

Machiavelli's Liberal Republican Legacy

Edited by

PAUL A. RAHE

University of Tulsa

 **CAMBRIDGE**
UNIVERSITY PRESS

world if we claim one disposition is more basic or that one can be reduced to the other.

Hume's modern principles are genuine and undeniable, but they are mitigated by more than a touch of classical moderation. In this respect, he is easier to recognize as the intellectual kinsman of the hardheaded yet commonsensical spokesmen of the American founding generation. While we cannot deny that Machiavelli is, in important respects, the intellectual ancestor of both, we must conclude that the American statesmen owe more to their Scottish cousin than to their Florentine great-grandfather.

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The Machiavellian Spirit of Montesquieu's Liberal Republic

Paul Carrese

It is now less controversial than it once was to claim that Machiavelli is a significant presence in Montesquieu's political philosophy. This change stems, Montesquieu might say, from two causes. The more elementary is the "influence scholarship" of the past century, which, after studying Montesquieu's library, the style and themes in his published works, and his comments in letters and notes, concludes that he was substantially indebted to Machiavelli.¹ For example, by 1726 – some eight years before publication of his *Considerations on the Causes of the Greatness of the Romans and Their Decline* and some twenty-two years before publishing his masterwork, *On the Spirit of Laws* – Montesquieu owned *The Prince* and the *Discourses on Livy* in Latin and French; eventually he came to possess the works of Machiavelli in Italian as well. However, the narrow methods of such scholarship tend to obscure the extraordinary character of each philosopher's thought and the dialogue a philosopher might have with a predecessor. Montesquieu himself boasts of having examined a sheep's tongue under a microscope (*EL* 2.14.2), but it is another matter to apply these methods to philosophic works such as Machiavelli's *Discourses on Livy* and Montesquieu's *Considerations on the Romans*.

The methods and spirit of influence scholarship point to the more interesting cause for lessened controversy over linking these philosophers: that being associated with Machiavelli is no longer scandalous. Montesquieu's most recent

¹ See Ettore Levi-Malvano, *Montesquieu e Machiavelli* (Paris: Champion, 1912), which is now available in English (*Montesquieu and Machiavelli*, tr. Anthony J. Pansini [Kopperl, TX: Greenvale Press, 1992]), and Robert Shackleton, "Montesquieu and Machiavelli: A Reappraisal," *Comparative Literature Studies* 1 (1964): 1–13. For other citations, see Neal Wood, "The Value of Asocial Sociability: Contributions of Machiavelli, Sidney and Montesquieu," in *Machiavelli and the Nature of Political Thought*, ed. Marvin Fleisher (New York: Atheneum, 1972), 282–307 (at 298, n. 52); Diana Schaub, *Erotic Liberalism: Women and Revolution in Montesquieu's Persian Letters* (Lanham, MD: Rowman and Littlefield, 1995), 161–2, n. 42. More generally, see Louis Desgraves, *Répertoire des ouvrages et des articles sur Montesquieu* (Geneva: Droz, 1988), nos. 1452, 2299–2322.

biographer reports that in the eighteenth century, "the reputation of Machiavelli in France, even with the relatively advanced thinkers, was unsavory," though he quickly adds that some thinkers (including Cardinal Richelieu and his secretary, Machon) rose above moral concerns to appreciate the Florentine's work and that "opinions abroad were different," especially in England.² Such respectable figures as Sir Francis Bacon, John Locke, James Harrington, and Algernon Sidney either cited or clearly echoed Machiavelli; Montesquieu's sojourn of over a year in England must have exposed him to these influences and to the Viscount Bolingbroke's more polemical usage of Machiavelli. Such observations support respectable conclusions about Machiavelli's important, if limited, influence upon Montesquieu, which is most evident in particular historical emphases and in a utilitarian attitude toward religion, climate, and terrain that appears in the years surrounding the publication of the latter's *Considerations on the Romans*. The Florentine's influence upon *The Spirit of Laws* is said to be even more limited. Nonetheless, Montesquieu's recourse to Machiavelli for "inspiration" on at least some themes gave "a modern and mature orientation to the French Enlightenment."³

Such judgments are true, but incomplete, for they misrepresent Machiavelli, Montesquieu, and the relation between them. We have taken for granted the main reason that linking these philosophers is now less controversial than it was in Montesquieu's day. We now think it "mature" to envisage Machiavelli not as a revolutionary philosopher or a teacher of evil but as a pillar of the classical republican tradition, indeed as its main restorer in modern times.⁴ This reading, which informs the predominant view of the relationship between Machiavelli and Montesquieu, casts the Florentine as a great teacher of republican liberty. For some, he is even the originator of liberal pluralism and thus of modern civilization itself.⁵

This classical republican view of Machiavelli is attractive for defending civic humanism and helpful for its attention to the historical context of authors and ideas, but it misperceives both Machiavelli and his legacy. A representative

² See Shackleton, "Montesquieu and Machiavelli," 7 (with 5-9). See also Shackleton, *Montesquieu: A Critical Biography* (Oxford, UK: Oxford University Press, 1961), 22, 127, 142-3, 152, 165, 265-9, 292.

³ See Shackleton, "Montesquieu and Machiavelli," 11-12.

⁴ See the prologue of this book.

⁵ See J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, NJ: Princeton University Press, 1975), 21, 427, 463, 465, 475, 484-5, 488, 491-2, 501, 516, 521, 526, 548. Fuller studies include Judith Shklar, "Montesquieu and the New Republicanism," in *Machiavelli and Republicanism*, ed. Gisela Bock, Quentin Skinner, and Maurizio Viroli (Cambridge, UK: Cambridge University Press, 1990), 265-79 (esp. 265-6); Wood, "The Value of Asocial Sociability," 289, 304-6. Wood quotes Sergio Cotta to the effect that Montesquieu's *Considerations on the Romans* provides "a new conception of political life," and he credits Cotta with linking its treatment of faction with that in *The Spirit of Laws*; see Cotta, "L'idée de parti dans la philosophie politique de Montesquieu," in *Actes du Congrès Montesquieu*, ed. Louis Desgraves (Bordeaux: Imprimeries Delmas, 1956), 260. Wood correctly traces this new conception to Machiavelli.

problem is its inattention to an aspect of Machiavellism that Montesquieu himself criticized. It is not accidental to Machiavelli's philosophy but essential to and a mark of the ruler's *virtù* in all regimes that individuals be killed for the greater good when "necessity" arises. This is true whether they be innocent or not, whether (or however) found guilty, and thus whether justly punished or not - though Machiavelli does recommend a legal mode of execution if possible: "For if a citizen is crushed in a way ordered by law, even though he has been done a wrong, there follows little or no disorder in the republic (D 1.7)."⁶ Machiavelli does praise a republican virtue of self-sacrifice for the common good. He also teaches that the common good can require the sensational sacrifice of some one or few who, being imprisoned, exiled, or dead, enjoy neither any common good nor the warm feeling of exercising civic virtue.⁷

While some readers of Machiavelli think it easy to extract from his work a hard-nosed republicanism while leaving behind the ferocity, Montesquieu, who attempted such a distillation, thought it a more difficult and delicate task.⁸ His relationship to Machiavelli is both complex and problematic. Machiavelli's political science deeply shaped his own, though he labored to hide this and to prove that one could modify Machiavelli's principles in such a manner as to avoid their harsher consequences. This complicated influence would be most evident from a thorough comparison of their masterful works on Rome, Machiavelli's *Discourses on Livy* and Montesquieu's *Considerations on the Romans*. Examining the relationship more comprehensively would be even more daunting, since both spoke of the "infinite" scope of their inquiries and wrote political philosophy in several genres, from history and comedy to treatise and letter. The themes requiring comparison range from their views on morals, religion, and the family to their distinctive attention to climate and history.⁹ Here it is enough to show that the doctrine for which Montesquieu is most famous, the separation of powers, accepts but moderates Machiavelli's

⁶ As to *The Prince*, note the simultaneous ascriptions of virtue and criminality to Agathocles (P 8), Hannibal (P 17), and Severus (P 19). See Victoria Kahn, "Virtù and the Example of Agathocles in Machiavelli's *Prince*," in *Machiavelli and the Discourse of Literature*, ed. Albert R. Ascoli and Victoria Kahn (Ithaca, NY: Cornell University Press, 1993), 195-217.

