effects. In that way, they managed to fix their refuges [retraites] forever; a prince who wanted very much to be rid of them would not, for all that, be in a humor to rid himself of their silver.

They invented letters of exchange, and in this way commerce was able to avoid violence and maintain itself everywhere, for the richest trader had only invisible goods, which could be sent everywhere and leave no trace anywhere (EL, XXI.20).

Here, Montesquieu uses exactly the same language he had used to describe barbarian liberty. A refuge, a place of retreat (retrait), is needed to secure the “liberty of the man.” This done, the liberty of the citizen tends to follow. Just as a despotic king of barbarians will soon make himself a king without a kingdom, so a despotic king of commercial peoples will soon make himself a king without an economy—and so eventually without a kingdom. Men can no longer retreat into the woods to live with their families, but sovereigns now face the great threat of wealth disappearing across borders to hide upon foreign ledgers. The bill of exchange is transforming asset


mobility in Europe, returning the continent to a state of affairs analogous to that of the ancient German forests. Indeed, Montesquieu suggests that as a result of these developments, the unity of justice and political utility is now gradually being acknowledged in the conduct of European statecraft. Acts once thought to be coups d’autorité are coming to be seen as maladroit; what were once called coups d'État are beginning to appear as “only imprudences” (EL, XXI.20). The flight of capital from despotic princes reveals the fact that “only the goodness of government brings prosperity (EL, XX.21).” While it has always been true that free and moderate governments tend to flourish, the modern revolutions in commerce confirmed this truth with unprecedented clarity. Europe has “begun to be cured of Machiavellianism” and “will continue to be cured of it,” as assets become more mobile and rulers learn the political meaning of asset mobility.109

None of this was mere theorizing. For a vivid illustration of these developments, both the reader and author of Spirit needed only to contemplate recent developments.

109 Taking this line of analysis a step further, later political and economic theorists in France would suggest that these new financial instruments forced princes to grant political participatory rights to citizens. For instance, the Marquis de Mirabeau, an acquaintance of Montesquieu, later observed, “In whatever place [the trader] may live, he will always enjoy the immunity which is inherent in the scattered and unknown character of his property... It would be useless for the authorities to try to force [a trader] to fulfill the duties of a subject: they are obliged, in order to induce him to fit in with their plans, to treat him as master, and to make it worth his while to contribute voluntarily to the public revenue.” Hirschman (1997), 95. According to this view, modern commerce not only moderates princes, as Montesquieu saw; it also democratizes governments. Several contemporary scholars have argued that monarchs across Europe were forced to grant powers to representative assembly in order to coax wealthy citizens with highly mobile, concealable assets to acquiesce in taxation. See especially Robert H. Bates and Da-Hsiang Donald Lien, “A Note on Taxation, Development, and Representative Government,” Politics & Society 14 (1985), 53-70; and Michael L. Ross, “Does Taxation Lead to Representation?” British Journal of Political Science 34 (2004), 229-249, which contains a helpful review of the literature on this question.
French history. The persecution of the Huguenots and the Revocation of the Edict of
Nantes in 1685 led to the flight of at least two hundred thousand citizens, bearing away
tens of millions of livres in the form of specie, bills of exchange and letters of credit.\textsuperscript{110} Huguenots were the most important traders in cities such as Bordeaux, and their mass
migration contributed to the French economic stagnation of the late seventeenth and
early eighteenth centuries (1683-1717). France would have suffered deeper economic
losses had not the crown and its representatives “begun to be cured” of
Machiavellianism through this experience. For example, after the initial exodus, it was
widely understood that the remaining French merchants of Huguenot heritage (the so-
called \textit{nouveaux convertis} who had become nominal Catholics to escape persecution)
were still flight risks. New aggressive policies from the crown could prompt a new
wave of emigration at any moment. In 1688, the royal administrator in Bordeaux wrote
to Paris to argue against Louis XIV’s plans to expel the Jews from southwest France; he
urged that this action would risk accelerating the flight of the \textit{nouveaux convertis}.\textsuperscript{111}
The husband of a Huguenot, Montesquieu makes no mention of the exodus in XXI.20,
and he does not need to. His readers would have known what events he had in mind.

\textsuperscript{111} Scoville, \textit{The Persecution of Huguenots}, 256. In the end, the Jews were not expelled for southwest
France as they had been expelled for the Louisiana territory, Marseilles and the French islands. John
Marshall, \textit{John Locke, Toleration and Early Enlightenment Culture} (Cambridge: Cambridge University
Press, 2007), 144. Worries about flight of \textit{nouveaux convertis} may have contributed to this decision,
though fear of losing the Jewish merchants’ own wealth may have been a factor as well. In this
connection, see Montesquieu’s suggestion in his \textit{Pensées} of founding a new city near the Spanish border
to attract persecuted Spanish and Portuguese Jews to France: “They would... manage to bring all the
wealth they have into that realm (MP, 266).”
Through experiences like the Huguenot emigration, properly interpreted by theorists like Montesquieu, princely avarice slowly learns to oppose violent zealotry. Indeed, states and peoples learn the broader lesson that capital will flee when it feels itself vulnerable to arbitrary absolute power.\textsuperscript{112} As Montesquieu concludes, “Happily, 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 (EL, XXI.20).”

Ultimately Montesquieu is suggesting that changes in international economy are transforming and should continue to transform common ways of thinking about the art of politics. These changes are transforming Europe’s maxims of government. Left unchallenged, this trend may gradually bear Europe back toward a time when serious talk of “unlimited authority and despotic power” might well elicit laughter owing to the obviously self-defeating character of such designs.\textsuperscript{113} Both through this process and through its more direct effects upon mores, commerce contributes to the formation of a liberal political culture in Europe.

Montesquieu’s analysis of the political effects of capital mobility does indeed belong in this account of what I have called “liberal culture,” but the reason for this is not obvious. In one sense, it appears that Montesquieu has offered something akin to a rational choice account of commerce and politics. Yet there is more to the story. We

\textsuperscript{112} Cf. EL, XX.23 and MP, 45 on commercial wealth existing in a “single [global] state.”

\textsuperscript{113} Note then the remarkable role of barbarian society in Montesquieu’s liberal science of politics. The liberal regime approximates the ancient Gothic regime; religious toleration is secured by the attenuation of religious attachments, on the model of barbarian religion; and the liberty of the citizen requires a place of retreat analogous to that of the barbarians.
must understand that Montesquieu *himself* is interpreting and expounding the meaning of material and economic changes that are, he thinks, still dimly understood. Through this analysis, he is unfolding new maxims of governments concerning the instrumental irrationality of despotism. He is teaching rulers the nature of their enlightened self-interest. These new maxims or beliefs about statecraft obviously have a material foundation, but they are beliefs or maxims nonetheless. By offering a scientific account of changes in material circumstances, Montesquieu is contributing to the formation of a liberal political culture—a culture in which, as in the days of Goths, some will learn to laugh at the very thought of unlimited authority.

In Montesquieu’s analysis of commerce, as in his treatment of religion and the household, we find that ostensibly private domains of human activity invariably infiltrate and influence the political domain. Like religious devotion and domestic life, commercial activity is a conduit of what can only be called a political education since by it we are made into citizens and subjects of a certain character and through it we acquire distinct ideas of what is possible and the necessary in political life.

**V. Liberal Politics as a Source of Liberal Culture**

The maxims, beliefs, social customs, character, mores and manners of a nation circumscribe the range of political institutions that it can support and sustain. But Montesquieu recognizes that laws and political institutions themselves can contribute to the formation of a people’s way of life and thought. If like the Ancients, he
acknowledges that regimes are born not of oak or rock but the character of the people, he also affirms the ancient view that constitutions themselves—the arrangement of offices—exert significant influence upon the ethos of citizens and subjects. His political science is sociological, but not in the sense of denying the formative or educative power of law and politics. Of course liberal legal and political institutions are not the only source of liberal culture; if they were, then Montesquieu’s analysis of the domestic sphere, religion, commercial mores and the like would be superfluous. If one has full and comprehensive faith in the power of law and politics to reeducate citizens in a stroke, then one need not worry so much about sub-political and non-public sources of liberal (or illiberal) culture. For according to such a view, liberal institutions would impart the national character necessary for their own survival: “If you build it, they will come.” This view is fully compatible with political universalism.

Montesquieu’s view is more balanced. While legal and political institutions alone cannot produce the customs necessary for their own maintenance and flourishing, it is nonetheless true that the political and legal spheres invariably “spill over” into other

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114 Consider MP, 1876. That his method was not pristinely sociological was subject of Durkheim’s complaint. Durkheim believed that Montesquieu had constructed a “defective science” because he had not realized that the “nature of society,” “circumstance” and mores determined the shape of laws and institutions with “something like a physical necessity.” By denying that a relationship of “necessity” obtained between sociological causes and political outcomes, Montesquieu had left space for reflection and choice in politics—in the person of “the legislator.” In other words, he was too eager to investigate the role of “final causes” in the political world. As this critique makes clear, Montesquieu’s view that political and legal institutions could shape culture preserved the place of political agency, human intelligence and statesmanship in his political science. Emile Durkheim, Montesquieu (Oxford: Berghahn Books, 2002), 49-53.
The primary aim of this penultimate section then is not to explore previously unexamined elements of liberal culture, but rather to make clear that Montesquieu sees in politics and law a power to transform culture. In other words, I mainly wish to make clear that politics is not simply downstream from culture in *The Spirit of the Laws*.

We have already seen this element of Montesquieu’s political science at work in his treatment of the domestic sphere. There, we recall, he analyzes not only how domestic power relations delimit and constrain political possibilities but also how the political sphere reshapes the contours of the household: “Each man follows the spirit of the government and brings to his home what he sees established outside of it (EL, VII.9).” We find here a lively sense of the interpenetration of the political and sub-political spheres, an appreciation of the ways in which political institutions and social customs are reciprocally causal. This analytical insight reappears throughout *The Spirit of the Laws*. Indeed, it is implied in what Montesquieu takes to be the most fundamental innovation in his system of politics, the distinction between the nature and principle of government, which corresponds substantially though not wholly to the distinction between political institutions and political culture.

Every government possesses a nature (EL, II). When contemporary political scientists speak of formal political institutions, they are generally speaking of what Montesquieu calls the nature of a government. The nature of a government is its

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structure or political constitution (EL, III.1). But as we have seen, each of the three basic forms of government—despotism, monarchy, republic—requires a principle or animating passion that gives life to the structure and makes it act like the thing it is (EL, III). For instance, monarchies act like monarchies because they run on honor; if fear begins to determine the actions of the government and governed, the transition to despotism is already well underway. The presence of monarchical structure or republican structure does not ensure the presence of monarchical principle or republican principle. Principle is not merely the product of nature, nor is nature the mere product of the principle.

Indeed, one searches in vain for broad, general statements regarding the causal relationship of nature to principle. Principles are said to “derive naturally” from the nature of each government, but by this Montesquieu intends to indicate a logical rather than causal relationship (EL, III.2). The principles “derive naturally” from the structure inasmuch as these passions are necessary for a government of this or that form to function. Similarly, though Montesquieu writes that the principle of each government has a supreme influence on the laws (EL, I.3), he does not suggest that principle determines the nature of the government. So unlike his follower Tocqueville, Montesquieu never identifies any single first cause in his science of politics. Instead, the nature, laws and principal passions of a nation have a relationship of reciprocal causality and constraint. Everything affects everything and is changed by everything.

\[116\] Tocqueville’s first cause is the social state. Tocqueville, *Democracy in America*, 50.
After his treatment of the nature and principle of government, Montesquieu turns in earnest to the task of elaborating the relationship of the principles to various kinds of law—laws concerning education (IV), “the laws given by the legislator” (V), criminal law (VI), luxury and women (VII). In these books, Montesquieu shows how many laws “follow from” and “conform to” the principle of the nation. The animating passion of the nation shapes these laws; they flow from the principle “as from their source (EL, I.3).” Some of these laws are indeed political laws, constitutive of the regime itself. Yet the laws and political forms produced by the principle have a life of their own and indeed exert influence upon the principle. The principle “receives new force from the laws” that it helped to shape, and this “tightens all the springs of the government (EL, V.1).” Montesquieu imagines a kind of continual reverberation between the character of the people and the institutions of the state. As in physical motion, so in political motion, “an action is always followed by a reaction (EL, V.1).” The principle forms laws and institutions, but the institutions form and shape the passions, customs and way of life, which in turn influence the institutions, and so on.

In his *Considerations on the Greatness of the Romans and Their Decline*, Montesquieu puts the matter this way: “At the birth of societies, the leaders of republics create the institutions; thereafter, it is the institutions that form the leaders of republics.” Of course, not all institutions are created products of human agency. In

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the rise of political institutions, chance plays a role as great if not greater than human prudence (EL, V.14).\textsuperscript{118} Some institutions are created; some grow. But whether products of chance or intelligence, institutions invariably play a role in forming men. In this passage from the \textit{Considerations}, Montesquieu proceeds to explain that the office of consul, owing to its short one-year terms, tended to form particularly ambitious leaders. But even beyond their influence upon leaders, every form of government imparts to the populace “a certain orientation, a certain disposition” (MP, 603). This is true of despotic and moderate governments alike.

Montesquieu devotes an entire chapter to considering the cultural and psychological consequences of liberal politics—what we might call the political sources of liberal culture. While the first twenty-six chapters of Book XIX take up the question of how culture constrains and determines political horizons, the final chapter (by far the longest) reverses the causal arrow and considers, “How laws can contribute to forming the mores, manners, and character of a nation (EL, XIX.27).” Though the title suggests that a rather general account will follow, Montesquieu focuses narrowly on the effects of the English constitution upon English cultural life.\textsuperscript{119} He announces,

\begin{quote}
The customs of a slave people are part of their servitude; those of a free people are a part of their liberty.
\end{quote}

I have spoken in Book 11 of a free people, and I have given the principles of their constitution; let us see the effects that had to follow

\textsuperscript{118} Plato, \textit{Laws}, 709a-c.

\textsuperscript{119} Throughout the chapter, Montesquieu speaks in the subjunctive mood (“they would be”; “they would have”) to make it clear that his analysis is in some measure deductive and therefore generalizable.
the character that was formed from it, and the manners that result from it (EL, XIX.27).

Here again, we see something of the distinctiveness of Montesquieuian Enlightenment. Political liberty does not *eradicate* custom to replace it with reason but rather forges new customs, the “customs of a free people.” These customs are a “part of their liberty” both because the customs themselves are liberating and because the customs serve as non-public foundations of liberal public institutions. Taken on their own, not all customs of a free people are impressive from the point of view of human excellence, but they tend to bolster the free institutions that gave them birth.  

In XIX.27, Montesquieu opts for breadth over depth in his account of these customs. Indeed, this treatment of liberal customs leaves one with the distinct impression that the chapter’s purpose is not to analyze fully the concrete elements of liberal culture but rather to show that political institutions do in fact impart particular customs to a nation. So for instance, we get just one sentence on poets (the individualism and independence instilled by liberal institutions produce an “original bluntness of invention” in poetic works). We get one sentence on historians (partisanship engendered by liberal constitutionalism leads historians to *lie* in favor of their party). There are two sentences on comedy (liberal citizens’ lonely withdrawal from social life leads men to feel their own vices more vividly, and consequently

satirical writings are downright scathing). Similarly, in free states, philosophers and scientists tend to think alone; again, a single sentence suffices to cover the subject. One cannot help but recall Tocqueville’s *Democracy in America*, which devotes a chapter or more to subjects that receive just a line’s worth of attention in *The Spirit of the Laws*. Montesquieu’s analysis serves only as an opening of doors. He means to demonstrate that there is a real, consequential interface between politics and culture. Here again, his goal for the reader is not one of “making him read but making him think (EL, XI.20).”

While English poetry, history and satire are certainly not superior to works found in other nations, they are more serviceable for liberal politics. Free institutions infuse arts and letters with a liberal ethos, this liberal ethos in turn strengthens liberty’s foothold in England.

In the course of this rapid survey of political sources of liberal culture, Montesquieu also traces specific ways in which participation in liberal institutions and life under liberal laws shape a people’s character and habits of heart. Most prominently, the signal liberal institution of *la distribution des trois pouvoirs* would lead to a constant struggle between the legislative and executive powers. Inevitably taking sides in the struggle, the people would develop a kind of low-grade suspicion, uneasiness and attentiveness. But in contradistinction to the agitated spirit of the people in an ancient democracy, the suspicions of citizens in representative governments would be more moderate as they could be regulated and calmed by the legislative body. This civic vigilance, produced by liberal political institutions, helps to sustain those institutions, as
citizens watchfully keep government within its limits. In addition to these effects wrought by the separation of powers upon the national character, liberal protections upon freedom of worship and thought would reshape the character of religious belief. Montesquieu suggests that liberty in religious matters would have one of two effects: Either men would be “indifferent” and therefore simply follow the dominant religion, or they would be very “zealous for religion in general” and join many different sects—a Madisonian multiplicity of factions. In either case, men would be “concerned (or unconcerned) with religion in a manner suitable to maintaining public peace.” Here again, we find the laws of a free state engendering customs consistent with the preservation of liberty.

By contrast, despotic government cultivates the character and customs of a slave people. The slave in form becomes a slave in fact. Despotic governments indiscriminately assign cruel and severe penalties to all crimes, and as a result, men are soon moved only by the threat of the lash. The nature of a slave is acquired through life as a slave, as Rousseau would observe. Despotism’s harshness decimates the subtler bridle of the human spirit—love of honor, fear of shame, hope of reward and “maxims of philosophy, morality, and religion (EL, VI.13).” The character and customs of a slave people become so corrupt that the rulers feel themselves under compulsion to

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122 C. P. Courtney agrees: “Here Montesquieu shows that the institutions of England tend to reinforce the spirit of liberty which produced them (*Montesquieu and Burke*, 95).”
govern with increasing severity. “If you see other countries in which men are restrained only by cruel punishments,” Montesquieu explains, “reckon again that this arises largely from the violence of the government, which has employed these punishments for slight transgressions (EL, VI.12).” Men become “accustomed to despotism” and “accustomed to harshness” as their form of government impresses itself upon customs and character (EL, VI.12, VI.9). In short, despotic institutions transform men into the kinds of beings the laws presume men to be. This is why “a subjugated nation can only have another oppressor,” while a “free nation”—free in character and custom—“can have a liberator (EL, XIX.27).” Despotic politics yields despotic culture, and so the nation doubles down on its servitude.

Montesquieu is alert to the power of cultural constraints to influence the viability of liberal political institutions, as we saw in Parts I-IV of the present chapter. Still, as I have argued in this section, he does not see political institutions as the mere

123 Indeed, at times Montesquieu suggests that the government in a despotic state is itself victim to the logic of despotism: “I beg you to observe with what industry the Muscovite government seeks to escape the despotism which weighs on the government even more than it does on the people (EL, V.14; italics added).”

124 Emphasis added.

125 “Revolutions formed by liberty are but a confirmation of liberty (EL, XIX.27).” But see Chapter IV below.

126 See also EL, VII.9: “Each man follows the spirit of the government and brings to his home what he sees established outside of it.” Montesquieu’s views mirror those of civic republican theorists, who held that a people subject to despotic government would eventually develop a character incompatible with the political freedom, while peoples raised on republican liberties would develop a character hostile to any form of domination. See Discourses, I.17-18; Prince, ch. 5. This is why Machiavelli counsels the prince to destroy a conquered republic; the people will scarcely allow the memory of their former liberty to pass. Similarly, he suggests that virtue and an “aptitude for living in freedom” could be restored to a corrupted people only by means of “extraordinary measures” and “much danger and bloodshed (EL, I.17).”
epiphenomenal emanations of sub-political forces. Mores, manners, habits, customs and spirit are not for Montesquieu what modes of production were for Marx. Politics qua politics has a life of its own. Montesquieu’s lively sense of the power of the sub-political to constrain viable choices is married to an equally lively sense of the considerable though not boundless power of political institutions to form and deform, educate and miseducate. Indeed it is this very power that makes institutions capable of inspiring such horror or hope. Despotism is an obscenity not merely because despotic government is unjust and cruel but also because it remakes man in its own image, inscribing the form of rule in a way of life.  

