

MONTESQUIEU'S  
COMPARATIVE POLITICS  
AND THE  
SPIRIT OF AMERICAN  
CONSTITUTIONALISM

ANNE M. COHLER  
*Ph.D.*



UNIVERSITY PRESS OF KANSAS

After this exploration of the relation between law and spirit suggested in book 1, we must return to the beginning of the book, that is to the forms of government first outlined in book 2. Montesquieu presents us with three forms of government—republics, monarchies, and despotisms—and with a continuum from moderation to despotism along which they are to be judged. Here we shall proceed with an introductory consideration of the governments to which he refers and then to a first look at the notion of moderation and of despotism that he suggests as a way of assessing all governments. Then we shall turn to each government in turn, taking up its structure and then Montesquieu's assessment of it in terms of its moderation and despotism as his exposition continues throughout the book. We then shall be in a position to see the connection between the forms of spirit and the three governments. Each government is based upon a view of the relation between the spirit and political life.

Montesquieu begins his second book by classifying governments into republics, monarchies, and despotisms. Montesquieu claims no theoretical ground for his classification; rather, he says that he assumes three definitions, or facts. Republican governments are those in which the people or a part of the people have sovereign power. Monarchies are those governments in which one man rules by fixed and established laws, while despotisms are those in which one alone, "without law and without rule, draws everything along by his will and his caprices" (2.1). These definitions are in terms of the nature of each government, its rule, although Montesquieu has made clear by excluding the word *rule* from his description of despotisms that the rule therein is in a way not a rule; it is not regular. Each government has its own peculiar identifying characteristic; no classificatory principle is clearly stated.

Upon examination, one can see that two classificatory principles are at work in these descriptions: (1) who rules and (2) whether that rule is exercised according to the law or according to the ruler's will and caprice. The old classification in terms of who rules—the one, the few, or the many—has been reduced to the alternatives of one or some group. Government by one is divided into government that is either under or not under the law by its nature. Nothing is said here about whether government by the people or a part of the people is or is not according to the law by its nature, or whether that government too can be divided into one sort of government that is and one that is not according to the law by its nature.

Montesquieu has taken the two great classificatory principles for political life and has used them both, rather than making a choice between them. Aristotle says that regimes are distinguished by the character of the ruler and, coincidentally, by whether those rulers are one, few, or many. Inherent in the claim of any group to rule is the claim that theirs is the best way of life, the way of life that is so good that those who do not exemplify it in their own lives could properly be expected to support it with their subordinate activities. Those who are not citizens are ordered in respect to their capacity to support the life of the citizenry. The assumption is that groups can be identified and divided according to that principle and that such a division ensures the virtue peculiar to each group. "For nature makes nothing in an economizing spirit, as smiths make the Delphic knife, but one thing with a view to one thing; and each instrument would perform most finely if it served one task rather than many."<sup>1</sup> In addition, that way of life is exemplified and supported by the distribution of offices, or constitution, and by the laws, both of which are properly its partisans.

By contrast, Locke and Hobbes began with individuals, who have a right to the preservation of that individuality, to self-preservation. From this point of view, everyone is equal, and everyone asks the same thing—a situation or a law—under which each of them can live out his life in safety from other men and can pursue his individual activities as long as they do not threaten that safety. The status of this law is something of a problem. If it is a natural law, it is one that men do not naturally, necessarily, obey.

Only by asserting that men are naturally a certain kind of animal was Rousseau later able to claim that they could once preserve themselves without recourse to human law. It is, then, a natural law whose purpose is achieved only under a government. Montesquieu, as we have seen, followed something of this pattern when he distinguished between natural inclinations and the intentions that made up that natural law. Here, the government is judged by whether or not it sees to it that the natural law is followed; the government is judged by its adherence to that law as the principle of its actions. But the question remains of how the government adheres to that law. It can threaten or kill those who threaten or kill others, acting simply as a superior power—like the despotic rule that enforces the natural law in Montesquieu. Hobbes's Leviathan bears a remarkable resemblance to Montesquieu's despot. Or a law can be established that the government, too, obeys, so that self-preservation is a result of the law that the government enforces and obeys. Even under such a law there remain instances in which preservation and that law are not identical; here one recognizes the Lockian prerogative. Everyone is held to the same law; the rulers are expected to know better how to administer it, but not to have some way of life that sets them and their virtue apart and deserves the support of the rest of the population.

By combining these two understandings of the relation of law and nature in one classification and by offering each in effect as the alternatives on a grid, Montesquieu suggests that neither offers a principle that includes all governments and that some governments could embody both. Once they are combined, the principles of three governments emerge; these principles—the passions that move the governments—also suggest a pattern of relations between governments and the people who animate the governments and are governed by them. That each government has its own principle, that its people relate to it in a distinctive way, suggests that this combining of views about the nature of governments is plausible.

Montesquieu, however, does suggest a criterion for all governments: all governments can be ranged along a line from moderate to despotic. Moderation is Montesquieu's clearest aim for political life. It is spread across the book, as we shall see in the

discussion of moderation as a standard for each of Montesquieu's governments. This is not to say that he does not admit expansion, war, religion, commerce, public tranquility, navigation, natural liberty, the delights of the prince, the glory of the prince and the state, the independence of each individual (11.5), and all the other goods that are the ends of political action; rather, it says that the standard he applies to each is the moderation or the despotism inherent in it or with which it is pursued.

Moderation appears in two quite different contexts in the beginning of *The Spirit of the Laws*. It is mentioned first as the principle of aristocracies (2.4). Aristocracies, Montesquieu says, have the advantages over democracies that result from a body that can repress others; their problem is the repression of the aristocrats themselves. The virtue of aristocrats need not be so great; they need only to be able to keep themselves from attacking one another; they need only be moderate, so that they will remain equal among themselves. The other possibility—a great virtue that makes the nobles equal to the people—forms a great republic, but Montesquieu does not seem to regard this virtue as essential to an aristocracy. Moderation is a limit to the ambition of aristocrats; they give themselves only what is required by their nobility and their rule, but no more. Then, moderation in the context of republican government is, in effect, having the rulers take only what is required to maintain their distinctive characteristic.

Moderation is next mentioned when Montesquieu discusses the need in despotisms for fear to be applied constantly and to the smallest things. Moderate governments, he says, can relax their springs, or loosen their control; but despotic governments cannot. A moderate government maintains itself by its laws and by its force (3.9). Moderate governments have some strength apart from that of the rulers; the power of monarchical and moderate governments is limited by that which is the spring, by honor in monarchies (3.10). That the government has some strength apart from the rulers seems to be connected to its having a spring that acts on both the rulers and the ruled and to the government's moderation. Moderation itself seems to be a characteristic of aristocrats and a characteristic of the structure of some governments. The link between the moderation of aristocrats and that of

monarchies may be that monarchies have a kind of self-control which limits the activities of its rulers and which is built into its structure, rather than into the character of the nobles.

