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Montesquieu

I

JEREMY BENTHAM, in one of the lyrical moments which are more frequent in his writings than is commonly supposed, writing half a century after the death of Montesquieu, exclaimed: 'Locke – dry, cold, languid, wearisome, will live for ever. Montesquieu – rapid, brilliant, glorious, enchanting, will not outlive his century.'¹ And, adding the name of Descartes to that of Montesquieu, he condemned both to oblivion on the ground that, interesting as their views may once have been, they contained a greater number of false propositions than true. These great systems must be accorded due tribute, and, after that, decent burial. For they have played out their part. The errors of which they are largely compounded must be rooted out, and not again allowed to haunt the minds of men.

This judgement, with its characteristically quantitative assessment of merit, has itself been long forgotten. But it may have seemed not unreasonable in the nineteenth century, particularly towards the end of it, when much that Montesquieu stood for appeared to have been peacefully absorbed in the outlook and institutions of civilised nations. Montesquieu advocated constitutionalism, the preservation of civil liberties, the abolition of slavery, gradualism, moderation, peace, internationalism, social and economic progress with due respect to national and local tradition. He believed in justice and the rule of law; defended freedom of opinion and association; detested all forms of extremism and fanaticism; put his faith in the balance of power and the division of authority as a weapon against despotic rule by individuals or groups or majorities; and approved of social equality, but not to the point at which it threatened individual liberty; and of liberty, but not to the point where it threatened to disrupt orderly government. A century after his death most of these ideals were, at least in theory, shared by the civilised governments and peoples of Europe. There were, it is

¹ *The Works of Jeremy Bentham*, ed. John Bowring (Edinburgh, 1843), vol. 10, p. 143.

MONTESQUIEU

true, despotic systems in the Russian Empire and in Asia, clericalism in Spain, intermittent chaos and corruption in Latin America, barbarism in Africa, a disquieting growth of nationalism and imperialism in Europe. But the essentials of Montesquieu's teaching formed the heart of the liberal creed everywhere; his doctrines had been well understood; it did not seem that he had anything new to tell the twentieth century. Time had made patent his errors. His knowledge of history, geography, ethnology, had lagged behind even his own times. His most famous doctrine, that of the separation of powers, an enthusiastic but mistaken tribute to the system that he had so falsely imagined to prevail in England, only to mislead Blackstone and De Lolme in their turn, had proved impracticable in France during the great Revolution, and had been much too faithfully adopted in the United States, with results not altogether fortunate. The conservative aspects of his teaching – the emphasis on the value of slow, 'organic' evolution as against precipitate reform; on the unique character of different civilisations, and traditional ways of life, and the undesirability of applying the same uniform methods to them all; on the virtues of hereditary aristocracies and inherited skills and professions, and on the vices of mechanical equality – all these had surely been better and more eloquently stated by Burke, and integrated into a great synoptic metaphysical vision by Hegel and his followers. As for the liberal aspects of his teaching – his defence of individual liberty, the integrity and independence of the administration of justice, and civilised and humane relations between nations and individuals alike – these had long degenerated into commonplaces of liberal eloquence which begin with Tocqueville and Mill and rise to a pathetic height with Jaurès and President Wilson. Finally there was the most original achievement of all – the adumbration of the sciences of sociology and anthropology, founded upon the comparative study of human institutions everywhere, and of their physical and psychological causes and conditions. This, in the hands of the great French positivist school, as well as their English and German rivals and disciples, had become a flourishing, highly specialised *métier* the practitioners of which looked back upon this eminent precursor with respect and curiosity, but no more. For his science was a mere collection of epigrams and maxims: his errors of fact were too numerous, his social history a string of anecdotes, his generalisations too unreliable, his concepts too metaphysical, and the whole of his work, suggestive though it might be in parts, and an acknowledged masterpiece of literature, was

unsystematic, inconsistent, and in places regrettably frivolous. He was an honoured ancestor, a frozen Augustan figure in a Roman toga, and no more. Whereas his immediate successors, Rousseau, Kant, Hume, Bentham, had said things still capable of agitating men's minds, and causing hot dissension, Montesquieu was chiefly remembered as a writer of great charm, an observant, civilised, sceptical *grand seigneur*, the author of a work once greeted as epoch-making, and vastly influential in its own day, but, a century after its appearance, looked on as a huge fossil in the stream of thought, a monument to an age dead and gone. This was certainly the view of Comte and Buckle, Herbert Spencer and Durkheim, themselves half forgotten now, and scarcely anyone in those days troubled to deny or to doubt it. However just this view may have seemed in its own time, it is not, I think, so plausible in ours. On the contrary I should like to argue that Montesquieu's views have far more relevance to our own situation than those of his nineteenth-century successors. It is their views rather than his that seem obsolete in the bleak light of today.

11

Let me begin with some well-known facts: Charles-Louis de Secondat, Baron de la Brède, was born in the Castle of La Brède, near Bordeaux, on 18 January 1689. His father was a magistrate, his mother a pious lady. A beggar who happened to be passing by the castle was given him as a godfather so that he might all his life remember that the poor were his brothers. He was brought up by peasants and taught by priests, and in his youth dabbled in the natural sciences, biological rather than physical. At the age of thirty-two he made his literary début with the *Lettres persanes*, which was received as an audacious, beautifully written, and entertaining satire on French society and the church of Rome, perhaps bolder than, but not in essence very different from, the fashionable sceptical literature of the time, of which a flood had been released by the death of Louis XIV. He had the routine career of an eminent provincial official, who was also a man of letters. He inherited from his uncle the title of Montesquieu and the office of Président à Mortier of the court of Bordeaux, was duly elected to the Bordeaux Academy and later to the *Académie française*, settled down to life on his estate and his judicial functions, paid occasional visits to Paris intellectual salons, and to-

wards the fortieth year of his life began the work which some twenty years later was to give him world fame. He died in Paris seven years after completing it, universally admired and mourned.

It is clear that he thought that he had made a stupendous discovery. He tells us that after a long and painful period of intellectual wandering, during which the light appeared to him intermittently, only to be lost again in the darkness, he suddenly perceived a central principle which made all things clear, and which made the chaos of hitherto unrelated facts appear as a lucid and rational order.¹ He speaks of this moment of illumination like others who had had a transforming experience. Descartes and Vico, Hume, Gibbon and Rousseau have spoken in similar terms of the crises which had changed their vision of life.

What was it that moved this very sober and sceptical man so deeply? He lived at a time when the world appeared to rationalist thinkers to be divided into two realms: on the one hand that of nature, the laws and principles of which had at last been discovered, so that the movements of every particle in space could at last be explained in terms of a few simple laws and rules of deduction; and on the other, that of human habits and institutions, where everything still seemed uncharted and uncharitable. The human scene presented itself as a field for the play of blind chance and irrational forces, good and bad fortune, the whims of despots, adventurers, and popular passions, which left the way open to metaphysical and theological explanations unsupported by anything worthy of the name of evidence, conducted by methods the opposite of rational, the happy hunting-ground of bigots and charlatans and their dupes and slaves. This was the standard attitude of the anti-clerical opposition; and the writings of the rationalists of the time, stifled by the ecclesiastical censorship during the last years of Louis XIV, had been directed to exposing the scandal. It was not surprising that Descartes had dismissed history, and humane studies generally, as being of no interest to seekers after the truth: the subject-matter seemed incapable of yielding precise definitions, clear rules of evidence, axioms, from which true conclusions

¹ "...quand j'ai découvert mes principes, tout ce que je cherchois est venu à moi". *De l'esprit des lois* (hereafter *E.L.*), préface. *Oeuvres complètes de Montesquieu*, ed. A. Masson, 3 vols (Paris, 1950-55), vol. 1 A, p. lxii. All subsequent references to Montesquieu's works are given in this edition, whose first volume is a facsimile of the 1758 edition in three volumes, here referred to as A, B, C.

could be deduced by unassailably valid means. Descartes spoke of history as a tissue of idle gossip and travellers' tales, suitable only for whiling away an idle hour. Vico had, indeed, claimed that he had found a thread in this seeming labyrinth, and could organise the scattered data by means of the new principles which he had brought to light. But he was an obscure, poverty-ridden Neapolitan recluse, and no one in France read him, or paid the slightest attention to him at this time. The story that Montesquieu had read the *Scienza nuova* seems to be pure legend. He speaks as if, for the first time in human history, he had uncovered the fundamental laws which govern the behaviour of human societies, much as natural scientists in the previous century had discovered the laws of the behaviour of inanimate matter. He speaks of the genesis of legal systems, but he obviously means something far wider: the entire institutional framework within which specific human societies live; not merely their systems of law, but the patterns, and the laws of the development, of their political, religious, moral and aesthetic behaviour. Once these are grasped, a science of man is possible. Henceforth a rational science of government can be constructed, and, what concerns him more closely, the behaviour of both governors and governed can be tested by it: a social technology can be elaborated, means can be fitted to ends in accordance with principles derived from experience and observation.