Similarly, free government represents a great good because it creates customs and habits that, in turn, act to brace free institutions themselves.

The danger of a qualification, which is what this section has been, is that it can be taken for the whole truth. The whole truth regarding liberal culture in *The Spirit of the Laws* is emphatically *not* that Montesquieu encourages legislators to expect a fully formed liberal culture to spring forth from well-designed liberal institutions like Athena from the head of Zeus. Indeed, upon reflection, one can appreciate how the power of politics to transform culture cuts both ways when it comes to the question of political change. While the capacity of free institutions to inculcate to some liberal customs may

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127 Montesquieu warned that European mores were not sufficiently strong to resist erosion by despotic government: “Most European peoples are still governed by mores. But if, by a long abuse of power or by a great conquest, despotism became established at a certain time, neither mores nor climate would hold firm… (EL, VIII.8).”
be a source of hope when viewed from the perspective of the liberal reformer, the capacity of despotic institutions to recast man should be a source of despair for this same reformer if he has his eye on a nation gripped by despotism. Autochthonous peoples are the stuff of myth. Real human communities have histories, and so pre-existing ways of life, which deeply complicate projects of political transformation.

VI. Conclusion

Knowledge of liberal culture—the character and customs of a free people—helps to define the task and limits of liberal political reform. In Montesquieu’s analysis of the household, religion, commerce and man’s relationship to his physical environment, we find on display the same fundamental insight: The boundaries between domains of human activity are porous. Our experience in each shapes the character of the other. Every regime is upheld by a whole constellation of practices, beliefs and habits, many of them ostensibly “private” and “non-political” in nature. Liberal regimes are no exception. Though free governments extend toleration to different ways of life, such governments nonetheless rely upon distinctively liberal mores, manners and customs for their maintenance and flourishing.

Montesquieu’s account of liberal culture does not leave one with the impression that a healthy liberal politics is possible only among individuals blessed to the highest degree with the most profound liberal virtues. Of course, neither does he suggest that the preconditions of liberal politics are so “thin” as to be inconsequential. Free and
moderate legal and political institutions are likely to be sustainable among a people possessed of an orientation toward action; open to some measure of sexual equality; restrained by moralistic religions to which they are moderately attached; habituated to justice and gentleness through commercial activity; and led by men who believe the pursuit of absolute power to be counter-productive and inconsistent with their own interests. Additionally, it follows from Section V above that a people’s recent experience with free institutions bodes well for attempts to reestablish these institutions, because free institutions liberalize custom to some extent.

Like contemporary treatments of democratic political culture, Montesquieu’s account of what I have called liberal culture initially leaves us uncomfortable and unsettled for reasons not difficult to discern. It sets up a problem. If a nation must look like this to support liberal politics, then what of nations that do not look like this? And how can a liberal political theorist suggest that basic human liberties are out of reach for whole swaths of humanity? As I indicated at the beginning of this chapter, Montesquieu has an answer to these questions which are commonly directed at theorists of political culture. In the next chapter, we turn in earnest to the problem of political change in The Spirit of the Laws. As we shall see, the logic of Montesquieu’s normative liberalism provides the moral impetus behind his particularistic warnings and supplies the moral foundation for an approach to regime change.
FIVE: Liberal Political Change

Solon was asked if the laws he had given to the Athenians were the best; ‘I have given them the best laws they could endure,’ he replied: this is a fine speech that should be heard by all legislators.

Montesquieu, *The Spirit of the Laws*, XIX.21

Since a particular form of government gives a certain orientation, a certain disposition to minds, you change the former without the latter following you, and you combine the new government with the old manner of thinking, which produces very bad effects.

Montesquieu, *Mes Pensées*, 603

In Chapter 3, we considered Montesquieu’s understanding of the liberal regime. In Chapter 4, we considered the elements of liberal culture. But what can be said of nations that lack of the elements of liberal culture? Is the liberal regime beyond their reach? Must the normative goals of liberal constitutionalism be limited or chastened by recognition of the requirements of liberal culture? If a nation in political transition often requires cultural “preparation” or cultural reform before that nation is capable receiving and sustaining liberal institutions, are there genuinely liberal means of achieving such reform? If cultural transformation is the precondition for liberal political reform, how can this transformation be justified before the tribunal of liberalism’s own normative commitments (e.g., the limited scope and ends of political power)? These are the questions to which Montesquieu’s theory of political change represents an answer. In the present chapter, I will outline the critical and constructive elements of Montesquieu’s theory, and I will argue that within this account of political
change, the shared moral logic of Montesquieu’s liberalism and political particularism emerges with special clarity.

As we have seen, Montesquieu subtly warns friends of free and moderate government against focusing exclusively upon the improvement of legal and political institutions. Instead, in projects of political change, they must attend to the cultural and social preconditions of liberty. Here I will argue that this exhortation cannot be chalked up to merely prudential caution aimed at ensuring regime stability. Rather, Montesquieu’s approach to political change flows from the moral center of his liberal constitutionalism. On his view, the goodness of free government lies partly in its effects upon the thoughts and passions of citizens. When citizens are prepared to receive and sustain it, free government promotes “the liberty of the citizen” defined as an “opinion of one’s security” and a “tranquility of spirit” within the citizen (EL, XI.6, XII.1). Liberty expels the species of fear that dominates men’s souls in despotic nations.¹ But when a people is not culturally and socially prepared to receive free political institutions, direct attempts to establish such institutions will likely produce an experience of political disquiet and fear—a “tyranny of opinion”—comparable to the psychological experience of men and women in truly tyrannical states (EL, XIX.3). Under these conditions, free institutions are no longer liberal in effect, for they fail to yield the tranquility of spirit that constitutes the “liberty of the citizen.” Thus when

Montesquieu warns against hasty institutional reform in nations unprepared for laws of liberty, he speaks from within the moral logic of his liberalism and not on behalf of prudential considerations external to it.

This same moral reasoning also gives shape to the constructive or positive element of Montesquieu’s treatment of regime change. Friends of liberty may pursue two possible courses with respect to nations that are as yet unprepared to receive free and moderate institutions. First, they may do nothing. Second, they may seek to transform a nation’s cultural life to prepare its people for freer institutions. Montesquieu refuses to commend the first path as a general rule. His political outlook, however pessimistic relative to later liberals, is simply too melioristic to admit of such a solution. This leaves the second path—that of cultural transformation. But he suggests that reformers who follow this path must refrain from using coercion to change the nation’s culture directly, for such projects transgress the moral limits of state power. This concern is at the heart of Montesquieu’s liberalism. Therefore Montesquieu outlines an art of political change that aims to avoid both the Scylla of quietism and the Charybdis of illiberal cultural legislation. He urges reformers to change mores and manners indirectly, not through the direct legislation. Though his initial examples of such indirect means of change appear obscure, I argue that his subsequent sections on

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commerce should be understood as a continuation of this project. That is, he turns to commerce not merely because he considers it a technically efficient means of promoting political liberty but also because he views commercial activity as a potential path to fostering a liberal culture without resort to illiberal methods of coercive cultural transformation. This counsel represents the constructive aspect of Montesquieu’s theory of political change, and like the critical aspect, it is underwritten by his liberalism.

As this summary suggests, Montesquieu’s moral analysis and empirical observations yield a rich though not unproblematic framework for judging approaches to political liberalization. Previous scholarly treatments have not appreciated the complexity and nuance of this element of The Spirit of the Laws. While many interpreters have noted the prominent role of mores and manners in Montesquieu’s understanding of political change, we lack an integrated account of how Montesquieu’s normative liberal commitments shape his approach to political liberalization. Thomas Pangle makes helpful distinctions between the modes of political change outlined in Spirit’s Book XIX, but he only hints at the relationship between Montesquieu’s approach to political change and his psychological account of political liberty.3 In her classic study of Montesquieu’s political thought, Judith Shklar notes that Montesquieu occasionally gives a “liberal face” to the “relativism and determinism” which she finds

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implicit in his political sociology. But by this she means only that Montesquieu’s climatological and sociological explanations of certain practices (e.g., suicide in England or polygamy in Africa) imply the need for toleration of such practices. More recently, Ana Samuel follows Diana Schaub’s lead in suggesting that Book XIX of Spirit contains the key to Montesquieu’s theory of political change, but Samuel does not inquire into the foundations of this theory.

In the present study, while I join my voice to those of a few scholars who call attention to Montesquieu’s counsel regarding political reform, in opposition to the older and generally discredited view that Montesquieu embraced materialistic determinism, I seek to chart a new course for understanding his approach to regime change in light of its distinctively moral and liberal foundations. I argue that his liberal constitutionalism and political anti-universalism share a common theoretical provenance that becomes especially conspicuous as we turn to his treatment of political liberalization. Indeed, it


is only by means of this unitary reading that we can make sense of Montesquieu’s art of political change and subject it to critical scrutiny.

This reevaluation of Montesquieu’s theory of political development invites us to consider whether the contemporary theory and practice of political liberalization has focused too little upon cultural and social constraints of political liberalization and too intently upon formal institutional design. The challenge is particularly worth considering as it comes from the father of modern liberal constitutional design. More than this, Montesquieu’s treatment of political change, human custom and human psychology furnishes fresh reasons to take seriously the claims of the political culture school. On his view, friends of liberty have moral reasons to attend to the relationship between custom and political institutions. His approach does not foreclose the possibility of radical political transformation even in nations with illiberal cultures, but particularly in such cases, he urges reformers to judge the methods of political liberalization by a moral standard implicit in his liberalism.

My argument will unfold as follows. First, I will show that Montesquieu’s liberal constitutionalism, even in its most institutional expressions, derives significant moral force from his psychological account of liberty. It is this same psychological understanding of liberty, I will then argue, that provides the moral (and not merely prudential) grounding for his warnings about universalistic approaches to regime change. Third, I will show that the approach to political and cultural change that Montesquieu sketches in *Spirit* is specifically designed to operate within the bounds of his liberal and
particularist commitments. Finally, I will briefly consider the scope of Montesquieu’s optimism and the depth of his pessimism. He presents a liberal theory of political change. But are some nations stuck with despotism?

I. The Psychology of Liberal Constitutionalism

Readers of *The Spirit of the Laws* have long noted Montesquieu’s warnings against universalistic and rationalistic approaches to political change that ignore the constraints of culture and circumstance. Traditionally, these warnings have been seen as the obvious, prudentialist applications of his political sociology and climatology. On this reading, Montesquieu’s critique of universalism in politics, or his political particularism, flows from worries about political instability: the legislator must “examine and test the soil”—the people—“in order to see whether it can support the weight”—the new political institutions.\(^7\) If he fails to do so, the regime may collapse.

While it is certainly true that political stability ranks among the chief concerns in *Spirit*, this understanding of Montesquieu’s political particularism is incomplete because it fails to capture the relationship between his warnings regarding regime change and his liberalism. As I will argue, Montesquieu’s particularistic art of politics derives normative force from his psychological account of liberty.

To understand this relationship, we must begin with Montesquieu’s treatment of political liberty in his books on the English Constitution and criminal law (EL, XI,

XII). Here, Montesquieu’s analysis moves along two fronts. First, in Book XI, he promises to approach political liberty in “relation with the constitution (EL, XI.1).” Next, in Book XII, he promises to approach liberty in relation to the citizen (EL, XII.1, XI.1). Though significantly more porous than it first appears, this distinction suggests that the establishment of liberal or moderate constitutional forms may not fully guarantee the liberty of the citizen (EL, XII.1).

In Book XI, Montesquieu describes the constitutional forms best suited to prevent abuses of power (EL, XI.4). He initially defines political liberty as “the right to do everything the laws permit (EL, XI.3).”9 When a constitution allows arbitrary constraint or compulsion beyond the scope of settled laws, political liberty is imperiled. In other words, liberty requires the rule of law. Montesquieu therefore proceeds to his discussion of the separation of powers, because this institutional feature preserves the rule of law. It becomes clear that “the laws that form political liberty in its relation with the constitution” are fundamental laws securing separation of powers and the rule of law (EL, XI.1).

But what does the “liberty of the citizen” require, beyond the presence of liberal constitutional forms? In Book XII, Montesquieu writes that the liberty of the citizen

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8 Note that with his use of the term “political liberty,” Montesquieu does not mean to draw a distinction between civil liberties and political liberties qua rights of political participation. Rather, he means to distinguish the species of liberty with which he is concerned from what he calls “philosophical liberty”—the freedom of the will (EL, XI.2, XII.2).

9 Cf. EL, XXVI.20: “Liberty consists principally in not being forced to do a thing that the law does not order, and one is in this state only because one is governed by civil laws; therefore, we are free because we live under civil laws.”
“consists in security or in one’s opinion of one’s security (EL, XII.6).” This aspect of liberty includes an unmistakably psychological core. The citizen might not consider himself politically secure, even if liberal institutions—the separation of powers and the rule of law—are in place.¹⁰ Instead, Montesquieu argues, the liberty of the citizen is realized only in the presence of the rights kinds of “mores, manners, and received examples (EL, XI.1).” Likewise, certain criminal laws “favor” the liberty of the citizen. In Book XII, Montesquieu focuses primarily upon these laws. Liberal mores, manners and received examples pass here without further mention but will reappear later.

Montesquieu thus seems to present two views of political liberty: one that is psychologically oriented and another rooted in observable constitutional arrangements and practices.¹¹ His explicit distinction between Books XI and XII suggests as much (EL, XII.1). But at the deepest level, both treatments of liberty are grounded in his psychology of fear. Just after Montesquieu promises to devote Book XI to “liberty in relation with the constitution,” he introduces a psychological definition of liberty. Appearing to get ahead of himself, he writes,

¹⁰ But see David Carrithers, “Montesquieu and the Philosophy of Liberal Jurisprudence,” in Montesquieu’s Science of Politics (Lanham, MD: Rowan and Littlefield, 2001), 292. David Carrithers takes “liberty of the citizen” to mean “civil liberty” under liberal criminal laws as distinct from “political liberty” under a liberal constitution. This distinction is helpful as far as it goes, but it misses both Montesquieu’s repeated emphasis upon the deeply psychological character of the liberty of the citizen and his claim that not only criminal laws but “mores, manners and received examples” can give rise to liberty (EL, XII.1). “Civil liberty” comprises the principal part of Montesquieu’s liberty of the citizen—but not the whole (EL, XII.2). Good criminal law is a reliable means of engendering tranquility of spirit, but it is only a means. It represents neither the definitive nor the entire content of Montesquieu’s liberty of the citizen.

Political liberty in a citizen is that tranquility of spirit (tranchuillité d’esprit) which comes from the opinion each one has of his security, and in order for him to have this liberty the government must be such that one citizen cannot fear another citizen (EL, XIX.6).

Political liberty is here defined in plainly psychological terms: it is tranquility of spirit.12

A citizen’s tranquility of spirit depends upon his freedom from fear of fellow citizens, including those in power. But this reference to the “liberty in relation with the citizen” in a chapter purportedly concerned with “liberty in relation to the constitution” is not a

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12 I have discovered no secondary literature that addresses Montesquieu’s choice of this particular formulation (tranchuillité d’esprit). There are a number of possible points of reference Montesquieu may have had in mind. Pierre le Charron discusses the psychological experience of tranquilite d’esprit in his De le Sagesse (1601). Charron was a defender of absolutism; he had been a resident of Bordeaux and an associate of Montaigne. Montesquieu possessed the 1623 edition of De la Sagesse in his library at La Brède. Charron argues that tranquilite d’esprit is “le souverain bien de l’homme.” It is the fruit of wisdom, innocence and a good conscience. Charron’s De la Sagesse was well-known, particularly because he was attacked as an atheist on the basis of it. If Charron’s treatment is Montesquieu’s referent, then this suggests Montesquieu may be subtly attacking the absolutist’s apolitical, intellectualist doctrine of tranquility and replacing it with the view that tranquility is possible only in the context of limited constitutional government and good criminal laws. But it is also possible that Montesquieu would have had classical points of reference in mind. Minor works by both Plutarch and Seneca bore the title De tranquillitate animi. Plutarch’s original Greek title was Peri Euthumias, but it was carried into Latin as De tranquillitate animi. Montesquieu owned a French edition of Plutarch’s Peri Euthumias, which translated the title as De la tranquillite de l’esprit. Needless to say, like Charron, neither Plutarch nor Seneca make tranquility of mind dependent upon political arrangements. Both urge the reader to find contentment despite the perils and misfortunes about him. For Seneca, tranquility of spirit is associated with the Stoic (and Epicurean) goal of ataraxia or lack of psychic disturbance. Indeed, according to James Warren, tranquilitas animi was the closest Latin could come to ataraxia. If Montesquieu offers his understanding of tranquility as an alternative to that of Seneca and Plutarch, then the contrast is much the same as in the case of Charron. Montesquieu shifts the focus to political sources or prerequisites of tranquility. By using this language, he is perhaps offering a correction to classical accounts (both Stoic and Epicurean). While Stoic and Epicurean sages may be able to ignore threats from his rulers or his fellow citizens, ordinary men require constitutional and legal fences in order to maintain la tranquillite de l’esprit. In this light, one might even say that Montesquieu’s liberalism is Stoicism for the people—but that may be going too far. William Farr Church, Constitutional Thought in Sixteenth Century France (New York: Farrar, Giroux & Strauss, 1941), 506-508; Louis Desgraves and Catherine Volpillac-Augier, eds., Catalogue de la bibliothèque de Montesquieu à La Brède (Napoli: Liguori Editore, 1999), 102; Pierre Charron, De la Sagesse (Rouen: 1614), 456, 459. Louis Desgraves and Catherine Volpillac-Augier, eds., Catalogue de la bibliothèque de Montesquieu à La Brède (Napoli: Liguori Editore, 1999), 344; Warren, Epicurus and Democritean Ethics: An Archaeology of Ataraxia (Cambridge: Cambridge University Press, 2002), 34.
Homeric nod. Rather, Montesquieu’s psychology of liberty serves as the point of departure for his analysis of the English constitution, and so, of his account of “liberty in relation with the constitution.” He continues, “When legislative power is united with executive power in a single person or in a single body of magistracy, there is not liberty, because one can fear that same monarch or senate that makes tyrannical laws will execute them tyrannically (EL, XI.6, emphasis added).” Separation of powers preserves liberty not simply by preventing actual tyrannical deeds, but also by removing the causes of fear—a passion that proves inimical to the human good in despotic regimes. Students of politics cannot fully understand even free and moderate political institutions except in relation to their effects upon the passions and opinions of men. Montesquieu locates the goodness of such institutions largely in their ability to reduce fear; absent this effect, the institutions are considerably less choiceworthy.