Moderation is a curious standard for political or moral action, because it seems to have no stability, nothing to offer as a guide for action other than not going too far. As a guide, it is dependent upon the excesses beyond which one is not to go. A direction that results from a balancing or a tempering of extremes is an ambiguous thing. It appears to be more a consequence of circumstance, of habit, or of history than of principle and therefore to be a standard whose sensibleness and attractiveness must be measured against its slipperiness and its unreliability.

It seems to me that a counsel of moderation that does not fall into one of merely going along must be based upon the inevitability of at least two possibilities in political life—neither of which can be denied some legitimacy and neither of which can be accepted entirely without bad consequences. Among the ancients, politics was thought always to arouse a conflict between the few or the one who claimed it was proper for them to rule because they knew best how to rule, whether as a result of education, character, birth, or even wealth, and those who claimed rule because they were free—that is, it was they who were in effect the city. They were its guardians, its soldiers, and they were essential to the city. But if we are all equal—citizens, aristocrats, women, slaves—before God or by nature, there are no inevitable groups whose recognition produces moderation in the actions of the rulers. Only one standard follows—namely, adherence to that equality. However, there are various grounds for equality—for example, before God as intelligences, as spirits moving toward God, or in the needs and passions given by nature. Even the satisfaction of those needs requires a particular solution, because they are not necessarily congruent. Not only are there two positions, but the weakness of each position points toward the other, giving moderation a ground in nature. Then, moderate governments are not unstable compromises or balances of opposites; rather, they are firmly set upon the diversity inherent in human nature, at some relatively stable middle, mixing particularity and universality into a specific way of life.

To further pursue the question of the meaning and basis for

moderation in Montesquieu, let us look into the three forms of government, asking the relation of those forms to the alternative between moderation and despotism. We shall do so by taking the division of governments into despotisms, republics, and monarchies, which pervades the first eight books, and trying to understand what kind of a typology this is. Then, we shall move through Montesquieu's book, trying to understand the relation of each type to the alternation between despotism and moderation.<sup>2</sup> We shall take up despotism first, because its standing both as a government and as a standard for all governments needs to be sorted out.

## DESPOTISMS

In considering despotisms here, the chief difficulty will be to disentangle despotisms as kinds of governments from the despotic as a tendency or possibility within any government. Here we shall offer a more orderly treatment of the governments, although the rule of republics and despotisms has already been compared to that of the limited intelligences of book 1. Each chapter or section in *The Spirit of the Laws* can be seen as a card in a deck of cards, each with its own pattern and with a variety of relations to the whole. One must take it up a number of times to begin to understand its relation to the whole. Here, we shall begin by examining Montesquieu's description of despotisms in books 2–8, where he takes up the kinds of governments. Then, we shall look at his treatment of China, a government that can be described, he says, as a despotism in spite of elements of regularity and control that make it appear moderate, or “enlightened.” Despotisms, in order to exist, must be moderated, but they are moderated in a way that remains despotic—namely, from the outside.

Despotisms are states in which rule is exercised by one person alone, without constraints.<sup>3</sup> A result of this is “that the one man who exercises it has it likewise exercised by another. . . . In this state, the establishment of a vizier is a fundamental law” (2.5). This is because the despot “whose five senses constantly tell him that he is everything and that others are nothing is naturally lazy, ignorant, and voluptuous.” He shuns the problems of govern-

ment, cannot even adjudicate between ministers, and abandons his administration to a vizier (2.5), to a eunuch whose passion has been curbed by force. Power passes "intact to those to whom he [the prince] entrusts it" (3.9). People who are capable of any self-esteem would be in a position to revolt, so rule must be through fear alone. The king's will must have its effect "as infallibly as does one ball thrown against another" (3.10). Montesquieu continues, remarking that "man is a creature that obeys a creature that wants" and that "there, men's portion, like beasts', is instinct, obedience and chastisement" (3.10). Here there is no currency but force—the perfectly despotic despotism.

Montesquieu identifies acting without constraints with acting perfectly willfully and with following the passion of the moment. Any principle of action would, in effect, be a constraint; that is, any consistency in action implies a restraint on action and thus some basis for action other than perfect willfulness. Such perfect willfulness produces fear in the subjects, and that same fear can result from the demands of nature or of the divinity. Because they are inhuman, they, even if we believe them to be consistent, are not experienced as consistent. There are no fundamental laws in despotisms, not even ones that establish the succession to the throne. Preservation of the state is reduced to preservation of the despot or of the palace in which he is enclosed. As we have seen, there is a certain universality to despotisms, both in the way they rule and in their appeal. Most peoples are subject to such governments, despite their love of liberty and hatred of violence, because moderate governments are complicated structures, masterpieces of legislation. "On the contrary, a despotic government leaps into view, so to speak; it is uniform throughout; as only passions are needed to establish it, everyone is good for that" (5.14). This simplicity is reflected in the laws. There is no need for civil laws because land, inheritance, and trade are not separate from the power of the prince, and marriage is with slaves (6.1). "Each household is a separate empire" (4.3). Women and their luxury are not public questions in despotisms; women "do not introduce luxury, but they are themselves an object of luxury" (7.9). They are enclosed, and their virtue is ensured by force.

There are no formalities of justice, and justice is swift, simple, and violent. That very violence is corrupting both of the people

and of whatever laws there are. Therefore, "atrocities in the laws prevents their execution. When the penalty is excessive, often one is obliged to prefer impunity" (6.13). It is hard to believe that this perfectly despotic despotism could continue to exist, and Montesquieu, in his formal description of despotisms as governments, offers some sources of regularity and limits on the violence of the government and the will of the prince. Montesquieu suggests that only religious belief can counter the will of the prince. "The laws of religion are part of a higher precept, because they apply to the prince as well as to the subjects. But it is not the same for natural right; the prince is not assumed to be a man" (3.10). Nature, in addition, can affect despotisms and create a certain order. In China the climate and the terrain, he says, lead to a constant threat of overpopulation and famine unless the people and the monarch are disciplined and frugal. When they are not, famine and revolution occur, permitting a new, disciplined, and frugal monarch to take the throne (8.21). Education in a despotism is quite limited; "it is reduced to putting fear in the heart and in teaching the spirit a few very simple religious principles" (4.3).

Rule that is despotic is willful or arbitrary; it has no source of regularity or dependability; and it is based exclusively on force. But any state, any rule, implies some regularity. Force and will alone are a ground for rule because they inescapably produce fear; but they are not a source of order. Montesquieu has offered religious practice as the source of direct control in a despotism, the source of regularity in such a state. Religion in this instance seems to offer the fear of a god's displeasure if his rules are not obeyed, but the god also offers rules about the conduct of everyday life. This divinity differs from human despots by having rules; it is similar in basing its rule on fear. This suggests that despotisms could have an order imposed from without, by forces that are not human. Despotisms could have an order and yet be based exclusively on force and its resulting fear. In this sense they could, paradoxically, be moderated and still remain despotisms.

