

MONTESQUIEU AND THE LOGIC OF LIBERTY



*War, Religion, Commerce, Climate, Terrain, Technology,
Uneasiness of Mind, the Spirit of Political Vigilance,
and the Foundations of the Modern Republic*



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UNEASINESS

The patriotic spirit is an exclusive spirit, which makes us regard as a foreigner and almost as an enemy all other than our fellow citizens. Such was the spirit of Sparta and of Rome. The spirit of Christianity, on the contrary, makes us regard all men indifferently as our brothers, as children of God. Christian charity does not permit us to make an odious distinction between the compatriot and the foreigner; it is good not for making either Republicans or warriors, but solely for making Christians and men; with indifference, its ardent Zeal embraces the entire human race. It is, then, true that Christianity is, by its very holiness, contrary to the particularist social spirit.

—Jean-Jacques Rousseau

In the preface to his *Spirit of Laws*, Montesquieu makes a point of insisting that the work's architecture is deliberate, and he contends that, in attending to it, one is attending to his purpose overall. "If one wishes to search out the author's design," he tells prospective readers, "one cannot discover it fully [*bien*] except in the design of the work" (Préf.). Elsewhere in his preface, Montesquieu adopts another metaphor. It is, he writes, by reflecting "on the details" that one "will feel [*sentira*] the certitude of my principles," and he warns his readers that "many of the truths" he presents "will not make themselves felt [*se feront sentir*] until one has seen the chain that links them with others" (Préf.). The chain is not, however, evident to the unsuspecting glance.¹

Winkling out the work's argument, as Jean Le Rond d'Alembert would later explain in the famous eulogy of Montesquieu that he penned for the *Encyclopédie, ou Dictionnaire raisonné des sciences, des arts, et des métiers*, is no easy task. "The author of *The Spirit of Laws* embraced within it a number of subjects

so great & dealt with them with such brevity & depth," he observed, "that only an assiduous & meditative reading can give one a feeling for the merit of this book."² Some eighteen months after the publication of his *Spirit of Laws*, its author confessed as much. "That which renders certain articles of the book in question obscure & ambiguous," he told one correspondent, "is that they are often at a distance from the others which explain them & that the links in the chain which you have noted are very often at a distance the ones from the others."³ To this one must add what Montesquieu tells us in the work's preface by way of an aside. As for the scattered "details" that make up the links in this chain, he wrote, "I have not provided them all: since who would be able to say everything without" incurring or inflicting (he does not say which) "a deadly ennui?" (Préf.).

Later yet, well after *The Spirit of Laws* had found its way into print, when critics, such as the abbé Joseph de La Porte, characterized the work as self-contradictory, disordered, and hopelessly obscure,⁴ Montesquieu, after privately displaying his annoyance (MP 2057), took the trouble to sketch out for his own satisfaction a response specifying in detail the manner in which a work such as his should be studied. "When one reads a book," he insisted,

it is necessary that one be disposed to believe that the author has seen the contradictions which, at first glance, one imagines that one encounters therein. In this fashion, it is necessary that one begin by distrusting rash judgments, that one take up again the passages which one asserts to be self-contradictory, that one compare them with one another, that one compare them again with those preceding and those following—all in order to see whether they derive from the same hypothesis, whether the contradiction is in the things or only in one's own particular manner of conceiving them. When one has done all of this properly [*bien*], one can pronounce as a master, "There is a contradiction."

This is not always, however, everything that one must do. When a work is systematic, one must make sure that one has fully [*bien*] seized hold of the system in its entirety. Consider a great machine made to produce an effect. You see wheels turn in directions opposed; you believe at first glance that the machine is going to destroy itself, that the assemblage of wheels is going to get in its own way, that the machine is going to bring itself to a halt. It goes on forever: these separate parts [*pièces*], which appear at first to destroy themselves, unite together for the object proposed. (2092)

To this set of considerations, we must add what should now be obvious—the fact that Montesquieu had to write with the censor in mind, that indirection was sometimes required, that, in some measure, he had to conceal his design.⁵

Here, again, d'Alembert's observations are apt. In reading Montesquieu, he

insists, one must "distinguish genuine disorder from that which is only apparent." A work appears to be disordered but, in fact, is not "when the author, setting in their true places the ideas he uses, leaves it to the readers to supply the intermediary ideas [*les idées intermédiaires*]: & it is this method that Monsieur de Montesquieu believed he could & should use in a book destined for men who think, whose genius could be expected [*doit*] to supply omissions deliberate [*volontaires*] & reasoned. The order which makes itself apparent in the great parts of *The Spirit of Laws* reigns no less in the details: we believe that the more one penetrates the work's depths, the more one will be convinced of this." To these observations, d'Alembert made one pertinent addition: "We will say concerning the obscurity that is permissible in such a work the same thing we said about the lack of order; what would be obscure for vulgar readers is not so for those whom the author had in view. In any case, deliberate obscurity is not a species of obscurity: Monsieur de Montesquieu, having at times to present important truths whose absolute & direct declaration might have wounded without bearing any fruit, had the prudence to shroud them, & by this innocent artifice, veiled them from those to whom they would be harmful without causing them be lost for the wise."⁶ Unfortunately, d'Alembert's warning and Montesquieu's advice to readers have not always been taken to heart, and this has proved to be an obstacle to understanding not only the latter's cryptic account of the English polity,⁷ but also the dialectical structure of his overall argument and the stages in which it unfolds.

