

Northeastern Political Science Association

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Reviewed work(s):

Source: *Polity*, Vol. 36, No. 2 (Jan., 2004), pp. 227-250

Published by: [Palgrave Macmillan Journals](#)

Stable URL: <http://www.jstor.org/stable/3235480>

Accessed: 09/09/2012 10:58

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Montesquieu's Complex Natural Right and Moderate Liberalism: The Roots of American Moderation*

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*The diversity in twentieth-century scholarship on Montesquieu's *The Spirit of Laws* helps to confirm his own appreciation for complexity, synthesis, and balance in both political theory and practice. This is the overlooked meaning of "moderation," the key to his labyrinthine masterwork. His liberalism sought to capture the multiple dimensions of politics and the equilibrium, or moderation, in nature and human nature. Moderation informs his constitutionalism of balanced powers but also a natural right encompassing individual interest and humane sympathy for fellows. Reading the entire work, as Montesquieu requests, reveals that moderation and complexity provide its very plan and coherence—from its title, to its six-part structure, to its balancing of philosophy with humane letters. His natural right emphasizes tranquillity and political moderation, tempering modern liberalism with classical and medieval elements. Montesquieu's synthesis of such alternatives, and of the individual and social dimensions of our nature, also lends perspective on recent liberal theory and its critics. Both Rawlsian and communitarian concerns are better served by a tradition of theory that comprehends both, and which better captures the complexity of American political thought.*

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Montesquieu's *De l'Esprit des Lois* (1748) engaged a variety of Anglo-American scholars in the twentieth century drawn to its views on human nature, constitutional politics, and liberalism, and a healthy interest continues among scholars

*This essay originated in papers delivered at the 1999 and 2000 American Political Science Association meetings; a draft was presented at the Harvard Political Theory Colloquium. Comments at these sessions, and by the reviewers for *Polity*, have improved the argument substantially. I develop here several themes briefly mentioned in *The Cloaking of Power: Montesquieu, Blackstone, and the Rise of Judicial Activism* (University of Chicago Press, 2003).

undaunted by its reputation as complicated or convoluted.¹ The diversity of views in this rediscovery indirectly confirms Montesquieu's belief that complexity was a constructive principle for political theory and practice—indirectly, since particular scholars or schools tend to mine some one element of his philosophy without seeing the larger whole Montesquieu intended. Not enough credit is given to the principle of “moderation” through which he elaborated his philosophy of complexity and equilibrium, the key to his labyrinthine masterwork. The long-criticized complexity of *The Spirit of Laws* seeks to modify liberalism by capturing the multifarious reality of humanity and politics, but not by eschewing universal principles of natural justice for a sociology of diverse particulars. Montesquieu did think analytical simplicity had slighted the multiple dimensions of human affairs and the equilibrium—the moderation—in things. This idea obviously informs his constitutionalism of separated, balanced powers, but he also argues that moderation defines natural right. The laws of our nature balance individual preservation and interest with humane sympathy for one's fellows, even while prudent judgment recognizes variation in the requirements of natural right in particular political circumstances. This view blended some main philosophical alternatives of the Western tradition, sought to capture the individual and social dimensions of our nature, and tempered some of the more abstract and revolutionary claims of early liberalism.² Understood in this way, Montesquieu's philosophy also lends perspective on recent liberal theory and its critics, grounding both Rawlsian and communitarian views in a broader view of human nature and politics. The deeper aims of contemporary anti-foundationalist and individualist liberalism, but also of contemporary communitarian ideas of civic duty and communal moral identity, are better served by a tradition of theory that comprehends both kinds of concerns, and which better captures the complexity of American political thought.

Examining Montesquieu's complex conception of natural right in light of themes throughout *The Spirit of Laws* confirms that a principle of moderation or balance animates his philosophizing and advice on good government. His modern liberalism incorporates some ancient and medieval principles, and his view of natural right cannot be reduced to Hobbes, Spinoza, or Locke. We should extend recent analyses of Hume and Smith to their French predecessor, since his complex philosophy informed their efforts to blend Enlightenment and counter-Enlightenment principles.³ This approach also clarifies why Montesquieu was the foremost

1. See, e.g., the works by Berlin, Oakeshott, Arendt, Pangle, Shklar, and Ceaser cited below. In general see David Carrithers, “Introduction,” in *Montesquieu's Science of Politics*, ed. Carrithers, Mosher, Rahe (Lanham, MD: Rowman & Littlefield, 2000), and the range of scholarly views in that collection.

2. Alan Gilbert emphasizes philosophical complexity in “Internal Restlessness: Individuality and Community in Montesquieu,” *Political Theory* 22 (1994): 45-70, but he sees a Hegelian synthesis and does not discuss Montesquieu's view of natural right.

3. See Charles Griswold, *Adam Smith and the Virtue of Enlightenment* (New York: Cambridge University Press, 1999), and John Danford, *David Hume and the Problem of Reason* (New Haven: Yale University

philosophic influence upon the framers of the American Declaration and 1787 Constitution, who blended liberalism and modern republicanism, as well as classical philosophy, Christianity, and classic common law.⁴ Such moderation or balance pervades American constitutionalism and shapes the complexity of American life and thought, blending pluralism and principle, rights and public purposes—even though distinct schools of scholarship or political practice emphasize one element of America's character at the expense of others.⁵ Montesquieu's continuing influence upon a globally influential political order recommends reexamination of the concepts of moderation and natural right he found fundamental for humanity and politics.

This philosophy of moderation and complexity, developed over 31 Books and 605 chapters in the *Spirit of Laws*, tends to pull scholars toward either brevity and simplicity—reducing the whole to one element—or a more sympathetic view that risks convolution. Indeed, to grasp Montesquieu's melding of individual and community, classical natural right and modern natural rights, and universal truth and particular context, one must see broader dimensions to his principle of moderation. Foremost here are the complexity inherent in his concept of a "spirit" of politics and the larger meaning inherent in the six-part structure of the work. Its frequent recourse to poetry, and blending of Newtonian dynamics with a statesman's perception of both flux and stability in politics, further reveal a principle bringing coherence to a vast landscape of observations. Montesquieu's philosophic ambitions, and his fundamental influence upon modern liberal life, can only come to light through exploration of these and other aspects of his works. Understanding his attempt at philosophical complexity also helps us to step outside our contemporary debates in political theory to test whether today's dominant modes of political theory effectively serve their stated aims. The inward-looking, anti-foundationalist stance of Rawlsian liberalism or of theories of deliberative democracy, and the similarly skeptical stance of communitarian theories that seek civic purpose and communal meaning without recourse to standards of natural justice, would benefit from rediscovering a more balanced, and grounded, philosophy of liberal republicanism.

Press, 1990); see also Peter Gay, *The Enlightenment*, 2 vols. (New York: Knopf, 1966) I, Preface, x; see also II: 325-26, 332.

4. See Donald Lutz, "The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought," *American Political Science Review* 78 (1984): 189-97; James Muller, "The American Framers' Debt to Montesquieu," in *The Revival of Constitutionalism*, ed. Muller (Lincoln: University of Nebraska Press, 1988), 87-102; Judith Shklar, "A New Constitution for a New Nation," in *Redeeming American Political Thought*, ed. Hoffman and Thompson (Chicago: University of Chicago Press, 1998), 158-69.

5. For the American founding as an incoherent "plethora of views," see Isaac Kramnick, "The Great National Discussion," *William and Mary Quarterly*, 3d series 45 (January 1988): 3-32. Arguments that the American amalgam is principled include James Stoner, *Common Law and Liberal Theory: Coke, Hobbes, and the Origins of American Constitutionalism* (Lawrence: University Press of Kansas, 1992), especially at 176-96, and Hans Eicholz, *Harmonizing Sentiments: The Declaration of Independence and the Jeffersonian Idea of Self-Government* (New York: Peter Lang, 2001); see also note 47, below.