Montesquieu is a child of his age in attributing human misery largely to fear of the unknown, the unnerving and debilitating effect of ignorance and superstition, and the able exploitation of these by charlatans and power-seekers in all spheres. The crippling sense of the fortuitousness and precariousness of all that depends on human relationships can and must be dissipated once and for all. Just as discoveries in the realms of physics and biology have transformed such very different arts as architecture and medicine, so his great social discoveries should be able to transform the art of government in its widest sense, and create societies in which men control their own destinies, instead of remaining at the mercy of natural forces and their own vices and follies. To this end societies must be studied in the systematic way in which anatomists study human organisms, or zoologists and botanists determine the behaviour of animals and plants. In a celebrated passage Montesquieu stated the central conception on which his work was to be based: 'Men are governed by many things: climate, religion, law, the maxims of government, the examples of past things, customs, manners; and from the combination of such influences a general

spirit is produced.¹ Societies are not fortuitous collections of heterogeneous elements, nor artificial constructions; they are forms of natural development, and the laws which men obey should be adapted to the character of this development. Human lives are subject to various causes of which some are unalterable, while others can be changed, but the process of change is always slow and, at times, very difficult.

Each human society differs from every other. Hence laws

should be so adapted to the people for which they are created, that it should be a great coincidence if the laws of one nation suit another ... They ought to be fitted to the *physical conditions* of a country, to its climate, whether cold, hot or temperate; to the nature of its soil, to its situation and extent, and to the way of life of its people whether it is agricultural or pastoral or that of hunters. They ought to be adapted to the degree of liberty which the constitution can bear, to the religion of the inhabitants, to their disposition, their wealth, their number, their commerce, and to their habits and manners. Finally they are connected with one another, with their source of origin, with the design of the lawgiver, and with the order of things in which they are established. They must be considered from all these points of view.

This is what I propose to do in this work. I shall examine all these relationships which collectively form what may be called *the spirit of the laws*.²

These were to be the principles of the new sciences of sociology, anthropology and social psychology; and one can understand why Montesquieu was so profoundly excited by his discovery. Neither God nor chance rule the world; Bossuet and the sceptics are equally mistaken. The behaviour of human beings, both individually and in the aggregate, is in principle intelligible, if the facts are observed patiently and intelligently, hypotheses formulated and verified, laws established, with the same degree of genius and success – and why not? – as had attended the great discoveries of physics, astronomy and chemistry, and seemed likely soon to bring about similar triumphs in the realm of biology, physiology and psychology. The success of physics seemed to give reason for optimism: once appropriate social laws were discovered, rational organisation would take the place of blind improvisation,

¹ *E.L.* xix 4: vol. 1 A, p. 412.

² *ibid.* i 3: vol. 1 A, pp. 8–9.

and men's wishes, within the limits of the uniformities of nature, could in principle all be made to come true. Never again was there so much confidence as in the eighteenth century; Helvétius and Condillac, Holbach and Condorcet, and, in a more qualified degree, Diderot and Turgot, Voltaire and d'Alembert, believed that they were living on the threshold of a new age, within sight of the ideal ending. The enemy was still strong, but the advance of science would inevitably render him progressively more ridiculous and impotent. Nothing could in the end stand in the path of scientific knowledge, and knowledge alone could make men happy and virtuous, wise and free. This victorious gospel travelled far beyond the confines of the French *salons*, it found a responsive echo in almost every country in Europe, and even in Russia. The darker the oppression, the brighter the future seemed. In England, admired as the freest and most enlightened society of the age, enthusiasm was more moderate, but here too the doctrine was viewed with much benevolence or sympathy. Of its American career there is scarcely need to speak. The materialist aspects of this teaching were attacked on moral grounds by Rousseau and Mably, and on religious grounds by a handful of Christian theologians, Catholic and Protestant, but scarcely any serious intellectual arguments were, until late in the century, advanced against it. Not since the Middle Ages had western European thought achieved such solidarity. High as the social optimism of the nineteenth century sometimes rose, it did not again mount to the peaks reached at the time of its birth, in the early years of Louis XV.

Montesquieu, who can, in some sense, be regarded as one of the fathers of the Enlightenment, did not altogether share in this mood. There is a sceptical note which runs through all his writing, and it upset the more serious and ardent reformers; some of his opinions on specific political and social questions irritated the Encyclopedists, and made them suspicious of his ideals. It was clear, for instance, that however warmly he may have approved the attacks of his young friend Helvétius on the injustice and the cruelty, the intolerance and the corruption, the ignorance and the stupidity of both church and state in France in his time, he had little sympathy with his more positive and revolutionary doctrines. Montesquieu's reasons for this, which critics in his own and in the nineteenth century were inclined to put down to his timidity and natural conservatism, have become a good deal clearer to us today.

By temperament Montesquieu is an empiricist who seeks to explain everything by naturalistic means wherever and whenever he can. He inherited certain metaphysical concepts, such as natural law and natural purpose, which enter into the thought of the majority of enlightened persons in his time, even when they profess to be wholly emancipated from them. Nevertheless, what he principally stressed was the fruit of observation. He observed curiously, minutely and insatiably, all his life. His accounts of his travels, his historical sketches, his scattered notes on a wide variety of topics, are detailed, vivid and penetrating. He was fascinated by what he saw and what he learnt, for its own sake, whether or not it offered evidence for a hypothesis or pointed a moral that he wished to emphasise. Hence the numberless digressions and asides with which his works abound, and which seem merely diverting to those who expect a systematic, logically constructed political treatise, and treat facts solely as material for generalisations and laws. Although ostensibly in search of such laws, Montesquieu loses himself in concrete detail. This alone is real for him: his vignettes of characters and situations are not stylised, neither caricatures nor idealisations in the manner of his century. His Persians, whether at home or abroad, are neither naïve savages nor monsters of malicious insight; Usbek and Rica are neither superior nor inferior to the Parisians whom they describe, but so dissimilar that what is obvious and normal in one culture seems perverse and ludicrous to another; each group of persons sets off the features of the other in high, often ironical, but never consciously exaggerated, relief. The same episodic method is used in *De l'esprit des lois*: the author delights too greatly in particular facts or events for what they are in themselves to press them too hard into the service of the hypotheses they are called in to support. Many efforts have been made to explain the order of the chapters of *De l'esprit des lois*, which on the face of it is a shapeless amalgam of disquisitions on various topics, in no apparent order. It would be ungenerous to disparage the devoted labours of so many scholars and commentators, yet one sometimes wonders if they are not all so much misdirected ingenuity. Montesquieu is not a systematic philosopher, not a deductive thinker, not a historian, not a scientist, and one of his great merits lies in the very fact that although he claims to be founding a new science in the spirit of Descartes, his practice is better than his professions, and he is, in

fact, doing nothing of the kind, because he realises that the material will not allow of it. With the result that, while on the one hand he knows that investigation of social facts is indispensable to the task which he has set himself, he is at the same time dimly aware of the fact that to attempt to marshal the data into some pre-established pattern, whether metaphysical or inductive, is, in fact, an excessively artificial proceeding, repugnant to the nature of this particular topic, and will turn out, as later sociology has all too often proved to be, exceedingly sterile in results. Indeed, he virtually says as much: 'On ne s'est guère jamais trompé plus grossièrement que lorsqu'on a voulu réduire en système les sentiments des hommes, et, sans contredit, la plus mauvaise copie de l'homme est celle qui se trouve dans les livres, qui sont un amas de propositions générales, presque toujours fausses.'¹