MONTESQUIEU'S GREAT PARTS

Some aspects of the design of Montesquieu's *De l'Esprit des lois*, such as its division into thirty-one books and six hundred five chapters, are obvious. Some are not. The most important and least discussed of the latter is the distribution of these thirty-one books into what d'Alembert spoke of as its "great parts." Scholarly neglect in this regard is not surprising. The parts, ultimately in number six, were never given titles. They were not marked out as such in the first printed edition of *The Spirit of Laws*, and this aspect of the work's architecture was similarly omitted in the posthumous edition ushered into print by Montesquieu's son in 1757.⁸ That subsequent editors should often follow suit is only to be expected, and it is only natural that it should become a scholarly convention to cite *The Spirit of Laws* by book and chapter—and not at all by part. This is, nonetheless, a misfortune, for the work's six parts were distinguished as such when a final clean copy of the manuscript was produced.⁹ Moreover, Montesquieu was dismayed when he learned that the printer and the editorial coordinator of the first edition had omit-

ted them;¹⁰ and he saw to it that this aspect of the work's architecture was made explicit in the revised edition published in Paris under a false imprint in 1750,¹¹ the version that he described to a correspondent as being "the edition" of his *Spirit of Laws* that is "the most exact."¹² That Montesquieu regarded the work's articulation into parts as highly significant there can be no doubt.¹³

THE SPIRIT OF LAWS, PARTS FIVE AND SIX

- V. 24. Of the Laws in the Relation Which They Have with the Religion Established in Each Country Considered with Regard to its Practices and in Itself
- 25. Of the Laws in the Relation Which They Have with the Establishment of the Religion of Each Country and its External Police
- 26. Of the Laws in the Relation Which They Ought to Have with the Order of Things on Which They Are to Pronounce Judgment
- VI. 27. Of the Origin of & the Revolutions in the Roman Laws concerning Inheritance
- 28. Of the Origin of & the Revolutions in the Civil Laws of the French
- 29. On the Manner in Which Laws Are To Be Composed
- 30. The Theory of the Feudal Laws among the Franks in the Relation They Have with the Establishment of the Monarchy
- 31. The Theory of the Feudal Laws among the Franks in the Relation They Have with the Revolutions of Their Monarchy

In some respects, the structure of Montesquieu's magnum opus is relatively easy to discern. When, for example, one attends to the logic dictating the division between the two volumes published in 1748, it becomes clear that *EL* 3.19, with its focus on "the general spirit," was intended to serve as a summary and conclusion for the first volume and that, prior to Montesquieu's last-minute decision to add an appendix (6.28, 30–31) on the evolution of French law, *EL* 5.26, with its focus on the "relationship [*rapport*]" that laws "ought to have with the order of the things on which they are to pronounce judgment [*statuent*]," was designed to serve as a conclusion for the second volume—while 6.29, with its focus on "the manner in which laws are to be composed," was meant to serve as a conclusion for the entire work. By the same token, when one attends to the logic dictating the division between the three volumes published in Paris in 1750, one quickly recognizes that the thirteen books that make up Parts One and Two and formed its first volume have as their focus legislation; that the ten books that make up Parts Three and Four and formed its second volume have as their focus the natural environment and the dialectic between technology and commerce

which enables human beings in some measure to reshape that environment and liberate themselves from it; and that Parts Five and Six re-examine the scope of legislation and consider how it, in fact, does and should take place. All of this suggests that Montesquieu's decision to delay making the English form of government thematic until Part Two was deliberate, but it does not clarify why he did so. To solve this problem one must attend to the less emphatic, but nonetheless crucial shift in perspective that distinguishes the first two parts from one another.

Montesquieu was a writer of consummate skill. Although he delighted in paradox and took pains to subject his readers to sudden and unexpected shifts in perspective, he was also inclined to prepare them surreptitiously for the great jolts to come. As we have seen (I.2-3, above), the triptych that, in 1734, he had wanted to publish illustrates both of Montesquieu's propensities. On the one hand, as originally designed, it would have required the reader to move without warning from a consideration of Roman aggrandizement to a reflection on the aspiration to universal monarchy in modern times and, then, to a meditation on the English polity. On the other hand, he consistently anticipated what was to come. In the first part of the trilogy, as it was originally designed, Montesquieu quietly laid the groundwork for his subsequent discussion by characterizing the Roman empire as a universal monarchy, by pausing briefly to reflect on the impact of modern communications on the formation of policy, and by suggesting that, as a consequence of its capacity for self-correction, the government of England was not only one of the wisest governments in Europe but deserved comparison with the government of republican Rome. And, in the trilogy's second part, he took care to indicate the manner in which England's emergence as a commercial, maritime power was prepared by the Anglo-Norman monarchy's loss of its vast domains in France.