⁷ See Harvey C. Mansfield, "Machiavelli's Virtue" and "Machiavelli's Politics," in Mansfield, *Machiavelli's Virtue* (Chicago: University of Chicago Press, 1996), 6-52, 233. See also Vickie B. Sullivan, *Machiavelli's Three Romes: Religion, Human Liberty, and Politics Reformed* (DeKalb, IL: Northern Illinois University Press, 1996); Patrick Coby, *Machiavelli's Romans: Liberty and Greatness in the Discourses on Livy* (Lanham, MD: Lexington Books, 1999).

⁸ Cf. the efforts by Shackleton, "Montesquieu and Machiavelli," 11; Wood, "The Value of Asocial Sociability," 307; Shklar, "Montesquieu and the New Republicanism," 266.

⁹ For work in this vein on Montesquieu's major works, see Schaub, *Erotic Liberalism*, 11-12, 20, 24, 42, 98, 101-2, 111, 147, 168, n. 2, 170-1, n. 9; David Lowenthal, "Introduction," in *Considerations on the Causes of the Greatness of the Romans and their Decline*, ed. and tr. David Lowenthal (Indianapolis: Hackett, 1999), 1, 6-12, 19; Thomas L. Pangle, *Montesquieu's Philosophy of Liberalism: A Commentary on The Spirit of the Laws* (Chicago: University of Chicago Press, 1973), 5, 86-7, 136-7, 162-4, 322-3, n. 8. Cf. Mark Hulliung, *Montesquieu and the Old Regime* (Berkeley, CA: University of California Press, 1976), 11-13, 17-24, 140-72, 185-9, 204-5, 224-5.

revolutionary advocacy of factional politics in his *Discourses on Livy*. This understanding in turn reveals that the importance of the rule of law and the judiciary in modern liberal democracies finds its germ, however modified by Montesquieu and his legacy, in Machiavelli's political science.

Necessity and Republican Faction

As Markus Fischer demonstrates in the prologue to this book, the early chapters of Machiavelli's *Discourses on Livy* thematically argue that faction is necessary for republican imperialism, and that such imperialism is itself a necessity. The political psychology informing this dynamic republicanism states that "men never work any good unless through necessity; but where choice abounds, and one can make use of license, at once everything is full of confusion and disorder" (D 1.3). Machiavelli only slowly reveals the profound implications of these principles, unfolding them over several chapters.¹⁰ As Fischer also observes, Machiavelli knew that classical political philosophy condemned faction, especially in republics, both for its own injustice and disorder – its violation of the higher ends that nature ordains for man and politics – and for its tendency to produce a tyrant who would claim to restore order. Machiavelli grants the balance or stability of the Spartan republican model, and of the mixed regime of ancient political philosophy. Nonetheless, he argues that such a republic is blind to or incapable of coping with necessity, which forces a republic to seek "greatness":

... since all things of men are in motion, and cannot stay steady, they must either rise or fall, and to many things that reason does not lead you, necessity leads you. ... In ordering a republic there is need to think of the more honorable part, and to order it so that if indeed necessity leads it to expand, it can conserve what it has seized. ... I believe that it is necessary ... to tolerate the enmities that arise between the people and the Senate, taking them as an inconvenience necessary to arrive at Roman greatness.

(D 1.6)¹¹

Though he rejects the Epicurean retirement from politics, Machiavelli revives the Epicurean materialism that rivaled the metaphysics and physics of qualities, forms, and ends propounded by Plato and Aristotle.¹² Machiavelli asserts the

¹⁰ On the manner and substance of Machiavelli's writing, see Leo Strauss, *Thoughts on Machiavelli* (Chicago: University of Chicago Press, 1958); Harvey C. Mansfield, *Machiavelli's New Modes and Orders: A Study of the Discourses on Livy* (Ithaca, NY: Cornell University Press, 1979). See also Victoria Kahn, *Machiavellian Rhetoric: From the Counter-Reformation to Milton* (Princeton, NJ: Princeton University Press, 1994), 26, 32, and Chapter 3 of this book.

¹¹ On demotion of the good and orientation by necessity, see Pierre Manent, "Machiavelli and the Fecundity of Evil," in Manent, *An Intellectual History of Liberalism*, tr. Rebecca Balinski (Princeton, NJ: Princeton University Press, 1995), 10–19; Markus Fischer, *Well-Ordered License: On the Unity of Machiavelli's Thought* (Lanham, MD: Lexington Books, 2000).

¹² A manuscript of Lucretius's *De rerum natura* survives with notations in Machiavelli's hand; see Sergio Bertelli and Franco Gaeta, "Noterelle Machiavelliane; un codice di Lucrezio e di Terenzio," *Rivista Storica Italiana* 73 (1961): 544–57. For another view on premodern science

primacy of the political and human over the natural, of the human passions over any natural order that might guide or restrain them. We must, he claims, judge man by what we can know and have observed, by the effectual truth of political life and the human things, not by "imagined republics and principalities" (P 15) – whether Plato's republic, Epicurus' garden, or Augustine's City of God. In this fashion, he repudiates the authority central to scholastic philosophy, Aristotle, whose political science draws upon a natural teleology that provides each species with an ordained end as well as the means for its achievement. "If nature," Aristotle contends, "makes nothing either incomplete or in vain, then she has necessarily made all these things for the sake of human beings" (Pol. 1256b). Machiavelli replaces this progression toward a set end with a chaotic natural world that permits only the fittest, most adaptable beings to survive. His discourse on the eternity of the world and the history of mankind thus compares the fact that "nature" often "moves by itself and produces a purge that is the health" of "simple bodies" with the plagues, famines, and floods that purge and renew the "mixed body of the human race ... so that men, having become few and beaten, may live more advantageously and become better" (D 2.5).

Such a science compels a redefinition of virtue, "the honorable part," to account for necessity and provide for man's way in the world. The Spartan, Platonic, and Aristotelian conceptions of a republic attempted to impose stability and order in accord with man's natural inclinations, thereby providing for leisure and a higher life, whether moral, political, or philosophic. For Machiavelli, such attempts fail to achieve stability because they overlook the necessity of either rising or falling. A static government fails to protect itself against external enemies, but also lays itself open to internal threats, for even if "heaven were so benign that it did not have to make war, from that would arise the idleness to make it either effeminate or divided" (D 1.6).

This is neither advocacy of faction for its own sake nor blithe approval of the tumults of politics. Throughout the *Discourses on Livy*, Machiavelli indicates his acceptance of faction as dangerous yet necessary – necessary to rising, itself a necessity.¹³ On this basis, he coins a maxim at the root of the politics of mistrust later institutionalized as the separation of powers, that "it is necessary to whoever disposes a republic and orders laws in it to presuppose that all men are bad, and that they always have to use the malignity of their spirit" whenever possible (D 1.3).¹⁴ As for institutions to secure these aims, that of "the tribunes of the plebs" in Rome "made the republic more perfect," a perfection shown to derive from institutionalizing the factious dispute between the Senate and the plebs. Hatred between claimants to rule – kings, nobles,

in Machiavelli's philosophy, see Anthony J. Parel, *The Machiavellian Cosmos* (New Haven, CT: Yale University Press, 1992).

¹³ Machiavelli asserts that faction was "the first cause of keeping Rome free" (D 1.4.1), then admits that at "the time of the Gracchi," it was "the cause of the ruin of a free way of life" (1.6). See D 1.12–13, 37, 47, 52, 54, 2.25, 3.30, for "disunion" or "tumults" bringing ruin if not managed.

