

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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my work begin, grow, advance, & come to completion" (Préf.). Early in the following year, in a letter addressed to a friend, Montesquieu repeated this claim. "I can say," he explained, "that I have worked on this [project] my whole life; when I left the *collège* they placed in my hands books dealing with right [*droit*]; I sought its logic, sense, and aim [*son esprit*], I worked, I did nothing worthwhile." Then, one day, everything became clear. "It was twenty years ago that I discovered my *principes*."³ It was apparently during his travels, some two decades before the publication of his *Spirit of Laws*, that Montesquieu discovered the "principles," drawn from "the nature of things" and not from his "prejudices," which enabled him to form his "design." (Préf.).

The precise timing of Montesquieu's discovery of his "principles" helps explain the point of his remark that, while "Germany was made to travel in, Italy to sojourn in, . . . and France to live in," "England" was made "to think in." It justifies fully the claim, advanced in the *Encyclopédie, ou Dictionnaire raisonné des sciences, des arts, et des métiers*, by that work's co-editor Jean Le Rond d'Alembert, that England was for Montesquieu the inspiration that "the isle of Crete had been for Lycurgus."⁴ And it suggests that it is in *The Spirit of Laws* that Montesquieu completes the project that he initiated in 1731 on his return to France from his enlightening sojourn in the British isles. It was his purpose therein to articulate a new political science capable of making sense of the new world that he had discovered when he crossed the English Channel, and he hoped to do so in a manner that would stymie the censor and secure for its author the hearing that he was denied in 1734.⁵

One

PRINCIPLES

We see next to nothing pertaining to justice & injustice that does not change in quality with a change in climate. Three degrees of Latitude overthrows all jurisprudence. A Meridian decides the truth; with a few years of possession the fundamental laws change. Right has its epochs. It is a ridiculous justice that has a river or a Mountain as its boundary. Truth on this side of the Pyrenees, error on that.

—Blaise Pascal

The first eight books of the work that Montesquieu entitled *De l'Esprit des lois* have one distinctive feature. It was there—after a brief introduction dealing with the problematic character of man's place in the universe and with the foundations of man-made law (*EL* 1.1.1–3)—that the French philosophe first introduced his novel typology of political forms. His stated purpose for doing so was to trace the *esprit*—the spirit, the mindset, the motive, the impetus, the purpose, the intention, the object, as well as the logic—behind the "infinite diversity of laws & mores" which are to be found in the larger world: his aim thereby was to refute skeptics and cynics inclined to agree with Pascal,¹ and to demonstrate to the satisfaction of all that there is a method to this apparent madness and that human beings "are not conducted solely [*uniquement*] by their fantasies" when they opt against "uniformity" and do not in every time and place adopt the same weights, the same measures, the same laws, and the same religion (Préf., 6.19.18).²

To this end, at the beginning of the second book of this great work, Montesquieu distinguishes, with regard to "nature," three species of government—republics, in which "the people as a body, or only a part of the people, hold the sovereign power"; monarchies, in which "one governs alone, but by laws fixed &

established"; and despotisms, in which "one alone, without law & without regulation [*règle*], draws everything in train by his will & by his caprices" (1.2.1). As Montesquieu's argument unfolds in the course of that book (1.2.2–3), he complicates this assertion, by further differentiating aristocratic republics, in which a part of the people hold the sovereignty, from democratic republics, in which the people hold the sovereignty themselves.

The typology deployed by Montesquieu is peculiar in two regards.³ On the one hand, it abstracts from questions of moral character.⁴ Where Xenophon, Plato, Aristotle, Polybius, and their medieval and Renaissance admirers had distinguished kingship from tyranny, aristocracy from oligarchy, and well-ordered popular government from the regime variously called democracy, anarchy, or mob rule and had done so chiefly with an eye to the character of the ruling individual or group,⁵ Montesquieu insists that "the form of the constitution" is alone determinative; and when discussing one-man rule, he therefore treats as "accidental" matters such as "the virtues or vices of the prince" and as "external" questions such as "usurpation" and "the succession" (2.11.9).

At the same time, however, that Montesquieu jettisoned the contrast between aristocracy and oligarchy and that between well-ordered and ill-ordered popular government, he reasserted that between well-ordered one-man rule and tyranny.⁶ He had long been sensitive to the fact that, with regard to their subjects, European monarchs exercised a species of self-restraint unknown in the Orient (*LP* 99–100/102–3), and he soon came to recognize that this was rooted in the fact that they did not themselves exercise the judicial power (*CR* 16.37–47). In consequence, where Thomas Hobbes had explicitly rejected regime distinctions of the sort espoused by the ancients as not just illusory but dangerous in the extreme,⁷ Montesquieu insisted on restoring in the case of monarchy alone something like the classical understanding. But where the ancients and their medieval and Renaissance admirers had juxtaposed the lawful rule of an individual over willing subjects in the interest of those ruled with the lawless rule of an individual over unwilling subjects solely in the interest of the ruler himself, Montesquieu abandoned the focus on interest and consent while re-emphasizing the rule of law. If he ultimately eschewed political moralism, he was nonetheless a constitutionalist of sorts; and although he appears at one stage to have been inclined to criticize Machiavelli for confusing despotism and monarchy,⁸ in the end, it was from the Florentine, who teaches that one should attend solely to "the effectual truth of the matter," that he took his cue.⁹ As he saw it, monarchical government is distinguished from despotism solely by the presence of corporate bodies (*corps*) possessing the privilege of self-government, which is to say, by "the prerogatives of the lords, the clergy, the nobility, & the towns"¹⁰—above all,

by the prerogatives accorded the "powers intermediary, subordinate, & dependent" which cause the monarch to "govern by the fundamental laws." There is, he contends, a sense in which "the nobility" with its *esprit de corps* "enters . . . into the essence of monarchy," for the "fundamental maxim" of this form of government is: "no monarch, no nobility; no nobility, no monarch."¹¹ Where there is one-man rule in the absence of such a nobility, "one has a despot" on one's hands (*EL* 1.2.4).¹²