I. Complexity and Spirit in Montesquieu's Philosophy

Understanding Montesquieu's political philosophy requires grasping why the complexity of *The Spirit of Laws*, in both structure and argument, is deliberate, and for more than rhetorical or aesthetic purposes. The work has been criticized as incoherent since publication, although in its first century greater tolerance for complicated works of philosophy and letters led to its enormous influence and wide audience. D'Alembert, the encyclopedist of Enlightenment, defended the *Spirit of Laws* by noting that one "must distinguish apparent disorder from real disorder" and that "voluntary obscurity is not obscurity."⁶ This adduces rhetorical reasons for a strategy of esotericism, but Montesquieu himself defends his work not as esoteric but as a complex whole requiring a careful reading. He begins the work by asking readers to "approve or condemn the whole book, and not some few phrases," warning that "many of the truths will not make themselves felt until after one sees the chain that links them to the others."⁷ After the famous analysis of the English constitution he signals his aim to provoke thoughts deeper, or more reform-oriented, than his words alone convey: "one must not always so exhaust a subject, that one leaves nothing for a reader to do," since readers must not only read but "think" (11.20). A Notice he later added is even bolder in this vein: "I have had new ideas; new words have had to be found or new meanings given to old ones."⁸

While much can be learned by contextualizing the *Spirit of Laws* in relation to eighteenth-century France or the Enlightenment, Montesquieu emphasizes that his meaning largely lies in the work itself; moreover, his dialectical philosophy will not follow Enlightenment modes of deduction from axiomatic principles. In the Preface he insists that his "genius" matches that of previous philosophers, even comparing his ingenuity to that of artists—the master of metamorphoses, Ovid; the epic poet Virgil; the inventor Daedalus; and, the painter Corregio (Epigraph, 227; Preface, 231). Montesquieu's approach to natural right or natural law in Book 1, understood as a standard of justice by which to measure politics and law, resembles as much Montaigne's complex humanism as Cartesian, deductive rational-

6. D'Alembert, "Éloge de Montesquieu," in *Œuvres complètes de Montesquieu*, ed. Masson (Paris: Nagel, 1950-55), xvii-xviii; David Lowenthal, "Book I of Montesquieu's *The Spirit of Laws*," *American Political Science Review* 53 (1959): 485-98 at 485-86; Thomas Pangle, *Montesquieu's Philosophy of Liberalism* (Chicago: University of Chicago Press, 1973), 11-12.

7. *De l'Esprit des Lois*, Preface, in *Œuvres complètes*, Pléiade edition, ed. Caillois, 2 vols. (Paris: Gallimard, 1949-51), 2: 229. Subsequent references are parenthetical, citing part of the work and page in the Pléiade edition. I have checked my translations against *The Spirit of the Laws*, ed. Cohler et al. (New York: Cambridge University Press, 1989) and the translation of Thomas Nugent (Hafner, 1949 [1750]), often using a more literal, precise rendering.

8. *Avertissement de l'Auteur*, Author's Note, (first published in 1757), 2: 227-28. Later he noted that *Persian Letters* (1721), sought "to join philosophy, politics and morals, to a tale, and to link the whole by a chain that is secret and, in some fashion, unknown." "Some Reflections on the *Persian Letters*" [1754], in *Œuvres complètes*, 1: 129.

ism.⁹ The Preface and Book 1 together introduce the blend of ancient and modern ideas he discerns in politics and which inform its spirit. The aim is to moderate early modern efforts to establish new foundations for political philosophy upon abstract analyses of man and right in a state of nature. Like Plato, Aristotle, and Cicero, and Tocqueville after him, Montesquieu grasps natural right through the complexity of human experience, found both in our likely primitive condition and in large, complicated societies. Many studies reduce his philosophy to some one earlier modern philosopher or school, or, at the opposite extreme, argue that he practically invented sociology and historicism, eschewing natural right.¹⁰ The one approach overlooks his insistence in opening *The Spirit of Laws* upon his philosophic originality, while the other overlooks his early pronouncement that philosophy can help man to discover "his own nature" despite erroneous philosophies that obscure it (Preface, 230; cf. 29.19). A more promising view finds Montesquieu adapting aspects of Aristotelian philosophy to modern purposes, using ancient and modern sources to forge a new science of politics.¹¹ This is evident in a conception of natural right found not only in the early contractarian analysis but throughout the work, a method that itself links natural right with complexity. His view of natural right unfolds throughout his epic, a work that begins and ends with Virgil and grasps human affairs in a manner as much indebted to the epic tradition as to Hobbes. The hero of this investigation of nature and politics is the philosopher-legislator who watches over mankind by inculcating prudence about how to moderate politics and make it more humane (Preface; 1.1; 24.10).

As noted, while some find *The Spirit of Laws* incoherent or historicist, others reduce it to a foundational, analytical principle. Some presence of Descartes or Hobbes exists in Montesquieu's capacious philosophy, but one of its aims is to temper the rationalist excesses of earlier modern philosophy. The fact that he reserves remarks on moderation until Book 29, near the end of the reader's long, complicated journey, suggests not confusion but respect for the world's complexity: "I say it, and it seems to me I have brought forth this work only to prove it: the spirit of moderation ought to be that of the legislator; the political good, like the

9. Montesquieu blends natural right and natural law in *Spirit of Laws*. The "laws of our nature" in Book 1 invoke yet modify the natural right of Hobbes and Locke; in Book 26 he uses the terms interchangeably (chs. 1, 3, 5, 6, 7). In 26.1 *droit naturel* is a kind of *loi* (750); 26.6 uses *droit naturel* in the title, but *loi naturelle* and *droit naturel* in the body (755, 757). Natural law in 26.3 includes "natural defense" and "natural modesty" (752; see also 26.7), but in 10.2 and 24.6 natural defense is a right (see 719; compare 6.13).

10. As noted below, Rousseau, Arendt, Hülling, Manent, and Kingston find sociology, communitarianism, or anti-foundationalism at the core of Montesquieu's philosophy; Lowenthal, Pangle, and Zuckert find Hobbes; Waddicor, Tuck, and Courtney find Grotius and modern natural law. See also Mark Waddicor, *Montesquieu and the Philosophy of Natural Law* (The Hague: Martinus Nijhoff, 1970), 16-17 for another typology of scholarly views on Montesquieu.

11. As noted below, Aron, Cohler, Mansfield, and Gilbert see some appropriation of classical thought, and for Goyard-Fabre he is "an ancient among the moderns;" *Montesquieu: la nature, les lois, la liberté* (Paris: Presses universitaires de France, 1993), 343.

moral good, is always found between two limits" (29.1, 865). Montesquieu chastises both ancient and modern political philosophers shortly after, as "legislators," for succumbing to their "passions and prejudices" (29.29). Throughout the work he insists upon the irreducible complexity of reality and the need for a dialectical, balanced judgment. The principle of his philosophy, moderation, thus serves as a non-principle, a marker for complexity.¹² These concluding maxims of the *Spirit of Laws* about political and moral moderation warn about the inhumanity of reducing human phenomena to singular, simplistic foundations. This disposition produced the striking argument in Book 11 that the English derived their constitution from the medieval Germans, a system of equilibrium and liberty devised "in the forests." This best government ever devised—praised for securing the liberal aims of individual tranquillity, liberty, and the rule of law—was achieved not by philosophy or science but through a common sense understanding of human needs and aspirations, and of how to achieve them in given circumstances (11.6, 11.8). A philosophy of moderation also explains his odd use of the term "theory" in the historical Books that close the work, a journey through medieval Franco-Gothic law that redefines a proper "theory of laws" (titles to Books 30, 31). Montesquieu's philosophy obviously is modern and liberal, marked by non-teleological and anti-Scholastic views of nature and morals, and by individual rights, the rule of law, faith in intellectual and political progress, and religious toleration. Nonetheless, his three main works—the poetic and philosophic *Persian Letters* (1721), the historical and philosophical *Considerations on the Romans* (1734), and his complex masterwork—comprise a single project to temper rationalism, the distortion of reality caused by artificial insistence upon demonstrability or clarity.¹³

To grasp the comprehensive, moderate philosophy attempted in the *Spirit of Laws* one must move between part and whole, between the seemingly rationalist account of all law in Book 1 and the historical particularity and prudence empha-

12. See Harvey Mansfield, *Taming The Prince* (New York: Free Press, 1989), 214ff; also Raymond Aron, *Les étapes de la pensée sociologique* (Paris: Gallimard, 1967), *Main Currents in Sociological Thought*, tr. Howard and Weaver (New York: Penguin, 1968 [1965]), 27-35, 56-57, 60; Pangle, *Philosophy*, 271-73; Judith Shklar, *Montesquieu* (New York: Oxford University Press, 1987) 85, 91; Anne Cohler, *Montesquieu's Comparative Politics and the Spirit of American Constitutionalism* (Lawrence: University Press of Kansas, 1988), 66-97.