The psychological account of liberty also shapes Montesquieu’s defense of the English jury system. Judicial power is “terrible among men” when attached to specific persons because, unlike the executive power, it is exercised upon individuals (EL, XI.6). The jury trial reduces this terror because it makes the judicial power “invisible

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and null (EL, XI.6).” Because one’s judges are not “continually in view,” one comes to “fear the magistracy but not the magistrates (EL, XI.6).” Under a jury system, the citizen does not know the identity of his future judges.\textsuperscript{15} The judicial power is composed of all and none. Fear is diffused. Similarly, Montesquieu suggests that a man’s judges must be his peers, not simply because one’s peers are actually more inclined to dispense justice, but because a judicial power so constituted will ensure that the accused “does not suppose he has fallen into the hands of people inclined to do him violence (EL, XI.6, emphasis added).” The jury system is a free institution because it fosters an opinion of security and a tranquility of spirit in the citizen and the accused. Likewise, the fundamental feature of free government—rule by promulgated law—is a free institution not only because it protects the citizen from harm by arbitrary power, but also because it liberates the citizen from fear of mercurial, arbitrary individual wills. We see therefore that even Montesquieu’s analysis of formal institutional arrangements relies upon the psychological account of liberty—the account he seemed to reserve for Book XII (EL, XII.1). In this way, Montesquieu places the perceptions of the citizen at the center of his liberalism even in its most institutional expressions. He foregoes a merely juridical or formal account of political liberty.\textsuperscript{16}


\textsuperscript{16} Judith Shklar rightly notes that Montesquieu’s liberalism aims to “lessen the burden of fear in the minds of ordinary citizens.” \textit{Montesquieu}, 91. Though Montesquieu’s liberalism may be more complex and attuned to positive human goods than Shklar’s account suggests, she is correct in locating the psychology of fear at the center of Montesquieu’s theory of crime and punishment. Cf. Harvey Mansfield, \textit{Taming the Prince} (New York: Free Press, 1989), 235.
Montesquieu’s understanding of despotism leads to this emphasis on political fear in his treatment of liberty. Fear (crainte) is the principle of despotistic government (EL, III.9). Like virtue in a republic or honor in a monarchy, fear sets despotistic government in motion and “makes it act” (EL, III.1). Despotism both produces and feeds upon fear. While Montesquieu regards the experience of fear as an intrinsic evil, he is equally concerned with its effects upon other elements of human well-being. In despotic regimes, fear undermines the grounds of political agency—magnanimity and honor (EL, V.12, III.8-9; LP, LXXIX). It vitiates love within the household (EL, III.10; LP, XV-XVI). In the presence of habitual fear, reason atrophies and man descends to the level of beasts (EL, III.10, IV.4, V.14; LP, VIII). Montesquieu summarizes the effects of fear upon human reason with a brief illustration drawn from travel literature: “When the savages of Louisiana want fruit, they cut down the tree and gather the fruit. There you have despotical government (EL, V.13).” Fear is stupefaction. It paralyzes the humanity in the man.

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17 This is how Shklar understands Montesquieu’s view of fear, and upon this foundation, she reconstructs the liberalism of fear. Shklar, Montesquieu, 69, 91.


Against the backdrop of this account of despotism, Montesquieu offers his account of liberty as tranquility of spirit. Moderate and liberal government affords man a modicum of freedom from both the intrinsic evil of fear and its effects upon other elements of human well-being. And against the backdrop of this account of liberty, one can begin to see more clearly how Montesquieu’s moral psychology lends normative force to his warnings regarding regime change.

II. Institutional Change and the ‘Tyranny of Opinion’

Montesquieu offers his most explicit counsel on the subject of regime change in the famous nineteenth book of The Spirit of the Laws, entitled, “On the laws in their relation with the principles forming the general spirit [l’esprit general], the mores, and the manners of a nation.” In previous books bearing obscure titles, Montesquieu opens with brief chapters explaining the terms in doubt. But “What the general spirit is” must wait until Chapter 4.

Instead, Montesquieu inserts Chapter 2: “How much it is necessary for spirits to be prepared for the best laws.” Before he explains the meaning of the general spirit, he gives the reader an indication of its importance. Unlike climate, terrain and other physical causes of laws, the general spirit, together with mores and manners, admits of

21 In this light, we understand Montesquieu’s epigram on liberty in the Pensées. Fear prevents us from enjoying the diverse goods of human life, but “Liberty [is] the good which enables us to enjoy other goods (MP, 1574, 1797).”

22 Pangle, Montesquieu’s Philosophy of Liberalism, 193-194.
manipulation by political reformers. Montesquieu then provides five examples of “unprepared” spirits. He recounts episodes from Roman history in which non-Romans balked at Roman judicial formalities. The Germans found Roman tribunals “intolerable.” Violently breaking up a Roman trial, they cut out the lawyers’ tongues and demanded, “Viper, stop hissing.” Mithradates reproached the Romans for their formal procedures of justice. The Laxians judged the Roman trial of their king’s assassin a “horrible and barbarous” affair. Finally, Montesquieu adds that the Parthians were unable to tolerate their king’s affability and accessibility (EL, XIX. 2).

In these four examples, Montesquieu shows us nations failing to understand and embrace the tone and practices of moderate government. In his view, judicial formalities and accessible rulers are hallmarks of moderate and liberal government. Formalities “increase in proportion to the importance given to the honor, fortune, life and liberty of the citizens (EL, VI.2).” Likewise, accessibility characterizes a monarch, in contradistinction to the cloistered despot (EL, XXIV.3). Montesquieu therefore means to suggest that the spirits of the Germans, the Laxians and the Parthians were unprepared for “the best laws.”

23 Florus says of the event, “Never was there slaughter more cruel than took place there in the marshes and woods, never were more intolerable insults inflicted by barbarians, especially those directed against the legal pleaders.” Florus, The Épitome of Roman History, trans. E. S. Forster (Cambridge, MA: Loeb Classical Library, 1929), II.30.37.

24 In the passage from the Annals which Montesquieu cites regarding the Parthians, Tacitus states that the Parthians were offended by their new king’s moribus aliena, his alien mores. Tacitus writes of the king, “But he was easy of approach; his courtesy was open to all, and he had thus virtues with which the Parthians were unfamiliar, and vices new to them. And as his ways were quite alien from theirs [moribus aliena], they hated alike what was bad and what was good in him.” Tacitus, “The Annals” in The Annals and The Histories, trans. Moses Hadas, (New York: Modern Library, 2003), Bk. II.2, 47.
A summary statement follows these four examples: “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 (EL, XIX.2).” The “best laws” are laws of liberty and moderation. Absent properly prepared spirits, these best laws are harmful to a people. The harm these institutions cause springs not from the institutions themselves, but rather from the people’s perception of them—from their appearance. Twice in this paragraph, Montesquieu remarks that good laws “appeared unbearable [paru insupportable]” to a people. The danger of free and moderate institutions for “unprepared spirits” lies in a problem of opinion, appearance or perception.

Chapter 2 closes with a colorful and revealing anecdote. A Venetian traveler visited the court of the king of Pegu. When in the presence of the king this traveler mentioned that Venice had no monarch, the king of Pegu laughed “so much that he began to cough and could scarcely talk to his courtiers.” Montesquieu asks, “What legislator could propose popular government to such peoples?” With this final example, Montesquieu suggests that a people may lack the political categories necessary to take liberalization or democratization seriously, much less judge the new institutions legitimate. Book XIX represents a warning for political reformers about the
limits and perils of institutional change; yet more than a warning, it represents a guide to the right methods of political change.25

The next chapter, “On tyranny,” seems out-of-place at first blush. Tyranny is not a regime type for Montesquieu, and one initially wonders why he takes up the subject in a book on the general spirit. In the original draft of The Spirit of the Laws, “On tyranny” is even more strikingly prominent. It appears to have been Book XIX’s lead chapter.26 The chapter’s theme was apparently central to the purpose of Book XIX as Montesquieu first conceived it. When we consider this brief treatment of tyranny and its role in the book, we begin to see more clearly the theoretical connection between Montesquieu’s liberalism and his particularistic cautions regarding political change.

Montesquieu explains that there are two sorts of tyranny: a real tyranny (réelle tyrannie) and a tyranny of opinion (tyrannie d’opinion) (EL, XIX.3). Real tyranny “consists in the violence of the government.” Tyranny of opinion is “felt when those who govern establish things that run counter to a nation’s way of thinking [la manière de penser d’une nation].” The introduction of this second variety of tyranny is a true innovation. John Locke offers a single, juridical definition of tyranny—the “exercise of power beyond right.”27 Montesquieu’s “real tyranny” answers to Lockean tyranny. But

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25 For a corollary, see MP, 699. There, Montesquieu writes that if the prince of the ancient Goths had “talked of unlimited authority and despotic power, he would have made his whole army laugh, and he would have been viewed as insane.”


tyranny of opinion is a new political category, forged for this occasion. Montesquieu invites the reader to ask after its significance as he turns to the reign of Augustus to illustrate its meaning.

He explains that when Augustus wanted to be called Romulus, the people “feared that he wanted to make himself king (EL, XIX.3).” If he had adopted this name, the Roman people would likely have felt themselves under a tyrant’s heel, even in the absence of any acts of violence. The people’s fear did not simply flow from an aversion to acts of despotism. Rather, the institution of kingship was opposed to their manners. Montesquieu suggests that though Caesar, the triumvirs and Augustus “were real kings,” the people did not perceive their reigns as tyrannical insofar as they “preserved an appearance of equality” and “seemed opposed to kingly pomp.” The perception of tyranny proceeded not from any institutional structure or act of violence but from the rulers’ contravention of national manners. The Romans did not want a king because they did not want to “suffer his manners.” Montesquieu implies that any political change, if it runs counter to the manners of a people, may be experienced as tyrannical and fear-inducing. Such changes need not come in the form of rulers that covet the name of Romulus.²⁸

In time, Augustus enacted truly harsh legislation. He governed violently, as a “real” tyrant (cf. EL, XII.4). As the Roman people recognized his tyranny, they grew angry and discontent. But as Montesquieu explains,

²⁸ On Romulus and his offense against mores, see MP, 677.
Their discontent ceased as soon as [Augustus] brought back the actor Pylades, who had been driven out of the town by the factions. Such a people felt tyranny more vividly when a buffoon was driven out than when all their laws were taken from them (EL, XIX.3, emphasis added).

The Roman populace was in error, as Montesquieu makes clear. But this episode, together with his previous comments on the reign of Augustus, suggests that just as real tyranny can exist where tyranny of opinion does not, tyranny of opinion can exist where real tyranny does not. The Romans misjudged a real tyrant because he restored their favored celebrity. Another people may misjudge free and moderate government because it runs counter to their mores, manners and general spirit. Though the institutions of free government may not produce tyrannical violence in Montesquieu’s sense, a people may nonetheless experience these institutions as alien, dissonant with their manner of thinking and productive of fear and disquiet. In other words, they may experience a tyrannie d’opinion.

In light of this, we see now why Montesquieu introduces the concept of the general spirit as he does. The Germans and Laxians experienced a tyranny of opinion under the Romans’ judicial formalities (EL, XIX.2). As I have argued, Montesquieu believes that such judicial formalities are essential to the full protection of political liberty. But here, he aims to show that when otherwise moderate, liberal institutions are installed before spirits are prepared to understand them and receive them as legitimate,

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29. Cf. Rahe, Montesquieu and the Logic of Liberty, 218-219 and Catherine Larrère “Montesquieu and Liberalism: The Question of Pluralism,” in Montesquieu and His Legacy, 291. Larrère comments upon the importance Montesquieu’s concept of the “tyranny of opinion” in XIX.3, but she does not note the ways in which Book XIX seeks to overcome this obstacle to political change.
the people perceive these innovations as tyrannical. No longer liberal *in effect*, the institutions become despotic *in effect*. That is, they enflame a people’s disquiet and fear—the same pernicious passion that sustains despotic regimes. They disturb and diminish a people’s “tranquility of spirit” and their opinion of their own security (EL, XI.6). While the Germans and Laxians may, in this instance, have been as mistaken as the Romans who felt tyranny when a buffoon was driven out, their perceptions carry moral significance for Montesquieu. The Romans’ institutional changes were harmful *for the same reason* that these liberal institutions are good in nations prepared for them. For on Montesquieu’s account, the goodness of these institutions lies partly and substantially in their psychological effects. He teaches the legislator to evaluate political institutions by considering their effects upon the passions and opinions of a particular people.

Finally, in addition to this central argument regarding the tyranny of opinion, Montesquieu leaves the reader to draw a subtler inference about the connection between political fear and innovation. In order to be obeyed, every political institution and code of law must engage some element of human passion. Even the most rational government cannot command the obedience of the people by virtue of their reason alone. Popular recognition of the reasonableness of law is an unreliable motive for

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30 Pangle intimates a connection between “tyranny of opinion” and liberty defined as an “opinion of security.” *Montesquieu’s Philosophy of Liberalism*, 185.

31 Consider *The Federalist*, No. 49: “In a nation of philosophers… reverence for the laws would be sufficiently inculcated by the voice of an enlightened reason. But a nation of philosophers is as little to be expected as the philosophical race of kings wished for by Plato. And in every other nations, the most
obedience. Other motives are necessary. This is the understanding at the heart of Montesquieu’s teaching on the principles of the constitutions: fear motivates men in despotism, honor in monarchy and virtue in republics. It is also at the heart of his understanding of mores: When mores are consistent with the laws, the laws meet with obedience by force of habit. Under such circumstances, mores secure what Madison called “reverence for the laws,” rendering unnecessary the threat of severe punishment.\textsuperscript{32}

Now consider the implications of this view in the context of institutional innovation. If they are discontinuous with received mores or customs, new political institutions and laws will lack the support of habit. Magistrates and legislators will need to look elsewhere for sources of obedience. Even if the new institutions are reasonable, this will not suffice as a font of obedience or legitimacy.\textsuperscript{33} There is a very real danger that these “metaphysically superior” institutions will require greater threats of force in order to be maintained. Non-despotic constitutions may come to rely on the defining passion of despotic government. While the regime may be more just in form, in practice its effect on the citizens may be to increase fear and disquiet. When laws are not backed by corresponding mores, they weigh upon us more heavily because we perceive them as alien constraints, even if the representatives of a majority have enacted rational government will not find it a superfluous advantage to have the prejudices of the community on its side.”

\textsuperscript{32} The Federalist, No. 49.

\textsuperscript{33} I refer to Weberian or subjective legitimacy as we find discussed in empirical political science literature.
them. Under these circumstances, authority must become harsher in order generate the fear required to sustain obedience.\textsuperscript{34} Thus in addition to risking the onset of a “tyranny of opinion,” counter-cultural institutional innovations may risk inviting greater severity in governance.

Montesquieu does not simply approach the legislator with counsels of expediency on the question of matching a regime to a people. He does not merely foretell the difficulties of political change amidst a people unprepared to understand it or receive it. He goes beyond description and prediction. Montesquieu suggests that unseasonable political change represents an injury to a people analogous though not identical to the injuries of despotism. Situated in the matrix of Montesquieu’s moral and political psychology, this error is not merely technical but also moral. On his view, to seek political liberalization through merely institutional means while neglecting the cultural preconditions of these institutions is to misunderstand and offend against the substance of liberty itself. The moral tenor of his warning follows from his deep intuition that liberal government’s moral superiority to other forms is contingent upon its reception. If received with fear, it is no longer good government, just as “pure air is sometimes harmful to those who have lived in swampy countries (EL, XIX, 2).”

\textsuperscript{34} Cf. Benjamin Constant, \textit{Political Writings} (Cambridge: Cambridge University Press, 1988), 75. See Chapter 6 below.
III. The General Spirit and the Means of Political Change

At this point, it may seem that Montesquieu’s treatment of political change finally amounts to a subtle and learned admonition concerning the moral and practical perils that await reckless reformers. But in fact, his warning about the tyranny of opinion is paired with a cautious desire for, and even anticipation of, responsible political change in at least some nations with histories of despotic government. The warnings we have surveyed above serve as the critical forerunners to his positive teaching on political change. Political reform and even political liberation are possible in many nations (EL, XVI.5), but friends of free and moderate government must carefully consider both the practical and moral merits of their methods. As Book XIX of Spirit proceeds, Montesquieu sketches an art of political change that takes its cues from the normative and empirical cautions implicit in his liberalism and particularism, as discussed above. Pangle, Schaub, Larrère, Samuel and others have noted that the phenomenon of political change moves to the fore in Book XIX.35 For this reason, Schaub and Samuel have described this book as the “fulcrum” or “turning point” of the entire work. While my analysis builds upon this fundamental insight, I argue as previous scholars have not that this treatment of political change must be understood as

35 Pangle, Montesquieu’s Philosophy of Liberalism, 195-196; Schaub, Erotic Liberalism, 138-144; Larrère, “Montesquieu and Liberalism”; Samuel, “The Design of Montesquieu’s Spirit of the Laws,” 312. Other commentators, such as Hulliung, Montesquieu and the Old Regime, ignore the importance of Book XIX in understanding Montesquieu’s approach to political change. This is particularly surprising in the case of Hulliung’s study given his claim that Montesquieu “dreamed of nothing less than a national republic… in France which could displace a monarchical republic (ix).”
Montesquieu’s attempt to outline a distinctively liberal and moderate means of achieving liberal and moderate institutions.  

The early chapters of Book XIX suggest that Montesquieu means to teach the legislator to reshape his nation’s spirit (EL, XIX.2) so that, when he finally establishes new civil, political or fundamental laws, these changes will not run counter to the people’s manner of thinking (EL, XIX.3). In this way, the people will comprehend the eventual changes and receive them as legitimate, and the legislator will avoid both the “tyranny of opinion” and acts of “real tyranny.”

But in order to understand how Montesquieu’s approach to political reform unfolds in Book XIX, we must first grasp the political vocabulary and analytical categories he employs there. As we have seen, the book’s central concept is the general spirit. Finally, in Chapter 4, Montesquieu defines it. A nation’s general spirit is a cause, though not a first cause. Still other physical and moral causes form it (EL, XIX.4). These include climate, human nature, religion, laws, political ideas, received examples, history, mores and manners. The general spirit is therefore not simply a “sociological” variable. Laws and material causes help to shape it. But the general spirit is also not simply an empty signifier, intended to represent the concatenation of all causes that “govern men (EL, XIX.4).” Having been shaped by these moral and physical causes, the general spirit shapes them in turn. It acts upon its causes. We have

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36 On the nature of Montesquieu’s institutional preferences, see Chapter 3 above.
seen how the general spirit can limit a people’s willingness to accept a new legal or political institution (EL, XIX.2). More importantly, according to Montesquieu, a nation’s mores “depend” upon its general spirit (EL, XIX.14).

Because Book XIX is a study of political change, Montesquieu devotes his attention to laws, mores and manners, for unlike physical causes (e.g., geography and climate), these admit of manipulation by the legislator. They are potential sites of human agency. Mores and manners are “usages that laws have not established, or that they have not been able to, or have not wanted, to establish (EL, XIX.16).” When laws, mores and manners are in harmony, “Mores represent laws, and manners represent mores (EL, XIX.16).” Mores impress the content of the laws upon man’s everyday experience, his judgment and his passions. For instance, when the laws give unquestionable authority to the king, mores often give unquestionable authority to the husband and thereby represent these laws to man. Manners also represent mores to the man, although in a different way. They are physical and exterior, consisting in the covering, movements and postures of the body. But despite their physicality, manners are designed to shape “internal conduct (EL, XIX.16).” Manners are habits of the body that represent and reinforce the habits of the heart. Given their powerful connection to law and the people’s reception of it, mores and manners must, to some extent, lie within the ken and control of statesmen.

Employing these categories, Montesquieu unfolds his art of political change in Chapters 5-15 of Book XIX. Pangle is correct in dividing the approach of these
chapters into two distinct modes. In Chapters 5-11, Montesquieu shows how the legislator may sometimes use the existing general spirit of a nation to produce a greater degree of political liberty or to prevent further decline into despotism. This is often possible in Europe. In Chapters 12-15, Montesquieu explains how the legislator may bring about political change when the general spirit itself is averse to liberty and moderation, as one finds under profoundly despotic governments. In the first case, the legislator may act with the general spirit and canalize its flow for his political ends. In the second case, the legislator acts not against but apart from the general spirit in order to alter it indirectly. Both methods avoid direct manipulation of custom, mores and manners.

Taken by itself, the title of Chapter 5 does not appear to mark the beginning of a meditation on political change. It reads, “How careful one must be not to change the general spirit of a nation.” But with this Montesquieu does not flatly deny the necessity of changing the general spirit. Rather, he promises a discussion of how careful the legislator must be not to change it. He then describes France in terms reminiscent of the account of Paris in the *Persian Letters* (LP, XL, VIII, LV). The French—especially French women—possess a *joie de vivre*, sociable humor, playfulness and even frivolity. Men live in the company of women, and each sex desires to please the other. From this desire is born ornamentation and the multiplication of fashions. Montesquieu concludes, “Fashions are an important subject; as one allows one’s spirit to become

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frivolous, one constantly increases the branches of commerce (EL, XIX.8).” In light of his teaching on commerce in Books XX and XXI, his meaning is clear. Commerce is a conducive to liberty because it softens mores, habituates men to give and demand precise justice, and establishes powers independent of the state. Within the general spirit of the French people, Montesquieu sees the germ of liberty. Their vanity multiplies opportunities for commerce, and commerce conduces to liberty. If the legislator’s end is liberalization and moderation, he may find within the vices of the national character a source of political improvement.