PRINCIPES

In the third book of his encyclopedic work, Montesquieu puts flesh on these constitutional bones by introducing a "distinction" which he thinks "very important" and which he describes as "the key to an infinity of laws." There is, he suggests, a "difference between the nature of the government & its principle [*principe*]: its nature is that which makes it such as it is, & its *principe*, that which makes it act. The one is its particular structure, & the other is the human passions that set it in motion" (1.3.1). The principle of democracy is virtue; that of aristocracy is moderation; that of monarchy is honor; and that of despotism is *la crainte* or fear (1.3.2–11). If Montesquieu rivals Aristotle as an analyst of political regimes, it is because he attends to the procedure followed by Plato in the eighth and ninth books of *The Republic* and supplements his strictly institutional analysis with an attention to political psychology which gives to his political science a suppleness, a flexibility, a subtlety, and range elsewhere unexcelled in modern times.¹³ The bulk of the first eight books of *The Spirit of Laws* is devoted to a consideration of the manner in which the laws and customs reigning within a polity must be framed with an eye not only to the structure of that polity but to the passions setting it in motion (1.4–8). As Montesquieu explains when he first introduces the notion, the "principle" of a polity has "a supreme influence over the laws," and one can see them "flow from it as from a spring [*source*]" (1.1.3).¹⁴

THE SPIRIT OF LAWS, PART ONE

- I. 1. Of Laws in General
2. Of the Laws Which Derive Directly from the Nature of the Government
3. Of the Principles of the Three Governments
4. That the Laws of Education Ought to be Related to the Principles of the Government
5. That the Laws Which the Legislator Provides Ought to be Related to the Principle of the Government

6. Consequences of the Principles of the Divers Governments, in Relation to the Simplicity of the Civil & Criminal Laws, the Form of Judgments, & the Establishment of Punishments
7. Consequences of the Different Principles of the Three Governments, in Relation to Sumptuary Laws, to Luxury, & to the Condition of Women
8. Of the Corruption of the Principles of the Three Governments

We would therefore expect that, when Montesquieu suddenly and without warning complicates his typology further by introducing yet another species of government,¹⁵ he would not only discuss the structure of that government but take care to specify its principle and examine in detail the consequences that arise therefrom. After all, in mounting a defense of his *Spirit of Laws* against the charges laid against it by the faculty of theology at the Sorbonne, Montesquieu would later insist that his account therein of "the principles" distinguishing the various forms of government is "of a fruitfulness [*fécondité*] so great" that it can justly be said that these principles "give form to my book almost in its entirety."¹⁶ But when the time comes and Montesquieu turns his attention to the question of "political liberty" in the eleventh book of *The Spirit of Laws*, he has nothing to say concerning the principle animating the new species of government that he describes therein.

His focus is what he terms elsewhere "a republic concealed under the form of a monarchy" (1.5.19, p. 304),¹⁷ and he prefaces its discussion by introducing a category of distinction to which he has hitherto barely alluded (1.4.8): the "object" peculiar to each political community. That "all states have the same object in general, which is to maintain themselves," Montesquieu readily concedes. But he insists, as well, that "each state has an object that is particular to it."

Aggrandizement was the object of Rome; war, that of Lacedaemon; religion, that of the Jewish laws; commerce, that of Marseilles; public tranquillity, that of the laws of China; the carrying trade [*navigation*], that of the laws of the Rhodians; natural liberty was the object of public administration [*la police*] among the savages; in general, the delights of the prince was its object in despotic states; his glory & that of the state, its object in monarchies; the independence of each individual is the object of the laws of Poland, & what results from this is the oppression of all.

"There is also," he then adds, "one nation in the world which has for the direct object of its constitution political liberty," and he promises "to examine the principles [*les principes*] on which" this constitution "is founded" (2.11.5). This promise he keeps in the very next chapter by launching into an elaborate discussion of the "beautiful system" constituted by the pertinent nation's constitution

and laws (2.11.6, esp. p. 407).¹⁸ But neither here nor anywhere else does he tell us what is *the* "principle" and what are "the human passions that set in motion" what turns out to be the government of England.

It is difficult to know what to make of this. It is possible that, when he deals with England's constitutional monarchy in the eleventh book, Montesquieu abandons the mode of analysis that he had made extensive use of when he discussed democracy, aristocracy, monarchy, and despotism in Books Two through Eight. He may, in fact, be implying that it makes no sense to analyze the English polity in terms of "the human passions that set it in motion." But it is equally possible that Montesquieu has deliberately left it to his readers to discover on their own "the principle" exercising "a supreme influence over the laws" of England, which he had himself left unmentioned. At the end of the eleventh book of his magnum opus, Montesquieu remarks that "it is not necessary always to so exhaust a subject that one leaves nothing for the reader to do. The task is not to make him read but to make him think" (2.11.20).¹⁹ To properly address these two questions, we will have to return to the first eight books of *The Spirit of Laws* and explore Montesquieu's political typology as a whole.