13. Montesquieu satirizes abstract, petty thinking throughout *Persian Letters*; see nos. 45, 72, 73, 109, 128, 134-37, and 145, in *Œuvres complètes*, vol. 1. See also *Spirit* 11.5 (396), 29.19 (882-83), 30.12 (898); in 11.6 (407) he warns of "extreme" liberty and extremes "even of reason;" see Aristotle, *Nicomachean Ethics* 1094b. On Aristotelian prudence in Montesquieu see Isaiah Berlin, "Montesquieu" (1955), in *Against the Current*, ed. Hardy (New York: Viking Press, 1980), 130-161; Pangle, *Philosophy*, 260-305; Melvin Richter, *The Political Theory of Montesquieu* (New York: Cambridge University Press, 1977), 1-19; Mansfield, *Taming the Prince*, 213-46; Goyard-Fabre, *La philosophie du droit de Montesquieu* (Paris: Librairie C. Klincksieck, 1973), 53-76 and *Montesquieu*, 1-12; Michael Oakeshott, "The Investigation of the 'Character' of Modern Politics: Montesquieu," in *Morality and Politics in Modern Europe*, ed. Letwin (New Haven: Yale University Press, 1993), 29-43, at 36, 41; and Diana Schaub, *Erotic Liberalism: Women and Revolution in Montesquieu's Persian Letters* (Lanham, MD: Rowman & Littlefield, 1995), 136-44.

sized thereafter. The structure of the work embodies Montesquieu's philosophy, reviving a kind of Socratic dialectic, alert to part and whole, simplicity and complexity, universals and particulars.¹⁴ He in fact provides three guideposts for this dialectical journey through the *Spirit of Laws*—its title, its division into six Parts, and its epigraph from Ovid. In Book 1 he summarizes the work by defining its title in terms of the various "relations" that comprise the spirit of laws, and in doing so captures the blend of principle and fact for which his political science is known (1.3). Montesquieu implicitly separates this list of relations or things into four categories, by using "relate" four times, in three verbal moods. First, laws "must relate to" the "nature" and "principle" of a government. Second, laws "should be related to" the physical aspect of a country, including climate, terrain, and "the way of life of the peoples." Third, laws "should relate to" the "degree of liberty" a constitution can sustain and to the religion, "inclinations," wealth, population, commerce, and mores and manners of the people. Fourth, "laws are related" to one another, their history, the "purpose of the legislator," and "the order of things on which they are established." Laws must be considered from all these points of view: "I shall examine all these relations: all together they form what is called THE SPIRIT OF LAWS" (1.3, 238, emphasis in original).

This list of topics does not clearly correspond to the six-part structure of the work, nor to the topics of the 31 Books. Nevertheless, the work examines all these relations and things, a scope that suggests a new political science blending the natural science of Bacon and Newton with traditional political science. The spirit of laws comprises the various elements of nature and man's nature in their relations with various laws, then the actual and theoretically optimal relations among laws themselves—comprehending the political, social, environmental, and theoretical phenomena affecting mankind. Understanding politics means not analyzing it through one idea or condition but grasping the actual ethos, the complex web of ideas and facts, that shapes laws, constitutions, and civilizations. Unlike modern sociology, Montesquieu thinks this requires study of the different aspects of man's being, and one framework for analysis is a Newtonian view of man's psychology and physiology, observing how forces and ideas act and react with each other.¹⁵ This natural science element explains why his notions of rationality and psychology omit classical teleology, precluding traditional investigations of the best human life, or best regime. His analysis of human nature and politics is prescriptive, but, in relation to classical and medieval philosophy, somewhat relativist and reductive. The new science of relations or spirit occupies a middle position between subjectivism and Socratic teleology—adopting neither the distinction between facts and values in

14. I emphasize Books 1-11 of *Spirit* here, the focus of scholarship reducing Montesquieu's thought to some one idea; chapters 3 and 4 of *The Cloaking of Power* discuss Books 12 to 31 in detail, emphasizing the projects for reform and prudence they propound.

15. See Lowenthal, "Book 1," 497-98.

modern social science nor the universal moral judgment of the first political science, Aristotle's. This moderate position identifies Montesquieu as a modern with classical moments. Instead of a law of the human spirit sought by Aristotle or Thomas Aquinas he analyzes a spirit of laws, thus preparing for, but not entailing, value-neutral social science. Still, this political science rejects the historicist notion that human being is essentially malleable and radically self-transforming, not to mention Nietzsche's notion that we are laws unto ourselves.

The concepts of "relations" and "spirit" embodied in the work's title, which suggest a newly comprehensive human science, in turn explain the division of the *Spirit of Laws* into six Parts. Scholars often dismiss this second major clue about the work, either ignoring Montesquieu's plan or making their own.¹⁶ This structure reinforces complexity and moderation in his philosophy, and suggests why the understanding of natural right in Book 1 ultimately is not abstract and rationalist. Part 1 (Books 1 to 8) discusses laws in general and then human or political laws as derived from the "nature" or ruling structure and "principle" or motive forces of the three basic types of governments (2.1; 3.1). Recent political scientists recognize this discussion, since it surveys traditional modes of political analysis and reformulates them. By the end of Book 3 Montesquieu indicates, however, that the crucial distinction for his political science is not between three (or four) types of government—democracy, aristocracy, monarchy, and despotism—but between moderate and despotic governments (see 3.10, title; 8.8, 356; 5.14, 297). Thus, the Books that propound Montesquieu's constitutionalism, 11 and 12, never use the nature or principle concepts, and Book 19 uses a new term, the "general spirit" of a nation, as a basic principle of political analysis—a comprehensive predecessor to the term "political culture" (19, title; 19.4). Montesquieu's fundamental ambition is to re-found political science upon new principles, while utilizing the best of existing approaches. The structure of the government or who rules, and the defining principle or motives of the political order—which together suggest Aristotle's *politeia* or regime—are relevant, but less crucial than the effects of these and other political phenomena upon individual tranquillity. He recognizes but demotes such fixtures of ancient and early modern political science as abstract natural rights, republican political liberty, or types of regimes, while emphasizing that liberalism must educate governments to provide for moderation in political and civil life and to avoid despotism and brutality. This blending of Montaigne's humane counsels with Newton's science of mechanics informs his kinder, gentler view that human nature and natural right seek equilibrium and tranquillity, moderation both individual and communal.

16. Exceptions include Schaub, *Erotic Liberalism*, 136-44; Cohler, *Montesquieu's Comparative Politics*, 11-33; and Paul Rahe, *Republics Ancient & Modern 2, New Modes & Orders in Early Modern Political Thought* (Chapel Hill: University of North Carolina, 1994), 210-14. The third edition (1750) restored the six-part structure omitted by the printer in 1748: Books 1 to 8; 9 to 13; 14 to 19; 20 to 23; 24 to 26; 27 to 31. See *De L'Esprit des Loix*, ed. Brethe de la Gressaye, 4 volumes (Paris: Société Les Belles-Lettres, 1950-61), 1: 1-11.

These fundamental principles of spirit, moderation, and tranquillity, which unfold in Part 1 of the *Spirit of Laws*, in turn inform the work as a whole. The latter Books of Part 1 (Books 2 to 8) analyze whether the traditional governments and concepts adequately secure the moderation and tranquillity essential to a humane politics. Part 2 (Books 9 to 13) completes this criticism of, and transition beyond, both classical political philosophy and early modern liberalism by proposing a new liberal constitutionalism, including a discussion of England and separation of powers (Book 11). Since traditional analyses and forms of government fail to provide moderation and tranquillity, and having sketched a complex constitutionalism that does so, Part 3 (Books 14 to 19) examines obstacles to political moderation from climate and terrain. Here Montesquieu scientifically analyzes politics and human nature in relation to nature and history, explaining the predominance of despotism and scarcity of political liberty or tranquillity throughout the world and recorded history. The last Book in this Part investigates the general spirit of a people, and launches the subtle, practical education in prudence and moderation that occupies the remainder of the work. He revisits England to examine the spirit of dynamism and faction shaped by its constitutionalism, an analysis that deeply influenced Madison and Tocqueville, among others (19.27). He launches Part 4 (Books 20 to 23), and the second half of the reader's journey, with an "Invocation to the Muses" that prepares for advice about commerce and population growth and sows the seeds of modern political economy and "globalization." Part 5 (Books 24 to 26) continues to blend theory and practice by discussing laws on religion and tolerance and defining distinct categories of law—separating political from civil, religious law from local custom—to secure both individual liberty and general order. The unduly neglected Part 6 (Books 27 to 31) examines the history of certain Roman and French laws and propounds a new historical "theory" of law, punctuated by general remarks on the spirit of law (Book 29). These final three Parts of the work examine crucial aspects of a constitutionalism of moderation and tranquillity; from modern commerce to medieval French law, Montesquieu inculcates a liberal prudence on reforming the laws and spirit of any particular people or government, the more subtly the better.