But if the sentiments of men cannot be reduced to general propositions, how is one to proceed? What does a new discovery consist in if it is not achieved by means of generalisations derived from the carefully amassed facts (according to methods recommended by, say, Auguste Comte or Herbert Spencer a century later) and applied to the particular cases that are of interest to the political scientist or the practical legislator or administrator? For all that Montesquieu speaks of Cartesian methods, he does not, fortunately for himself and posterity, apply them. What he does is rather to advance tentative principles and hypotheses; to defend them by adducing the never wholly conclusive evidence of observation, and employ them, i.e. their own best judgment, in the light of what he calls reason, i.e. their own best judgment, in the manner which the subject-matter itself seems to call for; not mechanically, nor by experimental methods which could, in principle, be taught to competent but uninspired practitioners, in the way in which, for example, chemical or physical methods can, to a large extent, be taught. Montesquieu's principles resemble maxims and aphorisms more than conclusions of careful inductions. So, for example, he makes no serious attempt to adduce evidence for a proposition as fundamental to his entire thesis as that man is by nature social, and that there is, therefore, no need for a Hobbesian hypothesis of social contract to explain why men gather in societies. He

¹ *Mes pensées* 30 (549): vol. 2, p. 9. In the Masson edition the *Pensées* are numbered in the order in which they appear in Montesquieu's manuscript notebooks; the number in brackets refers to the order adopted by M. H. Barchausen in the first edition of the *Pensées: Pensées et fragments inédits de Montesquieu* (Bordeaux, 1899, 1901).

merely asserts, without much argument, that Hobbes's man in a state of nature, hostile, isolated and self-centred, is a myth; that the genesis of society needs no special explanation: for society is the result not of artificial measures to prevent mutual extermination, or of the deliberate search for security or power, but comes into being as a result of biological laws as naturally as do flocks of birds or herds of animals; so that wars and fears of wars, so far from being a motive for social cohesion as Hobbes had taught, only occur after societies have come into being, when a man, in combination with other men, feels strong enough to attack others out of a desire to dominate or destroy rival power-seekers, a desire which is itself necessarily social – capable of arising only in communal life. Moreover, he thinks² that human societies should not be looked at as collocations of isolable human atoms or artificial structures brought together by a deliberate plan, but are much more akin to biological organisms which have their own laws of behaviour, observable only to those who study societies as unities and not as artificial conglomerates. Each social organism will differ in certain respects from other similar organisms; and each must be studied separately, if only to determine the effect upon it of the various material and mental (what he calls moral) influences, which themselves will differ as the relevant geographical position, climate, size, internal organisation, stage of development and so on differ. Many mental properties, of course, men do have in common; they seek self-preservation and all that that entails; they seek social cohesion, they need to be governed; they seek for the satisfaction of various physical and mental cravings. But their differences are more important, for only in terms of them can the differences in development of different human societies, the differences of institutions and outlooks and of physical, moral and mental characteristics, be explained. Montesquieu abhors the concept of man in general, no less than do later thinkers like Burke or Herder, or the cultural anthropologists of our own time. Well might he have said with de Maistre: 'I have seen, in my life, Frenchmen, Italians, Russians . . . but as for man, I declare that I have never met him in my life.'³ and added that Nature was a lady not known to him. Something of the sort had certainly been said by Vico, but, as I said before, his work seems to have been totally unknown to Montesquieu. By the time it became celebrated, a century later, the original truths which Vico enunciated so boldly, but in

¹ See p. 134 above.

² *Considérations sur la France* (Lyon/Paris, 1866), p. 88.

language at times dark and confused, were already the common property of educated Europeans, largely as a result of the influence of Montesquieu himself and of his German and French disciples – Herder and the historical school in Germany, and later the new social historians, influenced by Saint-Simon, in France. These were bold and fruitful notions, but they rested on *aperçus* and unsystematic observation dominated by moral purpose, not on careful and exhaustive, morally neutral researches like those made by his contemporaries Buffon and Linnaeus.

Yet, systematic or not, it was a novel thing to say that human societies were in the first place made what they were by physical factors; but that as they developed they were modified more directly and profoundly by mental than by material causes. Like a botanist of human society, Montesquieu describes the ideal types of the organisms he classifies. The celebrated division of societies into monarchical, aristocratic, republican and despotic is his attempted improvement on Aristotle. As a classification it doubtless leaves much to be desired; its importance rests not on the degree to which the concepts which he employs yielded fertile methods of analysis or prediction, but in the fact that this type of classification – by idealised models, analogous to the perfect bodies of physics – was destined to have a remarkable career in the sociological and historical analyses of Herder and Saint-Simon, Hegel and Comte, Durkheim and Max Weber.

Montesquieu's concept of types is not empirical; it springs from the ancient doctrine of natural kinds; it is thoroughly metaphysical and Aristotelian. According to him each type of society possesses an inner structure, an inner dynamic principle or force, which makes it function as it does – and this 'inner' force differs from type to type. Whatever strengthens the 'inner' principle causes the organism to flourish, whatever impairs it causes it to decay. His catalogue of these forces is very famous; monarchy rests on the principle of honour, aristocracy on that of moderation, the republican regime on that of virtue (that is, public spirit, *civisme*, almost team spirit), and despotism on that of terror. Montesquieu conceives of social organisms in the manner of Aristotle as teleological – purposive – wholes, as entelechies. The model is biological, not chemical. The inner spring of these societies is conceived by him as that which causes them to fulfil themselves by moving towards an inner goal, in terms of which alone they can be understood. This is the notorious notion of 'inner' forces, the substitution of final for mechanical causes, which had been abandoned

by the new science, and had been so brilliantly parodied by Molière in *Le Bourgeois Gentilhomme*. Nor does Montesquieu's appeal to history for support of his symmetrical schema carry any greater degree of conviction than the very similar efforts of Spengler and Arnold Toynbee to present their own ethical or theological systems in the guise of objective laws.

Montesquieu does not pretend to have founded his notion of the archetypes of society upon statistics derived from observation; it is not a hypothesis of a corrigible kind, founded upon empirical data. He attaches immense importance to it, for his entire philosophy of history is founded upon this central notion: individuals and states decay when they contravene the rules of their particular 'inner' constitution. Each state or human community has its own separate, individual, unique path of proper development, created in the first place by material causes, and the business of statesmen is to understand what this constitution is, and therefore what specific rules will alone preserve and strengthen it. These are the famous relations – the necessary rapports – which legal systems must fit if they are to perform their task, that is, render the human beings of a given society adequately healthy, happy, efficient, free and just, and provide them with other attributes the desirability of which is more or less taken for granted. The simile is, as so often in classical Greek philosophy, medical. The business of legislators and administrators, judges, and of everyone concerned with social issues in any form, is to preserve, maintain, improve the health of society. What does this health consist in? This is tantamount to asking what the ends of mankind are; and if the ends of different men or societies clash, how they should be reconciled; and whether, indeed, divergent interests can or should be reconciled at all. Montesquieu is only too well aware of the wide differences between the answers – the varieties of religious and philosophical systems which have sought to formulate the ultimate goal which men should, or in fact do, seek; or would seek if they were rational or knew what was right or true. He rejects out of hand the ends put forward by the Christian theologians of his time. Religion to him is a natural phenomenon like any other, brought about by natural causes that have led to Protestantism and toleration in the north of Europe, Catholicism and persecution in the south, Islam and a static fanaticism in the east, and so on. He sets himself to investigate these causes – hot and cold, wet and dry climates, fertile or sterile soils, distance from the sea, proximity to mountains – which create needs and with them institutions

designed to satisfy them. How is one to evaluate human institutions, legislation, forms of life? It used to be said, both for him and against him, that he was content merely to observe and describe – the politically committed, whether in Montesquieu's day or ours, probably find so much detachment morally almost sinister, perhaps even dangerous – but this is an illusion. Montesquieu's tone is moderate; his words were intended, as he once remarked,¹ to afford the reader the pleasure of watching grave and dignified theologians not thrown roughly on the ground, but sliding gently into the abyss. But he is concerned with moral issues no less deeply and directly than the more vehement controversialists of his time, and differs from them, not so much in his conception of the problems of behaviour as in his solutions and, of course, the tone and temper of the argument. He does not so much as discuss the single criterion of contemporary utilitarians. He remarks casually that men are made to preserve themselves² or that 'Happiness and unhappiness consist in a certain disposition, favourable or unfavourable, of the organs'³ or that 'interest is the greatest monarch on earth'.⁴ But these are the typical maxims of almost any eighteenth-century moralist. Nowhere does he say or imply that happiness, or the satisfaction of certain specified wants, is the sole end, or that the pursuit of it, in however perverted and ignorant a form, is the sole motive of human behaviour. The true answers to these questions, which agitated the eighteenth century so deeply, seemed to Montesquieu so obvious that he scarcely troubled to formulate them save by implication. Different societies clearly seek different ends; they seek them because they seek them, because their 'inner' principles so respond to their environments. To the degree to which men resemble each other and live in similar conditions, their ends, too, will be similar. To the degree to which they differ from one another – and this interests him more than their similarities – their ends will differ accordingly. He simply cannot see a problem where others have perceived one. A physician does not, after all, usually ask himself what precisely it is that good health consists in, and why; he takes it for granted, and calls himself a physician because he knows a healthy and normal organism from one which is sick or abnormal, and knows, moreover, that what is good for one type of organism may be fatal to