¹⁴ On the "politics of mistrust," see Chapter 9 of this book.

the people – should be harnessed, not eradicated, by structuring institutions to check each claim or passion by another. He commends the tribuneship as an office “with so much eminence and reputation” that those holding it could counter “the insolence of the nobles” (D 1.3).¹⁵ One must tolerate factions as an inconvenience necessary for greatness, since a machine that works by the conflict or opposition of forces moves more powerfully and quickly than a system that permits no internal opposition (D 1.6). Indeed, “in every republic are two diverse humors, that of the people and that of the great,” and so “every city ought to have its modes with which the people can vent its ambition, and especially those cities that wish to avail themselves of the people in important things” – such as the expansion necessary for rising (D 1.4).¹⁶ The centerpiece of this institutionalization of factious energy is the public accusation of crimes against the republic. Through accusations made by the people’s tribunes to the people themselves, such as that against the nobleman Coriolanus, “an outlet is given by which to vent, in some mode against some citizen, those humors that grow up in cities.” Institutionalizing this vengeance avoids the “extraordinary modes” that destroy republics, for “there is nothing that makes a republic so stable and firm, as to order it in a mode so that those alternating humors that agitate it can be vented in a way ordered by the laws.” It does not matter who is accused or for what; as long as a citizen is “crushed in an ordered way,” there will be little if any harm or disorder for the republic, “even though he has been done a wrong” (D 1.7.1).¹⁷

Montesquieu accepted many elements of Machiavelli’s turn away from the ancient condemnation of faction, as had Marchamont Nedham, Locke, and Sidney before him.¹⁸ The French philosophe’s decisive contribution was to make such conflict safer for each individual and less ferocious in general. His debt to Machiavelli is most obvious regarding faction in ancient Rome, since the *Discourses on Livy* deeply informs the analysis in his *Considerations on the Romans*. But Machiavelli’s linkage of expansion and faction also reappears in *The Spirit of Laws*. A moderated Machiavellism is at the heart of Montesquieu’s political science and conception of a modern republic in his doctrine of the separation of powers.

Indeed, Montesquieu’s interest in Machiavelli and in political faction long predates his travels to England or his writing of the *Considerations on the Romans*, let alone his drafting of *The Spirit of Laws*. This is most obvious in the earliest of his surviving works, the “Dissertation on the Policy of the Romans in Religion” of 1716, though it mentions neither the *Discourses on Livy* nor its

¹⁵ Further endorsements of the balance or equilibrium achieved by the contest of internal forces occur in D 1.40, 42.

¹⁶ See John P. McCormick, “Machiavellian Democracy: Controlling Elites with Ferocious Populism,” *APSR* 95:2 (June 2001): 297–313.

¹⁷ On the consequences of accusation by the tribunes, compare Machiavelli’s praise for the Coriolanus affair (D 1.7.1) with Livy’s view (2.36–42); but Machiavelli nearly admits the near-disaster this brought to Rome in D 1.29.

¹⁸ See Chapters 1 through 3 of this book.

author.¹⁹ Faction is a topic evident in his first major work of political philosophy, *Lettres Persanes* (1721), although the influence of Machiavelli is not as obvious here.²⁰ *Persian Letters* regularly praises a constitutional equilibrium of action and reaction among separated powers, first in a striking consideration of “what kind of government most conforms to reason” (LP 80). The protagonist and chief letter-writer, Usbek, concludes that “the most perfect is that which attains its goal with the least friction,” namely that which “leads men in a manner which is most suited to their interests and their inclinations” (LP 80). The greater rationality of mild government appears in its justice and tranquillity, while the “injustice and vexations” of despotism testify to its irrationality. Subsequent letters regularly connect moderate government and its reduction of any “friction” frustrating desires to another mechanical metaphor, an equilibrium or balance between powers that produces security and tranquillity for individuals.²¹ *Persian Letters* then amplifies this liberalism in two thematic discussions, on government in Europe and England and on “the history and origin of republics” (LP 102–4, 131). These discussions of liberty and faction, revolution and the balancing of powers – in Greece, Rome, the Germanic tribes, and England – foreshadow the analyses in both the *Considerations on the Romans* and *The Spirit of Laws*. To the extent that these are Machiavellian themes, his first major work quietly reveals Montesquieu’s early study of *The Prince* and the *Discourses on Livy*. His debt is noticeably greater in his *Considerations on the Romans*, even though here, too, he neither mentions nor cites either the *Discourses on Livy* or Machiavelli. Such silence, however, is an aspect of Montesquieu’s intention to write with care and subtlety. He explicitly states this regarding *Persian Letters*, which he later said contained a “secret and, in some respects, hitherto unknown chain” of meaning, and it is discernible in his other works.²²

The crux of his *Considerations on the Romans* is its diagnosis of the two causes of Rome’s ruin, its imperial expansion, “the greatness of the empire,” and its granting of citizenship to all conquered peoples, which produces “the greatness of the city” (Rom. 9). Montesquieu digresses from the second cause – that Rome fractured under such a wide granting of citizenship – to rebut the view of “the authors” that Rome never was united but always was riven by

¹⁹ See *Dissertation sur la politique des Romains dans la religion*, in *WoM* 1:81–92. For Montesquieu’s reliance upon the *Discourses on Livy* here, see Levi-Malvano, *Montesquieu e Machiavelli*, passim; Shackleton, “Montesquieu and Machiavelli,” 1–13.

²⁰ Schaub, *Erotic Liberalism*, points out several Machiavellian moments in LP; see footnote 9, above.

²¹ LP 92 laments the decline of *parlements* (judicial bodies) as a check on the French monarchy; see also LP 138, 140.

²² See “Quelques Réflexions sur les *Lettres Persanes*” (1754) in *WoM* 1:129. On the manner of Montesquieu’s writing, see David Lowenthal, “Book I of Montesquieu’s *The Spirit of the Laws*,” *APSR* 53:2 (June 1959): 485–98; Pangle, *Montesquieu’s Philosophy of Liberalism*, 11–19. In the preface to his *Spirit of Laws* (EL pref.), Montesquieu asks that “one approve or condemn the whole book, and not some few phrases,” and warns that “many of the truths will not make themselves felt until after one sees the chain which links them to the others.”

faction. This digression resumes his analysis of the conflict between the patrician Senate and the plebeians as "a secret war" within Rome. In addition to praising the Senate and criticizing the aggrandizement of the plebeians, this earlier analysis argues that "the most fortunate" republic is one where authority is not hereditary, implying that Rome's class warfare between people and Senate is unfortunate (*Rom.* 8). Yet his subsequent defense of Rome argues that, despite its internal commotion, it was "a city whose people had but a single spirit, a single love of liberty, a single hatred of tyranny, a city where the jealousy of the Senate's power and the prerogatives of the great, always mixed with respect, was only a love of equality" (*Rom.* 9). Indeed, he deems faction an essential requirement for any free republic. Montesquieu here employs an obviously Machiavellian – and Newtonian – conception of politics and distills many points from his *Persian Letters*:

It was very necessary there be dissensions in Rome. . . . To ask, in a free state, for men who are bold in war and timid in peace is to wish the impossible: and, as a general rule, whenever we see everyone tranquil in a state that calls itself a republic, we can be sure that liberty does not exist there.

What is called union in a body politic is a very equivocal thing: the true kind is a union of harmony, whereby all the parts, however opposed they may appear, cooperate for the general good of society, as dissonances in music cooperate in producing overall concord. There can be union in a state where we seem to see nothing but disorder, that is to say, a harmony resulting in happiness, which alone is true peace. It is as with the parts of the universe, eternally linked together by the action of some, and the reaction of others.

But, in the concord of Asiatic despotism, that is to say, of all government which is not moderate, there is always real dissension. . . . [For] some oppress the others without resistance: and, if we see any union there, it is not citizens who are united but dead bodies buried one next to the other.

(*Rom.* 9)

Proper government is moderate, a commotion of cooperation or a harmony of dissonances that provides happiness and true peace for both parts and whole. The rationale for such balance and tranquillity is Machiavellian necessity: Rome simply had to aggrandize other states if it was to be great, and to think otherwise would be to wish the impossible. Tranquillity in a republic is therefore antithetical to liberty, namely, the freedom to satisfy wants and thus to aggrandize power in both domestic and foreign affairs. In both *Persian Letters* and his *Considerations on the Romans* Montesquieu argues that it is better to let the passions go, with motion reinforcing motion so that the total energy of the political system increases and projects outward. This embrace of harmony over absolute unity recalls Aristotle's criticism of the extreme unity of Socrates' ideal city in *The Republic*, that "as a city advances and becomes more of a unity, it will cease to exist" (*Pol.* 1261a).²³ However, while

²³ See Arist. *Pol.* 1261a10–1261b15, and 1263b27ff, where Aristotle warns against reducing "a many-voiced harmony to unison or rhythm to a single beat."