VIRTUE AS A PRINCIPLE

If, as Montesquieu more than once suggests, the English polity really is "a republic" of some sort (1.5.19, p. 304; 1.6.3; 2.12.19); and if, as he clearly implies, its government has a popular cast (1.2.4),²⁰ it should be set in motion by virtue—the principle that animates democratic republics.²¹ This seems, however, not to be the case. To begin with, Montesquieu never attributes political virtue to the English: he touches on the subject only in referring to the brief republican experiment that took place after the execution of Charles I. The "impotent efforts" of the English "to establish among themselves democracy" on this occasion he regards as "a fine spectacle," noting that those "who took part in affairs had no virtue" and 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).²²

Moreover, Montesquieu nowhere suggests that political liberty is the object pursued by democracies and aristocracies. Indeed, he contends that these republics "are not in their nature free states" (2.11.4).²³ And he warns that it is a mistake to look for liberty "in democracies" where "the people seem pretty much to do what they wish" since to do so would be to "confound the power of the people with the liberty of the people" (2.11.2), for "political liberty does not at all consist

in doing what one wants" (2.11.3). It is, in any case, "not to be found except" in what he calls "moderate governments"—and not always there. Political liberty, he observes, "is not present except where there is no abuse of power, & it is an eternal experience that every man who has power is drawn to abuse it; he proceeds until he finds the limits." It is in alluding to the human propensity for the abuse of power that he pointedly adds, "Who would say it! Even virtue has a need for limits" (2.11.4).

This claim should give us pause. If virtue has a need for limits, it is because the principle of democratic republicanism can itself become a motive for the abuse of power. It is "a misfortune attached to the human condition," Montesquieu later observes, but one cannot deny the fact:

Great men who are moderate are rare; & as it is always easier to follow one's impulse [*force*] than to arrest it, within the class of superior people, one may perhaps with greater facility find people extremely virtuous than men extremely wise.

The soul tastes so much delight in dominating other souls; even those who love the good love themselves so strongly that there is no one who is not so unfortunate as to still have reason to doubt his own good intentions: &, in truth, our actions depend on so many things that it is a thousand times easier to do good than to do it well. (6.28.41)

In this passage, Montesquieu describes one dimension of the problem: there is something inherently immoderate and perhaps even tyrannical at the heart of all forms of political idealism and public spiritedness. The other dimension of the problem stems from the nature of political virtue itself.

When Montesquieu speaks of democratic republics, he nearly always has foremost in his mind ancient Rome and the cities of classical Greece. His analysis of these communities and of their customs and laws in terms of constitutional structure and political psychology is, in one crucial regard, at odds with their self-understanding. As I have tried to demonstrate in fine detail elsewhere, the Greeks—and the Romans as well—took political rationality to be the fundamental principle of the classical republican regime. To be precise, their institutions and practices embodied the presumption that, with the proper civic education, human beings can rise to the task of sorting out through public deliberation the character of the advantageous, the just, and the good; and a quarter of a millennium before Aristotle fully articulated what this entailed, they evidenced that they were quite conscious of the fact.²⁴ Montesquieu stands opposed to the ancients and to those of their civic-minded, humanist admirers in the communes of Renaissance Italy who entertained similar presumptions concerning man's ca-

capacity for rational, public speech—for, like Machiavelli,²⁵ he has next to nothing to say concerning public deliberation. When he speaks of virtue, he is not interested in those qualities of character and intellect that enable the very best citizens (and perhaps even the ordinary citizens at their very best) to transcend petty, private concerns and engage in public deliberation concerning the dictates of justice and the common good. Nor is he concerned with the liberation of reason from passion. In stark contrast with the citizens of the ancient republics, the classical philosophers, and their disciples the Christian theologians,²⁶ he doubts whether "reason" ever "produces any great effects on the minds of men" (3.19.27, p. 577). In this spirit, he has Usbek suggest in the *Persian Letters* that it makes far more sense "to treat man as feeling [*sensible*] than to treat him as reasonable" (LP 31.22–34/33). As one would then expect, when Montesquieu mentions virtue, he has in mind the fostering of an irrational, unreasoning passion for equality—for, in his judgment, it is this passion that sets the democratic republic in motion (EL 1.5.2–7).

This passion in no way depends on, gives rise to, or is subordinate to anything resembling moral, Christian, or even philosophical virtue as interpreted by Aristotle and his Christian successors,²⁷ and it is at odds with what Montesquieu calls "moderate" government. It is perfectly possible for a republic to adopt some of the institutional safeguards that the French philosophe considers essential to "political liberty"; and as he demonstrates, something of the sort actually happened in classical Rome (2.11.12–19). But this cannot alter the fact that the democratic republic is not in its "nature" moderate. Popular government is rendered problematic by the fact that, in such a polity, the rulers are subjects at the same time. In a monarchy, and surely also in "a republic concealed under the form of a monarchy" such as the polity which Montesquieu found established in England, "he who causes the laws to be executed" by appointing a public prosecutor "judges himself above the laws," and "one needs less of virtue than in a popular government where he who causes the laws to be executed senses that he must submit to them himself & that he will bear their weight" (1.3.3, 6.8, 2.11.6, pp. 396–99). In a democracy, if civic virtue is lacking among the populace as a whole, the laws will not be enforced—for, in the absence of self-discipline, there will be no discipline at all.