In his *Spirit of Laws*, Montesquieu did much the same thing. He reserved his extended discussion of the English form of government for the work's second part. But he took care in its first part, especially toward the end, to whet the appetite of his readers for what was to come. Quite early on, as we have seen, he observed that "the English, in order to favor liberty, have eliminated all the intermediary powers that formed their monarchy" (EL 1.2.4). A bit later he even intimated that England is "a republic concealed under the form of a monarchy" (1.5.19, p. 304),¹⁴ and he singled out as practices typical of those to be found in republics a set of procedures peculiar to the courts in England (1.6.3). But if, toward the end of the work's first part, he seemed to confirm the implications of these remarks by asserting that "the English nobility were interred with Charles I under the debris of the throne" (1.8.9), it does not make one forget his earlier

comments concerning the "fine spectacle" constituted by the "impotent efforts" of the English "to establish among themselves democracy," his assertion that those "who took part in affairs had no virtue," and his contention that the ambition that fueled their rivalries and gave rise to faction produced so "much of movement" and so "many shocks & jerks" that "the people," unable "to find anywhere" the democracy that "they were seeking," eventually "found repose in the very government that had been proscribed" (1.3.3). It was evidently Montesquieu's intention in composing Part One to leave his readers for the time being perplexed.

To complicate matters further, Montesquieu also conspired to suggest on the part of the English a powerful propensity to political moderation. He mentioned England's jury system (1.6.3). He commented on the salutary consequences of the English king's use of his pardoning power and more generally on the relationship between letters of pardon and moderate government (1.6.16). He noted the absence of judicial torture in an England that was nonetheless "very well policed" (1.6.17), and he observed that the quality of its soil was conducive to luxury (1.7.6). Moreover, in the last reference to England as a country to be found in Part One, Montesquieu specifically referred to the "moderate" character of its government (1.7.17). If, in Part One, he tells his readers a great deal concerning England, it is for the purpose of making them want to learn a great deal more.

In similar fashion, in the last seven chapters of the final book of the first part of his *Spirit of Laws* (1.8.15-21), Montesquieu turned to the relationship between the form a government takes and the size of the territory it administers—a question, hitherto undiscussed in his work,¹⁵ of so great an importance that its author insists that his overall argument will be incomprehensible to those who have not attended to it (1.8.15)—and this serves as a bridge to the ruminations on the projection of power that make up the first two books of the work's second part (2.9-10). If these two books seem to be a continuation of the last book of Part One, they nonetheless mark a shift in perspective.

THE SPIRIT OF LAWS, PART TWO

- II. 9. Of the Laws in the Relation Which They Have with Defensive Force
10. Of the Laws in the Relation Which They Have with Offensive Force
11. Of the Laws Which Form Political Liberty in its Relation with the Constitution
12. Of the Laws Which Form Political Liberty in its Relation with the Citizen
13. Of the Relations Which the Levying of Taxes & the Greatness of Public Revenues Have with Liberty

It would no doubt be a blunder to say that the first part of Montesquieu's magnum opus is nothing more than a recapitulation of the argument advanced in his *Considerations on Rome*, and it would be equally misleading to suggest that the first two books of the second part are simply a restatement of the argument advanced in *Reflections on Universal Monarchy in Europe* concerning the transformation that has taken place in the *ius gentium* in modern times. But it is nonetheless true that in Part One of his great work Montesquieu does manage to exploit, then moderate, and ultimately subvert the allure associated with classical republicanism, and it is a fact that he accomplishes this feat just as he had done so in his *Considerations on the Romans*—by showing that antiquity, which seems to the unsuspecting glance so grand and glorious, is upon close examination distasteful, ugly, and grim. Moreover, it is no less true that early in Part Two, in Book Nine, Montesquieu explicitly debunks the aspiration to universal monarchy (2.9.7), using paragraphs lifted from the little treatise on that subject which he had suppressed in 1734 (RMU 17.360–65, 372–82); and it is also the case that, in Books Nine and Ten, he singles out for celebration the changes in the *ius gentium* (EL 2.9.1, 10.1–3) that he had treated in similar fashion in his *Universal Monarchy* (RMU 1.1–27).¹⁶

Put simply, Books Nine and Ten, the first two books of Part Two of Montesquieu's *Spirit of Laws*, are and are not a continuation of Book Eight, the last book of Part One. To the extent that they constitute a rumination on the relationship between the size of a polity and its capacity to project defensive and offensive force, they are a continuation. To the extent that they allude to the increasingly commercial, increasingly pacific character of modern republics and reflect on the changes in the *ius gentium* that have altered the conditions that determine the viability of different forms of government, they mark a real break with what has come before—and in this fashion they open the way for a consideration of a species of government that not only has no obvious ancient analogue and no self-evident principle but is also, as far as one can tell, subject to no territorial constraints.¹⁷