Montesquieu seeks to distinguish his philosophy from extreme or simplistic analyses, his target is not so much Plato as the rationalism of earlier liberal philosophers.²⁴ That said, Montesquieu's particular criticism of unity presupposes his rejection of not only the Platonic but also the Aristotelian concern for virtue and justice as the fulfillment of man's political and rational nature. Excessive unity is despotic because it denies nature as necessity – the necessity of leaving people free to pursue their passions or "happiness" and to pursue the expansion necessary for the survival and happiness of any political community.

This is a Machiavellian view, an influence already evident from the fact that Montesquieu's *Considerations on the Romans* examines politics through the lens of greatness or power and not through that of the best regime as discussed in Plato, Aristotle, and the medieval philosophers.²⁵ This is so despite the initial impression given by Montesquieu's arguments about the two causes of Rome's ruin, which seem antithetical to expansion. His claims that "the greatness of the empire ruined the republic," that "the greatness of the city ruined it no less," and that it was "solely the greatness of the republic" that "changed popular tumults into civil wars" seem to prefer, against Machiavelli, the Spartan model over the Roman. Soon thereafter, however, Montesquieu states that "good laws" are those "which have made a small republic grow large," that "their natural effect was to create a great people," and that "there is a considerable difference between good laws and convenient laws, between those that enable a people to make itself master of others, and those that maintain its power once it is acquired" (*Rom.* 9).

Montesquieu's political science follows Machiavelli and modern science in understanding both nature and human nature in terms of matter, motion, and power. His debt is nowhere more evident than in these remarks on the political necessity of expansion, despite the fact that neither Machiavelli nor the *Discourses on Livy* ever appear. The subscription to Machiavelli's tumultuous republicanism also shows through in his earlier analysis of faction in Rome. He initially criticizes the "malady internal to man" that made Rome's plebeians attack patrician privilege: "a secret war was going on within its walls,"

²⁴ The famous chapter in *EL* on the constitution of England (2.11.6) closes by criticizing utopianism, arguing that Harrington sought liberty "only after misunderstanding it," and thus "built Chalcedon with the coast of Byzantium before his eyes"; the previous chapter (*EL* 2.11.5) closes in similar fashion, arguing that to "discover political liberty in [the English] constitution, not much trouble need be taken. If it can be seen where it is, if it has been found, why seek it?" On Montesquieu's critique of rationalism, see Harvey C. Mansfield, *Taming the Prince: The Ambivalence of Modern Executive Power* (New York: Free Press, 1989), 213–24, 232–3; Paul Carrese, "Montesquieu's Complex Natural Right and Moderate Liberalism: The Roots of American Moderation," *Polity* 36:2 (January 2004): 227–50.

²⁵ I am much indebted here to Lowenthal, "Introduction," 6–12. See also Paul A. Rahe, "The Book That Notes Was: Montesquieu's *Considerations on the Romans* in Historical Context," *History of Political Thought* 26:1 (Spring 2005): 43–89.

and its "fires were like those of volcanoes which burst forth whenever some matter comes along to increase their activity." This classical condemnation of faction fades, however, when he states that the only real problem was the plebeians' degree of success in aggrandizing the patricians. With the Senate effectively conquered, the internal contest could not continue; the Senate had been correct in fearing that "the populace would elevate some tribune to tyranny" (*Rom.* 8).²⁶ A significant difference between the two philosophers does arise, however, because Montesquieu does not endorse Machiavelli's animus toward Rome's nobles. Machiavelli depicts a balanced contest between the two, but Montesquieu praises the Senate's wisdom and notes the plebeians' malicious determination to strip the nobles of all privileges. Similarly, Montesquieu praises the patrician institution of censors for achieving stability through reforming "everything that could introduce dangerous novelties, change the heart or mind (*esprit*) of the citizen, and deprive the state – if I dare use the term – of perpetuity." Nonetheless, Machiavelli's general influence remains, since the real reason for praising this "very wise institution" is that it "continually examined" and corrected the constitution, ever changing the political order to achieve a stable motion or equilibrium amid factious agitations (*Rom.* 8).²⁷ Indeed, Montesquieu defines free government as being "always subject to agitation" and thereby doomed if it is not "capable of correction" or constantly reformed "by its own laws." This foreshadows the striking conclusion to not only the discussion of the causes of Rome's ruin but to Montesquieu's treatment of Roman faction. The problem in Rome was not motion and change but the ultimate cessation of motion or the timing thereof: "It lost its liberty because it completed the work it wrought too soon" (*Rom.* 8–9).

The meaning of this cryptic judgment becomes clearer in light of Montesquieu's mature treatment of political motion and an equilibrium of forces in *The Spirit of Laws*, which also moderates the Machiavellian teaching upon which it, too, draws. Perhaps the Romans should not have completed their quest for empire but instead should have stayed in perpetual motion; perhaps they completed that quest too quickly to consolidate their gains and reconstitute themselves in new circumstances, failing to maintain a dynamic imperial dominion instead of a static one. Either way, the moral of the story recommends a moderation of Machiavellian aims, not their rejection.

²⁶ Montesquieu later notes, "The emperors were vested with the power of tribunes," and "it is on this basis that so many men were put to death" (*Rom.* 14). Ronald Syme, *The Roman Revolution* (Oxford, UK: Clarendon Press, 1939), 336–7, dates the "revolution" that founded the empire to that moment when Augustus had the *tribunicia potestas* given him for life.

²⁷ Cf. NM, D 3.49 (the final discourse) with Montesquieu, *Rom.* 9, on the redistribution of the people among the tribes by the censor Quintus Fabius (each citing Livy 9.46). While Machiavelli qualifies his support for the plebeians (e.g., D 1.37, 54), other passages maintain his initial stance (for example, D 1.50). His *Florentine Histories* is more sympathetic to nobles. Montesquieu's more consistent neutrality, or even favor for patricians, in the name of moderation may be an amplification of Machiavelli's own sense of the need for limits to factious conflict.

The Moderation of Machiavellism in *The Spirit of Laws*

Montesquieu's softening of Machiavelli's political philosophy appears most fully in *De l'Esprit des Lois* (1748),²⁸ where there are four references to the Florentine. Three of these obviously criticize Machiavelli and his teachings. First, and perhaps most crucially, Montesquieu cites the *Discourses on Livy* to criticize Machiavelli's insistence upon a popular jury for cases of high treason in a republic (EL 1.6.5). The second reference praises the fact that commercial Europe "has begun to be cured of *machiavélisme*," defined as the "barbarism" of "great acts of authority" and violent abuses of rule termed "coups d'État," with the cure being "more moderation in councils" (EL 4.21.20).²⁹ In the fourth reference (EL 6.29.19), Machiavelli joins Plato, Aristotle, More, and Harrington in the list of "legislators" who failed to overcome their "passions and prejudices" in proposing laws: "Machiavelli was full of his idol, Duke Valentino" (Cesare Borgia).

These passages distinguish Montesquieu's political science from Machiavelli's but do more as well. As with the complicated references to Lucretius and Epicureanism in *The Spirit of Laws*, Montesquieu signals some affinity or agreement while indicating important points of contrast. Thus, praise and respect for Machiavelli shine through amid the criticism. Unlike the earlier works, *The Spirit of Laws* cites the *Discourses on Livy*, even though – as the word *machiavélisme* indicates – its author's name was synonymous with ruthless politics and the teaching of evil. It is even more noteworthy that in his first mention of Machiavelli, early in the work, Montesquieu calls him "this great man," though the occasion is a disagreement about trials and judging (EL 1.6.5). *The Spirit of Laws* makes no further reference to the *Discourses on Livy*, but it is the work of a great man, and no other criticisms arise. In the fourth reference, amid criticism of prejudiced "legislators," Machiavelli stands alongside important ancient and modern political philosophers – indeed, in the central position among the five. Moreover, while Montesquieu laments that all of them let their passions distort their philosophy, only Machiavelli is called a "great man" elsewhere in the work, even if there are many more references to Plato and Aristotle.