¹ See the letter to Madame du Deffand, 13 September 1754: vol. 3, p. 1515.

² e.g. *Lettres persanes* 143: vol. 1 C, p. 298.

³ *Mes pensées* 30 (549): vol. 2, p. 8.

⁴ *Lettres persanes* 106: vol. 1 C, p. 212.

another, and that what is needed in one climate is unnecessary or dangerous in another. Similarly Montesquieu assumed that the idea of political and moral health is too familiar to need analysis, that when it is present this is quite patent, and that to be rational is to recognise it for what it is, to know the symptoms, to know how to cure the relevant diseases and how to maintain the organism. No doubt great imaginative insight is needed to grasp the needs and habits of organisms very different from one's own. One of the salient characteristics of the *Lettres persanes* is that Montesquieu's travelling Persians are made to look at French and European institutions and habits with a singularly fresh eye, so that what is regarded as obvious and natural in Paris or Rome seems to them as odd or ridiculous or mad as do Persian customs, with equally great or little reason, to correspondingly prejudiced European travellers. This is Montesquieu's notorious relativism, the belief that there is no single set of values suitable for all men everywhere, no single solution to social or political problems in all countries. In virtue of it he has been regarded as a moral sceptic, a subjectivist, uncertain of what is right, unable to provide an objective standard for moral or political behaviour. But this is a misconception of his views. Montesquieu believed in what might be called social hygiene in the largest possible sense. He did not think that great disagreement occurred or could occur among men, provided that they were sufficiently rational and dispassionate, about what constitutes progress, or social solidarity, or weakness, or decadence in a society. In the course of his work on the greatness and decline of the Romans, he points out that what caused Rome to decay was the fact that it sinned against the central 'principle' of the Roman Republic. For republics can be healthy only if they are of a certain size, and their citizens can obtain proper satisfaction for their physical and spiritual wants only so long as certain institutions peculiar to republics are kept in a state of sound repair. Hence what ruined Rome was excess – imperialist over-expansion – and the supersession of 'republican virtue' by personal despotism directly resulting from this sin against the 'inner' principle of the republican structure. In saying this he may have wondered how far his explanation would prove acceptable, but he did not begin to imagine that anyone could question the values involved – for example that the Roman Empire did decline in the third or fourth or fifth centuries, or that it was better – more worthwhile – to be Cicero than to be Hellogabalus, although, of course, Hellogabalus may have enjoyed himself rather more.

Montesquieu conceived that his own original contribution to the subject was to explain the 'organic' causes of the rise or decline of states or societies, and that his particular achievement was to demonstrate the impossibility of universal solutions, to explain that what was good for some people in some situations was not necessarily equally good for others in different conditions, not only because of differences of means, but also of ends; that one society was not necessarily superior to another merely because it differed in its needs or the ways in which it set about solving them. It does not seem to have occurred to him that differences of ultimate values themselves might be questioned by equally civilised men, that two equally rational human beings endowed with knowledge and imagination – above all sufficient historical or anthropological sympathy to conceive of conditions very different from their own – could quarrel about ends, and dismiss each other's moral notions as objectively and demonstrably false or wicked. Rationality to him was not merely knowledge of how to adapt means to ends, or an adequate grasp of historical causation – in particular of the ways in which social structures grew, cohered, decayed – but lay in understanding the entire field of the interplay between nature and men; in understanding which desires and activities were self-destructive and suicidal and which were not; in understanding the vast variety of ends pursued by men in a vast variety of conditions; furthermore, in finding out how, if these ends collided with each other, they could at times be reconciled; or, if not wholly reconciled, whether a compromise between them could or could not be obtained. Some of these ends were doubtless more universal, or deeper in the nature of those who pursued them, than others. This was a matter of observation, factual study. There were no ultimate and universal standards beyond those which different societies in fact employed in different circumstances. Consequently there was no sense in seeking a single objective criterion or criteria in terms of which these ends themselves could be judged and approved or condemned. He did not, like Hume, say that only that was good or right which men approved, for he did not pay much attention to sentiment. Moral and political values for him revealed themselves in behaviour rather than in articulated thought or feeling; if they fitted the circumstances – if they suited the instincts of a given society, and were not self-destructive – they were not to be criticised. 'The names of beautiful, good, noble, great, perfect, are attributes of

objects relative to the beings who contemplate them. Keep this principle in your head. It is the sponge which wipes away almost all prejudices.¹

Where no notion of objective ends exists, subjectivism, which is its correlative, means little. Nor is this attitude sceptical or morally indifferent; and if it be said that it belongs to a man not principally interested in moral problems, or to one who does not probe too deeply into the goals and principles for which men are prepared to give their lives, there is little that can be said in reply. Montesquieu's position is very similar to that of Aristotle in this matter; and is, perhaps, more sympathetic to civil servants or lawyers than to followers of Pascal or Dostoevsky.

There are few things more disliked by those who wish to improve the world than dispassionate description of the facts, and Helvétius and his friends earnestly tried to dissuade Montesquieu from publishing his book on the spirit of the laws, on the ground that it could only do his reputation harm. It seemed to them to waste time on meticulous descriptions of too many forms of human error and aberration, almost as if the author placed some value on them merely because they existed. Helvétius declared that only two types of government were known to him: the good, which had not come into being yet, and the bad, namely that which transferred the money of the poor into the pockets of the rich; '... true political science is the science not of *what is*, but of *what ought to be*,² said the Abbé Siéyès towards the end of the eighteenth century, but he might just as well have said it fifty years earlier, for this is the view of almost all the rational thinkers of the great century. The proper concern of an intelligent man was with science; and science meant not mere description and systematisation, but practical rules designed to change things for the better by the most rapid and direct means. To this Montesquieu was conspicuously not sympathetic. He disliked and distrusted speed and violence. He poured

¹ *Mes pensées* 410 (2062): vol. 2, p. 158. There is a similar passage in the *Essai sur le goût* written for the *Encyclopédie* in 1757, published with modifications in Montesquieu's *Oeuvres posthumes*, 1783. Masson (see p. 133, note 1 above), vol. 1 C, pp. 611–12.

² In a manuscript of 1772 entitled 'Économie politique', cited by C. A. de Sainte-Beuve, *Causées du lundi*, 2nd ed. (Paris, 1832–62), vol. 5 (1833), p. 153.

could water on hopes of swift reform; he appeared to attach value to institutions merely because they existed; he distributed value judgements all too sparingly; he was evidently more interested in understanding than in action. Spinoza, it is true, had advocated some such attitude: but this was, in the eighteenth century, the least admired aspect of his war against the enemies of progress. Moreover, had not Montesquieu himself attacked Spinoza for his determinism and for wishing to suppress the passions without which men cannot act? But Montesquieu had omitted to add that the acts must be good and not bad; he seemed to show more interest in classifying types of activity than in their conduciveness to happiness. 'Of happiness, he says nothing',¹ said Bentham indignantly, echoing Helvétius; and the Neapolitan lawyer Filangieri accused him of having 'reasoned rather on what *has been* done than on what *ought* to be done'.² Montesquieu bore this type of criticism patiently, but one cannot help feeling that what the Encyclopedists had against him was not his addiction to the description of the truth for its own sake – which the best among them could not themselves resist – but the implications of his apparently neutral attitude. They felt that he was altogether too anxious to emphasise that durable and beneficial social structures were seldom simple, that large areas of political behaviour always remained very complex and obscure, that a radical change of one part of it might easily lead to unpredictable effects in others, and that the end might be worse than the beginning. They felt that his perpetual harping on the need to go along the grain, to act slowly and circumspectly, was meant to sabotage their ardent programmes, that his reminder that 'La nature agit toujours avec lenteur'³ and the famous definition of the 'most perfect' government as 'celui qui conduit les hommes de la manière qui convient le plus à leur penchant et à leur inclination'⁴ were altogether too

¹ op. cit. (p. 130, note 1 above), vol. 9, p. 123.