The third initial guidepost that Montesquieu provides for the *Spirit of Laws*, beyond the title and six-part structure, is the epigraph, taken from the *Metamorphoses* of Ovid: *Prolem sine matre creatam*, "An offspring created without a mother."¹⁷ Montesquieu's use of poetry is rarely discussed, but one must account for the prominent recourse here, and in the epigraph to Book 28, to ancient poetry about transformations of gods, nature, and men. As the Preface elaborates, his "genius" seeks original approaches to both longstanding and novel human problems, and his frequent use of poets and artists bespeaks a reordering of given ideas

17. Ovid, *Metamorphoses*, 2.553, ed. Miller and Goold (Cambridge, MA: Harvard University Press, 1977), I: 98-99; see Richter, *Political Theory of Montesquieu*, 319 n.2, and note 24, below.

or political circumstances even while wearing the mantle of things “classic.” His new political science of spirit, of the complex interrelations among natural and political phenomena, harnesses Enlightenment natural science with earlier elements of the Western tradition. Such complexity seeks to both understand and oppose despotism, the epitome of political extremism, imbalance, and disequilibrium. His primary remedy for this threat to a humane, free life is the moderation readily available in nature and human nature. This informs his most noted constitutional doctrine, separation of powers, for a principle of equilibrium guides his study of England’s constitution: “So that one cannot abuse power, it is necessary that, by the disposition of things, power check power” (11.4, 395). Moderation also informs his other well-known concepts, such as the pluralism or faction that defines free politics, but which produces its own kinds of extremism (19.27). Less obvious is that the *Spirit of Laws* as a whole seeks to inculcate philosophical moderation or equilibrium by drawing upon diverse modes of knowing about human nature and politics, from poetry and history to science and philosophy, blending them so as to capture a comprehensive portrait of human and political reality.

The scope and complexity of the *Spirit of Laws* embodies, then, Montesquieu’s notion of spirit, and this idea of the myriad interrelations among phenomena points back to moderation. These principles bind the many Parts, Books, and chapters of a work that boldly proclaims to comprehend “the infinite diversity of laws and mores” among men and “the histories of all nations” (Preface, 229). Since Montesquieu ultimately announces that the true spirit of laws, and of his political science, is moderation, one must grasp how this principle shapes such core ideas of his philosophy as natural right and constitutionalism.

II. Moderation, Humane Letters, and a New Science of Politics

Montesquieu’s concept of moderation demotes moral virtue and internal ethical balance, concepts central to classical and Christian ethics, so as to comprehend the myriad ideas and actions of human life. His most general formulation of moderation is “spirit” as a quasi-Newtonian equilibrium between bodies, forces, or ideas. Thus, the correct “relation between the laws and the principle” of each government “strains all the springs of the government; and the principle receives, in its turn, a new force. It is in the same way as, in physical motion, an action is always followed by a reaction” (5.1, 273). Often, however, relations among humans and their ideas cannot be defined so starkly, and Montesquieu’s recourse to poetry is one way of tempering analogies to physics. His predecessor as a counselor in the Parlement of Bordeaux, Montaigne, may inform this disposition, even though, as with Locke, he is never cited in the *Spirit of Laws*. Montaigne and Montesquieu both wrote works known for their comprehensiveness, seeming disorder, and blend of philosophy and *belles-lettres*. In the *Essays* and in the *Spirit of Laws* each compares himself to

a painter; each prominently cites Ovid, Virgil, Plutarch, and Lucretius; each addresses moderation, religious toleration, culture, and climate as factors in politics.¹⁸ Both sought a humane politics, to address human timidity and fear by moderating the cruelty evident in all tyrannies, whether sheer barbarism or religious and moral zealotry.¹⁹ Still, even if Montaigne is not the skeptic he seems, he never proposes a political science or philosophy as systematic as Montesquieu's.²⁰ Perhaps the *Spirit of Laws* gives both Montaigne and Locke the silent treatment because each reads nature in too skeptical or atomistic a mode, the one assaying provocative musings, the other treating politics, religion, education, and morals analytically and artificially, in discrete works.

The comprehensive scope and complex design of the *Spirit of Laws* suggest that Montesquieu's moderation serves a bold synthesis, but in a Socratic, not Hegelian, sense. He moves from the humane spirit of Montaigne in the Preface to scientific analysis in Book 1 of "laws in their relation with the various beings," then quickly shifts back, defining the spirit of laws in empirical, historical terms (1.1; 1.3). The last theoretical Book of the work echoes this synthetic approach, albeit having left behind any abstract reflections on the universe: the spirit of moderation should guide legislators, for the political and moral good exists between extremes (29.1). Moderation thus contains physical, epistemological, and political senses, analogous meanings that correspond to the relations he saw between the natural, psychological, and social aspects of reality.²¹ He tempers any traditional moral residue by blending in modern elements—Cartesian or Newtonian science, and Machiavellian realism about the need to lower the moral aims of politics.²² Although the final aim

18. Montaigne compares himself to a painter in "De l'amitié," *Essais*, 1.28, in *Œuvres complètes*, ed. Thibaudet and Rat (Paris: Gallimard, 1962), 182; "Of friendship," in *The Complete Essays of Montaigne*, tr. Frame (Stanford, CA: Stanford University Press, 1958), 135. Montesquieu names Plato, Malebranche, Shaftesbury, and Montaigne "the four great poets" in his *Pensées*; *Œuvres complètes* 1: 1546 (no. 2095).

19. See Shklar, *Montesquieu*, 15, 26-7, 114; David L. Schaefer, *The Political Philosophy of Montaigne* (Ithaca, NY: Cornell University Press, 1990), 340-41, 383-84, 394; Paul Rahe, "Forms of Government: Structure, Principle, Object, and Aim," in *Montesquieu's Science of Politics*, 75, 84-88; and Michael Mosher, "Monarchy's Paradox: Honor in the Face of Sovereign Power," in *Montesquieu's Science of Politics*, 217.

20. See Albert Sorel, *Montesquieu*, deuxième édition (Paris: Librairie Hachette, 1889), 173-74, on Montesquieu lying between Montaigne and Pascal in a "middle ground" or golden mean for knowledge, reflection, and common sense.

21. See Charles-Jacque Beyer, "Montesquieu et l'esprit cartésien" in *Actes du Congrès Montesquieu* (Bordeaux: Imprimerie Delmas, 1956); Lowenthal, "Montesquieu," in *History of Political Philosophy*, 3rd ed., ed. Strauss and Cropsey (Chicago: University of Chicago Press, 1987 [1963]), 513-34 at 514, and "Montesquieu and the Classics," in *Ancients and Moderns*, ed., Cropsey (New York: Basic Books, 1964), 258-87 at 259. Goyard-Fabre finds a Newtonian blend of empirical and rationalist principles more than an abstract, Cartesian rationalism, in *La philosophie du droit*, 57-65.

22. On Machiavelli and natural science see Lowenthal, "Introduction," in *Considerations on the Causes of the Greatness of the Romans and their Decline* (Indianapolis: Hackett Publishing, 1999 [1965]), 11; on moderation, Schaub, *Erotic Liberalism*, 25. I discuss these issues in "The Machiavellian Spirit of Montesquieu's Liberal Republic," in *Machiavelli's Republican Legacy*, ed. Paul Rahe (forthcoming, Cambridge University Press, 2004).

of Montesquieu's new science of politics is liberty, a distinctively modern moderation is thus its indispensable condition. His negative idea of liberty, as tranquillity or freedom from fear (11.6), follows Hobbes in defining human nature more by aversion to insecurity than by orientation to a higher end. However, against Hobbes he argues that liberty requires political moderation, and that our nature is open to higher aims, even to the divine (1.1-2; see also 4.2, 5.12, 24.1). Proper liberty entails moderation, the avoidance of any structural imbalance of forces or any stagnation of motion—the avoidance, that is, of despotism. Montesquieu will not have man patiently suffer despotism, whether physical, political, or moral, as a citizen of the city of God. He condemns the brutality of ambitious princes or factious republics, and the yoke of security imposed by any Leviathan. He would reform the city of man by emphasizing the natural desire for a tranquil, hospitable abode, even one with room for higher aspirations.²³

Related to this new conception of moderation is the recourse to poetry throughout the *Spirit of Laws*. A subtle redefinition of moderation is but one device by which, as the Roman poet Lucretius might put it, Montesquieu coats his controversial medicine with honey. His citations to poets and artists, from the opening epigraph to a closing sentence that quotes Virgil, rarely have been studied with care.²⁴ His aim, in part, is to recall the Epicurean materialism of Lucretius, a doctrine more quietly present in Virgil and Ovid, since Montesquieu largely accepts the Lucretian and Newtonian challenges to the physics and metaphysics of Plato and Aristotle.²⁵ To replace a teleology of forms, essences, and natural ends, Montesquieu updates the ancient materialists with a Newtonian science of the structure and power of matter and its motions. However, he applies such mechanistic principles to politics in the realistic, empirical spirit of Machiavelli's factious republicanism, although this, too, is suitably tempered. Montesquieu invokes the cosmopolitanism and humane grandeur of Virgil more than either Epicurean or modern materialism, preferring *The Aeneid's* praise for human emotions and attachments, for piety and tradition. He launches his analysis of commerce with his own poem and by recalling the tragedy of Dido and Aeneas, then regularly praises Carthage, the counterpoint to Rome's warlike imperialism (Book 20, epigraph and "Invocation to the Muses").