Amid these moderately critical remarks, Montesquieu's third reference points the reader to "what Machiavelli says of the destruction of the old Florentine nobility" (EL 6.28.6). Although no work is cited, he presumably has in mind the *Florentine Histories*. If so, *The Spirit of Laws* quietly treats, as

²⁸ In the view of Lowenthal, "Introduction," 19, there is an "inner kinship" between the republicanism of Machiavelli's *Discourses on Livy* and that of Montesquieu's *Considerations on the Romans*, while "the republicanism of *The Spirit of the Laws* is meant to be, and is, much more prudent."

²⁹ Throughout I revise Montesquieu, *The Spirit of the Laws*, tr. Anne Cohler, Basia Miller, and Harold Stone (Cambridge, UK: Cambridge University Press, 1989). I have also consulted the 1750 translation praised by Montesquieu and his circle: Montesquieu, *The Spirit of the Laws*, tr. Thomas Nugent (New York: Hafner, 1949).

authoritative, Machiavelli's analysis and qualified endorsement of faction, which Montesquieu had more openly adopted in his *Considerations on the Romans*. In the Proem to the *Florentine Histories*, Machiavelli distinguishes his study from earlier efforts for its attention to Florence's "civil discords and internal enmities, and the effects arising from them." Its extraordinary factiousness, being more complex and bloody than Rome's, both revealed and increased its greatness:

And truly, in my judgment, no other example appears to me to demonstrate so well the power of our city, as the one derived from these divisions, which would have had the force to annihilate any great and very powerful city. Nonetheless ours, it appeared, always became greater from them: so great was the virtue of those citizens and the power of their genius and their spirit to make themselves and their fatherland great, that as many as remained free from so many evils were more able by their virtue to exalt their city, than could the malignity of those accidents that had diminished the city overwhelm it.
(*FH* Proem)³⁰

Three of Montesquieu's four references to Machiavelli in *The Spirit of Laws*, then, are somewhat favorable and perhaps substantially so. Still, the second one seems damning. A declaration that Europe has been "cured of *machiavélisme*" endorses the respectable opinion that the Florentine is such an exponent of ruthlessness that one can contrast "coups d'État" with "moderation in councils" simply by reference to his name (*EL* 4.21.20). However, this condemnation lies within a general analysis of commerce that is a moderated version of Machiavellian political hedonism, with its rejection of Platonic and Aristotelian philosophy. In this second of three books on commerce, Montesquieu reiterates his contention that the spread of commerce will soften and moderate politics because rulers and ruled will be more concerned with their own interest, profit, and success than with their pride, mastery, or greatness. He does not argue that Europe has turned toward the Aristotelian moral virtue of moderation, only that increased commerce, through its capacity to increase the appetite for comfort and security, has moderated a customary ruthlessness. The lionlike barbarism of political brutality has given way to market-driven demands for a more foxlike, cunning politics, since "men are in a situation such that, though their passions inspire in them the thought of being wicked, they nevertheless have an interest in not being so" (*EL* 4.21.20).³¹ The great risk in this argument, which owes much to Bernard Mandeville's claim that private vices can become

³⁰ In *EL* 6.28.6, Montesquieu seems to point to Books II and III of the *Florentine Histories*; Machiavelli compares the "reasonable" faction in Rome with the "injuriously and unjust" kind in Florence (*FH* 3.12) and comments that the people's victory in an earlier battle inflicted "ruin" upon the nobles to a shameful degree (*FH* 2.41-2). Montesquieu may have learned from Machiavelli that only moderate faction is productive and beneficial.

³¹ For the fundamental importance of commerce for his political philosophy, see Pangle, *Montesquieu's Philosophy of Liberalism*, 200-48; Catherine Larrère, "Montesquieu on Economics and Commerce," in *Montesquieu's Science of Politics: Essays on the Spirit of Laws*, ed. David W. Carrithers, Michael A. Mosher, and Paul A. Rahe (Lanham, MD: Rowman and Littlefield, 2000), 335-73.

public virtues, is its moral dubiousness. Montesquieu thus emphasizes the benefits of reducing conflict, war, and insecurity, and does so by forcefully distinguishing commerce from *machiavélisme*.³² He quietly teaches a lesson of lowered expectations for politics and man learned from Machiavelli, while defusing any moral qualms by invoking the typical reader's condemnation of Machiavellism.

This spirit of moderated Machiavellism also informs the conception of tempered political commotion and party faction in *The Spirit of Laws*, just as it underlies that work's explicit criticism of the *Discourses on Livy* regarding popular juries for treason trials. Both temperings of Machiavelli's doctrines helpfully reveal the blending of prudence and science evident in Montesquieu's mature work, balancing a prudential attention to everyman's fears or wants with a scientific observation of the equilibrium achieved by interacting bodies. *The Spirit of Laws* emphasizes a complex constitutionalism and, more quietly, the judicial power as indispensable means to the relative equilibrium appropriate to each historical situation and people. A liberal constitutionalism, especially one suffused with judicial power, would provide for the "degrees of liberty each one of them can enjoy," and attain as moderate a government as possible given the necessities of each (*EL* 2.11.20).³³

Separation of Powers and the Constitutional Politics of Moderation

The basic premise of Montesquieu's constitutional principle of the separation of powers is that politics is best understood and practiced according to a blend of Newtonian dynamics and Machiavellian faction. But *The Spirit of Laws* uses modern physics and Machiavelli's revolutionary political science to elaborate a possibility not explored by Machiavelli, a liberal constitutionalism. Montesquieu's version also owes much to Hobbes and Locke, though it is less doctrinaire and rigorously deductive. The equilibrium that Montesquieu discerns and advocates in politics is also characteristic, then, of his own philosophy, which tempers the extremes of preceding philosophers by blending their teachings or balancing one with another.³⁴

The Spirit of Laws builds slowly toward the moderate constitutionalism embodied by its widely read chapters on the English constitution, and an early preparation for that peak occurs when it examines "the principle of monarchy." Honor or ambition may be "pernicious in a republic," but they are nonetheless advantageous in a monarchy, for if honor checks honor, an equilibrium of selfishness "gives life to the government," even as it prevents the worst effects of

³² Montesquieu twice (*EL* 1.7.1, 3.19.8) cites Mandeville's *Fable of the Bees* (1714) as authoritative, although he never provides its subtitle: *Or, Private Vices, Public Benefits*.

³³ In the opening book of his *Spirit of Laws* (*EL* 1.1.3), Montesquieu declares, "It is better to say that the government most in conformity with nature is the one whose particular disposition best relates to the disposition of the people for whom it is established."

³⁴ See Carrese, "Montesquieu's Complex Natural Right and Moderate Liberalism," 227-50.

what, "philosophically speaking," is "a false honor" (EL 1.3.7). Montesquieu makes the Mandevillian notion of private vices as public virtues more scientific and also more relative to the particular necessities and forces shaping each people or government.

The principal consequence of these Newtonian political mechanics is Montesquieu's emphasis upon moderation, understood both as a lowering of moral standards and a softening of political action. Indeed, his great interest in moderation leads, as his book unfolds, to a successively greater emphasis on the distinction between moderate and immoderate governments, which comes to overshadow his early classification of political regimes as republics, monarchies, and despotisms. The title of one early book refers to these "Three Governments" (EL 1.3.title), but an important chapter therein distinguishes "moderate" from despotic governments (EL 1.3.10). This eclipse of the initial typology of governments culminates in the constitutionalism that arises from his first thematic study of England. This influential sketch of a liberal constitution ignores or transcends the initial classification into three governmental structures and the principle moving each, for it emphasizes that "liberty is found only in moderate governments"; that "in most kingdoms in Europe the government is moderate" because the judicial power is independent of the king, who unites the other two powers; and that the "extreme political liberty" of England should not "humble" governments having "only a moderate one," since "the excess even of reason is not always desirable," and "men almost always accommodate themselves better to middles than to extremities" (EL 2.11.4, 6). Montesquieu ultimately recommends that we "seek out in all the moderate governments we know the distribution of the three powers and calculate thereupon the degrees of liberty each one can enjoy," and he leaves the reader to consider the links between political moderation, a constitution of separated powers, and liberty (EL 2.11.20).