² Gaetano Filangieri, *La scienza della legislazione* (1784), in *La scienza della legislazione di Gaetano Filangieri con giunta degli opuscoli scelti*, vol. 1 (Milan, 1822), p. 12, trans. William Kendall in *The Science of Legislation, Translated from the Italian of the Chevalier Filangieri* (London/Exeter, 1792), p. 11. This is the same as Rousseau's reproach in *Emile*, book 5: 'il faut savoir ce qui doit être pour bien juger de ce qui est'. See Rousseau's *Oeuvres complètes*, ed. Bernard Gagnebin, Marcel Raymond and others (Paris, 1959–), vol. 4 (1969), pp. 836–7.

³ *Lettres persanes* 114: vol. 1 C, p. 227.

⁴ *ibid.* 80: vol. 1 C, p. 164.

lukewarm. Still, even this would have passed, if he had not also said that if reforms were really unavoidable, one should touch laws 'only with a trembling hand',¹ and, worse still, 'the troubles, expenses . . . even dangers of justice are the price which every citizen pays for his liberty'.² Bentham again explodes: 'the screen made out of the panegyric on *delay* and *forms*, I have seen it in use these five and fifty years: the name of the manufactory is visible on it. *Egypt des lois* the manufactory: *Montesquieu* and Co. the name of the firm: a more convenient or fashionable article was never made.'³ No doubt the abuses which infuriated Bentham at the turn of the century were very different from those which Montesquieu detested in France in its early years. But there is also a genuine difference of outlook. Montesquieu cannot forget that simplicity, energy, speed, are the attributes of despotism, and go ill with individual liberty, which needs a looser social texture, a slower tempo.

If one must destroy, one should at least hesitate, feel qualms. The more radical reformers, naturally enough, distrusted this, and suspected Montesquieu of reactionary tendencies wrapped in the outer covering of scientific curiosity and enlightened opinions. Nor were they altogether mistaken.⁴ For he was certainly opposed to revolution: Catherine the Great, and, following her, a school of conservative Russian thinkers, could (and did) cite his views in defence of the proposition that Russia had 'organic' need of autocracy; and his naturalism undoubtedly contained deep layers of inherited metaphysical belief. Yet this reactionary attacked slavery as no one had before him; saw nothing wicked or unnatural in suicide, divorce, incest; and looked on religion purely as a social institution.

. . . when Montezuma insisted that the religion of the Spaniards was good for their country and the Mexican for his own, what he said was not absurd'.⁵ This attitude was calculated to – and did – irritate both sides in the great controversy of his age. The theologians of the Sorbonne naturally condemned it. Montesquieu was denounced fiercely by the Jansenists, his books were put on the Index. But the party of Enlightenment, Voltaire and the Encyclopedists, were scarcely

¹ *Lettres persanes* 129: vol. 1 C, p. 257.

² *E.L.* vi 2: vol. 1 A, p. 100.

³ op. cit. (p. 130, note 1 above), vol. 8, p. 481.

⁴ Rousseau's criticism of Grotius in *De contract social* (book 1, chapters 2–4) is not unlike Bentham's attack on Montesquieu.

⁵ *E.L.* xxiv 24: vol. 1 B, p. 103.

less indignant. For if this view was true it followed that scientific investigation was not capable of demonstrating that some moral purposes were correct and others not; that some or all religions were tissues of falsehood, and deleterious for this reason alone. In fact the whole system of values upon which the Enlightenment rested began to crumble if the very possibility of a single universal method for obtaining true answers to moral and metaphysical questions, true for all men, at all times, everywhere, *quod ubique, quod semper, quod ab omnibus*, was doubted or denied. Indeed, the very tone of Montesquieu, the whole tenor of his work was somehow felt to be subversive of the principles of the new age.¹ He was, it is true, an ally on such issues as the credibility of religious revelation, the authority of the church, the nature of royal authority, the irrationality of autocratic rule; he detested arbitrary oppression, the suppression of freedom of thought or speech, the benighted economic policies of the royal regime. He believed in knowledge, science, toleration. He hated armies, conquests, tyrants, priests. But there the agreement with the opposition virtually ended. He plainly did not believe in universal solutions, indeed in no simple or final solutions at all. It is true that he did not believe that man was in a state of original sin; but neither did he believe that he was infinitely perfectible. He believed that man was not impotent, only weak, that he could be made stronger, yet only with the greatest difficulty, and even then not very strong. He did not believe that ideal solutions could ever be realised, only approximations to them. He distrusted simplicity, and disbelieved in the permanence of any institution, any moral rule, save justice alone. He believed that only reason could solve human problems, but that by itself it could not effect much. He did not, like Hume, think reason to be necessarily the slave of the passions, only feeble than them, and maintained that since reason was weak and the passions strong, and, in any case, indestructible, they should be not fought but harnessed, and conditions created to direct them into desired channels – a doctrine later adopted by Saint-Simon, Comte and Pareto. 'Out of the crooked timber of humanity no straight thing was ever made', said Immanuel Kant,²

¹ Plato denounced a very similar attitude, which he attributed to the Sophists, and for much the same reasons.

² '... aus so krummem Holze, als woraus der Mensch gemacht ist, kann nichts ganz Gerades gezimmert werden'. 'Idee zu einer allgemeinen Geschichte in weltbürgerlicher Absicht', *Kant's gesammelte Schriften*, vol. 8 (Berlin, 1912), p. 23.

and this represents Montesquieu's view as against that of his friends, the optimistic planners of his day. Unlike them, he hates and fears all despots, even the most rational and enlightened, for he distrusts all central authority, all the great managers of society, all those who confidently and tidily arrange the destinies of others. He speaks with contempt and hostility of the *Désir universel* (a term he invented) who is never assailed by doubts, because societies organised by such persons, however well ordered and enlightened, are necessarily tyrannous. He believes passionately in the necessity for a minimum area of personal liberty for every citizen, whatever he may choose to do with it. He distrusts zeal, however benevolent, because it threatens to suffocate individuals ('virtue itself needs limits'),¹ and values personal liberty above all.

But there is a still graver charge against him: that he is not a whole-hearted determinist. No one did more to draw attention to the many unnoticed ways in which material factors mould human character and institutions, or to indicate strategic points in the network of social relations (such as the connection of free trade and military security, or the influence of the growth of communications on despotic governments, or of the development of new weapons of unheard-of destructive force on international relations),² but he does not believe that this kind of explanation accounts for the whole of human behaviour. He believes that the laws which govern human conduct are not as all-embracing as those which govern the behaviour of, say, inanimate matter in space. He believes in what he calls 'general causes' which create situations that render certain consequences no more than highly probable, that is to say, render certain – but only certain – possible courses of action impracticable. Accidents cause important consequences only because they operate in conjunction with explicable general causes: 'Had Caesar and Pompey thought as did Cato, others would have thought like Caesar and Pompey; and the Republic, which was destined to perish, would have been drawn to the precipice by another hand.'³ If Charles I of England had not administered a 'shock'

¹ *E.L.* xi 4; vol. 1 A, p. 206.

² '... depuis l'invention de la poudre, il n'y a plus de place imprenable... Je tremble toujours qu'on ne parvienne à la fin à découvrir quelque secret qui fournisse une voie plus abrégée pour faire périr les hommes, détruire les peuples et les nations entières.' *Lettres persanes* 105; vol. 1 C, pp. 208-9.