The difficulty arises from the fact that self-discipline is, in Montesquieu's judgment, unnatural. Virtue is not onerous at the outset and, then, somehow satisfying in the end. It is not what it was for Aristotle—a completion of nature's work, a perfection of the soul.²⁸ Nor is virtue anything like what Homer (*Il.* 6.208, 9.443) and his successors took it to be: the product of self-assertion on the part of a man who strives "always to be the best [*aristeúein*] and to be superior to

others." It, in fact, requires doing violence to oneself: "political virtue" is not an assertion, writes Montesquieu, it "is a renunciation of self"—and this is never pleasant, never satisfying. Virtue is "always a very painful thing" (EL 1.4.5).

According to Montesquieu, republican virtue is grounded in a "love of the laws & the fatherland"; it demands "a continual preference for the public interest over one's own"; in its emphasis on equality, which Montesquieu describes as "the soul" of the democratic state, it "restricts ambition to a single desire, to the sole happiness of rendering to the fatherland greater services than the other citizens." To produce this love, to so restrict the scope of ambition, and to inspire in the citizens of a republic the requisite spirit of self-renunciation, one must deploy "the complete power of education" (1.4.5, 5.3, 5).²⁹ In practice, this tends to require what Montesquieu calls "singular institutions"—of the sort established by the Greeks on Crete and in Thessaly, by the Spartans in Lacedaemon, by William Penn in Pennsylvania, by the Jesuits in Paraguay, by Plato in his *Republic* (1.4.7, 4.23.17), and by the Jews, the early Romans, and, we are told, the Chinese.³⁰

The "singular institutions" that Montesquieu has in mind "shock all the received usages by confounding all the virtues," and they "confound" as well "things naturally separate" such as "laws, mores, & manners." By way of illustrating what this entails, Montesquieu invites us to admire "the extent of genius" found in the Spartan lawgiver Lycurgus who, by means of "harsh institutions," instilled a "warlike spirit" into the Lacedaemonians, rendered them "grave, serious, dry, taciturn," and produced a "people always correcting or being corrected, always giving instruction or being instructed, equally simple & rigid," more inclined "to exercise the virtues among themselves than to accord them [genuine] respect."

By mixing larceny with the spirit of justice, the harshest slavery with extreme liberty, the most dreadful sentiments with the greatest moderation, he gave stability to the city. He seemed to deprive it of all resources—the arts, commerce, silver, walls: there, one had ambition without the hope of improvement; there, one possessed the natural sentiments without being a child, husband, or father; modesty itself was denied to chastity. By these roads Sparta was conducted to grandeur & glory—and with such an infallibility attending its institutions that one achieved nothing against it by winning battles if one did not succeed thereby in depriving it of its *police*. (1.4.6, 3.19.7, 16, 21)³¹

When instituted in democracies, Montesquieu observes, "singular institutions" of this sort are incompatible with "the confusion, the negligence, the extended affairs of a great people" situated on an extended territory; they find their "place"

only "in a petty state" like the cities of ancient Greece where "all the citizens pay a singular attention to one another" and where "one can provide a general education & rear a people as a family" (1.4.7). In "small republics" such as these, especially in those graced with "singular institutions" dictating public supervision of affairs no less private than "the marriages" which take place "between the children of citizens," their "love of the public good can be such that it equals or surpasses every other love" (4.23.7). As Montesquieu had observed in his *Considerations on the Romans*, "there is nothing so powerful as a Republic in which the Laws are observed not out of fear, not because of reason, but by way of passion, as was the case at Rome & Lacedaemon—since there to the wisdom of good Government was joined all the force that faction can possess" (CR 4.60–64).³²

In a large republic, Montesquieu adds in his *Spirit of Laws*, "interests become particular; a man senses then that he can be happy, great, glorious without his fatherland; & soon that he can be great solely on the ruins of his fatherland." One consequence of such a republic's size is that "the common good is sacrificed to a thousand considerations; it is subordinated to the exceptions; it depends on accidents." The situation "in a small" republic is more favorable: there, "the public good is more fully felt, better known, closer to each citizen; the abuses are less extensive there & as a consequence less well protected" (EL 1.8.16). Republics, if they are successfully to deploy shame as a reinforcement for the spirit of self-renunciation, must be comparatively simple and exceedingly small.

Here as in his *Considerations on the Romans*, Montesquieu evidences that he has much in common with Machiavelli. Like the Florentine, he wants his readers to stand in awe of the spiritedness and the ambition exhibited by the ancients.³³ This is why he writes, "One can never leave the Romans behind. So it is that still today, in their capital, one leaves the new palaces to go in search of the ruins; so it is that the eye which has taken its repose on the flower-strewn grasslands loves to look at the rocks & mountains" (2.11.13).³⁴ But, in contrast to the author of the *Discourses on Titus Livy*, Montesquieu is also intent that his readers recoil in horror and distaste at the price that the ancients paid for having what he regarded as great souls.³⁵ "It is necessary," he observes in one chapter, "to regard the Greeks as a society of athletes & warriors." The exercises that they engaged in were "suited to making men harsh & savage." They "excited" in the citizens "but one species of passion: severity, anger, cruelty" (1.4.8), and the code that they observed in conducting war, their *ius gentium*, was "abominable" (6.29.14). Later, he may begin by remarking that the "love of the fatherland" fostered by the ancient republics "is conducive to goodness in mores" and that "goodness in mores leads to a love of the fatherland," but he goes on to clarify what "goodness in mores" involves by invoking a disturbing analogy: "The less