Montesquieu's chief example of a moderated despotism is China. Montesquieu's concern is to explain that the sources of China's moderation are despotic, not human; they are not due to the enlightenment of its rulers. China, he says, is under great pressure because its climate leads to extraordinary fertility in the

women. Such fertility puts a constant pressure on their capacity to produce food, however fertile the land. As in all countries that are primarily dependent upon rice, famine is a frequent possibility (8.21). Much of the land is, in effect, made by men, as in Holland (18.6). In this situation, there is not merely a premium on order and hard work to moderate arbitrary power there (18.6), but the consequences of disorder are immediate and dire. "Disorder is born suddenly when this prodigious number of people lacks subsistence" (8.21). The prince is necessarily alerted promptly about the disorder and fears, not for his well-being in this life or the next, but for his empire and his life (8.21). Nature, in the guise of climate, the fertility of women, and the terrain's compatibility with cultivating rice, forces the prince to promote hard work and regularity (7.6, 7.7, 19.20).

The aim of the Chinese government is public tranquility (11.5), but tranquility alone is the end of all despotisms (5.14). This public tranquility is produced by a civility that combines religion, laws, mores, and manners into what the Chinese called rites (19.17). These rites are extremely complicated rules for writing and living that "are in no way spiritual but are simply rules of a common practice; it is easier to convince and to stamp spirits with them than with something intellectual" (19.17). These rites establish subordination in order to ensure tranquility by inspiring respect for fathers and, by extension, old men, teachers, magistrates, the emperor. "This empire is formed on the idea of family government" (19.19). As we have seen, this separation of families and emphasis on family government ensure the isolation of women and their subjection to the family rules, making it impossible for Christianity ever to be established in China. "The vows of virginity, the assembly of women in churches, their necessary communication with the ministers of the religion, their participation in the sacraments, the auricular confession, extreme unction, marriage to a single woman, all this overthrows the mores and manners of the country and strikes against the religion and laws at the same time" (19.18). China, then, like all despotisms, is divided into families, each of which is ruled separately. Subordination, the principle of that family rule, is also the principle of all other rule, making an orderly society based on the rites of family life.

China, then, is moderate insofar as circumstances force it to maintain order. At the same time it is a despotism because force and fear of force, both human and natural or physical, maintain order in a society based exclusively upon private and familial needs and structures. The spirit is stamped with common practices, rather than being related to some common expression of spirit. There is nothing that takes people out of those structures; they are so firmly bound into them that they cannot relate to God as individuals and become Christian. Public tranquility, or peace, as an end for political life, provides no ground for a life or spirit in common; rather, it is a basis for dividing the society into separate families, each of which follows a standard for orderly family life which provides them with their sole relation to each other.

Even the regularity, then, of despotisms is despotic.<sup>4</sup> Its functioning is due to the passions, particularly the fear, of all those concerned, both the ruler and the ruled. Despotism is imposed from the outside. Its only rule or regularity, from the divine or from nature, is felt as arbitrary violence, just as is the rule of the despot himself. Here we have an extreme of political life against which other governments can be measured. Its universality, which is grounded in the passions and in nature understood as the source of the passions, implies that less-bad governments will be more particular, based on some intentionality, some spirit, some good, which limits a government and defines its end. Moderate governments, then, are those whose laws are particular, not universal. With this notion in mind, let us turn to the most particular or singular of governments—namely, republics.

## REPUBLICS

Because republics are governments "in which the people as a body, or only a part of the people, have sovereign power" (2.1), the laws that derive from the nature of the government are those that define the people, that establish those whose wills are to rule through their votes (2.2). If a portion of the people is to rule, as in an aristocracy, the aristocracy is more nearly perfect as it approaches democracy and less perfect as it approaches monarchy

(2.3). This seems to be because of the conflicts inherent in aristocracy, "a government that has already established the most grievous distinctions" (2.3). The principle that sustains democracy is virtue. Democratic peoples must be willing to pass laws to which they will be subject and whose weight they will bear. Without that virtue, "ambition enters those hearts that can admit it, and avarice enters them all. Desires change their objects: that which one used to love, one loves no longer. One was free under the laws, one wants to be free against them. Each citizen is like a slave who has escaped from his master's house. What was a *maxim* is now called *severity*: what was a *rule* is now called *constraint*: what was *vigilance* is now called *fear*" (3.3). Virtue, then, is an internal constraint on the passions. Without virtue, a democratic people is no better than a gathering of slaves, each following his own will; the government is, then, a democratic despotism.<sup>5</sup> That which keeps a democracy from being a despotism is not the form of rule, but is those institutions that maintain virtue in the citizens.

In aristocracies, the people are constrained because they are subject to the laws made by the aristocrats. The difficulty is in constraining the aristocrats. They can either have great virtue, becoming in effect a part of the people, or they can have a moderation, which keeps them equal among themselves (3.4). The aristocrats must, somehow, not take undue advantage of not being constrained by the laws made for the people; otherwise they would become as simply willful as despots, forming an aristocratic despotism, as in Poland (2.3). In each case, Montesquieu has asked the source of the constraints on those who are both rulers and ruled.

To support virtue, republics rely upon the full power of education and upon laws that a legislator has given to settle the inheritance of property. Political virtue is "a renunciation of oneself, which is always a very painful thing"; that virtue can also be defined as "the love of the laws and the homeland," which requires "a continuous preference of the public interest over one's own" (4.5). The public education that best achieved this end was that of Sparta, where personal sentiments were totally detached from their usual individual aims. "He [Lycurgus] seemed to remove all its resources, arts, commerce, silver, walls:

one had ambition there without the expectation of bettering oneself; one had natural feelings but was neither child, husband, nor father; modesty itself was removed from chastity" (4.6). Montesquieu suggests that the institutions of Plato's republic are an extension of this notion. To the extent that such men are separated from family, from the private realm, their ambition and their devotion to their country is without limits. These are not moderate men, even though their passions and activities are constrained and directed by their devotion to the republic. Montesquieu suggests, as we have seen, that the Greeks added music to their education in order to give the citizens some gentler spirit in common, encouraging some softness for each other without promoting activities that would contradict the other institutions of the state that promoted the virtue of the citizens.

This care to establish a consistent way of life for the citizens, which both educates them and maintains that education, distinguishes republics. When Montesquieu takes up his next question—namely, the laws the legislator gives that are relative to the principle of the government—he returns to the same question, the relation between the private passions and public virtue. Virtue, he says, is love of the republic, love of equality, and love of frugality. In this section (5.2–5), he suggests an original property settlement that divides the land into equal small parcels, one for each family, and he proposes inheritance laws that maintain such a division. The image here is of an agricultural, family-based republic. The private concerns of the rulers are not entirely reshaped as in Lycurgus's Sparta and Plato's *Republic*; rather, they are carefully circumscribed, more on the model of Plato's *Laws*.<sup>6</sup> The republic provides the avenue for the expression of virtue, for ambition, and for the use of any luxury. Montesquieu does suggest two other ways of maintaining frugality, if not equality: first, in a commercial republic, "the spirit of commerce brings with it the spirit of frugality, economy, moderation, work, wisdom, tranquility, order, and rule" (5.6); and second, in republics whose established inequalities are dangerous to overthrow, a senate can provide both an example and an enforcement of old severe mores, as can respect for the old, for magistrates, and for paternal authority. Each institution takes a person away from concern with private

goods; commerce in effect moves the private desire to have more into the public arena, controlling it with public, common standards.