The broader upshot of the discussion is this: Some nations possess mores and manners that are imperfectly or incompletely liberal but still serviceable from the perspective of a liberal reformer. These existing elements of culture can be used to sure up the foundations of political liberty. In such cases, reformers need not undertake direct or indirect efforts at cultural change. They may instead simply make use of the existing mores and habits of a people. In the French example, this entails allowing the passion of vanity free rein. In other nations, this may involve liberalizing political institutions and laws in a manner consonant with the existing mores, crafting a native liberty.

But this mode of political reform is not always possible. In historically despotic nations, the general spirit offers no support for the work of political liberalization. The legislator finds little or nothing inclined toward liberty in either the national character or general spirit—no French vanity and no Athenian gaiety. Therefore, if he wishes
liberalize and moderate the state, he must alter the general spirit and the causes that form it in order to prepare the people.

Montesquieu asserts that in despotic nations, “there are no laws, so to speak; there are only mores and manners (EL, XIX.12).” Though he understands that many despotic nations live under nominally legal decrees, he means to suggest that mores and manners are the most powerful forces in these nations. They tend to exert great force in forming the general spirit. One would therefore suppose that Montesquieu’s reforming legislator must act upon mores and manners if he would “prepare spirits” for better laws.

In this light, Montesquieu surprises us with an initial warning: “It is a maxim of capital importance that the mores and manners of a despotic regime must never be changed; nothing would be more promptly followed by a revolution (EL, XIX.12).” This statement seems to suggest that political reform is impossible in historically despotic states. But we should note that while Montesquieu calls this maxim important, he does not say it is true without qualification. We should also note that Montesquieu expects revolution as the consequence of changing mores and manners in a despotic regime; they must “never be changed” if one wishes to avoid a revolution.

Yet Chapter 14 is entitled, “What are the natural means of changing the mores and manners of a nation.” With this, Montesquieu seems to shunt aside the “capitally important maxim” of Chapter 12. If the maxim were unqualifiedly true, he would exclude despotism from the analysis in Chapter 14. But instead, he uses the historically
despotic Muscovite regime to illustrate the “natural means” of changing mores.\textsuperscript{39}

Before proceeding to the Muscovite examples, he writes,

\begin{quote}
We have said that the laws were the particular and precise institutions of the legislator and the mores and manners, the institutions of the nation in general. From this it follows that when one wants to change the mores and manners, one must not change them by laws, as this would appear to be too tyrannical; it would be better to change them by other mores and other manners (EL, XIX.14).
\end{quote}

The legislator must change mores and manners in order to alter the general spirit and prepare a nation for better laws. But when he crafts new laws aimed at changing mores and manners directly, he errs. He will appear tyrannical because his institutions will run counter to the nation’s manner of thinking (EL, XIX.1, XIX.2). Here is the “tyranny of opinion (EL, XIX.3).” Instead, he must find a way to effect a change in mores and manners, and so in the general spirit, without opposing them.\textsuperscript{40} For as soon as he is seen to oppose them, he will cause the same fear and insecurity—tyranny of opinion—that he would have produced had he simply imposed “the best laws” without preparing spirits (EL, XIX.2). Montesquieu’s legislator must change mores and manners not by laws, but by new mores, new manners and fresh examples.

This indirect method takes shape as Montesquieu recounts two episodes from the reign of Peter the Great. First, Peter wanted all Muscovite men to shorten the lengths of their beards and their robes. He passed a law mandating it. If a long-robed

\textsuperscript{39} There can be no doubt that Montesquieu considers the Muscovite government to be despotic. See, for example, EL, XXII.14, XV.6, and VII.17.

\textsuperscript{40} Cf. C. P. Courtney, \textit{Montesquieu and Burke} (Oxford: Basil Blackwell, 1963), 22-23.
man sought to enter a town, the officer would impose a sartorial penalty, trimming the offending frock (EL, XIX.14). Montesquieu calls these sanctions “tyrannical” and “violent means.” Such spectacles illustrate the wrong way—the tyrannical way—to change mores and manners.

We recall here that on Montesquieu’s view, real tyranny “consists in the violence of the government (EL, XIX.3).” The violence of the government has a specific meaning for Montesquieu. A government does violence to man when its punishments proceed from “the legislator’s capriciousness” rather than “the nature of the thing”—that is, the nature of offense (EL, XII.4). Each class of offenses carries a natural, necessary and reasonable kind of penalty. When the offender meets with his natural penalty through the mediation of a government, no violence is done him (EL, XII.4). But the imposition of penalties in excess of an offense’s natural penalty constitutes an act of violence. Likewise, the imposition of penalties for an action carrying no natural, necessary penalty constitutes an act of violence (e.g., the execution of heretics). This position is central to Montesquieu’s liberalism. As he explains in Chapter 14, “Every penalty that does not derive from necessity is tyrannical. The law is not a pure act of power; things indifferent by their nature are not within its scope [ressort] (EL, XIX.14).”

The Muscovite manners governing dress and grooming are “indifferent by their nature.” They are certainly not indifferent politically; indeed, Montesquieu has underscored their political import. But they are indifferent with respect to the primitive
or natural law (EL, XVI.12, XII.4, I.1). They therefore fall outside the scope of positive law. To punish a man for the length of his beard is an act of violence and tyranny, Montesquieu insists. By extension, any use of penal codes to regulate indifferent manners constitutes an act of violence and tyranny. To attempt to change such manners by laws is not only imprudent; it is immoral and illiberal. Therefore, while Montesquieu’s art of political reform often relies upon changes in manners, it cannot directly regulate these conventions. The injunctions of legislators must remain within the natural scope of the law.

Montesquieu uses a second episode from the reign of Peter the Great to illustrate what he calls the “natural means” of changing mores and manners. When Peter assumed his rule, Muscovy’s women were “enclosed and in a way enslaved (EL, XIX.14).” Peter objected to these conditions. He called leading women to his court, had them don German dresses and sent them new fabrics. The foreign styles were a success. We expect Montesquieu to say that the women appreciated the flattering new style of dress. Instead, he explains that the women “immediately appreciated a way of life that so flattered their taste, their vanity, and their passions, and they made the men appreciate it (EL, XIX.14; emphasis added).” The new manners began to transform the mores of the household. Montesquieu leaves it to his reader to discern how this change unfolded. But he implies that the charming new attire shifted the balance of power between the sexes by strengthening the men’s attachments to their women—or, more to the point, by weakening the men. The Muscovite women became more like the alluring
and fashionable French women of the *Persian Letters*, who in Rica’s assessment had achieved a “wholesale capture of authority” in their households (LP, CVII).

Montesquieu explains that the liberalization of mores in the domestic sphere will spur similar effects in the political sphere. In Chapter 15, he writes,

This change in the mores of women will no doubt affect the government of Muscovy very much. Everything is closely linked together: the despotism of the prince is naturally united with the servitude of women; the liberty of women, with the spirit of monarchy (EL, XIX.15).

The liberation of women from domestic enslavement opens a pathway to the moderation and liberalization of laws and political institutions. As we saw in Chapter 4, when the husband’s authority is absolute and untrammeled, the general spirit is inclined toward despotism. When the husband’s authority is checked, softened, moderated or even undermined by feminine charm, the general spirit is inclined toward monarchy—a form of government that is, by its nature, moderate and somewhat free (EL, XI.4).

With this example, Montesquieu illustrates what he calls the “natural means” of changing mores, manners and, consequently, political institutions. Peter the Great did not “establish” new mores and manners; he did not directly oppose traditional mores and manners. Instead, he “inspired” new mores and manners by insinuating new examples (EL, XIX.12). Peter engaged the people to change their customs themselves (EL, XIX.14). Montesquieu calls the method natural for two reasons. First, it does not rely upon violence or real tyranny. The legislator governs against nature when he dispenses punishments for practices that are by their nature not worthy of punishment—
“things indifferent by their nature (EL, XIX.14).” In this way, Peter’s treatment of the women was consistent with nature, unlike his treatment of the men. Second, the method is natural because it uses natural passions to achieve its ends. Animated by their passions, the people changed their own mores. So strictly speaking, Montesquieu’s “natural means” of changing mores do not contradict the “maxim of capital importance” that mores must never be changed by reformers in despotic states (EL, XIX.12). This indirect change in mores was not “promptly followed by a revolution” in the conventional sense (EL, XIX.12). But Montesquieu predicts that the new manner of dress would work its way through the whole of state and society, reshaping the general spirit and gradually contributing to the moderation of political and legal institutions. Montesquieu suggests that when the legislator follows the natural means of political change, he advances his nation toward freer and more moderate political institutions without revolution. As importantly, he avoids real acts of tyranny and the appearance of tyranny, for he establishes nothing that runs “counter to the nation’s way of thinking” and does no violence to man (EL, XIX.3, XIX.14, XII.4).

Montesquieu’s approach to political change springs from his commitment to political liberty and his empirical observations concerning the power of custom. Just as his liberalism does not lead him the way of Condorcet, his particularism does not terminate in extreme conservatism. Montesquieu teaches the legislator to avoid both real tyranny and tyranny of opinion as he moves his nation toward a free and moderate politics. If liberal institutions are praiseworthy in light of their effects upon the inner
life of the citizen, then the means of liberalization must be subject to a similar standard of judgment. We have seen that in Book XIX, Montesquieu subtly sketches an art of political change that satisfies this standard. Like Rousseau’s legislator, Montesquieu’s legislator must be “occupied in private” with laws written neither on marble or bronze, but “in the hearts of the citizens.”

Through attention to mores, manners and the general spirit, the legislator may establish bridgeheads to political liberty.

Montesquieu’s examples from the reign of Peter the Great may initially strike us as being obscure and of limited relevance outside eighteenth-century Muscovy. But his search for means of cultural transformation that operate within the bounds of his liberal commitments does not end at the court of Peter. Montesquieu’s books on commerce (XX-XXI) immediately follow Book XIX’s exhortation to employ indirect means of cultural preparation, and they are best understood as a partial continuation of this theme. In Chapter 4, we saw in detail how modern commerce leaves its stamp upon the character of the people and the maxims of government. But now, we are in a better position to understand the place of commerce in Montesquieu’s liberalism. It is critical to see at this point that moral and unmistakably liberal considerations bring him to this destination. That is, in view of the argument of Book XIX, we see that Montesquieu does not turn to commerce simply because he considers it a technically efficient means of promoting the preconditions of political liberty. Rather, he focuses upon commercial activity because it represents a potential path to fostering mores consonant with “better

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laws” without resort to illiberal means of coercive cultural transformation, which are beyond the scope of law. The *doux commerce* thesis emerges as a distinctively liberal response to a distinctively liberal problem.

On Montesquieu’s view, commerce is one means of escaping the trilemma that faces friends of liberty as they consider the prospects for political change in despotic nations. The first horn of this trilemma is quietism or extreme conservatism in the face of despotism; the second is a rationalistic, universalistic and narrowly institutional pursuit of political change that ignores the cultural preconditions of “better laws”; the third is the pursuit of direct cultural transformation through the coercive power of the state. Montesquieu finds these choices unacceptable. Though not morally unambiguous in its effects, commerce along with other indirect means of liberalizing culture represent potential ways to escape the trilemma of liberal political change.

**IV. Stuck with Despotism? The Prospects of Political Reform**

Montesquieu limns the outline of a liberal theory of political change. But questions remains regarding the *prospects* of worldwide political liberalization. Can we expect the elimination of despotism, or is it a permanent feature of the human condition? How long does political liberalization take, and how far can it go? Political change is *possible* in a liberal particularist framework—but is it likely?

This family of questions directs us toward two related ambiguities. First, since liberal political change as Montesquieu has described it seems to rely at least in part on
the agency of leaders, we must ask how likely these leaders are to arise. Second, even if political elites are committed to political liberalization, what level of recalcitrance or pliability should we expect in cultural and political institutions? Again, Montesquieu clearly believes that cultural and political change are possible, and we have seen that he suggests how and why they must go hand-in-hand. But we have not yet determined the boundaries of his hope. This penultimate section will offer some answers to these questions.

First, there is the matter of leaders. If the foregoing analysis is correct, then it is natural to ask whom exactly Montesquieu is addressing and why he thinks they are interested in political change at all. One obvious answer is that he speaks to actors who embrace his normative liberal principles; they represent an audience disposed to listen. And indeed, there is probably some truth in this answer. He may have expected that his subtle moral case against despotism would attract readers to his cause.

But this audience (powerful, principled proto-liberals in despotic nations) seems rather narrow. Is there further reason that he speaks as if he expects elites in historically despotic nations might be willing to pursue legal and constitutional change? Montesquieu himself was clearly aware of his problem of audience. In the *Pensées*, he confesses that he tries “to persuade myself that seven or eight hundred years from now, there will arrive a certain people for whom my ideas will be very useful (Montesquieu [1899] 2012, 1940).” Still, he has a more cogent response to the problem of audience than this quip suggests. As we have seen, in his second book on commerce,
Montesquieu argues that it is in the self-interest of princes to govern moderately. As capital becomes more mobile and international currency exchanges develop, rulers will increasingly find it in their interest to govern in a way that attracts commerce and does not alienate potential lenders. They will find that “only goodness of government brings prosperity” and “what were formerly called coups d’état” now appear to be “imprudences” (EL, XXI.20).\textsuperscript{42} To rely upon and appeal to the interests of princes is fully consistent with Montesquieu’s recognition of the limits of political moralizing, which he discusses in his unpublished De la Politique (1723). There he declares that straightforward political moralizing “convinces everyone but changes no one.” Advocates of morality in politics could put their energy to better use in explaining how governing morally is in the interest of rulers.\textsuperscript{43}

This is exactly what Montesquieu does, as I have suggested in Chapter 2, Section IV. The famous passages on commerce show that despotism causes wealth to flee (EL, XXI.20); despotism also depopulates a nation (EL, XXIII.11); it limits the state’s ability to reap tax revenues (EL, XIII.12); it devalues currency. In his discussion of persecution, Montesquieu teaches princes that religious penal laws produce greater civic strife and also drive out wealth (EL, XXIV.12). The list goes on. Perhaps most importantly, Montesquieu shows that the ruler weakens himself politically as he attempts to consolidate power. He announces, “I will say to Princes: ‘Why do you

\textsuperscript{42} Kant would later develop this line of argument more fully. Robert S. Taylor, “Democratic Transitions and the Progress of Absolutism in Kant’s Political Thought,” The Journal of Politics 68.3 (2006), 557.

\textsuperscript{43} Montesquieu, OC I (Nagel), 112
exhaust yourselves so much to extend your authority? Is it to increase your power? But the experience of all countries and all times makes clear that you are weakening it (MP, 1991).” Just as in Goethe’s saying, the man who would be great must limit himself, so according to Montesquieu the state that would be great must limit itself. Despotic modes of governance wear down the springs of obedience and produce an impotent state that falls into perpetual cycles of disorder and revolution (EL, VI.12-13; VIII.10). Paradoxically, constitutional limits strengthen the government within its assigned sphere. On balance, moderate governments can do more, not less, than despotic ones. How many princes would chose to preside over the weak government of a poor and insecure nation when they could preside over the strong government of a rich, populous and stable nation? By illustrating the instrumental irrationality of despotism, Montesquieu aims in part to create an audience interested to his account of political change.

But even if political elites are willing to seek liberal political reform, there remain questions about the recalcitrance or pliability of cultural and political institutions. How optimistic was Montesquieu about the possibility of rapid reform even in the presence of willing elites? Are some nations simply stuck with despotism?

We certainly find suggestions to this effect in The Spirit of the Laws. In the case of Muscovy, Montesquieu sees a government that is straining to liberalize but that encounters innumerable obstacles along the way. He writes, “I beg you to observe with what industry the Muscovite government seeks to escape the despotism which weighs
on the government even more than it does on the peoples (EL, V.14; cf. XXIII.14).” Later he laments, “Muscovy has tried to leave its despotism; it cannot (EL, XXIII.14).” In light of Montesquieu’s discussion of Peter the Great, this latter statement appears to be an exaggeration, but the point is clear. Even with the backing of powerful, willing elites, political liberalization can be extremely difficult. In Muscovy’s case, the nation’s inability to establish a currency exchange is a primary obstacle to cultural, and so political, improvement. The operation of an exchange contradicts “all Muscovy’s laws (EL, XXIII.14).” In the absence of an exchange, modern commerce and trade simply cannot thrive in Muscovy, and so the nation lacks this engine of cultural liberalization.

China presents an even more formidable challenge. Speaking of conquerors and missionaries, Montesquieu announces that change is especially difficult in China because “manners, mores, laws, and religion are but the same thing there, and one cannot change all of that at once (EL, XIX, 18; cf. XIX.13, 17).” Laws, mores, manners and religion are deeply integrated, forming a kind of impenetrable social whole. The laws are inscribed in religion and mores; religion and mores are inscribed in law. Consequently, any effort to change the laws violates mores, manners and religion; any effort to change the religion violates the mores, manners and the law; and so on. Even when the Chinese have been overrun by conquerors, it has always been the conquering nations that “slowly bend” to the customs and laws of China, never the other way round (EL, XIX.18). Likewise, Christian missionaries have failed and will continue to fail in
China for the same reason. In a passage that would later cause Montesquieu trouble with ecclesiastics, he pronounces, “It is almost impossible for Christianity ever to be established in China (EL, XIX.18).” Thickly constituted social wholes, like that of the Chinese, represent a formidable barrier to change. But of course, it is worth noting that Montesquieu only speaks of conquerors and missionaries in this account. There is a third and subtler potential source of new mores: commerce. Though conquerors and missionaries are hard-pressed to make inroads into Chinese culture and law, Montesquieu gives us little reason to doubt that merchants might in some measure succeed where missionaries and vanquishers have failed.

According to Montesquieu, despotism in China is not as severe as despotism in Japan. Throughout Spirit, the island nation of the Far East serves as the chief exemplar of pure despotism. It is surprising, then, that Japan is the very nation concerning which Montesquieu offers specific, practical maxims for political and legal reform. In the book on criminal laws, after detailing the severity of Japanese laws, he comments,

A wise legislator would have sought to lead men’s spirits back by a just tempering of penalties and rewards; by maxims of philosophy, morality, and religion, matched to this character; by the just application of the rules of honor; by using shame as a punishment, and by this enjoyment of a constant happiness and a sweet tranquility. And, if this legislator had feared that men’s spirits, accustomed to being checked only by cruel penalties, could no longer be checked by a gentle one, he would have acted silently and imperceptibly and would have moderated the penalty for the crime in the most pardonable particular case until he could manage to modify it in every case (EL, VI.13).
Montesquieu attaches a footnote to his line about acting silently and imperceptibly. He urges, “Observe this as a practical maxim in cases where spirits have been spoiled by overly rigorous penalties (EL, VI.13, n. 36).” Japan is a hard case—the purest despotism on earth. Montesquieu takes the hard case and furnishes practical maxims for political reform in the unlikeliest place. Japanese government, literally the worst on earth, can be moderated to some degree. The reformer, if he is found, must introduce and fortify alternatives to fear of cruelty—gentler sources of obedience and order, such as philosophy, religion and honor. And he must recognize that gradualism is the pace of the world. When men have become accustomed to obey for fear of harsh penalties, reformers must decrease criminal sanctions incrementally and imperceptibly. To eliminate at once all harsh punishments would produce nothing but disorder, lawlessness and perhaps revolution.