This blending of ideas from ancient poetry, modern science, and Machiavelli is in fact the basis for Montesquieu's most noted political doctrine, a constitutional

23. See Gilbert, "'Internal Restlessness';" Sharon Krause, "The Spirit of Separate Powers in Montesquieu," *Review of Politics* 62 (2000): 231-65; Rahe, "Forms of Government," and Krause, "Despotism in *The Spirit of Laws*," in *Montesquieu's Science of Politics*, 69-108, 231-71.

24. See Pangle, *Philosophy*, 235-37, and Schaub, *Erotic Liberalism*, 144, 150, 175 n. 13. Christopher Sparks, *Montesquieu's Vision of Uncertainty and Modernity in Political Philosophy* (New York: Edwin Mellen, 1999), overlooks the philosophic reflection throughout *Persian Letters* and the poetry (including Montesquieu's own) throughout *Spirit*.

25. I am indebted to Eve Adler, "Vergil on World Empire" (unpublished essay) and *Vergil's Empire: Political Thought in The Aeneid* (Lanham, MD: Rowman & Littlefield, 2003); see also James Nichols, *Epicurean Political Philosophy* (Ithaca, NY: Cornell University Press, 1976), 190-98, 206.

politics of separated powers in a dynamic equilibrium, serving tranquillity and moderate satisfaction of the passions. In this complicated, factional politics the checking of each force by another “strains” all the springs of the governmental order, producing actions and reactions that keep the system moving and avoid the dangerous inertness of despotism (5.1, 11.13, 19.27). This new moderation blends a poet’s perception of the passions, a modern scientist’s mathematical view of motion, and a realist’s eye for the dynamics of politics. His philosophy embodies this dynamic equilibrium, with each element tempering the others so as to capture the complexity of nature and politics. To temper the radical tendencies in Lucretius, Machiavelli, or modern science, Montesquieu invokes the concern for moderate reform and prudence in Aristotle and Plutarch. He is the master painter who draws upon earlier masters, just as Corregio acknowledges Raphael (a Florentine contemporary of Machiavelli), but he utilizes earlier thinkers in light of his own view of reality and human nature (Preface, 230-31). This synthetic ambition informs his complex constitutionalism, with no hint of a Hegelian dialect driving it. He thinks that a politics of moderation and complexity could take many forms in different circumstances (see 1.3, 11.6 [end], 11.20). This spirit of moderation yields a complicated work of hundreds of chapters and thousands of citations to authorities, at once original and synthetic.

One price for eschewing teleology is that Montesquieu’s philosophy resembles, at moments, Machiavelli’s reductive realism. Unlike either the classical focus on the end(s) of man or the earlier modern focus on state-of-nature origins, he emphasizes the political state most historically and geographically prevalent, despotism.²⁶ His philosophy approaches foundationalism here, seeming to define man in terms of interacting forces. This is evident in his lone citation of a modern authority in Book 1, the Italian jurist and poet Giovanni Gravina (1664-1718) of the modern natural law school led by Grotius.²⁷ Montesquieu defines “POLITICAL RIGHT” (*droit*) and “CIVIL RIGHT” in strictly relational, amoral terms: “*The union of all individual forces*, Gravina states very well, *forms what is called the POLITICAL STATE*”; “Individual forces cannot be united without all wills being united. *The union of these wills*, Gravina again states very well, *is what is called the CIVIL STATE*” (1.3, 236-37, emphasis in original). Nonetheless, Montesquieu tempers any rationalism by looking to a fellow jurist and poet for these crucial terms, not to Machiavellian, Cartesian, or liberal philosophers. A jurist’s distinction between political and civil spheres embodies the balance his philosophy holds between universal laws, historical practice, and individual freedom. A political science of moderation relates

26. Schaub, *Erotic Liberalism*, 20; see also Lowenthal, “Book I,” and Pangle, *Philosophy*, 20-47. Alternately, see Shklar, *Montesquieu*; Cohler, *Montesquieu’s Comparative Politics*; and Goyard-Fabre, *Philosophie du droit et Montesquieu*.

27. See Waddicor, *Philosophy of Natural Law*, 16, 59-64, 96; Richard Tuck, *Natural Rights Theories* (New York: Cambridge University Press, 1979) 72-81; and C.P. Courtney, “Montesquieu and Natural Law,” in *Montesquieu’s Science of Politics*, 41-67.

natural laws of motion to psychological agency and the interactions between human wills. He concludes that only multiple governing powers can maintain a dynamic equilibrium, one preserving individual tranquillity and communal order.

The concepts of spirit and moderation in the *Spirit of Laws* thus aim to comprehend both motion and stability, mankind's evident political diversity and an essential humanity. This new human science seeks a "law" of politics to explain the diversity of political practices across time and place, moderating the ancient political science of virtue but also the early modern political science of efficacy and sovereignty. For Montesquieu, a quasi-Newtonian analysis of human things actually tempers the ambition for certainty in the new natural science, since a science of "man" concerns an "intelligent world" that is "far from being as well governed as the physical world" (1.1). This condition is caused by man's limited nature, that he is "subject to ignorance and error" and "falls subject to a thousand passions," but also by man's agency (1.1, 233-34). After citing Gravina on will and force he declares that laws "should be so appropriate to the people for whom they are made that it is a very great accident if the laws of one nation can suit another" (1.3, 237). Humans have such a capacity for choice despite the laws of our nature that we need instruction from philosophers on political reform to achieve happiness (Preface, 1.1). One aspect of human nature relates to the broadest generalities of a divine or ontological law governing nature, and this approach leads him to compare the primordial principles of human justice with *a priori* axioms on radii and circles (1.1, 233). This note of rationalism does not contradict, however, the pervasive argument of the *Spirit of Laws* that a philosophy of human affairs requires lenses beyond Cartesian abstraction and certainty. Indeed, by the close of Book 1 his analysis shifts toward empirical, historical reality, taking account of man's intelligence, will, passions, and history, among other complexities of man and nature.

Montesquieu's philosophy of epistemological, moral, and political moderation thus breaks with classical philosophy but employs some of its elements to criticize his modern predecessors. One important topic for discerning his stance toward both ancients and moderns, and his enduring influence upon later political theory and practice, is the novel conception of natural law or natural right yielded by this philosophy of moderation.

III. Nature, the Politics of Decent Tranquillity, and American Moderation

As noted, Montesquieu's capacious spirit finds him turning from the classical humanism of the Preface to launch an abstract discussion of "laws in general" in Book 1. He announces, "Laws, taken in their most extended meaning, are the necessary relations deriving from the nature of things." More specifically, "invariable laws" govern all the five classes of beings in the world, from "the divinity" to brute matter, even to "the intelligences superior to man," "the beasts," and man himself

(1.1, 232). Even the “creator and preserver” cannot violate or alter these rules; this is a world of necessary laws, aimed at preservation. While much debate arises over whether Spinoza or Descartes is the greater influence upon these extraordinary, cryptic statements, the actual source Montesquieu cites, the *Moralia* of the Hellenic biographer and moralist Plutarch, mostly is ignored.

The cited passage in Plutarch’s essay “To An Uneducated Ruler” quotes the ancient Greek poet Pindar, that “law is the king of all, mortal and immortal.”²⁸ Difficulties abound with citing such an authority to define the most general meaning of law. Pindar’s poem suggests a divine and natural law dictating that might justifies right, and many Sophists, as well as Plato’s Callicles in the *Gorgias* and his Athenian Stranger in the *Laws*, so interpret it. The eclectic, moderate philosophy of Plutarch, however, instructs the young ruler that natural law stands above human power, counseling princes to be wise and just.²⁹ Moreover, tradition suggests the deep piety of both Pindar and Plutarch, in their writings and in their belief in the oracle of Apollo at Delphi, for whom Plutarch was a priest. Such an ambiguous citation in Montesquieu’s initial remarks on natural theology, natural law, and natural right warrants caution about finding a Spinozistic or Hobbesian doctrine here. On the other hand, there is too much sober philosophic reflection in his earlier works and throughout the *Spirit of Laws* to dismiss these thoughts as either confusion or ironical Pyrrhonism about fundamental philosophical questions. Rather, the content and manner of these lines suggest an intention to moderate the canonical views of natural law in ancient and medieval philosophy, and to temper the reductive tendency in modern philosophy.