³ *Considérations sur les causes de la grandeur des Romains et de leur décadence*, xi: vol. 1 C, p. 427.

to the form of life of his people in one way, he would, given the general situation, surely have done so in another;¹ and if Charles XII of Sweden had not been defeated at Poltava, he would have been defeated elsewhere² because a 'general cause' was in operation whereby the Swedish state and army were in such a condition that one lost battle could lose them the war. But this shows at most that certain possibilities could not have been realised, and that to assume that they were open is an unrealistic reading of history. But it does not follow that all alternatives are always closed, and only one path is causally necessitated.

Montesquieu's lapses from strict determinism were noted, with some distress, by Durkheim, when, as a young man, he began to investigate Montesquieu's claims to be the forerunner, if not the pioneer, of sociology.³ Durkheim cannot understand why Montesquieu believed that the laws which govern human behaviour were less precisely statable, and less predictable in their effects, than those which governed the material world. When Montesquieu declares that material causes can to a large degree be counteracted by deliberate human action⁴ – indeed, he congratulated Hume in 1749 on giving 'une beaucoup plus grand influence aux causes morales qu'aux causes physiques'⁵ – Durkheim can scarcely conceal his indignation. If sociology is to be a science at all, it must surely regard human activities themselves as being neither more nor less subject to natural causes than the obstacles they are meant to overcome. He ends by accusing Montesquieu of gratuitously betraying the very science which he had been the first to conceive in a lucid and coherent manner. Durkheim was, of course, perfectly consistent, and if Montesquieu's claim to be the father of modern scientific sociology rested on strict application of the principles of Helvétius or Comte, it would, indeed, be gravely compromised. It is to the eternal credit of Montesquieu that he committed this very crime. He was guided by such actual facts as he had observed or believed to occur, and was not betrayed into arranging

¹ *De la politique*: vol. 3, p. 169.

² *E.L.* x 13: vol. 1 A, p. 195.

³ *Quid Scandalus politicae scientiae instituendae consulerit* (Bordeaux, 1892), trans. as *Montesquieu's Contribution to the Rise of Social Science* in Émile Durkheim, *Montesquieu and Rousseau: Forerunners of Sociology* (Michigan, 1960).

⁴ *E.L.* xiv 5, 6; xvi 12: vol. 1 A, pp. 312–13; 361.

⁵ Letter to Hume, 19 May 1749: vol. 3, p. 123.

them in some symmetrical pattern whether they were susceptible to such arrangement or not. He observed some natural or historical regularities which seemed to him important, and these he faithfully reported. Equally, he tried to estimate the extent of the power of human action in certain types of situations. Some among these human actions he supposed that he could trace to natural causes; some, but not all. He declined to go beyond his evidence, to extrapolate mechanically, and to maintain that because some phenomena seemed determined by strict laws, all must be so. Men could bend things to their will, though not very much; they were weak, but *Montaigne* had greatly exaggerated their weakness and helplessness. Pascal had declared that uncritical acceptance of custom was the mystical cause of the authority of laws, and had implied that he who probed – and 'brought it back to its principle' – destroyed it, and Burke and de Maistre echoed this fervently. He who 'brings back' any phenomenon to its source, to its 'principle', said Montesquieu, strengthens it. Knowledge cannot possibly be a source of weakness: it is doubtless limited, and we must do the best we can; this may be little, but it is not nothing. 'The world is ruled by laws, but they do not account for everything. Montesquieu is displeased with Spinoza for saying that a man can be a great scoundrel and yet have committed no crime, because he is caused to act abominably by circumstances over which he has no control.¹ Natural causes are doubtless very powerful, but they can at times be counteracted by legislation and education; even the effects of the great sovereign 'whose empire is the first among all empires' – climate itself – can be modified and regulated by intensive moral education. One can modify and moderate ('régler', 'modérer', are the terms constantly used by Montesquieu) almost everything; one law can be checked by means of another, one power by another; the best constitution is that which is built like an elaborate mosaic of countervailing powers. The natural tendency of men is to gravitate downwards and not even to attempt the immensely difficult task of being rational or being free, of walking the narrow causeway between despotism and anarchy. Yet this can be achieved, but only by working deliberately and with difficulty towards an equilibrium. This equilibrium is always unstable. To preserve it needs enormous care and vigilance, and also the most accurate factual – that is, scientific – information obtainable. Ignorance, idleness, self-interest are potent enemies of human progress, but even more ruinous are bigots and desperadoes – monks who teach men to stunt

¹ *Mes pensées* 1266 (615): vol. 2, p. 343.

their natural faculties, great conquerors who exterminate men to gratify their personal ambitions, and worst of all, the great despotic organisers who buy the freedom of the state at the cost of enslaving their fellow citizens. The two worst citizens that France had ever had were Richelieu and Louvois; and, if he had dared, Montesquieu would have added Louis XIV.

Liberty is not total independence, nor is it licence. It is very hard to attain and preserve, but without it all things wither. No amount of efficiency of government, national glory, prosperity, social equality, can compensate for its loss. Monarchies are in particular danger of losing it, for they tend to end in despotism as rivers lose themselves in the ocean,¹ and despotism means the prevalence of fear, and where fear is universal and every citizen is in terror of someone, there is no security, no 'tranquillity of spirit';² and a disease is at work which in the end destroys the texture of normal social life. But what is liberty? Montesquieu says that it is not identical with being permitted to do whatever one may wish, for that would lead to anarchy, and so to the despotism inevitably called in to suppress it. To possess liberty is, in the famous formula, 'to be able to do what one ought to will, and not to be compelled to do what one ought not to will'.³ But who shall tell us what we ought to will? The laws. Liberty is 'the right to do whatever the laws permit'.⁴ But can there not be despotic laws? Yes, but in a rational society the laws will be founded upon justice. Justice is not definable as that which the laws happen to enjoin, nor that which the ruler wills simply because he wills it. To define justice in terms of actual laws is as absurd 'as if one were to say that before circles were actually drawn their radii were not all equal'.⁵ Good laws embody the rules of justice, but these rules themselves are absolute and objective, independent of being formulated. What, then, is justice? It is 'a quality which belongs to men as much as existence';⁶ it is 'un rapport de convenance, qui se trouve réellement entre deux choses: ce rapport est toujours le même, quelque être qui le considère, soit que ce soit dieu, soit que ce soit un ange, ou enfin que ce soit un homme'.⁷ This fixed structure is none other than 'the necessary relations arising from the nature of things'⁸ – the celebrated metaphysical definition of law with which *De l'esprit des lois* opens, and which

¹ *E.L.* viii 17: vol. 1 A, p. 167.

² *ibid.* xi 3, p. 205.

³ *ibid.* i 1, p. 3.

⁴ *ibid.* 83, p. 169.

⁵ *ibid.* xi 6, p. 208.

⁶ *ibid.*, p. 206.

⁷ *Lettres persanes* 10: vol. 1 C, p. 26.

⁸ *E.L.* i 1: vol. 1 A, p. 1.

has puzzled and irritated modern commentators. 'La justice élève sa voix; mais elle a peine à se faire entendre dans le tumulte des passions.' It is the voice of reality itself speaking: 'la justice est éternelle, et ne dépend point des conventions humaines' (nor, he could have added, on divine ones either); 'Et, quand elle en dépendroit, ce seroit une vérité terrible, qu'il faudroit se dérober à soi-même'.²

These formulations give one pause. Not that there is anything very new in them – the doctrine, even the cynical invitation to conceal the truth, is at least as old as Plato. Montesquieu's words, *mutatis mutandis*, could have occurred in many a medieval text; neither Hooker nor Grotius would have thought them in the least peculiar. Indeed, it is a piece of medieval theology translated into secular terms. Hume³ accused Montesquieu of deriving this view of justice as an absolute objective relationship from Malebranche, and rightly considered it an unintelligible abstraction. It derives, of course, from a belief in natural law as conceived not merely by seventeenth-century jurists, but by eighteenth-century economists and social philosophers as well. The physiocratic doctrine of the coincidence of the true interests of all men is itself an application of the law of nature, an *a priori* system which can, indeed, be transgressed (though only to the cost of the transgressor) and which positive, man-made law is merely required to transcribe with literal accuracy. In this way the personal government of men, which, even in the hands of the wisest, retains some arbitrary element, will be replaced by the rule of law itself. It is not difficult to recognise in this the old theological natural order translated into economic or social terminology. Saint-Simon's formula about the government of men giving way to the administration of things, Marx's reiteration of it, Hegel's rational *Rechtsstaat* and all their progeny in modern legal and political theory, are rooted in the metaphysics of the natural order which, despite all efforts to restate it in empirical terms, retains indelible traces of its transcendental origin. But what is strange in the emergence of this time-honoured doctrine in *De l'esprit des lois* is its incompatibility with what is most original in Montesquieu's own great new discovery. His whole aim is to show that laws are not born in the void, that they are not the result of positive commands either of God or priest or king; that they are, like everything else in society, the expression of the changing moral habits, beliefs, general attitudes of a particular society, at a particular time, on

¹ *Lettres persanes* 83: vol. 1 C, p. 169.