we are able to satisfy our private passions, the more we abandon ourselves to those of a more general nature. Why are monks so fond of their order? Precisely because of those things which make it insupportable. Their rule deprives them of all the things on which the ordinary passions rest: there remains, then, only that passion for the rule which torments them. The more austere the rule, that is, the more it curbs their inclinations, the more strength [*force*] it gives to the one inclination which it leaves them with" (1.5.2).³⁶ Classical virtue has something in common with Christian virtue: in both cases, Montesquieu contends, the self-renunciation required contains within itself the seeds of an ugly fanaticism.³⁷ Montesquieu may accept in its broad outlines Machiavelli's account of ancient citizenship and of the aggrandizement that he regarded as its *raison d'être*—but this does not make him an unabashed admirer of the severity, the cruelty, and the ferocity to which, both agree, it inevitably gives rise. In *The Spirit of Laws*, as in his *Considerations on the Causes of the Greatness of the Romans and their Decline* and his *Reflections on Universal Monarchy in Europe*, Montesquieu's aim is Machiavelli's defeat, and the critique that he directs at ancient republicanism is a crucial part of "the cure" that he has designed for the despotic temptations promoted by what he terms "Machiavellianism."³⁸

In his moral and political outlook, Montesquieu has much less in common with the author of *The Prince* and the *Discourses on Livy* than with his fellow Frenchman Michel de Montaigne.³⁹ Both men enjoy contemplating "rocks & mountains," but both would prefer to reside in "flower-strewn grasslands."⁴⁰ The "beautiful system" admired by Montesquieu for taking political liberty as its "direct object" is not to be found among polities that are not in their nature free states. It must be sought among the forms of government that are intrinsically moderate.⁴¹

MODERATION IN GOVERNMENT

When he first introduces the notion of "moderate government," Montesquieu insists that it "is able, as much as it wishes & without peril, to relax its springs [*ressorts*]. It maintains itself by its laws & even by its strength [*force*]."⁴² Such is not the case, he points out, with despotism, the quintessence of immoderate government—for if there were to appear in such a polity a "good citizen" and if, out of love of country, he were "tempted to relax the springs of the government" and then actually "succeeded" in doing so, "he would run the risk of losing himself, it, the prince, & the empire" as well. In fact, when "the spring [*ressort*]" of this species of government, "which is fear," is no longer present, "all is lost" and "the people no longer have a protector." For, in such a polity, "it is necessary that the

people be judged by the laws & the great ones by the whimsy [*la fantaisie*] of the prince; that the head of the least subject be secure while that of the pasha is always exposed." If, when contemplating republics, Montesquieu at times betrays the same inclination "to shudder" that he ostentatiously displays when "speaking of these monstrous governments" (1.3.9, 4.3), it is because republics can only within limits approximate moderation: they cannot without danger relax their springs as much as they wish. Republics and despotic governments thus have this in common: they are fragile; they require apprehension; they must remain tense. "It is necessary," Montesquieu asserts, "that a republic dread something. The fear [*crainte*] of the Persians maintained the laws among the Greeks. Carthage & Rome threatened one another & rendered one another firm. It is a thing singular: the more these states have of security, the more, like waters excessively tranquil, they are subject to corruption" (1.8.5).

Moderate governments can profit from success and relax their springs because they encounter less friction than polities not in their nature moderate. Once set in motion, they possess a momentum all their own; like perpetual-motion machines, they do not run down.⁴³ "To form a moderate government," Montesquieu tells us, "it is necessary to combine powers, to regulate them, to temper them, to make them act, to give, so to speak, a ballast to one in order to put it in a condition to resist another; this is a masterpiece of legislation, which chance rarely produces & prudence is rarely allowed to produce." It may be more difficult to sustain and stabilize the government of any given despot, but it is much easier to institute despotic government in the first place. Though it constitutes an assault on human nature (1.2.4, 8.8, 21), despotism is, in a sense, natural. It "jumps up, so to speak, before our eyes; it is uniform throughout: as the passions alone are necessary for its establishment, the whole world is good enough for that" (1.5.14, p. 297).

In his initial discussion of moderate governments, Montesquieu is coy. For this, there is a reason. "I say it," he will later confess, "& it seems to me that I have composed this work solely to prove it: the spirit of moderation ought to be that of the legislator; the political good, like the moral good, is always to be found between two limits" (6.29.1). Political moderation is, in a sense, Montesquieu's cause.⁴⁴ Already, in 1721, when he published his *Persian Letters*, he was prepared to float the notion that the government "most in conformity with Reason" and "most perfect" is "a Government gentle [*doux*]," free from unnecessary "severity," which "moves towards its end with minimal expense" by conducting "men in the manner that accords best with their propensities & inclinations" (LP 78.4–10/80).

In *The Spirit of Laws*, Montesquieu's purpose is not simply to describe the po-

litical phenomena: description is, in fact, subordinate to prescription throughout. Because Montesquieu is persuaded that "extreme laws," even when deployed "for the good," nearly always "give birth to extreme evil" and that "it is moderation which governs men & not excess" (EL 4.22.21 and 22, p. 682), he is eager to teach legislators just how the spirit of moderation can be encouraged within each form of government. Thus, when treating despotism, he is quick to remark that religion, which may be otherwise politically malign, is useful as a check on arbitrary power: "as despotism subjects human nature to frightful evils, the very evil that limits it is a good" (1.2.4).⁴⁵ And when speaking of moderate governments, he implies that various polities may qualify. Sometimes he even treats republics as moderate states (1.5.15, 6.9, 15, 8.8), for to suggest that this is so is to justify and encourage their evolution in this direction.