At times, Montesquieu’s cautious hopes for Japan, like much of the East, seem not to extend much beyond the moderation of despotism—to make despotic government less extreme without fully transforming it into moderate government. In all the histories of Asia, Montesquieu claims that “it is not possible to find a single trait marking a free soul; one will never see there anything but the heroism of servitude (EL, XVII.6).” But he certainly shared Burke’s view that the degrees of political subjection vary infinitely. To put it in contemporary terms, Montesquieu’s theory of despotism

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appreciates the difference between life in present-day North Korea as compared to life in present-day Uzbekistan. Both are authoritarian states, but the despotism of the former is unquestionably more severe than the despotism of the later. The people of more “mildly despotic” states like Uzbekistan enjoy what Montesquieu calls *un peu de liberté* (EL, XII.29). In a chapter tragicomically entitled, “On civil laws appropriate for putting a little liberty in despotic government,” Montesquieu argues, “Though despotic government is in its nature the same everywhere, yet circumstances, a religious opinion, a prejudice, received examples, a turn of mind, manners, mores, can leave considerable differences among them.” Religion in particular can provide a source of moderation as religious law occasionally takes the place of a non-existent civil code and thereby “fixes what is arbitrary.” As he comments later, “It is necessary in society for something to be fixed,” and in mildly despotic states, “[R]eligion is that fixed thing (EL, XXVI.2).” Religious law places a limit upon the despot’s decrees: “One will forsake one’s father, even kill him, if the prince orders it, but one will not drink wine if the prince wants it and orders it (EL, IV.10).” Just as religious law can give a *rule* to an otherwise *arbitrary* government, so the power of clerics can act as an imperfect *check* upon an *absolute* government. Ecclesiastical authority cannot transform despotism into monarchy, but it can sometimes temper and balance political authority (EL, XII.29).

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All of this seems grim, and it certainly runs afoul of the narratives of infinite progress that would envelop modern liberalism after Montesquieu. Still, it is important to recognize the provisional nature of Montesquieu’s claims about the destiny of the East. He does not ground his pessimism in any racial theory or *a priori* principles; rather, it is a judgment he has rendered on the basis of historical and anthropological evidence before him. New evidence could in theory reshape that provisional, empirical conclusion. As importantly, we should note that not once in *The Spirit of the Laws* does Montesquieu explicitly declare that any *specific* nation is doomed to a permanently despotic future. *Incorrigibly despotic nations* exist as a *category* in his thought, but no nation is explicitly consigned to this category. So while Montesquieu often expresses profound pessimism regarding the likely limits of political change in some quarters, he never removes from any particular people the grounds of a sober hope.

V. Conclusion

In his *Spirit of the Laws*, Montesquieu confronts both the moral and practical challenges of political liberalization. He warns against mechanistic efforts to install a uniform set of free and moderate institutions in nations unprepared to embrace or maintain them. This warning flows not merely from concerns about state failure but from his conviction that, to a significant degree, the goodness of free government is contingent upon the citizen’s perception of the regime. Under the right circumstances,

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46 I am indebted to Diana Schaub in formulating this point.
free institutions help to promote the “liberty of the citizen,” which consists of the
citizen’s security and, crucially, the citizen’s tranquility or belief that he is secure.

From this psychological account of liberty it follows inevitably that conscientious
advocates of free and moderate politics must regard as a paramount concern the manner
in which a populace perceives institutional changes. Their perception is largely a
function of what we imprecisely calls a nation’s “culture”—its distinctive mores,
manners and customs. In Book XIX, Montesquieu explores the problem of
transforming a nation’s culture to make it more hospitable to free and moderate
government. He concludes, on unmistakably liberal grounds, that while state-builders
and reformers must often pursue fundamental changes to a people’s way of life as
preparation for constitutional changes, these actors must not transgress the moral limits
of state power by using coercion to change the nation’s culture directly. Consistent
friends of liberty must indirectly prepare a people for better institutions. In commercial
activity, Montesquieu sees one potentially effective means of promoting mores and
manners conducive to free and moderate government without the use of the state’s
coercive power.

Previous scholarship on *The Spirit of the Laws* has failed to appreciate how this
theory of political change takes shape in a framework set by Montesquieu’s liberalism
and political particularism. As I have argued, Montesquieu’s moral psychology and his
understanding of the moral limits of positive legislation give shape to both his political
particularism and his liberal constitutionalism. He suggests that a commitment to the
latter requires a commitment to the former. This internal unity challenges the view that Montesquieu’s thought is bifurcated. For his part, Montesquieu suggests that a principled commitment to liberty rightly understood should cause reformers to consider the ways in which a concrete “knowledge of place” must guide their pursuit of a freer and more humane politics.47

There can be little doubt that Montesquieu was among the first early liberals to study the question of political liberalization. Together with the later and more widely known approaches of Kant, Tocqueville and Mill, Montesquieu’s example should prod contemporary political theorists to bring their discipline’s unique resources to bear upon the constellation of normative and practical questions surrounding the phenomena of regime change, democratization and political liberalization. As Robert S. Taylor has suggested, this will require greater openness to non-ideal approaches to political theory.48

And like political theorists, scholars of comparative politics will also find in Montesquieu an engaging interlocutor on questions of political culture and liberal democratic transitions. A reexamination of this element of his thought is particularly appropriate given Welzel and Inglehart’s recent claim that “for first time in the history of comparative politics there is systematic evidence demonstrating that the political

47 See James W. Ceaser, Liberal Democracy and Political Science (Baltimore: Johns Hopkins University Press, 1992), ch. 3.

culture school’s most central claim is correct.” As contemporary scholars attempt to give culture its due while avoiding cultural determinism, they may find insight in Montesquieu’s own non-deterministic approach. As his account of political change makes clear, Montesquieu explicitly disavows cultural or sociological determinism even as he argues for the importance of cultural variables under some conditions. In order to fully explain regime change, one must account for many other factors—not least the agency of man (MP, 1266).

But most importantly, Montesquieu’s treatment of the psychology of regime change and the cultural preconditions of liberty suggests fresh normative reasons for partisans of liberal constitutionalism to attend to the questions raised by the political culture school. For if, as Montesquieu contends, the moral superiority of liberal institutions depends largely upon the citizen’s perceptions of these institutions, and if, as he also contends, cultural factors shape these perceptions, then understanding such factors should rank among the most pressing priorities for liberal political scientists and policymakers.

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In the estimation of historian Peter Gay, Montesquieu was the single most influential political writer of the eighteenth century. His works’ publication history alone is telling. Fifteen editions of *The Spirit of the Laws* (1748) had appeared before 1758, and twenty-eight were published by 1789. In addition, fully twenty-three editions of Montesquieu’s *Oeuvres complètes* went to press between 1758 and 1789. Among the chief loci of interest were Montesquieu’s views on confederation, monarchy, republicanism, French legal history and the English constitution. But of greatest significance for the present study is the critical reception, in the eighteenth and early nineteenth century, of Montesquieu’s liberal anti-universalism, or his liberal particularism. No mere anomalous episode in the history of liberal thought, Montesquieu’s acute attentiveness to the light visible between the *disposition* of a people and the requirements of liberal politics provoked and profoundly influenced later reflections on this question. A consideration of the theoretical and practical legacies of

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Montesquieu’s liberal particularism inevitably sets in relief the ambiguities, promise and dangers of his approach, because each of his critical heirs calls attention, either implicitly or explicitly, to the strains that can beset the marriage of normative liberal theory and political particularism. For this reason, we turn penultimately to an assessment of these legacies.

A comprehensive study of Montesquieu’s influence on later liberal thought would require a volume of its own. Here my more limited purposes are these: First, I aim to show that Montesquieu’s thought served as the philosophical headwaters of later anti-universalistic approaches to liberal political theory that were alive to the tension between the demands of liberal political morality and the limits imposed by the circumstances and character of a people. Second, in accomplishing this first task, I aim to assess the ways in which his critical followers’ engagement with his liberal particularism exposes some of its most problematic elements. When we consider the critical appropriations and responses of Rousseau, Burke, Constant and J. S. Mill, a series of objections emerge. Not all of the objections come directly from the pen of one of these thinkers. Some materialize as a result of the manner in which they have applied and appropriated Montesquieu’s principles. But common to each objection is the worry that Montesquieu did not quite manage to square the circle—that his marriage of political particularism to a normative liberal theory of politics causes the latter to degenerate into something less than itself. Though these objections help to

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4 The analysis that follows is organized around these objections rather than strict historical chronology.
illuminate potential sources of theoretical strain, I will argue that none of them prove fatal to Montesquieu’s union of liberalism and political particularism. His view emerges fully intact.

I. Political Particularism against Universal Values?

From 1746-1751, the family of Louis-Claude Dupin de Francueil, a French tax farmer in Chateauroux, employed a thirty-something musician from Geneva to help with research and secretarial tasks. The musician’s name was Jean-Jacques Rousseau, and he produced hundreds of pages of notes on The Spirit of the Laws for Dupin, who was writing a refutation of Montesquieu’s critique of tax farming. Montesquieu did not think much of Dupin’s “idiotic criticism,” but one suspects that if he had lived long enough to read Rousseau’s Social Contract, he would have felt differently about the subtle, critical appropriation of his own principles by Dupin’s able subordinate. Rousseau’s work for Dupin seems to have provided an occasion for him to undertake a

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6 “Someone was talking to me about the idiotic criticism of the Esprit des lois by the farmer general M. Dupin. I said, ‘I never argue with farmers general when it is a question of money, nor when it is a question of esprit (MP, 2239).’”

7 Rousseau’s extracts from and notes on The Spirit of the Laws are contained in the Papiers Dupin, housed in the Bibliothèque Municipale de Bordeaux.
serious study of Montesquieu’s political science, and this is evident in ways often
ignored by scholars.  

In Rousseau’s notes for Dupin, few sections of *The Spirit of the Laws* receive
more attention than the critical Book XIX on the general spirit and political change.  
And indeed, in his later political writings, Rousseau’s most fruitful, critical engagement
with Montesquieu’s thought centers upon the principles of political particularism
expounded in this book.  Rousseau clearly believed that in attempting to hitch a concern
for liberty to a respect for local particularity, Montesquieu had erred too much on the
side of particularity and had failed to make clear the universal moral priorities for
legislation in all nations.  The problem of matching a regime to a people appears
brilliantly in Rousseau’s chapter “On the Legislator” in *The Social Contract*.  The
chapter is motivated by a profoundly Montesquieuian concern: How does one prepare a
people to receive the best laws (cf. EL, XIX.2)?  

When pressed to its logical
conclusion, the questions seems to terminate in a paradox: “For an emerging people to

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8 As Roger Masters and Ruth W. Grant have each pointed out, the prudential aspects of Rousseau’s
thought have not received adequate attention.  This has inevitably meant that Montesquieu’s influence on
Rousseau’s science of politics has not been fully considered.  See Roger Masters, *The Political
Philosophy of Rousseau* (Princeton: Princeton University Press, 1968), chapter 8; Ruth W. Grant,
*Hypocrisy and Integrity: Machiavelli, Rousseau, and the Ethics of Politics* (Chicago: University of

9 *Papiers Dupin*, Bibliothèque Municipale de Bordeaux.

10 Here Rousseau quotes a line from Montesquieu’s remark in the *Considerations* in order to set up the
problem: “At the birth of societies, says Montesquieu, it is the leaders of republics who bring about the
institution and thereafter it is the institution that forms the leaders of the republic.”  Rousseau, *On the
1987), Book II, chapter vii.  Montesquieu is the only writer whom Rousseau quotes in the text of this
chapter or any of the four that follow.
be capable of appreciating sound maxims of politics and to follow the fundamental rules of statecraft, *the effect would have to become the cause.*"¹¹ Like Montesquieu, Rousseau believes it would be illegitimate to employ violence in order to prepare a people for better laws, and he understood that a people often lack the concepts, categories and experience to understand arguments for new institutions. They cannot be *convinced* to change.¹²

Rousseau’s way out of this paradox is of course the great legislator, who makes himself an interpreter for the gods in order to secure acceptance for his institutions among men. The legislator persuades without convincing. This was not Montesquieu’s solution to the problem of matching a people to a regime, and indeed even Rousseau did not believe that the powers of the great legislator simply dissolved this problem. For in the chapters that follow his discussion of the legislator (three chapters “On the People” and one “On the Various Systems of Legislation”), he dwells upon the question of fitting laws to a particular people.¹³ Even if a pseudo-prophetic statesman can be found—and especially if he cannot be found—there remains a need to tailor institutions to the character and circumstances of the populace.

Rousseau borrows liberally from *The Spirit of the Laws* in his three chapters on the people, where he focuses on the age, size, number and terrain of a people. The


theme is reprised in Book III, where Rousseau introduces climate and declares explicitly his reliance on “this principle established by Montesquieu.” The guiding conviction of this line of analysis is that,

Just as an architect, before putting up a large building, surveys and tests the ground to see if it can bear the weight, the wise teacher does not begin by laying down laws that are good in themselves. Rather, he first examines whether the people for whom they are destined are fitted to bear them.¹⁴

Having charted this distinctly Montesquieuian course, Rousseau deviates in his chapter “On the Various Systems of Legislation.” Here, we find an unmistakable, self-conscious effort to tack away from what Rousseau seems to have regarded as an excessively particularistic direction of Spirit while resisting the impulse toward a full-scale political universalism.¹⁵

The chapter opens with the announcement that the general objects (l’objet général) of every state should be liberty and equality.¹⁶ The concept of l’objet forms the chief concern of this chapter. In fact, a more apt title would have been “De l'objet des états divers.” This is title of Rousseau’s model, chapter five in Book XI of The Spirit of the Laws, to which Rousseau directs the reader explicitly. Here Montesquieu states that all states have an objet général—to maintain themselves—as well as an objet particulier that is peculiar to each state. “Expansion was the purpose of Rome; war, ¹⁴ Rousseau, Social Contract, II, viii.
¹⁵ Rousseau, Social Contract, II, xi. Remarkably, I have been unable to find any study of The Social Contract or Rousseau’s political thought that is alive to the fact that this chapter is a direct response to EL, XI.5.
that of Lacedaemonia; religion, that of the Jewish laws; commerce, that of Marseille,” and so on. Only the English constitution has liberty as its *objet particulier*. This announcement serves to introduce that famous chapter on the English constitution, which follows immediately.

Rousseau’s chapter is clearly normative, while Montesquieu’s is ostensibly descriptive. But it would be reasonable for Rousseau to see troubling normative implications in Montesquieu’s approach. Each of the purposes that Montesquieu names is tied in some non-contingent manner to the nation. That the Jews had religion as their object was not just a product of a decision they made. That Rhodes had navigation as its aim was not a matter of preference. Each purpose seems to follow from the character, circumstances and history of the people, and so the purposes do not seem readily transferable or exchangeable. This suggests that the liberty of England is peculiar to the situation of the English and that it is one of many state purposes that a legislator must take as a “given.” Rousseau seems to see a danger in putting liberty on all fours with other non-moral objects, and so he argues that liberty is not the peculiar object of a particular state but must rather be the object of every state. The greatest good which “ought to be the aim of every system of legislation… is summed up in two

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17 Rousseau complained that while Montesquieu had been the only modern in a position create a science of political right, he had neglected to do so. Rousseau, *Emile*, Trans. Allan Bloom (New York: Basic Books, 1979), 458. Rousseau seems to have believed that Montesquieu’s extensive knowledge of the science of positive law made him particularly well equipped to craft a moral science of politics. That Rousseau believed knowledge of historical laws would be necessary for crafting a science of political right is evident in Rousseau’s own extensive discussion of Roman law in *The Social Contract*. 
principal objects, *liberty* and *equality*.“¹⁸ But having thus clearly prioritized liberty in a way his teacher had failed to do, Rousseau embraces Montesquieu’s distinction between the *objet général* and *objet particulier*:

[T]he general objects of every good institution should be modified in each country in accordance with the relationships that arise as much from the local situation as from the temperament of the inhabitants. And it is on the basis of these relationships that each people must be assigned a particular institutional system that is best, not perhaps in itself, but for the state for which it is destined.¹⁹

Rousseau is even more explicit than Montesquieu in suggesting that these particular purposes are not exactly objects of choice. He insists that “each people has within itself some cause that organizes them in a particular way and renders its legislation proper for it alone.”²⁰ He mines *Spirit* for some of his examples,²¹ and he directs the reader to Montesquieu, who “has shown with a large array of examples the art by which the legislator directs the institutions toward each of its objects.”²² Montesquieu’s error was not in recognizing that the legislator must form laws consistent with the particular purpose for which each state is destined. Rousseau goes to great lengths to transmit, and to show that he has imbibed, this lesson. But he suggests that Montesquieu’s

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²¹ Like Montesquieu, he links the Israel to religion, Sparta to war and Rhodes to seafaring. Rousseau does correct Montesquieu on one point: whereas the former designated expansion as Rome’s purpose, Rousseau puts virtue.
²² Rousseau, *Social Contract*, II, xi. This language suggests that Rousseau saw EL, XI.5 as connected to Montesquieu’s broader normative teaching on the art of legislation.
failing lay in his inability to see, or at least in his willingness to obscure, the fact that every legislator has a moral obligation to aim at liberty as a general object of all states. The legislator must afford to every people a liberty and equality suitable to their local situation, and he must “modify” the general objects in accordance with his nation’s particular object. But he must understand that, from a moral point of view, these universal goods stand quite apart from various particular objects of nations.

Rousseau presses us to consider whether Montesquieu’s particularism has given short shrift to liberty, and he offers a science of the legislator that attempts to incorporate Montesquieuian moderation while clarifying the moral priorities that sound legislation must keep at the fore. Though in many respects Rousseau seems to be engaged in a straightforward correction of Montesquieu’s doctrine, it is certainly consistent with the argument of this dissertation to see Rousseau as accomplishing something more akin to critical articulation or explication of Montesquieu’s liberal particularism. Rousseau makes explicit what is implicit (but omnipresent) in *The Spirit of the Laws*: legislators and reformers must aim at liberty as their normative goal, but they must seek it in ways suitable to local circumstance and national character. Indeed, if my account of Montesquieu’s approach to political change is correct, then Montesquieu’s only concern with Rousseau’s “correction” might be its very transparency. He might have worried that such boldness and clarity concerning the

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moral aims of legislation could provide intellectual backing for political projects that would jettison the moderation inherent in political particularism. In other words, he might not have been surprised by the use and abuse of Rousseau’s political thought during the Revolution.

What is important to recognize is that even if Rousseau understood himself to be engaging in a critique or correction of Montesquieu’s doctrine, his modifications do not demonstrate that political particularism is itself incompatible with a commitment to liberty as a universal value. Rousseau’s refashioned theory of political “objects” suggests that if the normative aims of legislation are clearly set forth, a particularistic art of statesmanship need not run afoul of broadly liberal principles.

II. From Liberal Particularism to Liberal Imperialism?

Rousseau self-consciously pushes us to question whether Montesquieu had successfully joined a concern for the universal value of liberty with due regard for the relationship between laws and disposition. John Stuart Mill’s thought serves to raise before us a similar objection, only in Mill’s case, this effect is not exactly intentional; it is rather a product of his own union of imperialism with liberal particularism.