² *An Enquiry Concerning the Principles of Morals*, III ii 158, note.

³ *ibid.*, p. 170.

a particular portion of the earth's surface, played upon by the physical and spiritual influences to which their place and period expose human beings. It is difficult to see how this doctrine, which is the foundation of the great German school of historical jurisprudence, of French post-revolutionary historiography, of the various modern sociological theories of law, can be reconciled with belief in universal, unvarying, everlasting rules, equally valid for all men in all places at all times – rules discovered by the faculty of reason as conceived by Descartes or Leibniz, that is, as a non-natural means of perceiving eternal verities – the very notion which it had been the great historic service of Montesquieu to overthrow. Indeed, Montesquieu goes further. If law is to be the expression of eternal justice, a 'necessity of nature' independent of men or times or places, it must be formulated so explicitly that the sole task of judges will be to apply it as rigorously and precisely as they can to the particular cases before them, and the sole task of administrators to translate it into action as fully and literally as possible. Montesquieu is exceedingly insistent upon this point; he wants to make the operations of the law as strict and automatic as possible. The entire tradition of judge-made law, of the use of legal fictions, of the interpretation of old statutes to fit new situations with due regard to their spirit and not their letter, with such understanding of the public interest as each generation may exercise according to its own lights, which are not necessarily those of other societies or other generations – this cardinal development, oddly omitted by this keen observer in his analysis of English institutions, seems deeply abhorrent to him. There must be no tampering with the letter of the law, no interpretation, no flexibility, no pragmatic adaptation. He seems to think that if a law ceases to be useful, and no longer fully embodies the principles of objective justice, it must be formally abrogated, and a new law specifically created by the legislative organ. This may lead to too much chopping and changing of laws, and a consequent weakening in respect for laws as such, as Hume duly pointed out. But on a strict interpretation of Montesquieu's doctrine of justice this is unavoidable. The social disadvantages must be ignored; for what is social utility before the eternal laws of nature?

The doctrine according to which positive law is itself to be tested by the criterion of strict conformity to some extra-legal set of principles – as revealed in sacred books, or in the utterances of privileged persons, or by a special faculty of rational intuition – is an abiding feature of legal theory in the west. It is in obvious conflict with the

equally celebrated view which maintains that the law is only one among many aspects of social development, conditioned by the same sort of factors as social life in general, of which Hobbes's doctrine which Montesquieu rejects, that justice is whatever the laws ordain and nothing else, is merely an extreme, and indeed somewhat *outré*, version. There may, indeed, not exist a strictly logical contradiction between believing laws to be a function of social evolution, and belief in fixed standards of justice and the demand for explicit codification and rigorous application; for the standard may itself consist in some unvarying relationship between changing social factors, say the utilitarian principle of greatest happiness. But there is obviously a genuine disparity of attitude; and Montesquieu leaves us in no doubt that his notion of justice is not a natural function or relationship, but a transcendent eternal standard. The clash between the pragmatic theory of jurisprudence of, say, Holmes or Brandeis, and the older notion of the quasi-mechanical application of laws in the precise forms in which they are promulgated by the legislature, is a central issue that has divided jurists, especially in the United States, and has rightly been traced to profounder political, social, and indeed metaphysical differences. It is worth adding that Montesquieu's notion of absolute justice as the permanently valid standard for legislation is no less incompatible with the social interpretation of the law in the forms in which, for instance, Comtian positivists, or Marxists (with their theory of law as a superstructure dependent on a social and economic base), have understood it. Yet all these streams flow from Montesquieu: the contradiction is evidently present in his own thought.

Why did he fall into it? Perhaps it springs from his fear of despotism and arbitrariness, which took two different, not easily reconcilable directions. On the one hand he dwells over and over again on the fact that to each society belong the moral attitudes and habits and forms of life peculiar to it, that the mere passing of laws or issuing of regulations cannot by itself break these moral and social patterns, only obstruct them, and itself fail to be effective if it departs too far from the social laws which govern the evolution of the society in question. This is part of his great case against capricious interference, wanton oppression, and bullying by individual tyrants or despotic groups. Terror of this inspires the wish to preserve a hierarchical society, the desire to divide and balance, the distrust of all forms of zeal, the pleas for 'intermediary' powers, the defence of hereditary aristocracies and inherited professions, of local and provincial legislative and judicial bodies, of

survivals and relics of feudal institutions, of the neo-feudalism created by selling offices to the new middle classes, of anomalies for their own sake – all these being called upon to act as buffers between the perpetually encroaching central authority and the mass of the people which it might otherwise mould much too freely and brutally to some arbitrary pattern of its own. And, on the other hand, there is his passionate concern for legality, his insistence upon laws being written down in clear words for all to see, which again is a means, and a powerful one, designed always for the same overriding purpose – to prevent the exercise of their own untrammelled wills by strong individuals (whether it be advocated by defenders of the royal power, like the Abbé Dubos, or by believers in enlightened despotism, like Voltaire), and to protect private persons from the power of rulers by means of a guaranteed equality before explicitly formulated law.¹

But whatever may be the psychological explanation of Montesquieu's attitude, the internal contradiction remains, and we find two opposed lines of thought and practice, each claiming his authority. The first is the pragmatic development of law, consciously amenable to social change. Here again there is a parting of ways: it takes a conservative form in the writings of Burke and the German jurists, who see the law as the expression of the deepest traditions and instincts which have formed the character of a nation or a culture – bound up with the 'organic' development of a community, not to be deflected by the arbitrary *fats* of rulers, or by 'artificial' reforms which are not in harmony with its historical 'spirit'. In its other, radical, form, it has been interpreted by social reformers and radicals as so many demands that the law shall constantly respond to changing social needs and not be tied to some obsolete principle valid only for some epoch dead and gone. Both forms of evolutionary jurisprudence are equally incompatible with the Roman and Napoleonic tradition of codified law, dedicated to the application of explicitly stated general principles, the validity of which tends to be regarded as universal and eternal, independent of time and place and circumstance.

This internal conflict can also be discovered in Montesquieu's typically eighteenth-century ambivalence in the use of words like 'reason' and 'nature'. Reason sometimes means intuitive perception of general laws, in the sense in which Descartes and the rationalists

¹ It is almost as if he were convinced that the notion of absolute and eternal standards of justice was a chimera, but feared that knowledge of this would open the way to despotism and social instability (see p. 153, note 2 above).

had used this word, and at other times the (empirical) perception of what a given society needs for its 'sound' and healthy functioning in a given place and season. Nature is commonly gentle and slow, and achieves her ends by scarcely perceptible pressure; but she can also thunder and terrify: when, Montesquieu declares, I go too far, and consider the advantage of torture in a purely utilitarian spirit, what I hear is 'la voix de la nature qui crie contre moi' and brings me back to my senses. At other times nature is not normative but simply the actual constitution of things and persons, the cause of the behaviour, needs, demands of men in specific circumstances, and in this sense constitutes the object of all the sciences. There is a kind of continuous dialectic in all Montesquieu's writings between absolute values which seem to correspond to the permanent interests of men as such, and those which depend upon time and place in a concrete situation.