To grasp what Montesquieu is intimating, one must attend to the political significance of Christianity's sway. This was critical to understanding the argument of Montesquieu's triptych, as we have seen (I.1–2, above), and it is no less crucial for understanding the argument advanced in his *Spirit of Laws*. In Part One of the latter work, apparently in passing, Montesquieu pauses to lay stress on the alien character of ancient institutions, mores, and manners, implying that, in fact, they no longer even exist. When the virtue of the ancients was “in full force,” he reports, “they did things that we no longer see & which astonish our little souls.” If his contemporaries are unable to rise to the same level, it is, he sug-

gests, because the “education” given the ancients “never suffered contradiction” while “we receive three educations different” from and even “contrary” to one another: “that of our fathers, that of our schoolmasters, that of the world. What we are told in the last overthrows the ideas imparted by the first two.” In short, there is now “a contrast between the engagements” which arise “from religion” and “those” which arise “from the world” that “the ancients knew nothing of.” This is why the moderns possess such “little souls” (1.4.4).¹⁸ In short, there is nothing in the epigraph to this chapter to which Montesquieu did not subscribe.¹⁹

Here, of course, in keeping with the rhetorical posture that he adopts in much of Part One, Montesquieu seems to mourn the emergence of Christianity and the disappearance of classical republicanism in much the same manner as Machiavelli.²⁰ In Part Two, however, in the tenth book of *The Spirit of Laws*, where he briefly summarizes the central argument of his *Universal Monarchy*, Montesquieu abruptly reverses course. There he specifies the manner in which “the law of nations which we follow today” has set itself against “the arbitrary principles of glory, of decorum, of utility” sometimes recommended in “the councils of princes” (2.10.2). There he emphasizes that the *ius gentium* now rules out the legitimacy of offensive war except in self-defense and forbids conquest that eventuates, as ancient Greek and Roman conquest so often did, in the destruction of the conquered society and the enslavement, scattering, or extermination of its citizens. And there he adds, by way of conclusion, “Here is it necessary to render homage to our modern times, to the species of reasoning dominant at present [*la raison présente*], to today's religion, to our philosophy, & our mores” as well (2.10.3, 6.29.14).²¹

Moreover, later, in Part Five, where Montesquieu makes religion his theme, he will ask his readers to consider “the continual massacres” perpetrated by “the kings & chiefs” of the Greeks and the Romans; he will call upon them to contemplate “the destruction of peoples & cities” carried out “by Tamerlaine & Genghis Khan, the very chiefs who devastated Asia”; and he will then assert that, in the course of these ruminations, we will, of necessity, come to “see that to Christianity”—which, he will soon add, “softens the mores of men”—“we owe both in government a certain political right [*droit politique*] & in war a certain law of nations [*droit des gens*] for which human nature knows not how to be grateful enough” (5.24.3–4).²² It is this shift—it is the achievement of hegemony by a religion which teaches that all men are brothers, which induces us to think of citizenship as a secondary matter, and which encourages peace on earth—that explains the discontinuity between the epochs called antiquity and modernity. And it is in light of this shift and of the transformation in the overall

security environment that it effected that we can make sense of certain otherwise inexplicable claims put forward early in Book Nine—that confederations of cities “were more necessary in other times than they are today”; that in earlier times “a city without power ran greater risks”; and that “conquest” then caused such a city “to lose not only the executive & legislative power, as it does today, but also everything that there is that belongs to men,” such as “civil liberty, goods, women, children, temples, & even tombs” (2.9.1). This profound shift in sensibility also explains why Montesquieu can now say what one could never say in antiquity: that “the spirit of the republic is peace & moderation” (cf. 2.9.2 with 1.4.8, 2.11.15, 6.29.14). And, as we have already seen (1.3, above), it accounts for the remarkable preeminence achieved by the new Carthage in the West.

LIBERTY AS AN OBJECT

In Part Two of *The Spirit of Laws*, after the interlude in which he obliquely addresses the manner in which Christianity and changes it inspired in the law of nations have profoundly altered the political prospects of man, Montesquieu takes the next logical step by making freedom, rather than virtue, his focus. There he informs us that monarchies, as represented in his regime typology, are peculiar to modern times (2.11.9), and there he suggests that they give rise to political liberty—but not in the course of its pursuit. Liberty is, as he demonstrates, an accidental byproduct of their pursuit of that polity’s “direct object,” which is “the glory of the citizens, of the state, & of the prince” (EL 2.11.7). In similar fashion, monarchies may achieve moderation by combining, regulating, and tempering powers so that one power possesses the ballast to resist another—but moderation is not that at which they aim. Thus, if the government of France is, in this regard, “a masterpiece of legislation” (1.5.14, p. 297), as it surely is, this fact is largely a matter of chance. After confessing, “I do not believe that there has ever been on this earth a government as well-tempered as that which existed in each part of Europe during the [feudal] period in which” the Gothic monarchy “subsisted,” Montesquieu adds that he finds it “a matter for wonder [*admirable*] that the corruption of the government of a conquering people has formed the best species of government that men have been able to imagine” (2.11.8).²³