The population, as in a despotism, is divided into a number of households. Within the household there are women, children, servants, and slaves. The households relate to one another through the head of the household, the father. In a despotism, each head of a household relates to the despot or his vizier, but they have no direct relations with one another, and there is no stable number or relative wealth of households. In a republic, a law establishes the number and relative wealth of the households. Within those households, as in a despotism, the women, children, servants, and slaves have no public role. The heads of the households make up the people, the citizenry of a republic. They, in effect, replace the despot. In both despotisms and republics, the sovereign rules according to his will or their wills; the difference is that republics rely upon educated, formed, and directed wills.<sup>7</sup>

The first lesson of book 6, in which Montesquieu takes up the questions of the forms of judgments and the severity of penalties, is that republics and monarchies are alike in that they give importance "to the honor, fortune, life, and liberty of the citizens" (6.2). This makes possible a variety of punishments—for example, those that shame, reduce fortunes, and take away liberty. The government is not reduced, as in a despotism, to torture and death as punishments. In monarchies, spirits need not be corrupted by becoming accustomed to harsh punishments.

However, there are the similarities between republics and despotisms in respect to the form of judgments that we noticed earlier. Men are equal in both governments, even if they are everything in one and nothing in the other (6.2). No distinctions in respect to the persons of the accused are possible. However, the manner of judging came to be fixed in republics. This was a reform of the arbitrariness of the Lacedaemonian ephors and the Roman consuls who judged without laws (6.2). The decemvirs, who first wrote down Roman law and then became despots, illustrate how close the arbitrariness of republics is to that of despotisms. Montesquieu says that the decemvir Appius illustrates the danger of the lawgiver who interprets his own law (6.7). But that danger continues to exist in any republic.<sup>8</sup> Even when the

laws established both the crime and the punishments, the problem remained of framing the definition of the crime, the "formulae for actions at law," so that in the course of a case the question that the people were supposed to decide would not change continually and become unrecognizable (6.4). Otherwise, a single magistrate, or the people acting as a single magistrate, could decide the issue according to irrelevant, wrong, or malicious criteria. Montesquieu uses Appius's judgment of Virginia as his example of a single magistrate's judging according to malicious criteria (6.7). There is no mention here of Virginius's having murdered his daughter in order to save her from Appius and the ensuing public outcry against the decemvirs. The end of the story would have illustrated a recourse to mores, to the prelegal standards. Rather, Montesquieu raises the issue of the similarity between republican and despotic judgments. Even republican virtue must be guided in judgments by a legal tradition that poses the question that the people—or the jury, or even the magistrate—is to answer. Republics must be more like monarchies; they must rely on the limits that are a result of the form of judgment, if they are to be reliably moderate.

If a republic succeeds in establishing equality, there is no luxury; in establishing frugality, there is no need for sumptuary laws; and in establishing virtue, there is no need for special officers or courts to see to the morals of women. But the same family structure that limits the excesses of the society of warriors offers a great temptation to the citizen to try to accumulate some extra, or luxury, and to expend it on his family. "So far as luxury is established in a republic, so far does the spirit turn to the interest of the individual. . . . But a soul corrupted by luxury has many other desires; soon it becomes an enemy of the laws that hamper it" (7.2). Not only do men's desires become corrupt, but so do those of women. These women, legally under the guardianship of the closest male relative or the authority of their husband, became so debased, debauched, and dissolute that laws were made to control them (7.13). Laws, as Montesquieu often notes, imply the crimes they punish; but they also mean that the actions under the law are legitimate concerns of the government. Here women are held publicly responsible for their acts. In republics, in contrast to despotisms, the regime has a proper interest in the conduct of



families: the virtue of women, as well as of men, is finally enforced by public institutions.

The moderation of republics is problematic. The citizenry is constrained by virtue, which in turn is shaped by the education and is maintained by the laws that see to the equal distribution of property. That constraint produces a regularity that can be moderate. But the structure of republics implies certain despotic qualities. At first the citizenry, or its magistrates, ruled simply according to their wills, without reference to a written law. The laws according to which they judged were the principles of virtue, to which they had been educated. If the education failed, the judgments could be terrible. Written law serves to remind and make clear any breaches in that education on the part of the magistrates or the citizenry. Procedures can be devised to guide the judgment of a case; nevertheless, judgment remains in the end in the hands of the rulers, the lawmakers, and the citizenry. This republican moderation is hard-won and precarious.<sup>9</sup>

The family structure of republics presents an avenue for the growth of private interests, as well as the possibility of controlling both public and private passions. Families in republics are curiously ambiguous institutions. When Montesquieu suggests that a senate can enforce early severe mores, such as respect for the old, the magistrates, and paternal authority, we are reminded of his description of China. But his discussion of Roman efforts to ensure the virtue of women through magistracies and courts reminds us that the members of families—women, servants, and children—were treated as private by arrangement, rather than thought to be altogether so by nature. The city has only delegated its interest in their virtue and can take it back up again. Then, Christianity's insistence on some public role for these people will not preclude its acceptance, as it would in China. This suggests that the structure that underlies the different governments can be separate families; a body of people, separated out from families, which shares a certain character; or, finally, everyone.

Moderation and an orderly republic are the same thing. That is, a republic in which each kind of person does the thing it is supposed to do is also a moderate republic. The virtue of the citizenry and the work of the rest of the population are, in effect, coordinated toward the favored activity. This moderation resem-

bles that of the aristocrats. In each case the question is the self-control of the rulers in respect to the ruled—that they continue to do what they are supposed to do, not turning to use their subjects and goods for other purposes.

Another possibility for moderation in a republic follows from its very disorder—from the claims of both the democrats and the aristocrats that they are each the real expression of the activities proper to that country. Their virtues are in conflict, controlling each other and thus enforcing the virtue of each. We need to examine this possibility for moderation in republics, a mixed government that balances the people and the aristocrats. Montesquieu's major discussion of mixed governments takes place in the context of his discussion of the balance of power in Rome (11.11–20). It follows his description of the English balance of power, whose purpose was political liberty (11.6) and which is the topic for our next chapter. Rome, according to Montesquieu, began as an elective monarchy sustained by a powerful aristocracy. When such a monarchy fails, it changes into a tyranny or into a popular government in which patricians are superfluous. "Therefore, the situation required that Rome be a democracy, but nevertheless it was not one. The power of the principal men had yet to be tempered, and the laws had yet to be inclined toward democracy" (11.13). The history of Rome from the expulsion of the kings to the time of the Gracchi is the story of this change, of "the imperceptible shift from one constitution to another" in which "states are often more flourishing" than under either of these constitutions (11.13). In this situation, "there is a noble rivalry between those who defend the declining constitution and those who put forth the one that prevails" (11.13). The Roman balance that kept both aristocratic and democratic virtue from abuse was not precisely a constitutional balance; rather, it was a state in a prolonged transition from one constitution to another.