Montesquieu’s analysis of these issues in Book 1, and beyond, does draw upon the rationalism of Machiavelli, Hobbes, and Locke, each of whom explains reality and politics through a foundational principle. The debt to such rationalism wanes, however, as the *Spirit of Laws* unfolds, emphasizing complexity, particularity, and political moderation.³⁰ Even in the early passages bearing the strongest imprint of earlier modern and liberal theorists, Montesquieu asserts his genius by referring his most abstract conception of law to a didactic essay by Plutarch, in turn quoting a poet. Unlike Hobbes, Spinoza, and Locke, his philosophy is concerned not with abstract analysis but with educating statesmen through reflections on particular problems and ideas for humane ruling and reform. Whatever the allure of Machi-

28. Plutarch, “To an Uneducated Prince,” *Moralia* 780c, ed. Fowler (Cambridge, MA: Harvard University Press, 1936), X: 56-57. Pindar and Plutarch have “king,” but Montesquieu writes “queen.”

29. See *The Laws of Plato*, ed. Pangle (Chicago: University of Chicago Press, 1988 [1980]), 690b (Book III, note 24, 522-23). Dryden finds Plutarch influenced by the Eclectic school, “which selected from all the other sects what seemed most probable in their own opinions.” In *Lives of the Noble Grecians and Romans*, ed. Clough (New York: Modern Library, n.d.), Introduction, xx.

30. Alternately, see Michael Zuckert, “Natural Law, Natural Rights, and Classical Liberalism: On Montesquieu’s Critique of Hobbes,” in *Natural Law and Modern Moral Philosophy*, ed. Paul, Miller, and Paul (New York: Cambridge University Press, 2001).

avellian efficacy or the certainty of modern sovereignty, all rulers ultimately are governed by a higher law. On the other hand, observation of nature and human nature cannot support the moralism of classical and medieval natural law. In this way Montesquieu provides the lineaments of a modern "common sense" philosophy, neither teleological nor reductive, of the sort evident in the American Declaration of Independence. The American founders balanced Enlightenment doctrines with appeals to Providence, legal tradition, duty, and honor throughout the text, echoing a philosophical moderation that assimilates moderns and ancients, liberalism and classic common law.

Montesquieu's moderation continues to govern throughout the first chapter of Book 1. His first general law, covering all beings other than the divinity, embodies moderation as a complex equilibrium: "Between one moving body and another moving body, it is in accord with relations of mass and velocity that all motions are received, increased, diminished, or lost; every diversity is *uniformity*, every change is *constancy*" (1.1, 232-33, emphasis in original). This law, with all its paradoxical import, informs the analysis of the "nature" and "principle" of the four types of government in the rest of Part 1 (Books 1 to 8). Amidst the flux of politics, necessary consequences follow from antecedent states: "One must see which are the laws that follow directly from this nature, and that consequently are the first fundamental laws" (2.1, 239). Causal mechanisms can illuminate the messiness of politics because Montesquieu finds that every uniformity includes diversity and every constancy, change. The basic principle of nature and human nature, of natural science and political science, is the necessary governance of laws, but laws about motion and diversity. The interior and exterior freedom of each human exists within, and presupposes, a natural and social world in which bodies move according to uniform laws, laws of dynamic interaction. This accommodation of motion and constancy, and of the diverse circumstances in which a rule applies, is Montesquieu's original, imaginative response to his predecessors in both natural and political philosophy.³¹

The synthetic ambition of this political science finds a fundamental coherence between its opening citations to Ovid, Virgil, Corregio, and Plutarch (thus Pindar), and a seemingly rationalist analysis of universal laws. Poetry and natural science had met before in the ancient Roman poet Lucretius, and more subtly in Virgil and Ovid, who toned down the materialism and Epicureanism of their predecessor. Montesquieu's first enunciation of a general law echoes the blending of materialist dynamics and human originality in Lucretius and in Ovid's poem on metamorphoses, while confirming a modern philosopher's debt to the physics of Newton. Phrases and moments in Book 1 indeed reflect the sources often examined, whether Descartes or Hobbes, Spinoza or Malebranche or Clarke. Nonetheless,

31. See Lowenthal, "Montesquieu," 516, 514.

both in Book 1 and in the Preface, Montesquieu embraces philosophic, phenomenological complexity rather than analytical simplicity, seeking to temper modern philosophical rigor with the humane understanding of the ancients.³² Like Epicurus and Hobbes, he thinks nature orients man toward individual freedom and security. However, his analysis of freely moving human bodies and wills borrows from Virgil and Montaigne to temper modern reductionism, observing that humans naturally and freely share affections, and desire peace and sociability (1.2). This synthesis supports Montesquieu's argument that individual security requires a political and social order free of the Hobbesian elements of a rigid fundamental contract and a fearsome sovereignty. Hobbes may be, as Michael Oakeshott argues, a systematic but not rationalist philosopher whose prescriptions for public order seek to open up a free private sphere, but this is not how Montesquieu seems to have understood him. The one reference to Hobbes in the *Spirit of Laws* chastises the imposition of a fabricated or formal (*composée*) idea onto natural, pre-social man, that of empire or domination. Montesquieu terms such systematic thinking "unreasonable," a foretaste of his criticisms of the utopian Harrington and the French historian Dubos (1.2, 235; 11.6, 407; 30.10, 891-92; see also 11.5, 396).³³

Book 1 as a whole indicates that there is a divine law and law of nature, but this ordered yet ateleological universe yields only the moral or political guidance of general physical and psychological laws. Some moral order is found in nature, as is indicated by the one authority cited in Montesquieu's brief cosmology and ontology—not the Bible or Aristotle, Newton or Spinoza, but Plutarch's *Moralia*. The mixed character of Montesquieu's political science, neither entirely subjective nor universalistic, is evident in his minimalist natural laws or pre-political "relations of equity." These indicate, for example, that "supposing that there were societies of men, it would be just to conform to their laws;" or that, "if there were intelligent beings that had received some benefit from another being, they ought to have gratitude" (*reconnaissance*) (1.1, 233).³⁴ These laws of equity accord with man's pre-political nature as examined in the sequel, on "the laws of nature" (1.2). When read in light of the whole work, the treatment of human nature in Book 1 does not so much adopt earlier state of nature theories as respond to them. Montesquieu employs his more phenomenological, descriptive analysis to expose the excesses of this favorite method of early liberalism, in order to rescue natural right from the extremes of

32. Lowenthal, "Montesquieu and the Classics," 258-59.

33. See Michael Oakeshott, "Introduction to *Leviathan*," in *Rationalism in Politics and Other Essays*, expanded edition (Indianapolis, IN: Liberty Fund, 1991 [1962]), 221-94, especially 230-32, 235-48, 264-67, 282-83.

34. *Reconnaissance* means both acknowledgement and gratitude, suggesting anticipation of, yet difference with, Hegel's "recognition" as the basic human relationship. See *Philosophy of Right*, ed. Wood, tr. Nisbet (New York: Cambridge University Press, 1991 [1821]), secs. 57, 207. See also Mosher, "The Particulars of a Universal Politics: Hegel's Adaptation of Montesquieu's Typology," *American Political Science Review* 78 (1984): 178-88.

Hobbesian sovereignty and Lockean revolution. His complicated argument in Book 1 begins a redefinition of natural right in the non-Hobbesian terms of the most basic feelings, including sentiments toward family and friends, a modification confirmed by the very next usage of *droit naturel* in the work (3.10, 260).³⁵

IV. A Humane Natural Right and Political Moderation

Montesquieu sows many seeds for his redefinition of natural right in his chapter on the laws of nature, which mainly discusses human nature. He examines "the constitution of our being" by initially referring to the "law that impresses on us the idea of a creator and thereby leads us toward him." This is the first natural law "in importance" but not "in the order of these laws," and he then drops any treatment of divinity (1.2, 235). His analysis of religion throughout the work, and especially in Books 24 and 25, is more sympathetic than Machiavelli's, but omitting a discussion of what is said to be first in importance is significant. Montesquieu's political science treats only ambivalently a city of God that broadens the horizon of the city of man. He justifies this crucial judgment by observing that "man in the state of nature" thinks more of "the preservation of his being" than of his origin. This demotion of religion accords with the non-providential divinity implied earlier in Book 1. Similarly, he later recognizes a natural impulse to theological belief but places greater emphasis on the need for toleration and tranquillity in politics. This view hardly is Thomistic, but it is less hostile than Machiavelli's or Bayle's.³⁶ Whatever its merits, his portrait of human nature achieves a certain coherence, emphasizing feelings and passions, and readmitting reason only at the very close and in a subordinate role. Natural man "at first" would "feel only his weakness" and is marked by extreme "timidity" (1.2, 235). Still, Montesquieu avoids extreme atheism by noting a human inclination toward faith here, and later by praising religion's capacity to soften politics (see 2.4, 10.3, 12.29, 19.18, 20.7, 24.14). His criticism in Book 24 of Bayle's apparent atheism is not a prudent masking of essential agreement, but a characteristically balanced view. Scholasticism is mistaken, but a philosophy that ignores religious or transcendent inclinations in human nature also is extreme, missing a crucial part of the phenomena. This view informs the complexity evident in the American founding and in the religion clauses in the First Amendment to the Constitution. By encompassing not only free exercise but also non-establishment,

35. Pangle overlooks this passage in *Philosophy*, 309-10, and in "The Philosophic Understandings of Human Nature Informing the Constitution," in *Confronting the Constitution*, ed. Bloom (Washington, DC: AEI Press, 1990), 15-18, 24-37.