One consequence of the fortuitous origin of Europe’s monarchies is that they only “approach political liberty more or less.” In this regard, England’s government would appear to be quite different: if it actually provides for “political liberty”—as Montesquieu insists it does—it is because the form of government peculiar to England aims directly at it. English liberty is, at least in some measure,

a product of “prudence” rather than “chance” (1.5.14, p. 297; 2.11.7). Montesquieu prefaces his initial discussion of the English polity with an account of the nature of “liberty,” which he carefully distinguishes from “independence” of the sort possessed by those in the state of nature. His point is that the former is much more valuable than the latter. He begins, however, with a puzzling claim—that “liberty,” properly understood, consists in “being able to do what one ought to want & in not being constrained to do what one ought not to want.” Then, Montesquieu explains what this cryptic formula actually means—first, that “liberty is the right to do what the laws permit,”²⁴ and, then, that it is incompatible with genuine independence, for if a man is “able to do what the laws forbid, he no longer has liberty since the others would likewise possess this same power” and obstruct his freedom to do what the laws allow (2.11.3).²⁵

To prevent those most likely to strive for this species of independence from being “able to abuse power,” Montesquieu soon adds, “it is necessary that in the disposition of things power check power.” It is his contention that “a constitution can be such that no one will be constrained to do things that the law does not require or prevented from doing those which the law permits him to do” (2.11.4). This would appear to be the object of the English polity, and it evidently constitutes what Montesquieu has in mind when he devotes the eleventh book of his tome to the laws which form “political liberty in its relation with the constitution” (2.11).²⁶ The government of England pursues this end chiefly through what eventually came to be called the separation of powers.²⁷ In its relation with the constitution, political liberty “is formed,” we are told, “by a certain distribution of the three powers” (2.12.1).²⁸ But, as one learns while reading the second part of *The Spirit of Laws*, political liberty can be conceived in two different ways, and the second of these is no less important for understanding the modern predicament than is the first.

TWO CONCEPTS OF POLITICAL LIBERTY

Montesquieu distinguishes “political liberty in its relation with the constitution” from “political liberty in its relation with the citizen.” The latter is the subject of the twelfth book of *The Spirit of Laws*. But because it is the central focus of Montesquieu’s concern, it intrudes on that book’s immediate predecessor as well. “In a citizen,” Montesquieu explains therein, “political liberty is that tranquillity of mind [*esprit*] which comes from the opinion that each has of his security.” If he is to possess “this liberty, it is necessary that the government be such that one citizen be unable to fear [*craindre*] another citizen” (2.11.6, p. 397). The

separation of powers is as essential to the elimination of this fear as it is to the guarantee that "no one will be constrained to do things that the law does not require or prevented from doing those which the law permits him to do."²⁹

In the working manuscript of *The Spirit of Laws*, there is an entry betraying the fact that the two books ultimately numbered eleven and twelve were once united as one (MS 291). On the face of it, this would seem to make perfect sense, for the two forms of liberty that Montesquieu describes in these books would appear to be inseparable. Where the executive and the legislative power are united in the hands of a single individual or corporate body, as they are in despotisms and tend to be in republics, one has reason "to fear [*craindre*]" that the individual or body that "makes tyrannical laws" will "execute them in a tyrannical manner." In similar fashion, if "the power of judging" is not somehow "kept separate from the legislative power & the executive power, there is no liberty." If it is united with the legislative power, "the judge would be the legislator" and the citizen's life and property would be subject to "arbitrary power." If it is united with the executive power, "the judge would have the strength [*force*] of an oppressor." If the power "of making the laws" were united with "that of executing public resolutions & with that of judging crimes or the disputes of particular citizens," Montesquieu exclaims, "all would be lost" (2.11.6, p. 397).

After having set up this standard, Montesquieu applies it to the polities he has earlier described. If "the kingdoms of Europe" tend to be "moderate," we are told, it is because the prince, who exercises the legislative and the executive power, leaves the power of judging to his subjects. The unity of the three powers in the Turkish Sultan produces "a frightful despotism." That same unity causes there to be "less liberty in the republics of Italy" than in Europe's monarchies: these governments can sustain themselves only with "means as violent" as those used by the government of the Turks. As a "witness" Montesquieu summons the example of Venice with its "state inquisitors & the lion's mouth into which every informer can at any time throw his accusation by letter," and he mentions the "tyrannical magistracy of the ephors" at Sparta in the same regard. It was generally true of "the ancient republics," he later notes, that "there was this abuse: that the people were at the same time judge & accuser." It was generally true that in these republics "one citizen" could "fear another." Republics can be "despotic" in more than one way (2.11.6, pp. 397-99, 404). Machiavelli to the contrary notwithstanding,³⁰ they "are not in their nature free states" (2.11.4).³¹