The balance was between the people and the senate, or the patricians. Each held a certain portion of the legislative, executive, and judicial power; the two governments faced each other. "In Rome, as the people had the greater part of the legislative power, part of the executive power, and part of the power of judging, they were a great power that had to be counter-balanced by another" (11.18). When the judges were no longer chosen from among the

senators, the constitution was tipped in favor of the people. "Therefore, they ran counter to the liberty of the constitution in order to favor the liberty of the citizen, but the latter was lost along with the former" (11.18). In this situation, such great power had to counter great power to ensure the liberty of the constitution that there was no room to change the arrangements in the courts to favor the liberty of individual citizens.

The Romans could not move from the liberty of the constitution, which was guaranteed by balancing the offices held by democrats or aristocrats, to one in which the liberty of each individual citizen was protected in the courts. To suggest that there might be some aspect in which the citizens were undifferentiated was, in effect, to tip the scale to the democrats. In an introductory chapter in book 11 on the liberty of the constitution, Montesquieu wrote: "Democracy and aristocracy are not free states by their nature. Political liberty is found only in moderate governments. But it is not always in moderate states. It is present only when power is not abused; but it has eternally been observed that any man who has power is led to abuse it; he continues until he finds limits. Who would think: Even virtue has need of limits" (11.4). In moderate states, democracies and aristocracies, there is an ongoing danger that power will be abused; virtue is no guarantee against that possibility. Nor, as we have just seen, does a mixed state in which aristocratic and democratic institutions are pitted against one another provide such a guarantee. The moderation of the arrangement is essentially precarious, and the state cannot be called free by its nature, although it was in large part for hundreds of years free in practice. The moderation and the freedom of republics and aristocracies, even when balanced against one another in a mixed government, are not essential; they are not part of their nature.

Democracies decline as a result not only of losing the spirit of equality itself but also of acquiring a spirit of extreme equality. If the democrats refuse to entrust power to others, if they insist on doing everything themselves—on deliberating, executing, and judging—there can be no virtue. The end of respect for magistrates or for senators, implies the end of respect for elders, for husbands, for masters. "Everyone will come to love this license; the restraint of commanding will be as tiresome as that of obeying

had been. Women, children, and slaves will submit to no one. There will no longer be mores or love of order, and finally, there will no longer be virtue" (8.2). We have seen that republics are built on separated, complex families, whose heads are the equal citizens. When those distinctions dissolve, the republic resembles a despotism in which there are no stable distinctions: everyone is a slave of some kind. The suggestion here is that republics harbor a conflict between the equality of their citizens and the inequalities inherent in the underlying family structure.

Equality is an economic and social condition that encourages virtue by removing men who are heads of households from private and familial concerns and by limiting the sphere of those concerns. This makes it easier for them to devote themselves to their country. Their virtue is something else, a willingness to accept constraint on their actions for the good of the country. That devotion is also a competition in virtue, in service to one's country, which reveals inequalities that come to be expressed in the democratic delegation of some tasks to the more able. But this last notion of a graduated ability to be virtuous raises the possibility that the familial structure is arbitrary. What about the servants and slaves who are taken in war but were once citizens of another republic? When are children adults, and what about children for whom there is no estate to inherit and who are thus without an authorized share, family, and children? What about the women whose virtue keeps the families separate, maintains their frugality, and is the basis of the early education of the children? Earlier we noticed that Montesquieu remarks that Spartan institutions and Plato's republic took the notion of political virtue to its extreme, abandoning family structure to direct everyone's attention to the country. Of course, Sparta still relied on the helots, on some portion of the population that was not measured by any potentiality for virtue.

Montesquieu later suggests a similarity in the relation between philosophy and political life and that between Christianity and political life; he does this in the context of the end of a discussion about Roman laws that encouraged marriages and families. He remarks, of the decline of such laws during the empire, that "sects of philosophy had already introduced into the empire a spirit of distance from public business which could not have reached this

point at the time of the republic, when everyone was busy with the arts of war and peace. From it came an idea of perfection attached to all that leads to a speculative life; from it came the distance from the cares and encumbrance of a family. The Christian religion, succeeding philosophy, fixed, so to speak, ideas for which the former had only cleared the way" (23.21). Notions of perfection, both human and divine, can make the inequalities of families or of citizens seem unimportant; this leads to an insistence upon treating people as altogether equal, so that they are equally available for the most important things. This notion of equality resembles the natural, asocial equality of men who lack societies. In regard to Justinian and his revision of Roman law for the Christian Roman empire, Montesquieu says: "He believed he followed nature itself, when he set aside what he called the encumbrances of the old jurisprudence" (27.1). The limited equality of the citizens of a republic seems vulnerable to dissolution in the face of the criticism inherent in the separation of the philosophic sects and in the universality of equality before God and of natural equality, once those notions are abroad in the world. Republican equality of the citizens in their common pursuit of political virtue is vulnerable to becoming transformed into their equality as mere humans, as slaves to their passions and to one another, or into their equality as souls before God.

In sum, by directing the passions of the citizenry to the service of their country, republics acquire the regularity that is a prerequisite for moderation. In so doing, they give form to the shapeless willfulness of despots and of the people in despotisms. That shape, regularity, or direction is not, however, necessarily moderate. Montesquieu points this out very early when he discusses the need for music in the education of virtuous republicans. Their virtue has no inherent limits. Their passions are directed and regularized, but they remain passions, individual and infinite. Music arouses the spirit, another impulse within people that expresses a commonalty and offers a limit to the political passion. Insofar as republican government is seen as a middle between the natural, or familial, and the universal of the gods, of god, or of philosophy, its moderation in the sense of limits to its aspirations is implied. But this moderation is threatened by the possibility of identifying the universality of natural equality,

that before the Christian god, and political equality. The other source of moderation in the balance between the aristocrats and the democrats within a republic—a balance between conflicting understandings of political virtue—was, according to Montesquieu, a source of tension leading to activity, but not necessarily a source of moderation. Rome, after all, became a universal despotism.

## MONARCHY

Although republics and despotisms could be considered governments of another time or another place, monarchy raises the issue of France, of the government under which Montesquieu lived and in which he had served as a member of the Parlement of Bordeaux.<sup>10</sup> He lived under a monarchy that claimed to rule by divine right, in which rule was the private business of the king and his servants. In the seventeenth century, that monarchy had successfully put down a revolt by the nobility, both military and parliamentary, called the Fronde, in which the prerogatives of the nobility were claimed to have as much standing as those of the king.<sup>11</sup> Montesquieu has often been identified with the "these nobiliaire"—that is, with the Fronde—both because he was a noble and member of the Parlement of Bordeaux and because his description of monarchy clearly includes the old orders as well as the king.<sup>12</sup> In his later historical books, Montesquieu threads his way between the Abbé Dubos, who claimed that the French king took the place of the Roman emperors, ruling the whole population legitimately and alone and creating the nobility as he needed it, and Henri de Boulainvilliers, for whom the old military nobility, equals among themselves, were the conquerors of Roman France and should have ruled it together since that time. Montesquieu argues that the Romans were defeated and that among the Germans there was always a king who distributed goods among his followers, an aristocracy, and a people. Montesquieu clearly wished to fall into neither camp, but more importantly he wished, it seems to me, to establish a new understanding of monarchy, if not of the French monarchy in the middle of the eighteenth century, which would make of monarchy a form of government

that was in itself moderate. In so doing, he lays the groundwork for understanding a government that was in itself both moderate and free—the English.