36. See Rebecca Kingston, "Montesquieu on Religion and the Question of Toleration," in *Montesquieu's Science of Politics*, 375-408. Compare Robert Bartlett, "On the Politics of Faith and Reason: The Project of Enlightenment in Pierre Bayle and Montesquieu," *Journal of Politics* 63 (2001): 1-28, and Schaub, "Of Believers and Barbarians: Montesquieu's Enlightened Toleration" in *Early Modern Skepticism and the Origins of Toleration*, ed. Levine (Lanham, MD: Lexington Books, 2001), 225-47.

the American framers balanced accommodation of the importance of religion for public and private life with toleration and liberty.³⁷

Given that man is a passionate animal with some potential for rational, higher aims, Montesquieu sketches four laws of “our being.” Peace is “the first natural law”—first in historical appearance—since by nature each man “feels himself inferior” and would hardly attack his fellows. He explicitly criticizes Hobbes for projecting such a “complex” idea as desire for power and domination upon natural, pre-political man (1.2, 235). The second law of nature is “nourishment,” since “man would add the feeling of his needs to the feeling of his weakness” (236). The “natural entreaty” which men “always make to another,” or man’s natural sociability, is the third natural law, although this has a complex root in fear, pleasure, and sexual charm. Man’s natural timidity and fear prompts recognition of “mutual fear,” which would “soon persuade them to approach one another.” Alternately, “the pleasure one animal feels at the approach . . . of its own kind” would foster sociability. This third drive for community thus is the increase in such pleasure brought about by “the charm that the two sexes inspire in each other by their difference” (236). Each of these diverse sources of the natural law of sociability—which Montesquieu might also term, in Stoic fashion, ‘man’s humanity toward man’—is a passion or drive. Still, he closes by noting that beyond “sentiment” or feeling, “which belongs to men from the outset,” men eventually gain “knowledge.” This is no end in itself, but another “bond” that other animals lack, “another motive for uniting,” and thus “the desire to live in society” is the fourth natural law (236). Man is naturally rational in that he develops this capacity in history or through historical experience. While a modern view, it is not Rousseau’s historicist view of a basically malleable humanity, nor is it the anti-foundationalist or sociological view Arendt and others find.³⁸ Once again, his position lies between a Thomistic view of rational and political man, a Hobbesian view of rational but apolitical man, and a Rousseauian view of irrational and apolitical man developing toward reason and society. His complex view of human nature guides his political science, in that reason is a dimension of our nature but passions or sentiments—orienting us to peaceful, tranquil sociability—define us more fundamentally.

This portrait of the pre-political laws of equity and of “man in the state of nature” conveys man as he naturally was and is, not an abstracted, idealized projection onto

37. I discuss Washington’s moderation regarding religion and politics, which captures the American spirit of religion better than either Jefferson or a “Christian nation” view, in “Liberty, Constitutionalism, and Moderation: The Political Thought of George Washington,” in *History of American Political Thought*, ed. Frost and Sikkenga (Lanham, MD: Lexington Press, 2003), 95-113.

38. See Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958) 190-91 n. 17, 202-3, and *The Life of the Mind, Two/Willing* (San Diego: Harcourt Brace Jovanovich, 1978), 198-202; Mark Hulliung, *Montesquieu and the Old Regime* (Berkeley: University of California Press, 1976), 108-72; Pierre Manent, *The City of Man*, tr. LePain (Princeton: Princeton University Press, 1998 [1994]). See also Verity Smith, “Constitutionalism and the Paradox of Sovereignty: Montesquieu and Arendt Between Past and Future” (unpublished essay).

man's historical reality. The political science based upon these principles steers a middle course between the ethically substantive natural right of Aristotle or natural law of Aquinas, and the minimalism of Machiavelli or Hobbes.³⁹ Montesquieu's analysis of a human nature oriented to security, sociability, and freedom holds a philosophical middle ground because both the new physics and his observations of man's nature indicate that we are neither as beleaguered nor blessed as some have thought. The genius of politics—the spirit of laws—is to constitute laws that will best preserve our nature in all its complexity. The first recourse to “natural right” after Book 1 confirms this humane revision. Natural right primarily involves neither self-preservation nor self-defense, nor even individual liberty, each of which tends to privilege the isolated, Cartesian individual. Rather, it concerns “natural feelings,” such as “respect for a father, tenderness for one's children and women, laws of honor, or the state of one's health;” it is precisely such standards of “natural right” that a despot eschews, even if he might be checked by religious doctrines (3.10, 260). When discussing honor in monarchies he suggests that men are born to live together and please each other, and that the soul can achieve virtues of magnanimity and greatness (4.2, 5.12). By equating monarchical honor with self-interest, Montesquieu hardly makes himself a virtue theorist (see 3.7). Nevertheless, these humane dimensions to his account of natural right frustrate reductionist readings of his philosophy.⁴⁰

By avoiding extremes of rationalism and skepticism, Montesquieu's political science grasps the multiplicity, complexity, and diversity of phenomena affecting politics while insisting that natural right is a crucial standard for them. He ultimately deems a complex, moderate constitution the best government, both for peoples disposed toward it by nature and history and for those who could gain it through gradual reforms (Book 11, chs. 8, 11). He broadens liberalism by insisting that its aims are achieved by “Gothic” constitutions that are “well tempered” through their “true distribution,” among a “free people,” of legislative, executive, and judicial powers (11.8, 409; 11.11, 411). This historical and practical approach to liberal ends and means includes an examination of not only republic and monarchy but also the enduring political phenomenon of despotism. The diverse circumstances of human communities, from climate, economics, and history to mores and religion, practically ensure despotism in some cases. He distinguishes, however, the moderation of proper monarchies from the harshness of despotism to make constitutional monarchy more respectable for liberals, if not for strict republicans.⁴¹ Montesquieu ultimately links these numerous themes, and shifts to a new typology of moderate

39. Lowenthal, “Book I,” 495; see also Pangle, *Philosophy*, 20-47.

40. See Sharon Krause, “The Politics of Distinction and Disobedience: Honor and the Defense of Liberty in Montesquieu,” *Polity* 31 (1999): 469-99, and *Liberalism With Honor* (Cambridge, MA: Harvard University Press, 2002); see also Mosher, “Monarchy's Paradox.”

41. Kenneth Minogue finds Montesquieu arguing that the complex European monarchies provide a better basis for liberalism than simple republics, in “Citizenship and Monarchy: A Hidden Fault Line In Our Civilisation,” *The Institute of United States Studies* (University of London, 1998), 10-22.

and immoderate governments, in Book 5. After examining despotic severity and measures to moderate it, he frames the essential problem of our political condition and proposes a remedy. As Book 1 indicates, we lie between divinity and brute matter, between the liberty of intelligence and the necessity of material existence. This middling condition is confirmed by the fact of despotism, for “despite men’s love of liberty, despite their hatred of violence, most peoples are subjected to this type of government” (5.14, 297). This problem and its underlying causes perpetually confront humane legislators like Montesquieu and the Stoic philosophers he praises, those who watch over mankind (see Preface, 24.10, 29.19). At once political philosopher, great political founder, and reformer, his solution is complexity itself: 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 masterwork of legislation that chance rarely produces and prudence is rarely allowed to produce” (5.14, 297).