Montesquieu's account of the English constitution has an odd tone. Instead of describing, he resorts repeatedly to the language of prescription;³² and he underlines the point by issuing a disclaimer at the end: "It is not for me to examine whether the English actually enjoy this liberty or not."³³ All that he will assert is

that "it is established by their laws" (2.11.6, p. 407). One is left with the impression that his England is less a reality than an ideal type suggestive of the potential inherent in England's laws: one is given the same impression later by his persistent resort to the conditional in describing the contribution of England's laws in forming "the mores, the manners, & the character" of the nation (3.19.27). He is far more concerned with what is likely to happen than with what, in fact, does. "I will be," he warns, "more attentive to the order of things than to the things themselves" (3.19.1).

Moreover, like Tocqueville in *Democracy in America*, Montesquieu seems to have his eye as much on the future as on the present or past, and though he betrays an enthusiasm for the political liberty embodied in England's laws, he qualifies this with a denial that it is his intention "to disparage the other governments or to say that this extreme political liberty should serve to mortify those who possess none but one that is moderate." "How could I say that," he exclaims, "I who believe that an excess even of reason is not always desirable & that men better accommodate themselves nearly always to middling things than to extremities?" (2.11.6, p. 407).

Montesquieu's refusal to issue a blanket endorsement of the English example should give us pause—for, however valuable political liberty may be, there may be something wrong with a polity that takes this liberty as its "direct object." In the chapter immediately following the one in which he celebrates the English constitution and then intimates that, for all its virtues, it somehow misses the mark, he adds to his readers' perplexity by singling out for praise "the monarchies which we know." Although, he explains, or perhaps because, we may add, these states "do not have liberty as their direct object," although or perhaps because they aim solely at "the glory of the citizens, the state, & the prince," they manage to instill in their citizens "a spirit of liberty"; and, in such states, this spirit is "able to accomplish things as great & to contribute perhaps as much to happiness as liberty itself" (2.11.7).

There is much in Montesquieu's description of the structure of the English polity which deserves discussion: his defense of the principle of representation, his endorsement of a bicameralism that leaves the initiative to the popularly elected branch and a veto to the hereditary nobility that stands in for the well-to-do, the case that he makes on behalf of a unitary executive armed with a veto and accountable to the legislature for his deeds solely through the principle of ministerial responsibility, the emphasis that he places on the linkage between taxation and representation, and the argument that he advances on behalf of an army of citizen soldiers commanded by the executive but ultimately dependent on the legislature (2.11.6).³⁴ If our primary focus were "the laws that form political lib-

erty in its relation with the constitution," this would be our principal subject, and we would no doubt have to consider at length Montesquieu's ostentatious silence concerning the polity's territorial constraints.

More revealing, however, of the source of Montesquieu's reservations concerning the English polity is the fact that, when he discusses the English constitution, he singles out for particular attention the power of judging and the criminal law. He argues for fixed judgments determined by statute, and he praises the practice by which defendants help select their panel of jurors.³⁵ Security and fairness are obviously a concern. But repeatedly another theme thrusts itself into the limelight: Montesquieu's interests seem to be largely psychological.³⁶ Thus, in praising the jury system, he initially exclaims that "the power of judging" is "so terrible among men," and he then recommends that this power "be attached neither to a certain condition nor to a certain profession" and that it "become, so to speak, invisible & null." If this is the practice, "one does not continually have one's judges before one's eyes; & one fears [*craint*] the magistracy & not the magistrates." In much the same spirit, he adds that the jury should be made up of the peers of the accused so that "he cannot be of the mind that he has fallen into the hands of those inclined to do him violence" (2.11.6, pp. 398-99).

The emphasis placed on "fear" and on the defendant's state of mind is the feature of the argument that should catch and hold our attention. If Montesquieu can distinguish the liberty of the people from the power of the people, it is because he defines "political liberty in its relation with the citizen" in terms of "security, or, at least, the opinion that one has of one's security" (2.12.1-2). If anything, he seems more concerned with sustaining the citizen's "tranquillity of mind" than with sustaining his capacity "to do what the laws permit" him to do (2.11.3-4 and 6, p. 397). This explains why, in the end, he asks his readers to contemplate a paradoxical conclusion: that "it can happen that the constitution will be free & the citizen not" and that "the citizen will be free & the constitution not"; that while "only the disposition of the laws, & even the fundamental laws," can "form liberty in its relation with the constitution," liberty "in its relation with the citizen" can be made to arise "from the mores, from the manners, & from the received examples" prevalent within a political community and that it is less effectively promoted by political arrangements than by "certain civil laws" (2.12.1). It also clarifies why he can claim that "the knowledge which one has acquired in some countries and which one will acquire in others with regard to the surest regulations that one can hold to in criminal judgments interests human kind more than anything else that there is in the world" (2.12.2) and why he devotes so much attention to these regulations (2.12.3-30).³⁷ And it makes sense of his otherwise inexplicable concern with the psychological impact of taxation and his

association of "duties," such as those "on commodities," that "the people least feel" with both "moderate government" and "the spirit of liberty" (2.13.7-8, 14).³⁸ If he claims that, "in our monarchies, all felicity consists in the opinion that the people have of the gentleness [*la douceur*] of the government" (2.12.25), it is because human happiness and, therefore, "political liberty in its relation with the citizen" is a state of mind.³⁹