Montesquieu begins his discussion of the nature of monarchy by asserting: "Intermediate, subordinate, and dependent powers constitute the nature of monarchical government, that is of the government in which one alone governs by fundamental laws. . . .<sup>13</sup> These fundamental laws necessarily assumed mediate channels through which power flows; for if in the state there is only the temporary and capricious will of one alone, nothing can be fixed and consequently there is no fundamental law" (2.4). If there is to be moderation, the king must act in accordance with the law, rather than his temporary and capricious will; but here he is not taught, asked, or persuaded to follow the laws. What is shaped is, not his will, but the way it can act. The shape is a consequence of the channels through which his will must flow, of the intermediate, subordinate, and dependent powers of the monarchy. Therefore, the nature of a monarchical government is the result of the intermediate powers because they distinguish it from the despotism of one alone by providing the regularity necessary for moderate government. They do so, not by directly affecting the will or character of the prince, but by making certain actions easier or more difficult for him. The king, to use the image of an earlier theorist of the French monarch, is not reined in; rather, he tends to follow the easiest road through rough terrain.<sup>14</sup>

To put the matter somewhat more straightforwardly, monarchical government is made up of intermediate powers, and its nature is set by the shape of those powers. Without intermediate powers to channel the flow of power from the monarch, there would only be the temporary and capricious will of one alone: nothing would be fixed, and there would be no fundamental law. Without "the prerogatives of the lords, clergy, nobility, and towns, in a monarchy, you will soon have a popular state or else a despotic state" (2.4). Without privilege, the state will be despotic if it is ruled by one person; otherwise it will become a popular state. Montesquieu suggests the possibility of another moderate government in which rule is mediated and shaped through intermediate institutions, but one that has a popular rather than a monarchical basis.

In this same chapter, Montesquieu uses water to present another image about the effects of intermediate powers. "Just as the sea, which seems to want to cover the whole earth, is checked by the grasses and the smallest bits of gravel on the shore, so monarchs, whose power seems unlimited, are checked by the slightest obstacles and submit their natural pride to supplication and prayer" (2.4). The issue here is the power of the clergy in monarchies, "especially in those tending to despotism," such as Spain and Portugal. "Ever a good barrier, when no other exists, because, as despotism causes appalling evils to human nature, the very ill that limits it is a good" (2.4). This clergy is that of the Inquisition, whose evil pushes Montesquieu to one of the most dramatic and ironic chapters in his book (25.13). Religion here moderates despotism, not through the despot's fear of God, however, but because of the existence of the clergy as one of the intermediate powers.

In the first image, the power of the monarchy, like water, seeks to spread over everything, unless it is stopped by something higher. However, one might as easily see the power of the nobility or the clergy in action and that of the king as a riverbank or shore that stops them from spreading over everything. The view of the terrain changes as the kind of lordship—the topics and kinds of rule—varies. This expansion and contraction of the power of the monarch, the nobility, and the clergy is tracked in book 31. Twice the kings of France virtually disappeared and were replaced by a new line: the Merovingians were replaced by the mayors of the palace; the Carolingians were replaced when the kings no longer led the nobles to war, losing the incentives with which they controlled the nobles (31.5); the Carolingians were replaced by the Capetians when virtually all fiefs became inherited, leaving the reigning house so stripped of domains that it could not support the king (31.30), and the crown had to be conferred upon the holder of a great fief who could defend the country (31.32). Similarly, "the clergy have always acquired, they have always returned, and they still acquire" (31.10). The goods of the clergy can accumulate endlessly because "the clergy is a family which cannot perish; therefore, goods are attached to it forever and cannot pass out of it" (25.5). These endless acquisitions of the clergy "seem so unreasonable to the peoples that anyone who

would want to speak in their favor would be regarded as an imbecile" (25.5). During the reigns of the Merovingians, Carolingians, and Capetians, the clergy received so much that "they must have been given the whole of the goods of the kingdom several times" (31.10). The nobility and the clergy, as well as the king, sought to expand their domain or power until they were halted.

The last element in the nature of a monarchy is what Montesquieu calls a "depository of the laws." Here we reach what Montesquieu is later to call the power to punish crimes or judge disputes between individuals (11.6). He goes on to say that in most kingdoms of Europe, the government is moderate because that power is left to the subjects. In a monarchy the question arises, Which subjects? At the beginning of the chapter on the laws in their relation to the nature of the monarchy (2.4), Montesquieu defends the justice of the lords and the clergy as being a part of their prerogatives, whose abolition will lead to the end of monarchy. But later in the book, he traces the dissolution of those forms of justice and the rise of what was to become the parlements. The justices of the lords were established before the end of the reign of the Carolingians (30.22). But separation of justice from the fief began in France with the beginning of appeals during the reign of the Capetian kings in the thirteenth century, particularly with appeals to the court of an overlord, because "an infinity of men with fiefs had no men under them, they were not in a position to hold their own court" (28.27). That separation led to what Montesquieu calls a "depository of the laws," to the customs being written down, becoming more general, and receiving the stamp of royal authority (28.45), and then, to add the implied remaining step, being held, interpreted, and rewritten by a judicial body, by some people defined by the political task they perform rather than by their birth. "It is not enough to have intermediate ranks in a monarchy; there must also be a depository of laws. This depository can only be in the political bodies, which announce the laws when they are made and recall them when they are forgotten. The ignorance natural to the nobility, its laxity, and its scorn for civil government require a body that constantly brings the laws out of the dust in which they would be buried" (2.4). In France, the body of law that has become the law of the

country is preserved and enforced in the parlements.<sup>15</sup> If monarchies rest on the prerogatives of the nobility, they also require judicial institutions which are formed by the task to be done.