Several Books before propounding his own constitutionalism in Books 11 and 12, Montesquieu provides the fundamental rationale for his separation of powers doctrine. Liberty can achieve security only if man’s free motion is structured according to the dynamics of the laws of nature. Since our natural condition is not so low and desperate as Hobbes thinks, there is no *need* for the foundational contract and the absolute Leviathan, nor even for the constant threat of revolution in Locke’s contractarian politics. Since, however, our natural condition is not so favored as either the Bible or Aristotle indicate, there is no *warrant* for a moral orientation to politics and laws that substantially restricts individual liberty. Man need face neither the fearsome judgment of a Leviathan, nor continual fear of revolution, nor the prospect of divine judgment or ethical censure. Nature indicates, rather, that politics must be structured in terms of multiple powers and perspectives that at once check and facilitate the free movement of political passions and energies. This humane tale of moderation and balance, recommending devices from an independent judiciary and commerce to toleration and the complexities of the medieval French constitution, occupies the great theme of the work. Moreover, understanding the philosophy of moderation that informs Montesquieu’s view of natural right and politics illuminates the extent of his influence on such statements of American pluralism and political balancing as *Federalist* No. 10 and No. 51; it is no accident that he is extensively discussed in the less famous essays informing these, Nos. 9 and 47. A related innovation is his insistence that one of the independent powers be a judiciary that secures the tranquillity of each individual’s feelings about their security and liberty. Montesquieu gradually develops his conception of separation of powers on this basis of moderation and complexity in Parts 1 and 2 of the *Spirit of Laws*, culminating in the liberal constitutionalism of Book 11 and the protections of due process endorsed in Books 6 and 12. This is the legacy he bequeathed to American constitutionalism, politics, and political theory, both directly and through his disciple Blackstone, a legacy influential still today.

V. Montesquieuan Moderation and Liberalism: Beyond Current Extremes

Recent studies of democratic transition and consolidation in the post-Cold War era find Montesquieu's constitutionalism of separated powers more instructive about the requirements of free, liberal politics than his nineteenth and twentieth-century critics had granted.⁴² The dominant discourse in Anglo-American political theory today, largely revolving around the liberal theory of John Rawls, should join this rediscovery. Both the original Rawlsian formulation of a universal theory of justice as fairness, then a "political liberalism" emphasizing mutual respect and tolerant public deliberation, reconceptualize the liberal concern for individual autonomy and rights.⁴³ Critics find this reformulation too narrow, since liberalism long has recognized that communal concerns about morals, larger public purposes, and civic participation are at least necessary for securing individual rights.⁴⁴ Unlike the main thrust of either recent liberal theory or most of its communitarian critics, the central notion of Montesquieu's political science, moderation, encompasses both the natural rights of individuals and the natural basis of their communities. His liberal, modern philosophy seeks to temper and elevate modern humanism with important principles of ancient and medieval philosophy. One cause for the dichotomy that defines much recent Anglo-American political theory is the prevailing judgment that natural right is either philosophically naïve or politically intolerant. To our skeptical minds, whether analytical, historicist, or post-modernist, an "essentialist" natural right privileges one conception of human needs or goods above others. From his wide reading Montesquieu knew of brands of skepticism throughout the Western tradition, and he would not heed such charges made by those confidently asserting their own correctness. While aware of historical change and cultural diversity, he thought such phenomena not only qualified but strengthened liberal concerns with natural right. He would find our discrete notions of either rights or communal purposes, of either tolerance or civic virtue, as not sustainable without an anchor in human nature. The scope of his political philosophy has no counterpart in earlier

42. Steven Fish, "Social Science and Democratization in East Europe and Eurasia," *Slavic Review* 58 (1999): 794-823, 805; Jan-Erik Lane and Svante Ersson, *The New Institutional Politics* (London: Routledge, 2000), 115, 286-87; Péter László, "Montesquieu's Paradox on Freedom and Hungary's Constitutions 1790-1990," *History of Political Thought* 16 (1995): 77-104.

43. See Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), and Ronald M. Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press, 2000).

44. See Alasdair MacIntyre, *After Virtue* (Notre Dame, IN: University of Notre Dame Press, 1981); Stephen Macedo, *Liberal Virtues* (Chicago: University of Chicago Press, 1990); William Galston, *Liberal Purposes* (New York: Cambridge University Press, 1991); Jean Bethke Elshtain, *Democracy on Trial* (Concord, Ontario: House of Anansi Press, 1993); *Seedbeds of Virtue*, ed. Glendon and Blankenhorn (Lanham, MD: Madison Books, 1995); Steven Kautz, *Liberalism and Community* (Ithaca, NY: Cornell University Press, 1995); Michael Sandel, *Democracy's Discontent* (Cambridge, MA: Harvard University Press, 1996); Peter Berkowitz, *Virtue and the Making of Modern Liberalism* (Princeton: Princeton University Press, 1999).

liberalism, not even if one tried to fuse Locke's discrete analyses of education, religion, and politics into a larger philosophy.⁴⁵ Montesquieu's philosophy of moderation warns that conceiving of rights apart from communal mores and duties, or the reverse, leads to extremes of isolated individualism (19.27) or communitarian oppression (3.10). Without a grounding in human nature, either school further is susceptible to such extremes as a liberalism oppressive in its demand for tolerance, or a communitarianism that fosters a willful if communal subjectivism, cut off from a shared humanity. Montesquieu's reading of prior politics and philosophy found any such narrow doctrines mistaken for failing to discern the balance of principles and aims in our nature.

These conceptions of moderation and natural right shaped America's quasi-legal revolution, defending traditional rights as a duty of "sacred honor," in contrast to the more doctrinaire line of Locke and Rousseau, and of France after 1789. That complex spirit led America's founders to further transcend Locke through a complex constitutionalism of federalism, tripartite powers, and bicameralism. This Montesquieuan order reflects some debt to the Socratic, dialectical political science of Aristotle, which embraced both natural right and a regime's division into distinct functions, balancing inclusion with space for merit in select offices.⁴⁶ Montesquieu in turn influenced Tocqueville, who more fully captures the American spirit by calling on liberal democracy to appreciate those dimensions of the Biblical and Western traditions that moderate the quest for ever-greater equality and individual security.⁴⁷ The consensus among the American founders that the *Spirit of Laws* was the preeminent authority to which all should appeal lasted, however, only a short time. More Lockean and Rousseauan doctrines eventually prevailed among influential American thinkers, criticizing both Montesquieu's complicated style and his sympathy for traditional modes of governance. The first prominent critic was Jefferson, and the successful effort by Woodrow Wilson to formulate a new political science and constitutionalism for American democracy further reduced Montesquieu's standing, at least until recently. These Cartesian, Lockean, and progressive strains in American and modern liberalism may be stronger in democratic times than the synthetic, seemingly conservative views of Montesquieu, Blackstone, or Tocqueville. A further issue is Montesquieu's own responsibility, in part, for his subsequent decline in liberal thought, since his humane conception of natural right to some degree

45. See Nathan Tarcov, "A 'Non-Lockean' Locke and the Character of Liberalism," in *Liberalism Reconsidered*, ed. MacLean and Mills (New Jersey: Rowman & Allanheld, 1983), 130-40, and Berkowitz, *Virtue and Modern Liberalism*.

46. Aristotle, *Politics*, 1297b35-1301a18. For James Ceaser, Aristotle, Montesquieu, and Tocqueville embody "traditional political science," in *Liberal Democracy and Political Science* (Baltimore: Johns Hopkins University Press, 1990).

47. I discuss a principled American amalgam in "The Complexity, and Principles, of the American Founding: A Reply to Alan Gibson," *History of Political Thought* XXI (2000): 711-17, "Liberty, Constitutionalism, and Moderation: The Political Thought of George Washington," and in *The Cloaking of Power*, ch. 8.

dilutes our conceptions of human nature and natural law. The jurist Oliver Wendell Holmes, Jr. was an architect of the pragmatism or positivism now predominant in American law, repudiating both natural right and a fixed constitutionalism—and he found in Montesquieu only doctrines about historical change and the propriety of dominant communal forces prevailing over time.⁴⁸ The redefinition of natural right in *Spirit of the Laws* in terms of affections and familial attachments lends itself to reductionist, skeptical consequences not originally intended. As Tocqueville perceived, an emphasis on individual tranquillity and security permits the rival extremes of individualism and majority tyranny, which undermine the very constitutionalism and concern for mores characteristic of Montesquieu's political science. We may need to moderate his philosophy with those resources in the liberal and Western tradition that provide balance to his conceptions of philosophy, humanity, and politics.

48. Oliver Wendell Holmes, "Montesquieu," in *Collected Legal Papers*, ed. Harold Laski (New York: Harcourt, Brace, 1920), 250-65; I discuss the use of Montesquieu by Holmes and other modern legal realists and historicists in *The Cloaking of Power*, ch. 10.