In fact, Montesquieu prepared for this first study of the constitution of England by stating that political liberty is found only in moderate governments. Even in those "moderate states" where moderation results not from the structure of government but from other causes – perhaps the character of the ruler, or general mores – the citizen cannot have liberty (EL 2.11.4).³⁵ Since he then defines liberty as that "tranquillity of spirit which comes from the opinion each one has of his security" (EL 2.11.6), there is no tranquillity even when political moderation prevails if there is no governing structure to ensure moderation and thus secure liberty; without this, there is no security of knowing that power will not be abused. Montesquieu then offers his influential prescription

³⁵ Another passage early in *The Spirit of Laws* that emphasizes moderate government and foreshadows Montesquieu's discussion of the separation of powers occurs after an extensive discussion of despotism: "In order to form a moderate government, one must combine powers, regulate them, temper them, make them act; one must give one power a ballast, so to speak, to put it in a position to resist another; this is a masterwork of legislation that chance rarely produces and prudence is rarely allowed to produce" (EL 1.5.14).

for moderate government and liberty, which reads almost as a précis of the early chapters of Machiavelli's *Discourses on Livy*:

[Political liberty] is present only when power is not abused; but it has eternally been observed that any man who has power is led to abuse it; he continues until he finds limits. Who would say it! even virtue has need of limits.

So that one cannot abuse power, power must check power by the disposition of things. A constitution can be such that no one will be constrained to do the things the law does not oblige him to do, or be kept from doing the things the law permits him to do. (EL 2.11.4)³⁶

Montesquieu dares to say it: Even virtue has need of limits. This develops Machiavelli's treatment of faction, albeit toward the softened, liberal aim of constitutionalism. Montesquieu is more concerned with the tranquillity and security of all than with the glory of one alone. He offers a more humane and pedestrian account of providing for oneself in a world of harsh necessity, in part because he is more concerned to watch over all mankind than is Machiavelli.³⁷

Montesquieu thus adopts Machiavelli's marriage of the ideal and the actual in a lowered ideal. However, Montesquieu's perception of the human manifestations of Newton's laws about the equilibrium and conservation of momentum produces a political philosophy more egalitarian and liberal than Machiavelli's, since it argues that an equilibrium of forces, or a moderating of any extreme force, is the effectual truth about nature and human nature. A striking instance of this occurs in Montesquieu's long analysis of commerce, where he explicitly rejects Aristotle's condemnation of usury. He criticizes both classical political philosophy and Christianity for an unrealistic concern with virtue precisely in the chapter where he rejects "*machiavélisme*" in favor of "moderation in councils." Usury and commerce have reduced the harshness of politics so much that Europe's persecuted but persistent merchants, the Jews, have raised the prospects for themselves and for all. By linking lowered moral expectations with a criticism of political brutality, Montesquieu adapts Machiavelli's orientation by interest to a moderation of both the ends and means of Machiavellian man (EL 4.21.20).³⁸

This political science of moderation is most famous for its endorsement, especially with respect to England, of factional republicanism as a corollary of the separation of powers. Indeed, Montesquieu's doctrine of the separation of powers differs from that of Locke by blending the classical "balanced constitution" or mixed regime model, which accords representation to distinct classes, with a model delineating the powers of government. This blending first appears in the dual use of the term "three powers" in the first thematic chapter

³⁶ Note the Machiavellian tenor in Locke's view of the separation of powers in *TTG* 2.7.93, 12.143.

³⁷ Consider Montesquieu's praise for the Stoics (EL 5.24.10) in light of *EL* pref.

³⁸ Shortly after this, Montesquieu (EL 4.22.21–2) draws several lessons: first, "extreme laws for good give rise to extreme evil"; then, "affairs must go forward, and a state is lost if everything falls into inaction"; and, finally, "I shall continue to repeat, it is moderation which governs men, not excesses."

on England, where the phrase is initially used to refer to legislative, executive, and judging powers and then more often deployed to identify lower and upper legislative houses and a separate executive, which represent, respectively, popular, aristocratic, and monarchical orders (EL 2.11.6). Intrinsic to this blending is the constitutionalizing of party faction, a device employed in part to animate a constitutional machine that is so separated and internally opposed. Thus, while *The Spirit of Laws* maintains the endorsement of faction more obviously evident in Montesquieu's *Considerations on the Romans*, it moderates faction by applying Newtonian dynamics and its law of equilibrium. Montesquieu's final statement on the conflict between patricians and plebeians, principally in the chapters on Rome that follow the first crucial chapter on England in his *Spirit of Laws*, removes the air of empire, power, and ruthlessness that in part characterizes his *Considerations on the Romans*. The candid brutality of Machiavelli's *Discourses on Livy*, with its claim that the "tumults" never sent "more than eight or ten citizens into exile" and "killed very few of them," producing "not any exile or violence unfavorable to the common good but laws and orders in benefit of public freedom," stemmed from the necessity to secure oneself and even to rule as one alone (D 1.4). Montesquieu adopts only the aim of individual security, and this in its humane and pedestrian version: security for all. The constitutionalized, Newtonian conception of faction in Montesquieu's book is so soft that he resorts to a floral metaphor to describe the conflict in ancient Rome:

States are often more blossoming (*fleurissent*) during the imperceptible shift from one constitution to another than they are under either constitution. At that time all the springs of the government are strained; all the citizens have claims; one is attacked or flattered; and there is a noble rivalry between those who defend the declining constitution and those who put forward the one that prevails. (EL 2.11.13)³⁹

This constitutionalizing of faction, moderating its passions through the bloodless mechanism of Newtonian equilibrium, is even more evident in Montesquieu's second extended discussion of the English constitution in *The Spirit of Laws*. He returns to the English to study "the effects that had to follow" from "the principles of their constitution," especially "the character that was formed from it, and the manners that result from it" (EL 3.19.27). There is liberty for all the passions in such a constitution, especially those productive of vice. Montesquieu even praises this licentiousness for its beneficial fostering of conflict between partisans of the "two visible powers, legislative power and executive power." A conflict between Tories and Whigs, supporters of Crown and Parliament, arises over the "great expectations" generated by the executive among seekers of patronage, since it "has all the posts at its disposal."

³⁹ In addition to emphasizing judicial procedures and mild criminal laws throughout *The Spirit of Laws*, Montesquieu (EL 1.7.17) praises mildness in government more generally, including a discussion of "Administration by Women": "their very weakness gives them more gentleness and moderation, which, rather than the harsh and ferocious virtues, can make for good government." Cf. Machiavelli's recommendation of brutal methods for dominating the woman *fortuna* (P 25).

Its supporters are those who stand to gain, while it is "attacked by all those who could expect nothing from it." Rome's partisans struggled over matters of life and death, liberty and oppression, but the Newtonian mechanics of a liberal constitution lower the stakes. In the modern constitution of liberty, such controlled agitation is a necessary source of momentum and energy within an equilibrium of forces, a balance that always will maintain itself so as to protect liberty. It even can tame the distinctively Machiavellian passion for distinction:

As all the passions are free there, hatred, envy, jealousy, and the ardor for enriching and distinguishing oneself would appear to their full extent; and if this were otherwise, the state would be like a man who, laid low by disease, has no more passions because he has no more force.

The hatred between the two parties would endure because it would always be powerless.

As these parties are made up of free men, if one party gained too much, the effect of liberty would be to lower it, while the citizens, like hands which relieve the body, would come and raise the other party. (EL 3.19.27)

Since neither the nurturing of character nor the activity of contemplation is the aim of such a constitutionalism, stability in authority and law is not a prerequisite. Indeed, this Newtonian science of dynamics elevates the factional agitation condemned by the ancients to the level of constitutional principle. Montesquieu's political science endorses passion, faction, and injustice because they maintain the free motion and activity of the separated parts, thus the liberty of the parts and also that of the whole: "they would even have the good effect of straining all the springs of the government, and rendering all the citizens attentive" (EL 3.19.27). The costs of this republican faction are thought to be only the "terrors" or "empty clamors and insults" needed to maintain liberty. This is a significant moderation of the supposedly "few" murders, exiles, confiscations, and fines that Machiavelli thought an acceptable price for the achievement of a liberty that was itself a means to republican imperialism.