All of this helps explain why Montesquieu opted in the end to place the chapters focused on constitutional liberty in one book and those focused on the citizen's liberty in another, and it suggests something about human nature and something about the "principle" of the "republic concealed under the form of a monarchy" that he investigated during his extended sojourn in England. If, in contrast with its ancient counterpart, this modern republic can be situated on an extended territory, as Great Britain is, it is because it requires on the part of its citizens little or no virtue. Nowhere does Montesquieu suggest that "self-renunciation" is required to sustain it. Nor does he even intimate that it demands anything "very painful." And nowhere does he speak of the need to deploy therein "the complete power of education." His silence in this regard is explained by the fact that what Montesquieu says of monarchy can be said of England's government as well: it "is favored by the passions & favors them in its turn" (1.4.5). But though the passion that it favors and is favored by is as solid and reliable as the "principle" of monarchy, if not more so, this passion is not the longing for distinction. The "principle" of the modern republic is not honor; it is something very much like fear.⁴⁰ When, in 1753, the philosophe François Duverger Véron de Forbonnais insisted that "the principle" of Montesquieu's England "is terror,"⁴¹ he was not far off the mark.

ENGLISH INQUIÉTUDE

The government of England is not a despotism comparable to the oriental states that Montesquieu so vehemently despised, but it has an undeniable kinship with despotism. It has as its object "political liberty," not "the delights of the prince." But it comprehends this political liberty in terms of the citizen's "opinion of his security." Where the "despotic state" in China takes as its object "public tranquillity" and other despotisms pursue "tranquillity" as their "aim [*but*]," if not their "object," England's government pursues the individual citizen's "tranquillity of mind."⁴²

Despotisms sometimes attain their "object"; England's government generally fails to do so. If one were to examine the English constitution solely with regard to its "nature" or "structure," Montesquieu tells us, one would have to conclude

that its three separated powers "form a condition of repose or inaction." But, of course, England's government is rarely, if ever, at rest (2.11.6, p. 405). In interpreting this fact, Montesquieu evidences something like an Epicurean understanding of the human condition,⁴³ comparable to that articulated by Machiavelli.⁴⁴ The foundation of the latter's teaching concerning politics is his claim that "all the things of men are in motion and cannot remain fixed." By this he meant to convey something closely akin to what Thomas Hobbes and David Hume had in mind when they subsequently asserted that reason is the slave of the passions. As Machiavelli put it by way of explanation, "the human appetites" are "insatiable"; "by nature" human beings "desire everything" while "by fortune they are allowed to secure little"; and since "nature has created men in such a fashion" that they are "able to desire everything" but not "to secure everything," their "desire is always greater than the power of acquisition [*la potenza dello acquistare*]." ⁴⁵

In writing of England, Montesquieu follows Machiavelli's lead — contending that "this nation" is "always inflamed" and that "it is more easily conducted by its passions than by reason, which never produces any great effects on the minds of men" (3.19.27, p. 577). And in speaking of "the three powers," he argues that when, "by the necessary motion of things, they are constrained to move [*aller*], they are forced to move in concert" (2.11.6, p. 405). One cannot say of the English constitution what Montesquieu says of despotism: that it "jumps up, so to speak, before our eyes"; that "it is uniform throughout"; that "the passions alone are necessary for its establishment." The modern republic is, after all, "a masterpiece of legislation," a product of chance and prudent artifice. One can say of it, instead, what he says of monarchy: that, in it, "policy makes great things happen with as little of virtue as it can" and that, "just as in the most beautiful machines, art also employs as little of movement, of forces, of wheels as is possible. The state subsists independently of love of the fatherland, of desire for true glory, of self-renunciation, of the sacrifice of one's dearest interests, & of all those heroic virtues which we find in the ancients & know only from hearing them spoken of." Moreover, one can say that, once a modern republic is instituted, "the human passions that set it in motion" are "alone" necessary to sustain it (1.3.5 and 5.14, p. 297) — and that the ruling passion that does so is closely akin to the very passion that is responsible for the "establishment" of despotism.