IV

The contradiction remains unresolved. The only link between the two doctrines is their common libertarian purpose. What Montesquieu means by liberty is to be found not in his formal – and commonplace – definition of this concept as consisting in the right to do what the laws do not forbid, but in his exposition of other social and political ideas which throw light on his general scale of values. Montesquieu is, above all, not a thinker obsessed by some single principle, seeking to order and explain everything in terms of some central moral or metaphysical category in terms of which alone all truths must be formulated. He is not a monist but a pluralist, his virtuosity reaches its highest peak, he is most himself, when he tries to convey a culture or an outlook or a system of values different from his own and from that of the majority of his readers. A radical author said of him that he explained too well: that he seemed to justify everything.² And, indeed, so far is he from the vice prevalent in his day of grading all outlooks and cultures in terms of their distance from the enlightened standards of the eighteenth century, that he rendered himself suspect to both the obscurantists and the radicals of his time by too great a

¹ *E.L.* vi 17: vol. 1 A, p. 124.

² Letter to Saurin of 1747–8, included in Masson (see p. 133, note 1 above), vol. 3, pp. 1538–40. On the authorship of this letter, see R. Koebner, 'The Authenticity of the Letters on the *Esprit des lois* attributed to Helvétius', *Bulletin of the Institute of Historical Research* 24 (1951), 19–43.

tenderness for institutions different from those of the Christian west. The substitution of general principles for the faculty of sensing individual differences is, for him, the beginning of evil. His range of sympathies is genuinely very wide. He pleads convincingly for vastly different ways of life, each of which he represents as conditioned by its own physical environment, following its own intelligible path of development, and satisfying the needs of the human beings who lead them no less satisfactorily and fully than other cultures, at other times, in other lands and climates and geographical situations. This singular gift for identifying oneself imaginatively with a great variety of forms of life leads Montesquieu not merely to toleration (celebrated for it though he was) and to condoning abuses, but to a more positive attitude. He was one of the few thinkers of his age who had grasped one of the central characteristics of the moral history of mankind, that the ends pursued by men are many and various and often incompatible with one another, that this leads to unavoidable collisions between civilisations, to differences between the ideals of the same community at different times, and of different communities at the same time, and to conflicts within communities, classes, groups and within the individual consciousness. Furthermore he perceived that, given the vast variety of situations, and the extreme complexity and intricacy of individual cases, no single moral system, let alone a single moral or political goal, could provide the universal solution to all human problems, everywhere, at all times. To seek to impose such single systems, no matter how worthy and noble and widely believed, must always in the end lead to persecution and deprivation of liberty. Despotism is 'obvious, uniform throughout; passion alone is sufficient to establish it, and anyone can produce that'.¹ Only those societies are truly free which are in a state of 'agitation', unstable equilibrium; whose members are free to pursue – choose between – a variety of ends or goals. A state might itself be free, that is, independent of other states, but if it becomes frozen and suppresses opinion in the name of no matter how sacred a principle, its citizens are not free but enslaved. Montesquieu dislikes conflict; he prefers peace, conciliation, compromise. He is suspicious of all new creeds since they are usually the work of zealots and lead to strife. But once a creed has found a degree of acceptance, then, however foolish, it should be tolerated and not persecuted out of existence; for it is more important that people should be free to err than that they be coerced into holding correct opinions.

¹ *E.L.* v 14: vol. 1 A, p. 84.

Montesquieu was not a relativist about the truth. In common with most enlightened men of his period he believed that the objective truth in all realms was discoverable. But he believed even more deeply that societies which did not grant freedom of choice between ideals, with due precautions against open warfare between their adherents, would inevitably decay and perish.

This opposition to the enforcement of any orthodoxy, no matter what was at stake, no matter how lofty and deeply venerated might be the ideals of the orthodox, distinguishes Montesquieu from the theologians and the atheists, the idealistic radicals as well as the utilitarians of his time. It inaugurates the struggle within the camp of Enlightenment between democrats and liberals. They might unite against obscurantism and repression, clerical or secular, but the alliance is, at best, temporary. Despotism is no less despotic because it is self-inflicted or enthusiastic. Willing slaves are still slaves. This note is not heard again until Benjamin Constant and the liberal reaction against Jacobins and Legitimists alike. It is a point of view which, because it sets freedom above happiness, peace and virtue, is always suspect, always unpopular.

What emerges, and what seems of particular interest in the present day, is his very clear perception of the fact that no degree of knowledge, or of skill or of logical power, can produce automatic solutions of social problems, of a final and universal kind. The leaders of the French Enlightenment, the great popularisers of science, have rendered great service to mankind by the open war which they conducted against ignorance and obscurantism in every form, and in particular against brutality, stupidity, suppression of the truth, cynicism and disregard of human rights. Their fight for freedom and justice, even when they did not quite understand their own formulas, created a tradition to which a great many men owe their lives and liberties today. The majority of these same men, whose case for the prosecution was so unanswerable, also believed that as there was a science of the behaviour of things, so there could be a science of the behaviour of men; that anyone who had grasped the principles of this latter science could, by applying it, realise all the goals to which they were unitedly striving; that all these goals – truth, justice, happiness, freedom, knowledge, virtue, prosperity, physical and mental powers – were bound to one another 'by an indissoluble chain' as Condorcet had said,¹ or were at

¹ *Esquisse d'un tableau historique des progrès de l'esprit humain*, ed. O. H. Prior and Yvon Belaval (Paris, 1970), p. 228.

least compatible with one another; and that it was possible to bring them all into existence by transforming society in accordance with the infallible principles of the newly discovered scientific truth about social existence.

When the great French Revolution failed to make men happy and virtuous overnight, some of its adherents claimed either that the new principles had not been properly understood, or had been inefficiently applied, or that not these, but some other principles, were the true key to the solution of problems; that, for example, the purely political solution of the Jacobins had fatally oversimplified matters, and that social and economic causes should have been taken into greater consideration. When in 1848-9 these factors had been duly taken into account, and still the results had proved disappointing, the believers in a scientific solution declared that something else had been left out — say the war between the classes, or the Comtian principles of evolution, or some other essential factor. It is against the 'terrible simplifiers' of this type, whose intellectual lucidity and moral purity of heart seemed to make them all the readier to sacrifice mankind again and again in the name of vast abstractions upon altars served by imaginary sciences of human behaviour, that Montesquieu's cautious empiricism, his distrust of laws of universal application, and his acute sense of the limits of human powers, stand up so well. If there is a case for radical reforms, for rebellion and revolution, it is when the injustices of a regime are too intolerable, when 'nature cries out' against it; but such courses always involve risks, and can never be guaranteed, morally or materially, by infallible methods of calculating the social consequences. Human history is not susceptible to the simple laws which had so deeply hypnotised many noble thinkers, especially in France. 'La plupart des effets arrivent par des voies si singulières, ou dépendent de causes si imperceptibles et si éloignées qu'on ne peut guère les prévoir.'¹ And since this is so, all we can do is to try to frustrate as few human beings as possible, whatever their purposes. That government is best which accords best with men's 'penchant et leur inclination'.² In making laws one must, above all, have a sense, which only experience or history can sharpen, of what goes with what: for the rapports of laws with human nature and human institutions in their interplay with human consciousness are immensely complex, and these cannot

¹ *De la politique*: vol. 3, p. 166.

² *Lettres persanes* 80: vol. 1 C, p. 164 (cf. p. 146, note 4 above).

be computed by simple and tidy systems: timeless rules, rigidly imposed, will always end in blood.

Despite his archaic classifications of political institutions, his *a priori* conceptions of the inner principles of social growth and of absolute justice as an eternal relationship in nature, Montesquieu emerges as a far purer empiricist both with regard to means and with regard to ends than Holbach or Helvétius or even Bentham, not to speak of Rousseau or Marx. Conservatives, liberals, Fabian socialists have each derived their own conclusions from the tradition that he founded, and his undogmatic principles are only too relevant to our violent modern conflicts between rival ideologies. 'Montesquieu would have left nothing, perhaps, behind him', writes Maxime Leroy, 'save a state of mind, a sociological tendency, and the memory of his charming Persian fantasies . . . if he had not attached his name to the doctrine of the separation . . . of powers.'¹ Not much more, perhaps, than a dry sense of historical reality, as concrete as Burke's and free from his violent prejudices and romantic distortions; and an understanding of what men, or, at any rate, human societies, live by, unparalleled since Aristotle.

¹ *Histoire des idées sociales en France*, vol. 1: *De Montesquieu à Robert Pierre* (Paris, 1946), p. 110.