The Moderating Spirit of Judging and the Rule of Law

The indispensable institution for maintaining the moderate Machiavellism of separated powers is, curiously, the power Montesquieu refers to in his first study of England as "invisible and null," the one he later implicitly charges with moderating the dispute between "the two visible powers" – namely, the judging power (EL 2.11.6, 3.19.27). An early indication of the important role assigned to judging is Montesquieu's first reference to Machiavelli in *The Spirit of Laws*, where he seeks to moderate Machiavelli's ferocious republicanism precisely regarding the use of popular juries for treason trials (EL 1.6.5). However, this crucial instance of Montesquieu's concern for judicial power and the rule of law may well be indebted to Machiavelli's praise of France's ordered monarchy and

of its *parlements* in particular.⁴⁰ The *parlements* were assemblies of nobles dating from the Middle Ages, established first in Paris then in all the regions, which had shared legislative and political functions with the monarch but by the early modern period were confined to judicial activity. In *The Prince*, Machiavelli declares that "among the well-ordered and governed kingdoms in our times is that of France. And in it are infinite good institutions, on which the liberty and security of the king depend, [and] the first of these is the *parlement* and its authority" (P 19). His *Discourses on Livy* echoes this praise: France "lives under laws and under orders more than any other kingdom. These laws and orders are maintained by *parlements*, and especially that of Paris" (D 3.1).⁴¹ In the case of faction, Montesquieu tempers the Machiavellian ruthlessness of a "few" murders and exiles toward greater protection of the life, liberty, and property of individuals. Regarding public prosecutions and judging, however, he pointedly rejects the *Discourses on Livy*, seemingly having learned from Machiavelli himself of the importance of judging and the rule of law.

Montesquieu challenges Machiavelli's commentary on the expulsion of the Florentine secretary's own employer, Piero Soderini, from Florence in 1512 by a Spanish army, which led to the restoration of the Medici. Machiavelli claims that if Soderini had been charged, judged, and executed, or exiled by the people, the republic would have remained: "For to accuse one powerful individual before eight judges in a republic is not enough; the judges need to be very many, because the few always behave in the mode of the few" (D 1.7). Montesquieu comments that Machiavelli attributes "the loss of liberty in Florence to the fact that the people as a body did not judge the crimes of high treason committed against them, as was done in Rome," because, "states Machiavelli, few are corrupted by few." Montesquieu's critique reveals his greater concern with individual security and tranquillity and the priority he gives to civil or private matters over political ones. Further, the essential means to these ends are the judicial power and due process, the general topics of this particular book of *The Spirit of Laws*:

I would gladly adopt this great man's maxim; but as in these cases political interest forces, so to speak, civil interest (for it is always a drawback if the people judge their offenses themselves), it is necessary, in order to remedy this, that the laws provide, as much as they can, for the security of individuals. (EL 1.6.5)

⁴⁰ See Elena Guarini, "Machiavelli and the Crisis of the Italian Republics," in *Machiavelli and Republicanism*, 26–8, 32, on Machiavelli's report (after a diplomatic mission) on France, the *Ritratto di cose di Francia*, and the remarks on France in his *Discourses on Livy* and *The Prince*. Guarini overlooks the importance for Montesquieu of Machiavelli's praise of French laws and orders, especially its judicial order.

⁴¹ See also NM, D 1.16 (France and its king are "secure and content" due to the "infinite laws in which the security of all its people is included"), 19 (France is maintained by its "ancient orders"), and 58 (France is "moderated more by laws than any other kingdom of which knowledge is had in our times"); see also D 1.55. Paul A. Rahe notes the link between Machiavelli, Montesquieu, and judging in *Republics Ancient and Modern: Classical Republicanism and the American Revolution* (Chapel Hill, NC: University of North Carolina Press, 1992), 1002, n. 173.

Montesquieu then cites two protections afforded to the "civil interest" in ancient Rome that, he implies, Machiavelli overlooks: Accused men could exile themselves before judgment was passed, and the people could not confiscate the goods of an accused man.⁴² Further, he links this analysis of judicial formalities or due process with his subsequent study of the constitution of political liberty, remarking that "other limitations placed on the people's power to judge will be seen in Book 11" (EL 1.6.5). This apparently refers to the limits on popular juries, emphasized early in the chapter on England's constitution, and to the "supreme authority" later attributed to the upper house of the legislature to moderate any and all laws. It may also refer to the treatment of Rome that follows, in which the chapter on Roman judging is the longest. Interestingly, Montesquieu's views on Roman judging are at odds with Machiavelli's endorsement of the tribunes' handling of the Coriolanus affair and with the praise he bestows on the general transformation of judging from a patrician to a popular function (EL 2.11.6, 18).

This explicit and pointed criticism of Machiavelli's disregard for the security of individuals occurs within Book 6 (the first extended treatment of judging in *The Spirit of Laws*), where Montesquieu catalogues various abuses and reforms of the judging function in terms of such security. One of the distinguishing, if little noted, marks of Montesquieu's political science is this humane emphasis upon judging and the administration of justice for individuals, and it explains his strong disagreement on this issue with a "great man" to whom he is so indebted.⁴³ Montesquieu was for many years a senior judge (*président à mortier*) in the *parlement* of Bordeaux and thus drew upon his experience as well as his theoretical acumen to support his constitutional emphasis on the judging power. Indeed, just prior to his critique of Machiavelli, he declares that "justice," understood in judicial terms as "the formalities of justice" or due process, is "the thing in the world that it is most important for men to know" (EL 1.6.2). Nonetheless, throughout the work he discusses the role of judging in facilitating the security and tranquillity of individuals within the larger context of moderate government and the separation of powers. His central innovation in liberal constitutionalism, as compared to Hobbes and Locke, is an independent judicial power that tempers the constitutional conflict between classes and among the separated powers, thus moderating the making and execution of laws affecting individual security and tranquillity. These liberal, life-protecting purposes for judicial power explain the other striking statements about it scattered throughout *The Spirit of Laws* – that "among a free people"

⁴² For Montesquieu's references to Socrates and Plato in discussing self-exile, see the notes to EL 1.6.5. In discussing the Roman constitution, Polybius (6.14.7) specifically praises the practice of voluntary self-exile.

⁴³ I discuss this at length in Paul Carrese, *The Cloaking of Power: Montesquieu, Blackstone, and the Rise of Judicial Activism* (Chicago: University of Chicago Press, 2003), as well as recent English and French scholarship on this theme. A more historical interpretation of judging in Montesquieu's political philosophy is Rebecca Kingston, *Montesquieu and the Parlement of Bordeaux* (Geneva: Droz, 1996).

the "masterwork of legislation is to know how to place well the power of judging," that individual security (already identified as the essence of liberty) "is never more attacked than in public or private prosecutions," that a knowledge of "the surest rules one can observe in criminal judgments concerns mankind more than anything else in the world," and that "it is only on the practice of this knowledge that liberty can be founded" (2.11.11, 12.2). Since Montesquieu may have seen Machiavelli's praise of *parlements* and the rule of law in France as, paradoxically, a key to turning the drive for glory toward liberal preservation and tranquillity for all, Montesquieu's judging reveals itself as distinctly, if softly, Machiavellian.

Machiavellian Moderation and the Perpetuation of Liberal Constitutionalism

Montesquieu, and Machiavelli's influence upon him, should not be remote concerns in liberal democracies. Montesquieu's prominent place in the thought of the American founders, especially at the time of the framing and establishment of the 1787 Constitution, is evident to any reader of *The Federalist*.⁴⁴ Through America's influence on the world's liberal democracies, whether parliamentary regimes or governments based on a separation of powers, Montesquieu's distinctive imprint shines through in the prominence of pluralism, faction, judicial power, federalism, and globalization – the worldwide reach of commerce and the moderate government that it requires. Yet for all the achievements of the modern liberalism he promoted – from personal and political liberty, to general prosperity, to military prowess – he would be among those friends of liberal democracy who acknowledge its defects. He would recognize the problems diagnosed by Rousseau and Nietzsche in terms of "alienation" or "individualism," although he surely would prefer Tocqueville's more moderate formulations. These concerns arise across the contemporary academic and political spectrum in America, voiced by liberal theorists, communitarians, and conservatives, as the lack of a "politics of meaning," "habits of the heart," or "civility," as the need for "personal responsibility," "family values," or "character," or with reference to such symptoms as "defining deviancy down," "bowling alone," or "democracy's discontent."