25 Recall Montesquieu’s coy response to the question of natural government in Book I, chapter 3. “It is better to say that the government most in conformity with nature is the one whose particular disposition best relates to the disposition of the people for whom it is established.” As I argued in Chapter 2 above, one of the reasons Montesquieu resists outlining a theory of natural or abstract right is the tendency of such efforts to encourage universalistic political programs.
Those who dip no more deeply into his body of work than to peruse his essay *On Liberty* will stumble upon traces of his political particularism. As he opens that work, Mill announces that his argument has no application among men incapable of being improved by liberty; such peoples could do no better than to live under an Akbar or Charlemagne. Scholars often link this element of Mill’s thought to his views on empire, and in the burgeoning literature on so-called “liberal imperialism,” he has not fared well.\(^\text{26}\) Most notably, Jennifer Pitts attributes the nineteenth-century’s theoretical turn to empire to the thought of James Mill and his son.\(^\text{27}\) But Pitts cursorily assigns special blame to Montesquieu as the source of a pervasive late eighteenth-century discourse concerning the inability of Eastern peoples to rule themselves, a discourse which fed directly into defenses of imperial liberalism.\(^\text{28}\) While it would be unfair to hold Pitts to account for a passing (albeit pregnant) comment, we must consider the relationship between Montesquieu’s political science and both Mill’s particularism and his theory of liberal empire. For if Mill’s thought is in some manner a necessary application of Montesquieu’s approach, this very fact would suggest that liberal


\(^{27}\) Pitts, *A Turn to Empire*, 123-162.

\(^{28}\) Pitts, *A Turn to Empire*, 79.
particularism threatens to collapse in upon itself and terminate in a political program that seems substantially illiberal.\textsuperscript{29}

In this section, I will argue that while Mill’s political science mirrors that of Montesquieu in important ways, his departures from and additions to the model set forth in \textit{The Spirit of the Laws} provide indispensable theoretical support for his theory of empire. Political particularism need not provide a pretext for imperialism. I argue that this is made particularly clear by comparing Mill’s work with Edmund Burke’s writings on India, especially his speeches from the trial of Warren Hastings. In contradistinction to Mill, Burke puts Montesquieuian particularism in service of a spirited assault on colonial abuses. This contrast with Mill’s approach allows us to see even more clearly that political particularism was a necessary condition for a liberal theory of empire, but it was not a sufficient one.

In a student debate at the age of twenty-three, Mill pushed back his opponent’s simplistic attempt to pit Benthamite universalism against Montesquieuian relativism. He rejected the claim that Montesquieu had endorsed, as a fundamental axiom, the “conservation of all the principal institutions of [every] country and of all the habits and

\textsuperscript{29} For a remarkable account of an additional application of Montesquieu’s thought to a colonial context, see Malick W. Ghachem, “Montesquieu in the Caribbean,” in \textit{Postmodernism and the Enlightenment: New Perspectives in Eighteenth-Century French Intellectual History}, ed. Daniel Gordon (New York: Routledge, 2001), 7-30. Ghachem details how Montesquieu’s principles were used to defend slavery in the Caribbean; Creole jurists argued that no single code of law could govern the peoples of France and Saint-Dominigue.
feelings of its people." While Mill’s speech degenerated into a defense of Bentham, the debate suggests that early on in his intellectual career, he was acquainted with role of political sociology in Montesquieu’s *Spirit of the Laws*. That he was an admirer of the work is evident in a letter he sent to a friend seeking recommendations for books on statesmanship: “There are few writers better worth studying to an European thinker than Adam Smith, Montesquieu, Tocqueville,” he opined.

Mill’s own literary engagement with Montesquieuian themes is most clearly discernable in his *Considerations on Representative Government*. This work contains one of the most direct attempts in this history of liberal thought to address the problem of liberal political culture, and it is natural to read Mill’s discussion as, in part, a revision of Montesquieu’s view. The argument of the *Considerations* is that representative government provides the greatest source of moral and intellectual improvement for a people willing to receive and able to maintain such institutions. As this summation suggests, it is a highly practical text that neither remains in the rarified heights of ideal theory nor glosses over problems of implementation. Three chapters in

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32 Montesquieu is of course not Mill’s only point of reference on this subject. His father’s famous debate with Lord MacCaulay centered upon related questions. Mill reports that shortly after this debate, and following his breakdown, he “ceased to consider representative democracy as an absolute principle, and regarded it as a question of time, place, and circumstance.” Mill, *Autobiography*, chapter 5. This view contradicted the universalism of his father’s *Essay on Government* (1825), which MacCaulay had savaged in a book review.
particular hit upon Montesquieuian themes: chapter one addresses “To What Extent Forms of Government are a Matter of Choice;” chapter three explains “Under What Social Conditions Representative Government is Inapplicable;” and a final chapter treats “Of the Government of Dependencies by a Free State.”

In the first, Mill argues that human choice determines political outcomes within horizons formed by the desires and capacities of the people. He situates his own view between two extremes. On the one hand, a thoroughgoing political naturalist avers, “Governments are not made, but grow.” According to a thinker of this stamp,

The fundamental political institutions of a people are considered by this school as a sort of organic growth from the nature and life of that people: a product of their habits, instincts, and unconscious wants and desires, scarcely at all of their deliberate purposes. Their will has had no part in the matter but that of meeting the necessities of the moment by the contrivances of the moment, which contrivances, if in sufficient conformity to the national feelings and character, commonly last, and by successive aggregation constitute a polity, suited to the people who possess it, but which it would be vain to attempt to superinduce upon any people whose nature and circumstances had not spontaneously evolved it.

Consistent with his dialectical conception of truth, Mill believes the naturalist is partly right. The other part of the truth rests with the political mechanist, whose view is essentially a negation of the naturalist view. The political mechanist will hold that governments are purely a matter of contrivance and invention. Whether governments

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will exist at all, and what form they will take, depends entirely upon deliberate human choice and design. For the mechanist, the work of political philosophy is simply to identify the best form of government, to persuade others that it is best, and to insist upon seeing it established everywhere.

Mill styles his own view as a hybrid of the naturalistic and mechanistic models: All regimes owe their existence to human will, but they are made (or ought to be made) in forms suitable to the people for whom they are made. Even if governments are treated as machines rather than organic growths (he grants the mechanists a metaphorical advantage), every machine requires capable operators and suitable material from outside itself. Specifically, Mill enumerates three fundamental conditions that constrain the choices of legislators. First, the people must be willing to receive the form of government; second, they must be willing and able to do what is necessary to preserve it; and third, they must be willing and able to fulfill the functions and duties required by the form of government. There are no conditions beyond these three, Mill emphasizes. “[W]ithin the limits set by the three conditions so often adverted to, institutions and forms of government are a matter of choice.”

Nothing in Mill’s compromise position appears particularly striking or remarkable until we notice what kinds of cultural and social institutions he wants to

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35 It is somewhat confusing to speak of a “naturalistic theory of politics” as Mill does. For the arguments he calls “naturalistic” appeal to custom and history, not human nature. They are “naturalistic” only in the sense that they see change in political institutions occurring through organic and undirected processes.

remove from the list of fundamental preconditions. The political naturalist school speaks of the necessity of matching a regime to the character, pre-existing habits, feelings, history and prior national usages, Mill explains. But political naturalists have fetishized these elements, elevating them to a status that is without scientific basis. There is often “a great quantity of mere sentimentality connected with these and similar phrases,”37 for political naturalists fail to recognize that a people’s history and culture are relevant considerations not in themselves but only insofar as they promote or block the fulfillment of the three (and only three) fundamental conditions.

If the supporters of what may be termed the naturalistic theory of politics, mean but to insist on the necessity of these three conditions; if they only mean that no government can permanently exist, which does not fulfill the first and second conditions, and, in some considerable measure, the third; their doctrine, thus limited, is incontestable. Whatever they mean more than this, appears to me untenable.38

By distinguishing between when national character matters and when it does not, Mill undertakes to rationalize and demystify the naturalist’s account of political preconditions. Only a demystified account of such preconditions can provide a clear way forward for projects of political, moral and intellectual improvement.

Mill’s account of representative government’s preconditions would provide an essential foundation for his theoretical defense of liberal imperialism. The final chapter of his Considerations turns to the question of how a free state must govern imperial and colonial holdings. On Mill’s view, a foreign imperial power may legitimately rule a

people who are unwilling or unable to fulfill the three fundamental conditions with respect to representative government. Such a government is “as legitimate as any other” if it most effectively facilitates the people’s moral, intellectual and political progress. But whether this progress is possible depends upon the quality of the rulers. Neither foreign legislatures nor royal governors could wield power in a way conducive to real improvement. Instead, imperial power must be entrusted to professional administrators, semi-permanent residents of the colony. Mill makes no secret of the fact that his model here is the British East India Company, which for thirty years had employed him in London as chief examiner of dispatches for thirty years. The power of the company had recently been transferred to the Crown, a decision Mill believed would be remembered with regret. A foreign power can rule a dependency successfully only through a delegated body, freed from the pressures of home politics and able to remain immersed in the native culture. In the Indian case, company administrators were able to acquire a deep understanding of the subject people by making the study of India their very profession. Only by virtue of this nearly comprehensive knowledge could colonial administrators facilitate a people’s progress toward higher stages of improvement. Thus Mill’s treatment of representative

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40 Strangely, Uday Singh Mehta states that “India was visibly outside the domain of his work on Representative Government.” Nothing could be further from the truth; the concluding chapter of the work deals explicitly with India. Mehta, Liberalism and Empire, 65.

41 Considerations was published just three years after Mill’s retirement in 1858, when the British Raj acceded to the authority of the Company in India.

42 See Pitts, A Turn to Empire, 149.
government ends where it began: When the three fundamental conditions cannot be met, the best attainable regime will likely be rule by a foreign free state.

To a point, Mill follows a path Montesquieu had traced. Like Mill, Montesquieu had attempted to walk a middle way between what Mill calls the naturalistic and mechanistic schools. He certainly recognizes the role of human agency in institutional design and reform; his insistence on speaking often of the legislator’s purposes caused Emile Durkheim, a thoroughgoing political naturalist, considerable consternation.\(^{43}\) Moreover, the theoretical link between Mill’s political particularism and his liberalism is formally identical to that of Montesquieu’s particularism and liberalism. For Mill, liberal institutions are choiceworthy because they conduce to moral and intellectual improvement; but when (owing to the capacities or desires of the people) improvement cannot be realized through free institutions, these institutions are undesirable. Similarly, Montesquieu locates the goodness of liberal institutions largely in their ability to reduce fear and to promote the opinion of security; absent this effect, the institutions are considerably less choiceworthy. As was true in Montesquieu’s case, Mill’s liberalism and his political particularism share the same moral foundations.

Still, there are important distinctions between Mill’s renovated liberal particularism and that of Montesquieu. One must wonder if Montesquieu was among those whom Mill believed had invited a kind of mystical regard for custom and habit. He would never have found in *The Spirit of the Laws* the kind of simplified approach

represented by his three fundamental conditions. Montesquieu believed customs and mores are important not only as “mere aids” in facilitating the fulfillment of these conditions; they are also important because the prudent legislator must graft his innovations onto preexisting customs in order to strengthen the new institutions without relying upon threats of violence—a consideration that Mill omits. Beyond this, even while trying to explain the reasons for diverse human conventions, *The Spirit of the Laws* does not fail to communicate something of the inscrutability of human custom and social systems more broadly. Few minds can fully penetrate the constellation of causes at work in their own nation, much less in foreign nations. Montesquieu declares that readers of his great work will naturally draw the conclusion that “changes can be proposed only by those who are born fortunate enough to fathom by a stroke of genius the whole of a state’s constitution (EL, Preface).” To fathom the whole by a stroke of genius seems bridge too far for colonial bureaucrats educated at the Westminster School. Montesquieu’s complex account of social causes tends to discourage the view that a band of foreign professionals could be relied upon to acquire knowledge sufficient to usher a whole civilization to a higher stage of improvement. Thus his social theory tends to undercut the view that imperialism can be justified by the progress anticipated under such a mode of rule. In these ways, Montesquieu’s approach is closer to the “naturalistic theory of politics” than Mill’s position. Mill certainly knew that Montesquieu’s thought had been employed in the “sentimental” defense of custom,
habit and spontaneous growth. His streamlined liberal particularism muffles this kind of sentimentality. In short, Mill further demystifies the power of custom in order to leave ample room for his program of progress—a program upon which his defense of imperialism is predicated.

These important distinctions notwithstanding, it is difficult to ignore the fact that Mill’s defense of empire is underwritten by a political particularism evocative of Montesquieu’s approach. But when we turn to an earlier application of Montesquieuian

44 This is exactly how his opponent in the university debate had employed Montesquieu’s thought.

45 This critical appropriation of Montesquieu’s political particularism is presaged in Jeremy Bentham’s thought. Like Mill, Bentham was a qualified admirer of Montesquieu, whose work he emphatically favored above that of Locke. Despite his reputation as a simplistic political rationalist, Bentham argued that legal and political institutions must be carefully fitted to the character and circumstances of the people. He credits Montesquieu with keeping this duty before the eyes of legislators. Bentham explains that, prior to the ascendancy of *The Spirit of the Laws*, if a man was asked to give laws to a distant people, he would have replied, “Name to me the people, …reach me down my Bible, and the business is done at once. The laws they have been used to, no matter what they are, mine shall supersede them: manners, they shall have mine, which are the best in nature.” Thanks to Montesquieu, such a legislator would now likely understand that he must tailor his institutions to the people. Jeremy Bentham, "Of the Influence of Time and Place in Matters of Legislation," in *Works*, Vol. 1, 174. But like Mill, Bentham pushed back against what he believed to be excessive concessions to custom. Bentham anticipates Mill’s concern that political particularism not be permitted to serve as a pretext for traditionalism and conservatism. He writes,

> Laws need not be of the wild and spontaneous growth of the country to which they are given: prejudice and the blindest custom must be humoured; but they need not be the sole arbiters and guides. He who attacks prejudice wantonly and without necessity, and he who suffers himself to be led blindfolded a slave to it, equally miss the line of reason (Bentham, “Of the Influence of Time and Place,” 180).

Like Mill after him, Bentham sought to avoid the Scylla of political universalism and the Charybdis of mystical or sentimental reverence for immemorial prejudice. Armed with the requisite stock of empirical facts, Bentham insists, reformers and legislators are capable of making laws for any country they please: Legislators who… have learnt to soar above the mists of prejudice, know as well how to make laws for one country as for another: all they need is to be possessed fully of the facts; to be informed of the local situation, the climate, the bodily constitution, the manners, the legal customs, the religion, of those with whom they have to deal. These are the data they require: possessed of these data, all places are alike (Bentham, “Of the Influence of Time and Place,” 180).
social theory to questions of imperialism, we find that Edmund Burke had marshaled Montesquieu’s particularistic sensibility in opposition to imperial abuses just as effectively as Mill had employed it in defense of empire. This is particularly remarkable given the fact that Burke’s chief practical concern was identical to Mill’s—British colonial rule in India.

To Burke, Montesquieu was the “greatest genius” of the modern age, a man “gifted by nature with a penetrating aquiline eye; with a judgment prepared with the most extensive erudition; with a Herculean robustness of mind.” Had Montesquieu been living during the Revolution, Burke speculated, he surely would have been among the first wave of horrified émigrés—high praise indeed, coming from the author of the Reflections. As C. P. Courtney has argued, Burke’s political and social thought simply cannot be understood without reference to the significant debt he incurred to Montesquieu. In particular, Courtney suggests, Burke relied again and again upon the doctrine of the esprit générale, which is to say, Montesquieu’s political particularism. This is nowhere more evident than in Burke’s writings and speeches on colonialism and empire. But as I have suggested, in contrast to Mill’s Considerations, Burke’s writings

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47 Indeed, Burke was delighted to find that Montesquieu’s grandson was among these émigrés, and he struck up a warm friendship with the young man. C. P. Courtney, Montesquieu and Burke (Oxford: Basil Blackwell, 1963), 37.

48 See generally Courtney, Montesquieu and Burke; see also F. T. H. Fletcher, Montesquieu and English Politics (1750-1800) (London: Porcupine Press, 1980).
demonstrate how a particularistic sensibility could cut against abuses of imperial power and even imperial power itself.

Burke clashed with the machinery of British colonialism most dramatically in the 1788 impeachment and trial of Warren Hastings, governor of Bengal. Criticism of British imperial policies was nothing new for Burke. Seven years earlier, he had persuaded the House of Commons to enact the Bengal Judicatures Bill to reform abuses in the misapplication of English law to India, and two years after that, he had famously backed Charles Fox’s controversial East India Bill to make the East India Company accountable to a parliamentary commission. Earlier still, he thundered against the Crown’s policy toward the American colonies.49 But the Hasting trial represented by far Burke’s most substantial and time-consuming attack on the work of the East India Company and colonial policy in general. Having successfully secured Hastings’ impeachment by the House of Commons, Burke would serve as lead prosecutor in the trial before the Lords, who ultimately acquitted Hastings of all charges. The trial is an especially important window upon the relationship between Montesquieu’s political

49 See esp. Edmund Burke, “Speech on Conciliation with America,” and “Letter to the Sheriffs of Bristol” in *The Works of the Right Honorable Edmund Burke*, Vol. 1, ed. Henry Rogers (London: Holdsworth, 1837), 181-205. Burke argues that representative government is the only form of rule consistent with the nature of the Americans, and in particular, the spirit of liberty that characterizes them. It is a Montesquieuian argument for making major political concessions to the colonies or granting her independence. He pronounces, “I think it may be necessary to consider distinctly the true nature and the peculiar circumstances of the object which we have before us. Because after all our struggle whether we will or not, we must govern America, according to that nature, and to those circumstances; and not according to our own imaginations; not according to abstract ideas of right; by no means according to mere theories of government, the resort to which appears to me, in our present situation, not better than arrant trifling (183).” See Courtney, *Montesquieu and Burke*, 83-106.
particularism and imperialism because both sides—Hastings and his prosecutors—drew upon *The Spirit of the Laws* to make their cases.

Hastings stood accused of myriad crimes in India; it took Burke two days to read aloud the twenty counts against him. In the main, he stood accused of bribery; plundering of the native wealth through confiscations and exorbitant demands for tribute; attempting to ruin local potentates; and brutality in armed operations such as the Rohilla War, which Burke believed to be a war of ethnic extermination.\(^{50}\) In short, he was accused of despotism. Hastings and his attorneys disputed with the accusers over many of the facts in the case. But with respect to some charges, they sought to justify Hastings actions on putatively Montesquieuan grounds. The people of India, they argued, are accustomed to rule by despotism, the only form of political authority consistent with their naturally submissive Oriental character.\(^{51}\) Counsel for the defense appealed to Montesquieu’s authority on the matter: “‘The people of Asia’—says the President—‘are governed by the cudgel, and the inhabitants of Tartary by whips. The spirit of Europe has always been contrary to severity, and in all time, what the people of Asia have called a punishment the people of Europe have called an outrage.’”\(^{52}\)

Hastings had ruled with a stern hand, but this was in keeping with the customs and

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character of the people over whom he had authority. Any other means of rule would have been alien to the Indian mores. To impose British principles and to apply the standards of British law in India would be to ignore the nature and disposition of the populace—a great error, as Montesquieu had taught the world.

Burke found this mode of defense especially egregious. If accepted, these particularistic arguments would “carry off a great deal at least, if not entirely the foundation of our charge.” In anticipating and responding to the defense, Burke does not always strike a Montesquieuian tone. He fulminates against “geographical morality” when Hastings suggests that his actions, though unacceptable in a British context, were permissible in India. While Montesquieu certainly never endorsed a crude geographical morality, Hastings would not have been the first or last to read him this way. Additionally, in answer to Hastings’ reference to Montesquieu’s views on “oriental despotism,” Burke states sharply, “[E]very word which Montesquieu has taken from idle and inconsiderate travellers is absolutely false.” A significant portion of his seven-day opening argument is devoted to refuting, through an impressive survey of Indian political history, the view that the subcontinent was under the foot of absolute and arbitrary rulers before the arrival of the British.

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54 Burke, Works (Rivington), Vol. 13, 155-156, 192.
But even this quarrel with Montesquieu does not occur at the level of theory. His error is empirical. In essence, Burke replies, No, the Indians do not have the character of slaves, so do not rule them as if they did. While Burke criticizes Montesquieu’s oriental myth, he also relies upon Montesquieu’s political particularism in order to lay the groundwork for his case. It is Hastings, he argues, who has broken with the immemorial political maxims of the Indian people. Though the “Gentoos” have suffered at the hands of Tartar and Muslim conquerors, the power of the rajahs or local princes had never been obliterated until the governorship of Hastings. Indeed, two of the charges against the governor accused him of attempting to ruin the Rajahs of Benare and Sahlone. Hastings’ centralization and consolidation of power represented a break with India’s political and social history: “The system and principle of [their] government is locality. Their laws, their manners, their religion, are all local.” In destroying the local sites of power, Hastings had failed to rule in a manner consistent with the customs of the people. Thus even as Burke dismisses Montesquieu’s view of Asia, he draws upon the mode of analysis set forth in *The Spirit of the Laws*.