ARISTOCRATIC MODERATION

Where Montesquieu is direct and clear from the outset is in his contention that monarchy, as exemplified by his native France, is moderate. In fact, monarchy would appear to be moderate government par excellence.⁴⁶ This polity's moderation is not, however, a consequence of the moderation of the monarch and his nobility. As a "principle," moderation is peculiar to aristocratic republics: it is "the soul of these governments," and it is "founded on virtue"; it does not "come from a cowardice & a laziness of soul." Virtue is required in an aristocracy for the same reasons that it is required in a democracy: "those who are charged with the execution of the laws against their colleagues will sense that they then act against themselves. . . . The nature of this constitution is such that it seems to place the same people under the power of the laws that it exempts from them" (1.3.4).

Virtue is, however, exceedingly difficult to achieve in an aristocracy, for this species of government is "ill-constituted" (1.7.3).⁴⁷ In fact, as Montesquieu intimates, it is less a distinct form of government than a defective version of the democratic republic—one that has a certain, unfortunate "connection [*rapport*] with the government of one alone" (3.18.1). When Montesquieu first speaks of this polity, he insists that "the more an aristocracy approaches democracy, the more perfect it is," and that "it becomes less perfect insofar as it approaches monarchy" (1.2.3, p. 247). Later he intimates that, to the degree that it approaches the government of one alone, aristocratic government exhibits a spirit more despotic than monarchical. Thus, like despotism, it is extremely intolerant of "the satirical writings" that flourish under democracy. "In consequence of the fact that they are ordinarily composed against powerful individuals," these "satir-

ical works" are welcome "in democracy" since there "they flatter the malignity of the people who govern." Within an aristocracy, however, the opposite is the case, for "the magistrates there are little sovereigns who are not sufficiently grand to despise insults." When a barb is aimed at a monarch, it rarely reaches so high, and he can easily laugh it off. "An aristocratic lord is pierced by it through & through" (1.6.15, 2.12.13).

The problematic character of aristocracy is due to the fact that its nature or structure runs counter to the principle required for sustaining it. Put simply, the inequality fundamental to an aristocracy militates against the inculcation of a love of equality. This explains why Montesquieu has absolutely nothing to say concerning the education in virtue given the citizen in an aristocracy.⁴⁸ As he will later have occasion to observe, "silence sometimes expresses more than any discourse" can (2.12.12).

Within an aristocracy, because one cannot hope to educate the citizens in virtue, one must rely, instead, on laws with teeth in them, and these must themselves instill "a spirit of moderation" in its rulers and work to insure that "everyone is as equal as the nature of the government permits." In an aristocratic republic, the nobles may have "riches," but they "are not supposed to spend them," and they become "so accustomed to miserliness that only courtesans can make them give money." As a consequence of the law, these nobles must display "modesty & simplicity of manners": they must "affect no distinction"; they must "confound themselves with the people"; they must "dress like them"; they must "partake of their pleasures"—and thereby make the people "forget their weakness."

Since all of this is contrary to the natural instincts of the well-born, there has to be within an aristocracy, "for a time or forever, a magistrate who makes the nobles tremble." Put bluntly, "this government has need of quite violent springs [*ressorts*]." One consequence, which would otherwise be counter-intuitive, is that there is "less liberty to be found in the republics of Italy" than in the "monarchies" of Montesquieu's Europe, for the former have to resort to "means as violent as the government of the Turks" if they are "to maintain themselves." If these aristocratic republics nonetheless fall short of corresponding "precisely with the despotism of Asia," it is only because "the multitude of the magistrates softens somewhat the magistracy." In Venice, Montesquieu tells us, it is a capital crime to bear arms, and it is necessary "that there be a hidden magistracy"—since the conspiracies "that it punishes, always profound, are formed in secrecy & in silence." For the letters of anonymous accusers, Montesquieu observes, there is "a mouth of stone open in Venice; you could say that it is the mouth of tyranny" (1.2.3, 5.8, 7.3; 2.11.6, pp. 397–98; 3.15.1; 5.26.24). In short, the state that inculcates and enforces the virtue of moderation is anything but moderate itself.⁴⁹

HONOR AS A PRINCIPLE

Although monarchy and aristocracy both embrace inequality, they are, in at least one crucial regard, diametrically opposed: monarchy can be moderate—precisely because within it no one need be such himself.⁵⁰ “Monarchical government” can, in fact, “maintain & sustain itself” without “much in the way of probity,” for “the force” possessed by its “laws” is sufficient. Severe self-discipline is not required where “he who causes the laws to be executed judges himself above the laws.” If “bad counsel or negligence” prevents the monarch from “causing the laws to be executed, he can easily repair the evil: he need only change his counsel or correct the negligence itself” (1.3.3).

“In monarchies,” Montesquieu explains, “policy makes great things happen with as little of virtue as it can, 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.” If virtue and moderation can be discarded, it is because in a monarchy “the laws take the place of all these virtues, for which there is no need; the state confers on you a dispensation from them.” It is a good thing that monarchies have no need for the virtuous because therein “it is very difficult for the people to be so.” Consider, Montesquieu urges, “the miserable character of courtiers. . . . Ambition in idleness, baseness in pride, a desire to enrich oneself without work, an aversion for truth, flattery, treason, perfidy, the abandonment of all one’s engagements, contempt for the duties of the citizen, fear of the virtue of the prince, hope looking to his weaknesses, &, more than that, the perpetual ridicule cast on virtue form, I believe, the character of the greatest number of courtiers, as is remarked in all places & times” (1.3.5).⁵¹