This helps explain, among other things, the tenor of Montesquieu's description of the contribution made by England's "laws" in forming "the mores, the manners, & the character" of the English "nation" (3.19.27).⁴⁶ One consequence of the laws' provision of liberty is that "all the passions there are free: hatred, envy, jealousy, the ardor to enrich & distinguish oneself appear to their full

extent; & if things were otherwise, the state would be like a man struck down by a malady who has no passions because he has no strength [*forces*]." In a sense, the English citizen is unaccommodated man: like the individual trapped within the state of nature, he is "always independent."⁴⁷ He therefore follows "his caprices & his fantasies"; he and his countrymen are inclined "not to care to please anyone," and so "they abandon themselves to their own humors." Frequently, they even switch parties and drop one set of friends to take up another, having forgotten "the laws of love & those of hatred" (3.19.27, p. 575).

Precisely because the laws make no distinctions among men, each Englishman "regards himself as a monarch; & men, in that nation," are, in a sense, "confederates rather than fellow citizens." The fact that "no citizen ends up fearing [*craignant*] another" gives the Englishman a king-like "independence" that makes the English as a nation "proud." But, at the same time, "living," as they do "much among themselves" in a state of "retirement" or "retreat [*retraite*]," they "often find themselves in the midst of those whom they do not know." This renders them "timid," like those men in the state of nature truly graced with independence, but the recognition of "reciprocal fright [*une crainte réciproque*]" does not have on them the effect that it has on men in their natural state: it does not cause them to draw near, to take "pleasure" in the approach of "an animal" of their "own sort," and to become sociable. They are similarly immune to "the charm" of sexual "difference" and to "the natural appeal" which draws women and men to one another even in that aboriginal state. Instead of friendliness and longing, "one sees in" the "eyes" of these Englishmen, "the better part of the time, a strange [*bizarre*] mixture of ill-mannered shame & pride." Their "character" as a "nation" most clearly appears in the products of their minds — which reveal them as "people collected within themselves" who are inclined to "think each entirely on his own" (cf. 3.19.27, pp. 582–83, with 1.1.2, 2.11.3, 5.26.15).⁴⁸ In short, Montesquieu's Englishman is very much alone.

That so solitary a man should have an "uneasy spirit [*esprit inquiet*]" stands to reason (3.19.27, p. 582). Nor is it surprising that, unprompted by genuine peril or even by false alarm, he should nonetheless "fear [*craint*] the escape of a good" that he "feels," that he "hardly knows," and that "can be hidden from us," and that this "fear [*crainte*]" should "always magnify objects" and render him "uneasy [*inquiet*] in his situation" and inclined to "believe" that he is "in danger even in those moments when" he is "most secure" (3.19.27, pp. 575–76). The liberation of the passions does not give rise to joy. "Political liberty in its relation with the constitution" may well be "established" for the English "by their laws," but this does not mean that they "actually enjoy" what Montesquieu calls "political liberty in its relation with the citizen" — for the latter is constituted by "that

tranquillity of mind which comes from the opinion that each has of his security" (2.11.1 and 6, pp. 397, 407), and the English are anything but tranquil of mind.

"Uneasiness [*inquiétude*]" without "a certain object" would appear to be the Englishman's normal state of mind. He is rarely given reason to fear another citizen: fear is not deployed to secure his obedience as it is in a despotism. But he is anxious and fearful nonetheless. Moreover, in such a country, "the majority of those who possess intelligence & wit [*esprit*]" would be tormented by that very *esprit*: in the disdain or disgust that they would feel with regard "to all things, they would be unhappy with so many reasons [*sujets*] not to be so" (3.19.27, pp. 576, 582).

Three

PARTISANSHIP

We never hold onto the present. We anticipate the future, as if it were too slow in coming, as if we could hasten its course, or we recall the past as if we could arrest its departure as too prompt. We are so imprudent that we wander in times which are not at all our own & think not at all of the only time which belongs to us, & we are so vain that we dream of times which do not exist & let escape without reflection the only time that really subsists. This is because ordinarily the present wounds us. We hide it from our view because it afflicts us, & if it is agreeable to us we regret seeing it escape. We attempt to shore it up with the future & think of arranging things which are not in our power for a time which we have no assurance of reaching.

—Blaise Pascal

In singling out *inquiétude* as the peculiar disposition of the English, Montesquieu is obliquely addressing an important contemporary debate, which was initiated in the previous century by certain Jansenists in France. The most important contributor to this debate was its instigator Blaise Pascal, a scientist and mathematician of the first rank and a loose adherent of Port Royal, who died in 1662. Pascal's thinking, like that of his Jansenist friends, had deep roots in Augustinian theology, and his influence on subsequent European political thought was not only profound: it was, as we shall eventually see in *Soft Despotism, Democracy's Drift*, long-lasting as well. Moreover, even at the outset, Pascal's influence was by no means restricted to France.

In the aftermath of Pascal's death, his sister Gilberte Périer and her son Étienne turned to Jansenist sympathizers, such as Antoine Arnauld, Pierre Nicole, and Artus Gouffier, duc de Roannez, who had been close to the deceased or had