At times, Burke comes close to straightforward plagiarism of Montesquieu’s views. On the third day of his opening speech, he attempts to explain to the Lords why the people of India *even more so than other nations* must be ruled in the manner to which they are accustomed. He argues,

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If we undertake to govern the inhabitants of such a country, we must govern them upon their own principles and maxims, and not upon ours. We must not think to force them into the narrow circle of our ideas; we must extend ours to take in their system of opinions and rights, and the necessities, which result from both; all change on their part is absolutely impracticable. We have more versatility of character and manners, and it is we, who must conform. We know what the empire of opinion is in human nature… It is… the strongest principle in the composition of the frame of the human mind… But if such is the empire of opinion among us, it has a pure, unrestrained, complete, and despotick power amongst them. The variety of balanced opinions in our minds weakens the force of each… [But in India] the laws of religion, the laws of the land, and the laws of honour, are all united and consolidated in one invariable system, and bind men by eternal and indissoluble bonds to the rules of what, amongst them, is called his cast.57

According to Burke, while governments everywhere should be adapted to the customs of the people, this is especially true where the various constituent elements of “culture”—all sites of conventional authority—speak with one voice. India is just such a place, characterized by what we might a unified culture.

What is remarkable, as C. P. Courtney points out, is that Montesquieu describes China in identical terms.58 “As manners, mores, laws and religion are but the same thing there,” Montesquieu explains, “one cannot change all of that at once (EL, XIX.18).” The conquerors of the Chinese have not possessed such a unified culture, so they have invariably been led to acquiesce in Chinese ways (EL, XIX.18). Burke clearly models his account of India’s unified culture on this passage, though he gives Montesquieu’s argument a hyper-conservative tincture (“all change on their part is absolutely

57 Burke, Works, Vol. 8, 66.
58 Courtney, Montesquieu and Burke, 135.
impracticable”) that is lacking in the original. Still, we find him drawing rather conspicuously upon Montesquieu’s particularistic sensibility to oppose Hastings’ departure from the traditions of India.

Burke’s application of political particularism to British imperialism helps to reveal just how Mill’s changes to Montesquieu’s model opened the way to liberal imperialism. Mill sought to simplify the conditions of political improvement and to stamp out the mystery that sentimental “naturalists” attach to ancient custom. If a nation could be thoroughly comprehended by outsiders, and if the conditions of improvement could be clearly set forth, then a liberal justification for imperialism could be predicated upon the anticipation of future progress through “a little management,” in Bentham’s words.59 By contrast, Burke emphasized the inscrutable nature of customary institutions in a way that completely banishes any thought of defending imperialism on progressive grounds. “All our little fashionable theories” cannot begin to comprehend why Indian institutions and practices have sustained that civilization for several millenia.60 Englishmen are in no position to judge India. “Faults this nation may have;—but God forbid we should pass judgment upon people, who framed their laws and institutions prior to our insect origin of yesterday.”61 The Indians were “cultivated

60 Burke, Works (Rivington), Vol. 13, 71.
61 Burke, Works (Rivington), Vol. 13, 70.
by all the arts of polished life, whilst we were yet in the woods.”62 As a lately civilized, foreign people, the British could not hope to understand the Indians’ way of life. So the notion that empire could be justified on the basis of social progress orchestrated by colonial bureaucrats would have been completely alien to Burke’s outlook. This contrast with Mill’s approach allows us to see even more clearly that political particularism was a necessary condition for a theory of liberal imperialism, but it was not a sufficient condition. The Millian defense of empire is mostly likely to ring true if one believes that the elements of human culture are easily calculable and comprehensible, and that conditions for political improvement can be clearly known and numbered.63

For his part, Montesquieu like Burke never saw in the principles of liberal particularism a warrant for imperial projects of improvement. To be sure, he was no straightforward critic of empire. While he condemned the conquistadorial imperialism of Spain and Portugal,64 he expressed no qualms over the British colonization of the New World, which he believed to be aimed more towards the expansion of commerce than the expansion of political dominion (EL, XIX.27). In an obvious reference to

63 Of course, there are other elements of Mill’s political philosophy that smoothed the path from political particularism to liberal imperialism. His utilitarianism, his faith in well-educated liberal administrators, his belief in the power of social science (including his science of human character, “ethology”), his confidence in our ability to distinguish between more and less advanced ways of life, and his attraction to narratives of progress, each contributed to his liberal defense of empire.
64 Montesquieu speaks of the “destroyers of America” and “their crimes (EL, XV.4).” Cf. EL, X.4; XV.3; XV.4, XVII.7.
British America, Montesquieu was even quite sanguine about the prospects of a nation exporting its own political institutions to rule over its colonists, though not over native populations: “As one likes to establish elsewhere what is established at home, [a free state] would give the form of its own government to the people of its colonies; and as this government would carry prosperity with it, one would see the formation of great peoples, even in the forests, to which it had sent its inhabitants (EL, XIX.27; italics added).” But Montesquieu was deeply suspicious of the view that any state could secure political liberty on behalf of a foreign, subject people—the premise at the heart of Mill’s defense of empire. While a foreign nation can sometimes intervene to remove an upstart usurper in an historically free nation, we may expect nothing similar in the case of a nation long under despotic rule: “A free nation can have a liberator; a subjugated nation can only have another oppressor (EL, XIX.27).”

III. From Liberal Particularism to Traditionalist Conservatism?

If Burke’s colonial writings help to dissolve the charge that political particularism justifies imperialism, they carry an additional problem in tow: Is Montesquieu’s liberal particularism inherently linked with Burke’s brand of traditionalist conservatism? Did Burke understand Montesquieu better than Montesquieu understood himself, inasmuch as Burke’s political particularism is allied with reverence for the authority of traditional mores and institutions rather than simply

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65 In context, the comment clearly pertains to foreign liberators, not homegrown ones.
a practical knowledge of their power? More generally, do the meta-principles of the particularist really leave sufficient room for political and social change? This problem is akin to the one we have just addressed. Burke’s conservativism, like Mill’s view of empire, prods us ask whether political particularism can be wedded to normative liberalism without the vitiation of certain liberal values.

This is was among the questions that Benjamin Constant confronted, albeit not by design, in his *Spirit of Conquest and Usurpation*. Though it has perplexed scholars on many points, the work is generally understood to be an attack on Napoleon’s despotic rule and wars of conquest. But of special interest to us is not the general thesis of the work but rather the line of argument initiated in “On Uniformity,” one of the book’s longest chapters. Here, we find that Constant has both Napoleonic despotism and the Jacobin politics in his crosshairs, for they are implicated in similar crimes. He had closed the preceding chapter on the treatment of conquered peoples in lament:

> The conquerors of our days, whether peoples or princes, wish their empire to present an appearance of uniformity, upon which the proud eye of power may travel without meeting any unevenness that could offend or limit its view. The same code of law, the same measures, the same regulations, and if they could contrive it gradually, the same language, this is what is proclaimed to be the perfect form of social organization.

> …It is a pity that one cannot destroy all towns to rebuild them according to the same plan, and level all the mountains to make the ground even everywhere. I am surprised that all the inhabitants have not been ordered to wear the same costume, so that the master may no longer encounter irregular and shocking variety.⁶⁶

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In this way, Constant introduces chapter thirteen, a wide-ranging discussion of uniformity in laws and political institutions. The chapter recalls Montesquieu’s own treatment, “On ideas of uniformity (EL, XXIX.18).” Indeed, an earlier version of Constant’s chapter bore that very title, and he opened it by quoting Montesquieu’s discussion of uniformity at length.\(^67\) Here in the published version, Constant directs the reader to* Spirit* in a footnote: Montesquieu is one of the “two imposing authorities” on the subject of uniformity (Mirabeau is the other).\(^68\) While commentators have noted the Burkean tone of Constant’s treatment of uniformity, it is to Montesquieu that he refers his reader. Here we find a liberal defense of political and legal particularism that is of unmistakably Montesquieuian provenance.\(^69\)

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\(^68\) Just as Montesquieu had complained that ideas of uniformity infallibly strike “small spirits,” Constant announces that uniformity is the admiration of “narrow minds.” Likewise, each refers to Charlemagne as an advocate of uniformity. Constant is clearly tracking closely with Montesquieu’s text.

\(^69\) As Jacob Levy points out, some scholars have attempted to downplay both the importance of *The Spirit of Usurpation and Conquest* generally and “On Uniformity” in particular. Holmes argues that they represent the fruit of a temporary alliance of convenience between Constant and the royalist party. *Benjamin Constant and the Making of Modern Liberalism* (New Haven: Yale University Press, 1984). As evidence of Constant’s embarrassment over *Usurpation and Conquest*, Holmes cites the fact that it was not included in an early edition of his collected works. But Levy persuasively argues that this exclusion was no indication of embarrassment but rather simply a result of Constant’s desire to include only works focused on life under the Restoration and the Charter. Constant included *Usurpation and Conquest* in subsequent editions of the complete works. Jacob T. Levy, “Ancient and Modern Constitutionalism Revisited” (Unpublished, 2002). Holmes’ demotion of *Usurpation and Conquest* is consistent with his effort to downplay the importance of Constant’s debts to Montesquieu. In contrast to Holmes, Biancamaria Fontana argues that Constant “remained closer to the historical and sociological approach of Montesquieu and Adam Smith—the two writers he most admired and most often cited in his work—than to any form of more abstract analysis.” Fontana, *Benjamin Constant and the Post-Revolutionary Mind* (New Haven: Yale University Press, 1991), 18 ff.
Constant opens the chapter by wondering aloud at the fact that uniformity was never so fervently adored than during a revolution made in order to secure the rights and liberties of man. He refers, of course, to the French Revolution. On his view, the revolutionaries had joined two alien inclinations, for the will to uniformity is no friend of human liberty. Constant attempts to account for the attraction of uniformity in multiple ways. First, in its evenness, its symmetry, and its appearance of order, uniformity appeals to us aesthetically. Second, the erasure of local difference also has a directly political appeal within a nation and empire. Men are most vividly attached to local customs and local ways of life, and these attachments often prove to be germs of resistance to encroaching power. The lust for power demands their dissolution. Authority “rolls its heavy body effortlessly over them as if they were sand.” This was true in revolutionary France, and it is true in the age of Napoleon, for “at the bottom of both” lay the “will to tyranny.”

This tendency of local difference to resist overweening power is among the reasons Constant finds uniformity odious. In addition, he points to a second, subtler political advantage of maintaining imperfect institutions rooted in the mores of a people, rather than replacing them with new, perfect institutions. According to Constant, the “inherent merit” of a law is less important than the manner in which a

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people submit to it. If laws are revered because they seem to be the “legacy of
generations,” then obedience to these laws ennobles a people’s character rather than
rendering them servile.\textsuperscript{73} They can submit to these laws while maintaining their dignity
because the laws are “fused,” as Constant puts it, to their mores. The people are more
likely to regard these laws as legitimate than they are to regard new but more perfect
institutions as legitimate. Constant confesses,

I will say, to the great scandal of our modern reformers... that if I found
a people who, having been offered the \textit{most perfect of institutions,}
\textit{metaphysically speaking}, refused them in order to remain faithful to
those of its fathers, I would admire this people, and I would think it
happier in its feelings and in its soul under its faulty institutions, than it
could be made by all the proposed improvements.\textsuperscript{74}

Wholly new, “metaphysically perfect” laws and institutions do not tend to garner the
allegiance of the people as a matter of second nature, so they must be backed by greater
threats of force and more conspicuous state control. Institutions that are best, in the
abstract, may not actually prove as mild, moderate and humane in practice. This is not
due to any inherent defect in these institutions; rather, they simply cannot be sustained
without at least a season of severity. This is the trade-off involved in replacing a
multiplicity of inferior, diverse, existing institutions with superior institutions modeled
on an ideal. Once this calculus is understood, it becomes “evident that peoples placed
in different situations, brought up with different customs, living in different places,
cannot be subject to perfectly identical forms, usages, practices and laws without

\textsuperscript{73} Constant, “The Spirit of Conquest and Usurpation,” 75.
\textsuperscript{74} Constant, “The Spirit of Conquest and Usurpation,” 75
constraint that costs them much more than it is worth to them.”

For this reason, Constant regrets the loss of “those times when the earth was covered with numerous and vigorous peoples and mankind could stir and exert itself in every way in a sphere suited to its capacity. Authority had no need to be harsh to be obeyed.”

Aimed at avoiding cruelty, severity and political fear, the character of his argument on behalf of particularism is unmistakably liberal, and it recalls Montesquieu’s own liberal particularism.

Constant is careful to qualify his position: He insists that his respect for existing institutions excludes all injustice. Time and long use can never hallow injustice because there is always a wronged party who can never become so accustomed to the evil that it ceases to represent an injury to him. He explains, “Those who appeal to habit in order to excuse injustice remind me of that French cook who was reproached for making eels suffer when she skinned them. ‘They are used to it,’ she said, ‘I have been doing it for thirty years!’”

But this qualification was not enough to stop Constant’s critics from crying foul at his attack on uniformity. Several readers apparently saw his defense of “fusing” laws with traditional mores as an unacceptable concession to Burkean conservatism. Constant found the charge troubling enough to warrant adding a clarification to the
fourth edition of *The Spirit of Conquest*—a clarification longer than the original chapter on uniformity. Given the nature of the charge, Constant’s response reads as much like a critique of Burke as it does a response to his critics; for to satisfy his critics, he must show that considerable distance remains between Burke’s thought and his own. In other words, the addition contains Constant’s attempt to explain why a commitment to *particularism* does not necessarily entail an embrace of a full-blow Burkean conservatism. He opens the chapter on a defensive note:

Some seem to have believed that, in recommending respect for the past, I blamed all innovations, making no allowances for the progress of ideas… Yet I had excepted from my respect for the past all unjust institutions. I had recognized that no prescription could legitimate injustice. But it is certainly true that when it is simply a matter of imperfections, when the desired changes are not exacted by rigorous equity, but merely by their supposed utility, I think that one ought to proceed to those innovations only slowly and with reserve.

Constant here restates his original qualification (minus the culinary joke). But what exactly could it mean to exclude injustice from the foregoing argument about custom? Surely when Constant describes institutions and laws as imperfect or faulty, he is measuring them by a standard of justice as much as any non-moral standard (e.g., efficiency). They are presumably imperfect because they are less than fully just. So what can it mean to exclude injustice from the argument?

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Constant’s “injustice exclusion” is a rather unsatisfying reply to his critics, and it seems not wholly genuine, for as the clarification unfolds, Constant returns to speaking in terms which invite us to assume that less than fully just institutions are indeed included in his regard for the past. He suggests that his theory does indeed apply to the proposed abolition of “abuses,” and injustices are among the examples he cites (e.g., “the yoke of the priesthood” in Portugal). Perhaps we can spare Constant the charge of inconsistency if we construe his exclusion as applying only to gross injustices (slavery was his initial example) rather than more minor abuses. But what is clear is that his genuine response to his critics relies not on the injustice exclusion but rather on his account of political change, which promptly follows. Like Montesquieu, Constant sets out to show how considerable space remains for judicious reform within the bounds of his particularism.

But while Montesquieu turned to the general spirit in order to outline his approach to political change, Constant turns to the “spirit of the age.” In Constant’s hands, the spirit of the age lacks most of the metaphysical baggage it would later acquire. If you want to know what is the spirit of the age, simply acquaint yourself with the wishes of the nation. To follow the spirit of the age, follow public opinion.

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80 Constant, “The Spirit of Conquest and Usurpation,” 150, 153
82 At one point, Constant revealingly runs these two concepts together, referring to “the national spirit, the spirit of the age.” Constant, “The Spirit of Conquest and Usurpation,” 59.
83 Here Constant fails to distinguish between the wishes and capacities of a people.
Reforms must be in accord with the “ideas” and “feelings” of the people. Constant refers to the spirit of the age, rather than the spirit of the people, because he wants to emphasize the progressive character of mores. \(^84\) When unopposed, the human race marches gradually toward sunlit uplands. The task of the legislator is to keep in step with this march and to favor its “natural progress.”\(^85\)

Despite the historicist accretions, this adaptation of Montesquieu’s framework produces an approach to political change similar to that of Book XIX in *Spirit*. “In order to remedy abuses,” Constant counsels, “Let the people free themselves from them; let them, do not force them. By letting them you call all progressive forces to your aid; by forcing them, you arm many interests against you.”\(^86\) The resemblance to Montesquieu’s language is striking.\(^87\) Like Montesquieu’s Book XIX, Constant compares examples of hasty institutional change to examples of deliberate and gradual change. The philosopher-emperor Joseph II impatiently bypassed public opinion in his efforts to enlighten the people; his administration “went against their habits and prejudices.” By contrast, the policies of Russia’s Czar Alexander I garner from Constant praise that recalls Montesquieu’s tribute to Peter I. Through slow political

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\(^84\) Constant, “The Spirit of Conquest and Usurpation,” 156
\(^87\) Montesquieu counsels, “In general, people are very attached to their customs; taking their customs from them violently makes them unhappy; therefore, one must not change their customs, but engage the peoples to change them themselves (EL, XIX.14).”
reforms and subtle changes aimed at weakening the institution of serfdom (e.g., opening schools to serfs), Alexander has shown that,

By preceding theory, practice prepares the spirit to accept it, and the moment arrives when that theory, which is merely the exposition of what must be, will be received even better because it will simply be the explanation of what already is. 88

Alexander sought to create conditions for the cultivation of mores, customs and ideas that could support lasting institutional changes—namely, the transition to a non-feudal economic system and constitutional government. 89 He neither raced ahead of the spirit of the age nor blocked its advance; instead, he sought to favor its “natural progress.” 90

Constant strains to point out that his framework censures sluggish conservatism as severely as it does impetuous progressivism. The extreme conservative, no less than the Jacobin, fail to adapt their policies to the ideas and feelings of the people. “It is always the rights of public opinion which are in question: some do not wish to wait for it; others do not wish to march in step with it.” 91 Striking a tone that anticipates Tocqueville’s warning to wistful aristocrats in France, Constant chides those who would restore feudalism or reestablish nobility: “To restore… is only another way of innovating.” 92 Conservatives of this stamp are no less “systematic” and “obstinate”


89 After a failed coup attempt, Alexander I had a change of heart and many of his plans for reform languished.


than were the revolutionaries who wished to divide a nation into numbered districts. Both labor against the grain of the people, at cross-purposes with the spirit of the age.\textsuperscript{93}

Constant’s quarrel with Burke can be seen as an internecine feud between two political particularists of broadly Montesquieuian stock. The contrast between their critical appropriations of Montesquieu’s approach should help to dissolve the worry that a commitment to political particularism necessary entails an embrace of traditionalist conservatism. Burke joins to Montesquieu’s principles a reverence for the wisdom of generations and a sense of the incorrigibility of custom; Constant adds a belief in the progressive direction of human history. These auxiliary principles, and not those they have gleaned from Montesquieu, determine Constant and Burke’s differential sanguinity concerning the prospects for liberal political reform. Between these two theoretical heirs stands Montesquieu, who lacks both Constant’s historical progressivism and Burke’s brand of reverence for tradition. His own approach to political change is consequently more hopeful and endeavoring than that of Burke, but he lacks Constant’s faith that the forces of history will always befriend a moderate

\textsuperscript{93} While Constant thus denies the likeness of his approach to Burkean conservatism, he does not miss the opportunity to reaffirm his opposition to uniformity in law and politics. In the same clarifying chapter, he reprises his argument about innovation and constraint, and he adds an argument concerning the indeterminate nature of justice. He mockingly paraphrases the complaints of Voltaire and other advocates of uniformity: “What, two portions of the same empire are subjected to different laws because they are separated by a hill or stream of water! Is justice not the same on the two sides of a hill, or on the two banks of a stream of water?” Constant replies, “But laws are not justice: they are merely forms to administer it.” (Constant, “The Spirit of Conquest and Usurpation,” 154-155). While there is a natural standard of justice, no law code can be strictly \textit{deduced} from it. In this connection, consider Aquinas’ distinction between conclusions and determinations from the natural law. Thomas Aquinas, \textit{Summa Theologica}, II.1.95.2.
What is ultimately clear is that while Burke clearly took inspiration from Montesquieu and deployed his particularistic principles against colonial abuses, the political particularism of Spirit is no more inextricably bound to Burkean conservatism than it is to Mill’s imperial liberalism.