If monarchy can nonetheless produce good government, it is because in it honor “takes the place of the political virtue” found in republics (1.3.6).⁵² The honor that Montesquieu has in mind is an artifact: if it gives rise not to civic virtue but to the vices characteristic of courtiers, it is because it is a “false honor,” more consonant with “vanity” than with “pride,” which demands artificial “preferences & distinctions” and is grounded in “the prejudice of each person & condition” (1.3.6–7, 5.19, 2.19.9, 5.24.6).⁵³ The consequences of this all-pervasive “prejudice” are paradoxical but undeniable. “In well-regulated monarchies,” Montesquieu contends, “everyone will be something like a good citizen while one will rarely find someone who is a good man” (1.3.6). Monarchy he compares to Newton’s “system of the universe, where there is a force which ceaselessly re-

pels all bodies from the center & a force of gravity which draws them to it. Honor makes all the parts of the body politic move; it binds them by its own actions; & it happens that each pursues the common good while believing that he is pursuing his own particular interests” (1.3.7).⁵⁴ Monarchies are ruled by something like what Adam Smith would later call the “invisible hand.”⁵⁵

It is essential, Montesquieu emphasizes, that social distinctions be maintained, for these artificial preferences and distinctions, and they alone, can work a transformation in the paltry vanity, which all men possess, and turn it into the socially useful and far more formidable passion for honor, glory, and renown which serves as monarchy’s *principe*. Those who urge that, in France, the nobles be allowed to engage in commerce know not what they recommend. “This would be the means for destroying the nobility,” he insists, and it confers “no utility on commerce.” It is the prospect of advancing from trade to nobility that is the chief motive for engaging in trade. In similar fashion, he adds, there is much to be said for maintaining the distinction between “the estate of the robe” and “the great nobility.” The former may lack “the brilliance” of the latter, but it has “all the” requisite “privileges.” It may leave individuals in a state of “mediocrity,” but the “body” drawn from among its members which serves as a “depository of the laws” basks in “glory.” It is an estate “in which one has the means to distinguish oneself only by the achievement of a competency [*suffisance*] & by virtue.” It provides one with an “honorable profession, but always lets one see another more distinguished: that of the warrior nobility, who think that, however rich one may be, one’s fortune is yet to be made, but that it is shameful to increase one’s goods if one has not begun by dissipating them.” This latter body is a part of the nation, Montesquieu remarks, “which serves always with the capital of its goods; which, when it is ruined, gives place to another which will serve with its capital in turn; which goes to war in order that no one dare say that it was not there; which, when it has no hope for riches, hopes for honors, & when it does not obtain them, consoles itself because it has acquired honor nonetheless: all these things contribute to the greatness of the realm.” If, during the previous two or three centuries, France has steadily increased its power, Montesquieu concludes, it is due to “the goodness of the laws” (4.20.22).⁵⁶

On the face of it, monarchical government would appear to be absolute and entirely unchecked: such was certainly the English view of France.⁵⁷ But, according to Montesquieu, monarchical rule is far from arbitrary, and France is “the most beautiful monarchy in the world” (1.5.10).⁵⁸ “In states monarchical & moderate,” he explains, the logic of absolute sovereignty is frustrated,⁵⁹ for “power is limited by that which is its spring or motive [*ressort*]; I mean to say honor, which reigns, like a monarch, over the prince & over the people.” Honor

reigns, "restrains [*arrête*] the monarch," and thereby limits the exercise of monarchical power—for "honor has its laws & regulations & knows not how to bend," and "it depends on its own caprice & not on that of another." Honor is an essential part of the "ballast" that puts the nobility "in a condition to resist" the court.

By this fact honor is linked with constitutional government: its rules and laws may be as irrational and capricious as honor is itself artificial and false, but, reinforced as they are by human vanity, they do persist; and honor, though it may be replete with "whimsicalities [*bizareries*]," can therefore "be found only in states where the constitution is fixed & the laws are certain." This explains why a monarchy can relax its springs without danger as much as it wants: its nature or structure and its principle reinforce one another, for the love of honor is born of inequality. Relative to the "nobility," which is monarchy's distinguishing structural feature, "honor is, so to speak, both child & father." In consequence, as a form of government, monarchy is not fragile; it does not require apprehension; it need not remain tense; "it maintains itself by its laws"; and, like a well-made machine, it possesses a "strength [*force*]" all its own (1.2.3, 3.8–10, 5.9 and 14, p. 297), for the longing for honor that sets it in motion is in no way painful: it "is favored by the passions & favors them in its turn" (1.4.5).

This false honor is taught "not in the public establishments where one instructs children" but in "the world," and it teaches "three things: 'that it is necessary to introduce into the virtues a certain nobility, into mores a certain frankness, & into manners a certain politeness.'" The pertinent virtues arise from honor itself: they are "always less what one owes others than what one owes oneself: they are not so much what summons us towards our fellow citizens as what distinguishes us from them." With regard to monarchical government, it can be said that "honor, mixing itself through everything, enters into all the modes of thinking & all the manners of feeling & directs even the principles" governing conduct. Under its influence, these become a matter of fashion: "this whimsical [*bizarre*] honor causes the virtues to be only what it wishes & to exist in the manner in which it wishes; on its authority, it sets down rules for everything that is prescribed for us; it extends or limits our duties in accord with its fancy—even though they have their origin in religion, in policy, or in morals." Laws, religion, and honor emphatically prescribe "obedience to the will of the prince," but this same honor restricts royal power, for it "dictates to us that the prince should never prescribe to us an action which dishonors us—since that would render us incapable of serving him" (1.4.2).⁶⁰