As we noticed earlier, the law of republics and despotisms was relatively simple. Judges were not required to consider circumstances or to distinguish among the people and goods before them, although there had come to be an effort to distinguish kinds of actions before courts, as well as the evidence and the course of judgment appropriate to them. "The differences in rank, origin, and condition that are established in monarchical government often carry with them distinctions in the nature of men's goods, and the laws regarding the constitution of this state can increase the number of these distinctions. . . . Each sort of goods is subject to particular rules; these must be followed in order to make disposition of the goods, which further removes simplicity" (6.1). Monarchies are also altogether different in respect to judgment. Judges are to deliberate with each other and to take into account a great variety of circumstances.<sup>16</sup> "In monarchies judges assume the manner of arbiters; they deliberate together, they share their thoughts, they come to an agreement; one modifies his opinion to make it like another's; opinions with the least support are incorporated into the two more widely held" (6.4). One cannot help but notice that Montesquieu has put deliberation—that is, the capacity to consider the best action in a set of circumstances—in the hands of people who have not been selected simply by their birth or by their service to the king.<sup>17</sup>

As we have seen, the great change in the French monarchy centered around the change in the status of fiefs, which began as revocable or for life and later became permanent or inherited. The fiefs themselves were rights over some aspect of government—for example, justice, taxation, or military service. Jurisdiction over the same person was divided into a number of fiefdoms and among a number of persons. The great invention of Gothic government was that rule over the same good or person could be shared, so that no person or group need be sovereign over any good or man (30.1). Monarchies, then, have no citizenry; they have no distinctive group that could express political virtue itself. This leaves open the possibility of a great variety of change within this kind of government. In his history of the French monarchy,

Montesquieu distinguishes between two aspects of monarchies: the division and separation of powers so that each had some jurisdiction over the same person, and the way the persons who were to fill those offices were chosen. In the beginning of the Germanic monarchy, the king gave the fiefs to the noblemen of his choice, but gradually those fiefs came to be inherited and to be inherited according to rules of inheritance that kept the wealth and the fief or office in the hands of one member of a great family. Montesquieu calls this the change from political to feudal rule. Here we can see some of the variability within monarchy and the possibilities for change again in the way the offices are to be filled.

After this extended inquiry into the nature of monarchical government, we must turn to its principle. Montesquieu begins by asserting that virtue has never been a characteristic of the courtiers or of the people in a monarchy. It is awkward, he claims, to expect the people to be decent when the principal men of the state are dishonest (3.5). "HONOR, that is the prejudice of each person and each condition takes the place of the political virtue of which I have spoken and represents it everywhere" (3.6). Monarchies have a variety of preeminences and ranks; "the nature of *honor* is to demand preferences and distinctions, therefore honor has, in and of itself, a place in this government" (3.7). Honor, then, is based upon an opinion that one's own rank is preferable to that of others (at least some others) and that one belongs in such a place. By using the word *prejudice* (*préjugé*), Montesquieu intends us to know that the opinion is unexamined; it is the result either of laziness or of deference to received opinion. But it should be noticed that when the honor of each person is identified with a place in the monarchy, the constitution of the monarchy—that is, the array of intermediate powers—is represented by the sum of the honor.

What is clear in this regard is that honor and the grand actions that accompany it are not dependent upon any match between the person and the rank. It suffices for one to believe that the rank is appropriate and to act as if one properly belonged to that rank. Max Weber, in *The Protestant Ethic and the Spirit of Capitalism*, attributes this same trick of mind to the Calvinist elect; he adds a touch of anxiety in regard to the reliability of one's belief that one is really one of the elect, which Montesquieu only hints at here

with his notion that great activity results from this sense of honor. People are always trying to demonstrate by their actions that they belong in their place. This restless desire to prove that one belongs in one's place implies either a distrust that one truly does belong in such a place or a distrust of inequality itself.

Education to honor does not take place within those public institutions where children are instructed; rather, it begins when one enters the world. In contrast to what pertains in republics, a child's family life—his life before entering the public realm—is not shaped by the interest of the public in having a particular kind of citizen. Rather, the society itself shapes people as they enter it. "The world is the school of what is called *honor*, the universal master that should everywhere guide us" (4.2). In the first place, the virtues in a monarchy are "not so much what calls us to our fellow citizens as what distinguishes us from them." Second, in respect to mores, men speak the truth because they want to appear to be daring and free, to seem "dependent only on things and not on the way another receives them." Third, "we are polite from arrogance; we flatter ourselves that our manners prove that we are not common and that we have not lived with the sort of people who have been neglected through the ages" (4.2). In sum, nobility in the virtues, frankness in mores, and politeness in manners are each designed to express a distinction. Thus, honor and its accompanying characteristics are shaped by the ranks and orders of the monarchy.

Montesquieu suggests, however, that those same ranks and orders make a situation in which the greatest of the moral virtues—magnanimity—can exist. "In monarchies one sees the subjects around the prince receive his light; there, as each one has, so to speak, a larger space, he can exercise those virtues that give the soul not independence, but greatness" (5.12). Those who are either unable or not in a position to be magnanimous may be vain or arrogant. The difference is a consequence of the extent to which the orders of the monarchy are stable and clear.

In book 19, Montesquieu describes a people characterized by its sociability and vanity, which sounds remarkably like the French. "If there were in the world a nation which had a sociable humor, an openness of heart; a joy in life, a taste, an ease in communicating its thoughts; which was lively, pleasant, playful,

sometimes imprudent, often indiscreet; and which had with all that, courage, generosity, frankness, and a certain point of honor, one should avoid disturbing its manners by laws, in order not to disturb its virtues" (19.5). This sociability has the effect of showing up the singularities of individuals. "The more communicative peoples are, the more easily they change their manners because each man is more a spectacle for another; one sees the singularities of individuals better" (19.8). This communication, observation, and imitation can take place only if the ranks and orders are not so definitive as to make sociability unlikely and vanity, whose ground is fundamental equality, impossible. That is, here Montesquieu seems to make clear not only the arbitrariness of the orders of the monarchies but also that those who are a part of the monarchy suspect, or believe, them to be arbitrary.

A clear separation between the ranks and orders leads to arrogance, the improvement in morals is not clear, and the loss in economic activity is predictable. To turn monarchies toward republican virtue, to try to get the public men to identify their good with that of the country and to act seriously and virtuously, leads to arrogance and laziness. To suggest this, Montesquieu compares this vain and sociable people with the arrogance and isolation of the Spanish. A correction of the excesses of vanity in a monarchy, Montesquieu implies, leads to pedantry and loss of taste and to a society in which "gravity, arrogance, and laziness go hand in hand" (19.9). Tocqueville moves this criticism to the French monarchy, arguing that the French nobility had become in effect a caste. Monarchies seem to thrive on a lack of clarity and definition—in contrast to republics, which require clarity as to who is a citizen and how they are to act toward each other.

Monarchies, like republics, are supported by an inheritance law. But rather than ensuring a number of equal families, the inheritance law of monarchies sustains the privileges of the noble families. "Noble lands, like noble persons, will have privileges. One cannot separate the dignity of the monarch from that of the kingdom; one can scarcely separate the dignity of the noble from that of his fief" (5.9). The monarchical inheritance law is designed to keep together a great estate and to give it a single head, so that a noble family remains a privileged political body. It is very difficult, if not impossible, to sort out the public and the private in

these great families. In a way, the noble families are the actors, the citizens, in a monarchy. Then, the wives, the servants, the younger sons, and the daughters—all lead a public life. They cannot be kept private when the household itself, as at court, is where political life takes place. Montesquieu writes: "In monarchies, women have so little restraint because, called to court by the distinction of ranks, they there take up the spirit of liberty that is almost the only one tolerated. Each man uses their charms and their passions to advance his fortune; and as their weakness allows them not arrogance but vanity, luxury always reigns there with them" (7.9). The sociability of the court, where all these people from many noble families along with their retainers meet and jostle for position, is the environment for sociability, communication, and vanity. In order to support the inequality of monarchies, there must be luxury, so that the rich will spend and, by so doing, will pay the poor for the work that sustains the luxury of the wealthy (7.4). Families and economic activity are in the public domain; monarchies blur the sharp distinctions between public and private which are maintained by republics.