The second most famous chapter in *The Spirit of Laws* reveals Montesquieu's prescient awareness of the potential for such problems in modern liberalism. When he observes how English laws shape the mores, manner, and character

⁴⁴ Donald Lutz, "The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought," *APSR* 78:1 (March 1984): 189–97, argues that Montesquieu was the most widely cited author in America in the 1780s and 1790s, more so than Locke. I discuss this in Paul Carrese, "The Complexity, and Principles, of the American Founding: A Reply to Alan Gibson," *HPT* 21:4 (Winter 2000): 711–17, and in "Montesquieu's Complex Natural Right and Moderate Liberalism," 227–50. Note also Fareed Zakaria's reliance on Montesquieu's conception of liberal constitutionalism in Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (New York: W. W. Norton, 2003).

of the nation, he describes English politics as a dynamic equilibrium that moderates the passions by promoting private enterprise and commercial opportunity for individuals (EL 3.19.27). His mixed portrait of this liberal people anticipates Tocqueville's concerns regarding liberal democracy, suggesting that for all the benefits that the English constitution produces in the character of its people, the "extreme liberty" that Montesquieu had earlier noted in fact produces an extreme individualism, an antireligious ire, and polarized or sectarian thinking among intellectuals.⁴⁵ That said, Montesquieu was less concerned with, or attuned to, these issues than his fellow Frenchman subsequently would be, and a paradox associated with recovering an understanding of Montesquieu's philosophy today is that we must consider how much its own resources can be used to moderate its own tendencies toward extremes. There are discernibly Montesquieuian roots to the past century's judicialism and the individualism it enforces – an unintended consequence of his emphasis on individual tranquillity and an independent judiciary empowered to protect and enhance it. A range of contemporary political theorists has challenged the judicialized conception of liberalism that arose in the twentieth century, warning that such a politics reduces any higher civic and moral aims to litigious disputes about individual claims and entitlements, even regarding elections to the highest political offices.⁴⁶

Indeed, a quite public pairing of Montesquieu with Machiavelli in the nineteenth century in a dialogue on liberalism – and especially the ultimate fate of that pairing – reinforces our recognition of the paradox that aspects of Montesquieu's moderate liberalism have subsequently damaged the philosophe's own aims. French author Maurice Joly sought to champion the enlightened liberalism of Montesquieu by ranging it against the illiberalism of Machiavelli,⁴⁷ but this well-laid plan suffered a shocking fate. Something within modern liberal Europe was capable of transforming this defense of humane liberty into the protofascist and anti-Semitic Protocols of the Learned Elders of Zion, and of using it to achieve the most illiberal of aims.⁴⁸ Montesquieu's

⁴⁵ See Schaub, *Erotic Liberalism*, 142–4. Recent studies that find Montesquieu moderating modern liberalism with ancient elements include Paul A. Rahe, "Forms of Government: Structure, Principle, Object, and Aim," and Sharon Krause, "Despotism in *The Spirit of Laws*," both in *Montesquieu's Science of Politics*, 69–108, 231–71, as well as Carrese, "Montesquieu's Complex Natural Right and Moderate Liberalism," 227–50.

⁴⁶ Compare the defense of a juridical liberalism by John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 231–40, 212–13, with the criticisms aimed at it by Michael Sandel *Democracy's Discontent: America in Search of a Public Philosophy* (Cambridge, MA: Harvard University Press, 1996), 28, 39–47, 92–101, 279–80, 286–8. I discuss these issues in Carrese, *The Cloaking of Power*, 231–64.

⁴⁷ See [Maurice Joly], *Dialogue aux enfers entre Machiavel et Montesquieu: ou, La politique de Machiavel au XIXe siècle* (Brussels: A. Mertens, 1864), which is now available in an English translation: See Joly, *The Dialogue in Hell between Machiavelli and Montesquieu*, ed. and tr. John S. Waggoner (Lanham, MD: Lexington Books, 2002).

⁴⁸ See Shackleton, "Montesquieu and Machiavelli," 1–13; Schaub, *Erotic Liberalism*, 176–7, n. 20.

liberal apology was discarded, the Jews were given Machiavelli's lines, and the moral of the story was the need to combat such characters with a similarly Machiavellian ruthlessness. Montesquieu had thought that Jews, and the rest of us, would find security within a factional liberalism of commerce and mutual self-interest. The most enlightened and educated of peoples proved in the twentieth century, however, that the turn away from virtue and the good is not always easily kept moderate or civilized. Such concerns about tendencies in modern liberalism to uproot or undermine its own principles do not suggest that American constitutionalism is thoroughly, even if moderately, Machiavellian, or that our founders intended it to be so. Nor do they suggest that moderation and the separation of powers are all bad. Rather, the issue is a restoration of aspects of our complex constitutional tradition that were intended by its founders to balance others. Moderate expectations for civic virtue, public-spiritedness, and political civility were once thought conditions necessary for protecting individual rights, and our complex constitutional republic originally was constituted to promote such qualities. Similarly, a classic common law jurisprudence once tempered the atomistic, rationalist tendencies of the Lockean legal theory with which it was blended.⁴⁹ Montesquieuan moderation may well be more humane than the more severe and doctrinaire versions of liberal modernity. Even a moderately Machiavellian liberalism, however, cannot by itself provide what it promises to deliver – individual security and tranquillity. The distinctly modern versions of moral and political moderation may need moderating through recourse to other principles and traditions.

⁴⁹ See Harvey C. Mansfield, "Separation of Powers in the American Constitution," in Mansfield, *America's Constitutional Soul* (Baltimore, MD: Johns Hopkins University Press, 1991), 115–27; James R. Stoner, *Common Law and Liberal Theory: Coke, Hobbes, and the Origins of American Constitutionalism* (Lawrence, KS: University Press of Kansas, 1993), 1–9, 223–5, and *Common Law Liberty* (Lawrence, KS: University Press of Kansas, 2003); Carrese, *The Cloaking of Power*, passim.

Benjamin Franklin's "Machiavellian" Civic Virtue

Steven Forde

At first glance, it might seem that Benjamin Franklin is the least Machiavellian of the American founders. He abhorred war, though he thought the American Revolutionary War necessary. He despised the classical ideal of heroism insofar as it was wedded to the glories of war. The ideal that he self-consciously proposed to replace it, through his *Autobiography* and other writings, is unabashedly at peace with commerce, wealth, and creature comforts. His ideal also has strong elements of public service and civic virtue, but this virtue is not understood as heroic or even self-sacrificing. Franklin's virtue seems far indeed from the martial republican virtue that Machiavelli hoped to revive in modernity. Indeed, despite the central role he played in the politics and diplomacy of American independence, Franklin might have been less concerned with politics per se than any of the founders. He devoted his energies as a writer and thinker much more to what we would call social or private affairs.

But by Franklin's day, the influence of Machiavelli was felt in the world of social and private affairs as much as anywhere. That influence, modified by Montaigne, Bacon, Locke, and others, had created a distinctive modern outlook and a distinctly modern world – the grandchild, not the child, of Machiavelli. In statecraft, the moralized Machiavellianism of *raison d'état* was a reigning doctrine.¹ Machiavelli's bloody and expansive lust for glory had been replaced

¹ See Friedrich Meinecke, *Machiavellism: The Doctrine of Raison d'État and Its Place in Modern History*, tr. Douglas Scott (Boulder, CO: Westview Press, 1984). *Raison d'état* is Machiavellian in giving over the world of politics, especially international politics, to amoral calculations of power and interest. But it justifies this by appealing to the national interest as an overriding moral interest. See Leo Strauss, *Thoughts on Machiavelli* (Seattle, WA: University of Washington Press, 1969), 61–3, 79–80; Harvey C. Mansfield, "Machiavelli's *Stato* and the Impersonal Modern State," in Mansfield, *Machiavelli's Virtue* (Chicago: University of Chicago Press, 1996), 281–94; Paul A. Rahe, *Republics Ancient and Modern: Classical Republicanism and the American Revolution* (Chapel Hill, NC: University of North Carolina Press, 1992), 263. See also Thomas L. Pangle, *The Spirit of Modern Republicanism: The Moral Vision of the American Founders and the Philosophy of Locke* (Chicago: University of Chicago Press, 1988), 63–4.