IV. Conclusion

Although many liberals and republicans of the late eighteenth and early nineteenth century either rejected or ignored Montesquieu’s anti-universalism, his political philosophy served as a point of departure for several thinkers who would follow him in attempting to join liberalism to a particularistic art of statesmanship. His liberal politics of prudence had a life beyond the pages of The Spirit of the Laws in the thought of Rousseau, Burke, Constant, Mill and others. But as I have suggested, these legacies carry problems and objections in tow. Rousseau indicates that Montesquieu, in his preoccupation with particularity, had failed to give liberty its due. J. S. Mill’s efforts to marry liberalism to political particularism force us to ask whether liberal particularism does not simply degenerate into liberal imperialism. Burke’s appropriation of Montesquieu’s thought challenges us to show how Montesquieu’s liberal particularism can be distinguished from traditionalist conservatism. As I have argued, only in the presence of certain auxiliary principles does political particularism

yield projects and outlooks inconsistent with fundamental liberal values. While Montesquieu’s *Spirit of the Laws* served as an important point of departure for the thinkers we have considered, each of his theoretical heirs critically altered and reshaped the bequeathal. This is as we would expect from a work designed not to make men read, but to make them think (EL, XI.20). Their appropriations of Montesquieu’s thought serve to highlight the strains that can attend a marriage of liberalism with particularism, but ultimately these strains do not derive from any necessary theoretical animus between modern liberty and political particularism itself.
SEVEN: Conclusion

One windy fall day in 2010, hundreds of Afghan children gathered on Kabul’s Nader Khan Hill.¹ They had come for kites on offer from the Americans. Banned under Taliban rule, kite-flying is a favorite pastime in Afghanistan, though it is customarily reserved for boys and men. The United States Agency for International Development (U.S.A.I.D.) had organized a kite giveaway in order to promote gender equality and use of the justice system. The kites, emblazoned with slogans about women’s rights and the rule of law, would be given to boys and girls alike. Through play, they would begin to acquire ideas and habits of great political import. But the event did not go as planned. Afghan policemen seized dozens of kites, and they beat the children with sticks and water bottles to keep them from crowding the distribution tent. Amidst the commotion, very few girls sought or managed to get one of the thousand kites on offer. One aid worker succeeded in pushing her way through a throng of boys to give a kite to a small girl. Triumphant, the little girl ran back to her father, who seized the kite and gave it to her brother. “He is my son and he should get the kite,” the father explained. The event’s chief organizer claimed success when the kites were gone. But one U.S.A.I.D. contractor, Abdul Manem Danish, expressed some doubt. “That’s not a very good example of the rule of law,” he said. “Maybe it is the nature of these people that needs to be changed.”

Child’s play, as it turns out, is a serious subject. This mostly depressing tale is illustrative of the political questions I have attempted to address in this dissertation. The story suggests that Americans may indeed recognize, at some level, that informal cultural and social patterns act as constraints upon the establishment and consolidation of liberal democratic institutions. But the story also exemplifies the profound difficulty of grasping both the strength of these constraints and the suitable means of their attenuation. I have written the present study under the conviction that Montesquieu’s political philosophy can contribute to our understanding of these questions and the moral thicket that encircles them.

As I have argued, Montesquieu’s contribution is bound up in his sophisticated union of liberalism with political particularism. Sharon Krause correctly suggests that the “most famous and influential aspects” of The Spirit of the Laws are Montesquieu’s theory of the separation of powers and his account of the political effects of social and cultural factors. On the basis of the former, he has been regarded as father of liberal constitutional design. By virtue of the latter, his political science has been regarded as the forerunner to modern sociology. There is a considerable body of scholarship on both of these aspects of his thought, but to date, there has existed no extended account

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of the relationship between these two teachings. This is no doubt due in some measure to the view, sometimes stated and sometimes not, that these elements of his thought are two ships passing on a dark night. Such a view is incorrect. In the present study, I have provided an account of the relationship between Montesquieu’s liberalism and his political particularism (the practical offspring of his descriptive political sociology). I have argued that so far from being unrelated or contradictory, these elements of his thought are theoretically harmonious and mutually reinforcing.

This dissertation has examined the nature of this relationship from a number of different vantage points. I began by arguing that Montesquieu developed this unified liberal particularist framework in conversation with both ancient and modern writers. Sixteenth and seventeenth-century defenses of absolute monarchy in France appealed to abstract rational principles, claims of universal justice, natural law, and the value of uniformity. But the constitutionalist defense of liberty and limited power was linked to ideas of national particularity, local usage, custom, and resistance to so-called “written reason” inscribed in foreign law. Viewed in the context of these sources, particularism seemed the natural ally of liberal constitutionalism. And so it was. Similarly, when we turn to his ancient sources, we find that Montesquieu’s appropriation of classical political particularism constitutes an essential element of his case for modern constitutional government. He employs principles of classical political science in order to dethrone the classical republican ideal and replace it with a more suitably modern regime of liberty.
Montesquieu’s conception of liberal constitutionalism is especially complementary to political particularism because he was a regime pluralist—that is, he thought a fairly wide range of balanced regimes could rule moderately and secure the liberty of the citizen. So while free and moderate government requires a suitable cultural substructure, reformers enjoy considerable flexibility in choosing among institutional forms. This makes it easier to match these institutions to the people’s disposition. After offering this account of Montesquieu regime-pluralist conception of the liberal “arrangement of offices” (to borrow Aristotelian language), I offered an account of the liberal “way of life” as it is presented in *The Spirit of the Laws*. As I argued, Montesquieu presents a rich “theory of interface,” a well-developed conception of the interpenetration that occurs between our political and non-political selves or our public and non-public identities. The patterns of authority and moral habits forged in ostensibly non-political domains inevitably influence and constrain the political domain, and the inverse also holds true.

In response to this empirical verity, Montesquieu sketches an account of political change that operates within the framework set by his liberal and particularistic principles. On his view, liberal and moderate institutions are better than despotic institutions because they provide both security and the opinion of security. They diminish the presence of civic fear. The moral superiority of liberal government to other forms is therefore partly contingent upon its reception. But sometimes, even when

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aiming to craft laws and institutions that are free or moderate in themselves, reformers can act in ways incongruous with a people’s customs, ideas and even their capacities. In such cases, the free institutions, while free in form, are not liberating in fact, because they cause the people to experience a species of fear or disquiet redolent of despotic institutions. Moreover, if new and improved institutions represent a clean break with all older institutions to which the people were affectively attached, the new government may soon be required to employ harsher penalties than the old. This is a perverse outcome by Montesquieu’s liberal lights, because the great good of liberal government lies in its mildness and gentleness, not in its abstract justice.

To avoid these difficulties, reformers can often find ways to accommodate free institutions to the distinctive customs and habits of the people, grafting the new onto the old and using what is good or neutral within the old to support the new. But when the entrenched customs and habits are profoundly illiberal, this is not possible. In such cases, it is necessary for reformers and legislators to prepare a people for legal and political improvements. This means that cultural change will often need to precede and keep a step ahead of political and legal changes. Now, as a liberal, Montesquieu holds that it is beyond the legitimate scope of governmental power to uproot “indifferent” private customs. This is a major problem, because many non-public customs (even seemingly unimportant ones, like who gets the kite) have trickle-up political implications. So to liberalize politics and law, reformers must find a way to liberalize culture without relying exclusively on state coercion. To negotiate this moral and
practical problem, they must find ways to liberalize culture indirectly, not by directly attacking established mores but by introducing new salutary mores that in time will leaven the whole lump of society. Among these indirect means is the encouragement of commerce. Montesquieu does not turn to commerce simply because he considers it a technically efficient means of promoting the preconditions of political liberty. He focuses upon commercial activity because it represents a potential path to fostering mores consonant with “better laws” without resort to illiberal means of coercive cultural transformation, which are beyond the scope of law. The doux commerce thesis emerges as a distinctively liberal response to a distinctively liberal problem.

But as I have emphasized, Montesquieu does not simply mean to propose a “method” for establishing free institutions. The Spirit of the Laws is a cautionary work. It instructs friends of liberty, but it also warns them. Customs are almost invariably harder to change than laws; orchestrating beneficial changes to custom and law requires considerable knowledge of place as well as knowledge of legal and political science. When the liberal political reformer understands both the limits of his capacities and the psychological dimensions of liberty, he will proceed with considerable care. Learned friends of liberty—those versed in the empirical and moral constraints upon political reform—should not entertain exuberant hopes of rapid transformations, for politics is “a dull rasp which by slowly grinding away gains its end (EL, XIV.13).”

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above all, of moderate and liberal politics. The despot’s will produces its effect “as infallibly as does one ball thrown against another (EL, III.10).” Formalistic liberal universalism mimics the despot; it yields an apolitical approach to political change. But Montesquieu’s approach to political liberalization reenacts the slow grinding that characterizes liberal government itself. *The Spirit of the Laws* promises neither universal political liberation, nor infinite moral and political progress, nor even the achievement of freedom through general enlightenment.

This interpretation of Montesquieu’s thought opposes the common tendency to ascribe to liberal theory—and in particular, to Enlightenment liberal theory—a serial neglect of what Oakeshott called the topical and the transitory. I challenge the view that Enlightenment liberalism uniformly peddled a prescription for a universal regime. Montesquieu’s thought provides us with an example of liberal theory that resisted, on principle, universalistic impulses. While it is certainly true that some leading varieties of liberal democratic thought make common cause with political universalism, this theoretical orientation is not part of liberalism’s genetic make-up. We might say that it is a *mutation* to which liberalism’s double helix is prone—but it is a mutation nonetheless. As Montesquieu suggests, genuinely liberal statecraft takes careful stock of the ways in which place, culture and history must complicate the instantiation of normative liberal values in particular nations.

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6 History is the “constant ebb and flow of liberty and empire (MP, 100).”

Still, Montesquieu’s liberal particularism will not satisfy every critic of liberal democracy, nor for that matter, every liberal democrat. Some will see in his praise of commerce not an antidote to global adventurism but the germ of it; for what is the *doux commerce* thesis if not a justification for western nations bearing their modern liberal values to the four corners of the earth? Isn’t global commerce simply another form of liberal universalism? This was the subject of Rousseau’s incisive allusion to Montesquieu in the “Preface to *Narcisse*,” where he writes, “Everything that facilitates communication among the various nations carries to some, not the virtues of the other but their crimes, and among all of them alters the morals that are proper to their climate and the constitution of their government.”

As Pierre Manent comments, “With exquisite critical finesse Rousseau gathers in one sentence his adversary's two great theses… and makes us ask whether they are not contradictory.” Benjamin Constant, a friendlier heir than Rousseau, similarly noted the homogenizing effect of commerce: Trading nations tend to adopt “customs and habits which are almost identical.” This line of argument is particularly familiar to us today in the context of debates over

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economic globalization, whose critics complain that western investments and goods bring with them western ways of life and pressure to adopt western political ideas.¹¹

When viewed at low resolution, this objection seems to tell against Montesquieu’s approach, but it also provides an occasion to clarify his meaning. The normative foundation of Montesquieu’s political particularism does not consist in a respect for cultural difference or tradition as such.¹² In this way, Montesquieu is distinct from both contemporary multi-culturalists and theorists of presumptive tradition like Edmund Burke.¹³ One purpose of The Spirit of the Laws is to explain scientifically what was previously thought to be inexplicable—variety in human custom and law. Montesquieu invites reformers to seek to understand more fully “the causes that govern men” and to prepare their nations for better institutions through indirect action upon those causes, including cultural causes. Political change will often require cultural change. If cultural obstacles to political reform can be removed without violence or the “tyranny of opinion,” Montesquieu welcomes such changes to an extent that Burkeans and multiculturalists cannot.


¹² See Steven Kautz, Liberalism and Community (Ithaca: Cornell University Press, 1997), 96

If the foregoing objection is likely to come from liberalism’s critics, there is another more fundamental objection to Montesquieu’s approach likely to issue from liberal democratic quarters. Some will argue that there is no need to work ourselves into a lather asking how to “match a regime to the people.” For such a question assumes that political change is being directed from above. Rather than turning to Montesquieu’s elaborate speculations, we should seek a simpler solution to the problem of political universalism in *democratic power*. As Donald Lutz argues, popular sovereignty is “the best way of preventing the imposition of ideology that attempts to change people rather than accommodate them as humans with different histories.”

Popular sovereignty is the efficient way of matching governments with characteristics of humankind in general and specific people. A thoroughly democratic approach to political change is the best way to avoid unworkable designs that are incongruous with the history of the people. Despite his support of imperial liberalism, John Stuart Mill expressed a similar view in an essay on the Californian Constitution:

> Perhaps the truth is, that the constitutions which will not work are those which are made for the people, while those which do work, such as the American, are made by the people; a fact which is in itself a guarantee that the ideas which they embody are such as the people are already familiar with, and attached to, and are therefore both capable and desirous of making them ‘work.’

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So obvious was this truth in Sheldon Wolin’s view that he suggests it is the hidden teaching of *The Spirit of the Laws*: Montesquieu deliberately developed a messy political science of ridiculously complex causal relationships in order to induce the legislator to throw up his hands and despair of reforming society on his own.\(^{16}\) This would leave considerable room for the “democratic reason” of self-governing citizens.

The democratic objection, which Wolin puts in the mind of Montesquieu himself, is a compelling one. There is certainly some truth in it. If you want be sure that institutional innovations suit the people’s disposition, why not just ask them what they think? Or better yet, let them form the institutions themselves.

From a theoretical point of view, Montesquieu’s failure to consider the role of popular sovereignty in combating the problem of rationalistic universalism is probably a shortcoming of his approach. But for a few reasons, popular sovereignty does not completely solve the problem. First, and perhaps most obviously, this solution assumes too much about the “disposition” (in Montesquieu’s language) of peoples. Not all peoples are equally prepared to make use of popular sovereignty even or especially in its most radical form, i.e., in choosing and transforming political institutions. For instance, it would be little surprise if a given people who were offered the chance to shape their own political institutions were found to have simply deferred to the views of some class of citizens possessing customary authority. Second, and relatedly, this

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objection suffers from the old democratic neglect of the role of elites in politics. Montesquieu addresses leaders. A leaderless movement is a political chimera. And as soon as we make some distinction between the people and their leaders, we face afresh the problem of matching institutions to a people. Democratic leaders may be better at doing this than enlightened despots or foreign interventionist powers, but their record is far from perfect. Popular political movements have often pursued legal and political innovations poorly suited to the customs and capacities of the nation. So while democratic power may sometimes represent a check upon projects of political universalism, it probably does not dissolve the need for an approach like Montesquieu’s.

But in the end, the real shortcoming of The Spirit of the Laws is that it cannot finally relieve us of the need to use our own moral and political judgment in particular cases. Montesquieu himself advert to this limitation: “I do not speak of particular cases: as mechanics has its frictions which often change or check its theoretical effects, politics, too, has its frictions (EL, XVII.8).” Without analyzing all the “frictions” in detail, it is difficult to say conclusively whether the principles of liberal particularism can underwrite a thoroughgoing critique of U.S. policy in Iraq—or kite-flying in Kabul. Instead, Montesquieu’s political thought provides us with an empirically-informed ethical framework for evaluating projects like these. This framework generates some middle-range principles that do not always yield decisive answers in particular cases but
can provide practical guidance as we consider the question of liberal democracy’s global career.

First, Montesquieu’s liberal particularism entails a presumptive judgment against the initiation of major international projects of forcible regime change and state-building. This is not an absolute negative—desperate times may require desperate measures—but his approach furnishes ample reason to view such endeavors with profound moral and pragmatic suspicion. Second, his work suggests that whether in the context of foreign occupation or foreign aid, democracy promotion efforts should focus not only on political and legal institution-building but also on activity in the non-political departments of human life. This might mean enhanced concentration upon carefully designed education programs—especially for women and girls—as well as “civil society” programs with modest aims. Third, these foreign aid programs should

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not hold too rigidly to any one set of political institutions or any single law code as the *sine qua non* of liberal democracy.\(^{19}\) Fourth, and relatedly, foreign democracy assistance programs should partner as often as possible with local organizations on the principle that such organizations are more likely than foreign aid contractors to understand what Montesquieu calls the mores and manners of the people. Fifth, advocates of liberalism’s global spread should continue to entertain the possibility that their aims can be advanced through working with, and not against, relatively moderate autocracies such as we find in Jordan and Oman.\(^{20}\) Sixth, while they should not expect the progress of global commerce to rid the world of despotism, friends of political liberty should also not grow weary of pursuing new avenues for economic opening as

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\(^{19}\) Consider Risse and Börzel’s complaint that the European Union follows “one single cultural script that it uses to promote democracy, human rights, and the rule of law across the globe.” They continue, “‘One size fits all’ appears to be the mantra of EU democracy promotion. If the programs vary at all, it concerns their budgetary allocations.” Tanja Börzel and Thomas Risse, “One Size Fits All! EU Policies for the Promotion of Human Rights, Democracy and the Rule of Law,” delivered at Promoting Democracy and the Rule of Law Workshop, Stanford University Center for Democracy, Development and the Rule of Law, October 2004. Cf. Thomas Risse and Tanja A. Börzel, “Venus Approaching Mars? The European Union’s Approaches to Democracy Promotion in Comparative Perspective,” in *Promoting Democracy and the Rule of Law: American and European Strategies*, eds. Amichai Magen, Thomas Risse and Michael McFaul (Houndmills, UK: Palgrave-Macmillan, 2009), 34-60.

This would include the encouragement of international commerce as well as vibrant local commerce.

Montesquieu speculated that it might take “seven or eight hundred years” for his ideas to become truly useful (MP, 1940). But perhaps their day has arrived five centuries ahead of schedule. Montesquieu’s work provides fresh moral reasons for aspiring liberal reformers and state-builders to ask soberly whether cultural conditions will permit their contemplated institutional innovations to produce the benefits they are designed, in theory, to impart. And he demonstrates that when theorists and policymakers embrace both liberal constitutionalism and political particularism, their loyalties remain undivided.

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21 Consider J. Ernesto López-Córdova and Christopher M. Meissner, "The Impact of International Trade on Democracy: A Long-Run Perspective," World Politics 60.4 (2008), 539-575, which finds significant long-run positive effects of international trade on democracy scores.
Bibliography


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Biography

Keegan Callanan was born January 18, 1981, in Burlington County, New Jersey. He attended Bowdoin College as an undergraduate, where he received his A.B in Government in 2003. After two years with Teach for America, he matriculated at Duke University to study political science, obtaining his A.M. in 2008. He has been the recipient of the H.B. Earhart Fellowship, the Richard M. Weaver Fellowship, the Humane Studies Fellowship and the John H. Hallowell Fellowship. He finished his dissertation while in residence at the University of Virginia on a pre-doctoral fellowship with the Program on Constitutionalism and Democracy. He is author, with Michael Allen Gillespie, of “Toward Noon: On the Genealogy of Morals,” in Paul C. Bishop (ed.), A Companion to the Works of Friedrich Nietzsche (Camden House, 2012).