The law-abidingness and moderation of republics are the same thing. The king rules in accordance with the kind of monarchy it is, because he rules through the intermediate powers of that monarchy. Therefore the law that the king obeys is the one that sets the order of the monarchy. The depository of the laws—the judiciary—is essential; its job is to maintain the distinctions—to treat people according to their ranks and goods according to their place. The moderation of monarchies, like that of aristocracies, limits and directs the actions of the rulers. But in monarchies, the limit on the actions of the ruler, the king, is a result of his having to rule through subjects who were not chosen by him. When slavery or serfdom came to an end in the monarchies (11.8), the entire population had some, however small, political or civil role. Those roles were, as we have seen, partial. This made for the curious combination of universality and distinctiveness that typified monarchies. Everyone was involved, but with different ranks and in various ways. This distinguishes monarchy from any previous government.

Montesquieu repeatedly objects to John Law's financial manipulations because they dissolved the orders of the monarchy and



treated the population equally badly. The English were said to have risked everything, in effect, by dissolving their nobility and settling upon a government whose end was political liberty. Their moderation was not the condition for their liberty; rather, it was coextensive with it. Tocqueville said that the king, in fact, tried to move around what he saw as disorder to form his own administration and to treat his subjects—the population as a whole—as equally subject to his rule. This mixture of universal and particular makes both the moderation of monarchies and the danger of despotism. That the rule of the monarchy must be filtered through the activities of those whose claim to their position is as legitimate as the prince's because it has the same source—namely, the nobles—leads to moderation through what Tocqueville was, in the American context, to call decentralized administration. The king, like the American democracy, has every claim to rule but has no way to exercise that rule directly. If either he or it did find a way, the result would be despotism.

### CONCLUSION

We are now in a position to put together the notions of law and spirit with those of the three kinds of government and of moderation. We can see that Montesquieu's principles of governments are representations of the characteristic human interactions, or spirits, that typify and distinguish these governments. The moderation or the despotism of a government follows from this structure.<sup>18</sup>

Despotisms are altogether without spirit, without any intention or purpose that might unite the people. They are based only upon the passions; thus, they are universal and recognize only force and its response, fear. The only justice is based on punishment, reciprocity, and the equality of everyone. There is no internal principle or spirit within a despotism that would propel people toward the actions that would satisfy the natural law. They have to be forced to preserve themselves, to work to take care of their children. Even the force that keeps them together and keeps them regular is a product of having some external circumstance exert the same fear upon the ruler that he imposes upon his people—

whether that circumstance be fear of god or of the climate and circumstance. We have noticed the formal similarity between this rule and that of the divine over the individual intelligences. In each case the ruler holds the subject absolutely accountable, no quarter is given, and the subjects are each individually subject to the ruler. Montesquieu seems to say that the divine rule over intelligences will, if applied to ordinary human politics, be a despotism. Human justice, or moderation, requires some limit on reciprocity, some groups within which the full power of neither the passions nor the divine intelligence has effect.

Republics are distinctive societies, based on a particular spirit. The various spirits that result as people bestir themselves to satisfy their needs in certain terrains are given form in the distinctive spirits of the citizens of a republic. In this natural, pre-Christian situation the varieties of human spirit are exemplified by different societies. Each society was based on and supported a certain kind of human activity, a form of the human spirit. In so doing, it ordered itself so that those who exemplified the particular spirit were favored and the others supplied the goods necessary for its practice. The premise of such a regime is that the population can be divided into those who express its spirit and those who do not, or who do so to a lesser extent. These latter have to be controlled, or ruled, in a manner appropriate to their limitations. They are not educated to be the citizens; rather, they are to supply the materials needed by the citizens. Thus, in effect, each citizen is supported by a family that supplies his needs and educates the citizens to come. The passions of the citizenry are contained by their virtue, their dedication to the whole, and are directed to the ends of the regime, to the actions encompassed in its spirit. The citizenry itself is an egalitarian body, ruled in ways that are analogous to the despotic rule and the rule of intelligences: they are, after all, equal individuals.

But the punishments are moderated because the spirit of the citizenry offers a number of punishments that were not available before—namely, those based on shame before the principles of action of the other citizens. The punishments are also moderated by the beginnings of legal process, of institutions that point the decision making and the punishments of the republic toward the ends or spirit of the regime with a regularity that is not dependent



upon the character of the particular ruler at hand. Conversely, dangers to the moderation of republics are to be found in the collapse of their particularity, of their spirit. These exist, first, in a tendency toward extreme equality, in a tendency to collapse the institutions of the republic itself that are designed to maintain its principle. Along this same line are the tendencies to elevate private life to an importance comparable to that of political life, thus giving familial and economic purposes comparable importance. Second, the spirit of the republic itself can point to a kind of universality, whether in the Roman progress toward conquering the world or in the ambition of the Greek philosophers to put the spiritedness of the republics underneath the generality of the ambitions of the philosophic sects. In each case the republic becomes a part or an example of universal rule, not a particular good or spirit in action.

Monarchies are based on an international law that does not make ordered distinctions between peoples. Christianity presumes that everyone has a spirit of which the highest demands on the spirit can properly be made. If so, there can be no natural slaves because no one is thought to be without spirit, so that he could properly be ruled despotically. Women are held to the same standards as men and must be admitted to the sacraments of the church; thus, they cannot be kept entirely private. Sociability, or communication, is universal.<sup>19</sup> The divine reasserts itself here as a universal spirit, but not as a universal law based on the justice of retaliation. In the context of the world after the conquest of the Roman Empire, in which peoples from different tribes and countries lived side by side, the law was reduced to "personal law"; such personal law refuses to make distinctions among the laws, and thus among men. The relations between these individuals could only be settled through a process of judging, whether by combat or by judges who adhered to a code of law that was to emerge out of that very process.

What emerged from this process was, as we have noticed, a rule that was divided both in its source and in its application. That is, by and large, different aspects of one's life were ruled by different people. This unique event in history presented an altogether new pattern for political life. The shape of political life became a result of the changing jurisdictions and the changing sources of rule.

Moderation is to be found in the regularity that results from the balance between these varying rules and sources of rule.<sup>20</sup> Although reasons—based on the divinity, on history and birth, or on choice and election—could be given for any particular arrangement, there remained within it the suspicion of arbitrariness. That suspicion is the source both of the honor of monarchies and of its vulnerability. For this politics not to fall into the despotism implied by its universality, it must both give some shape to the variety of spirits and even some liberty to pursue one's own ends within that shape. Here we have entered into the topic of the next chapter, the notion of political liberty in *The Spirit of the Laws*. Both this free government and monarchies fall within the same category; in each a division of power leads to a particular way of life and moderation built upon a notion of equality, before god or by nature.<sup>21</sup>