Monarchy is distinguished from despotism, Montesquieu insists, less by "the power" accorded the ruler than by "the manner" in which he is obeyed.⁶¹ "In despotic states," he tells us, "the nature of the government demands an extreme

obedience." All that matters is "the will of the prince. There is no tempering, and there are no modifications, accommodations, terms, equivalents, negotiations, remonstrances: nothing can be proposed on the grounds that it is as good or better. Man is a creature who obeys a creature who wills." Montesquieu is nowhere so indelicate as to suggest that, in a monarchy, the prince may be disobeyed. In fact, he asserts the opposite. When he contends that "honor . . . reigns, like a monarch, over the prince & over the people" alike, he merely infers that "from this fact there results certain necessary modifications in the obedience" accorded the prince. It is this alteration in "the manner of obeying" that apparently gives rise to the tempering, the modifications, the accommodations, the terms, the equivalents, the negotiations, the remonstrances, and the propensity to propose alternative policies that typify monarchy, distinguishing it not only from the singlemindedness of despotism but from that of republicanism as well. Throughout, however, Montesquieu insists that, "to whichever side the monarch turns, he prevails, tips the balance, & is obeyed." In short, "the entire difference" distinguishing the two forms of one-man rule is "that, in monarchy, the prince possesses enlightenment [*des lumières*] & the ministers are infinitely more skillful & expert in public affairs than in the despotic state" (1.3.10, 6.4).

Later, Montesquieu indicates by example what he means by the "modifications in the obedience" accorded the prince that are somehow made "necessary" by honor's reign: "Crillon refused to assassinate the duke of Guise, but he offered to Henry III to go into battle against him. After St. Bartholomew's day, when Charles IX wrote to all the governors to have the Huguenots massacred, the Viscount of Orte [Adrien d'Aspremont], who was commander in Bayonne, wrote back to his king, 'Sire, I have found among the inhabitants & the men of war only good citizens, brave soldiers, & not one hangman; for this reason, they & I beg Your Majesty to employ our arms & our lives in things that can be done.' This grand & generous courage regarded an act of cowardice as a thing impossible" (1.4.2). From Montesquieu's perspective, neither refusal counts as disobedience properly understood—for neither was aimed at overthrowing the monarchy or even the prince, and neither posed a challenge to the authority of the French king. In fact, in the very act of refusal, Crillon and the Viscount of Orte gave vital support to all three.⁶²

One salutary consequence of the peculiar "manner of obeying" dictated by honor's reign is that in monarchies, as opposed to despotic states, "things are very rarely carried to excess." This arises from the fact that the leading men "fear for themselves; they fear being abandoned." In such a polity, "the intermediary, dependent powers" have almost as profound a stake in the existing constitution as the monarch himself and "consider it an honor to obey a king but regard it as sov-

ereign infamy to share power with the people." Since the nobles "do not want the people to take too much," it is exceedingly "rare that the orders of the state are entirely corrupted. The prince depends on these orders: & the seditious, who have neither the will nor the expectation of overturning the state, neither can nor wish to overturn the prince." Instead, in times of disorder, when aristocratic resistance threatens to take a violent form, "the people who possess wisdom & authority intervene; temperings take place, arrangements are made, corrections are instituted; the laws regain their vigor & make themselves heard." Despotic states are characterized by "revolutions without civil wars," but the histories of the European monarchies are "filled with" the opposite. The histories of these "civil wars" and the conduct of those most responsible for fomenting them prove, as they did in the case of the Fronde, "just how little suspect ought to be the authority which the princes leave to certain orders in return for their service—for, even in their distractedness, the latter long for the laws & their duty, & they retard the ardor & impetuosity of the factious more than they can be of service to them" (1.5.11, 8.9).

A monarch who understands "the great art of ruling" will behave in such a manner as to take advantage of the proclivities of his subjects. Above all else, he will be accessible and easygoing, and he will never forget that, "in our monarchies, all felicity consists in the opinion that the people have of the gentleness [*la douceur*] of the government." "Towards his subjects," Montesquieu remarks, such a prince will "act with candor, frankness, & confidence," for "he who evidences a great deal of uneasiness [*inquiétudes*], suspicion, & fear [*craintes*] is an actor embarrassed & awkward in playing his role." In ordinary circumstances, he will refrain from employing domestic spies, and he will ignore anonymous accusations except where his own safety is at stake and in cases which "cannot suffer the tardiness of ordinary justice." Satirical writings he may prohibit, but he will not treat them as crimes, for "they can amuse the general malignity, console malcontents, diminish envy of those in public office, give to the people the patience to suffer, & make them laugh at their suffering." Such a prince will, however, be quite circumspect in resorting to raillery himself. In moderation, mockery may promote a pleasing familiarity. But when it is biting, it inflicts mortal wounds. A capable monarch will keep in mind the fact that he has it in his power "to make beasts of men & men of beasts" and that his "mode of conduct [*moeurs*] contributes as much to liberty as the laws" themselves. It is "an unskillful minister," Montesquieu remarks, who "always wants to inform you that you are slaves." The king who "loves free souls will have subjects" while he "who loves debased souls will have slaves." He should induce "honor & virtue" to draw near; he should "summon personal merit." At times, he may "even cast his eyes on tal-

ent." His task is to "win the heart" but "not imprison the spirit. Let him render himself popular." A wise prince will be "charmed to have subjects for whom honor is dearer than life & no less a motive for fidelity than for courage" (2.12.13, 23–28).

Above all else, Montesquieu insists, the false honor that sets monarchies in motion is significant because it contributes to the rule of law. As we have seen, monarchy is distinguished from despotism by the presence of "powers intermediary, subordinate, & dependent" constituted principally by the nobility. These sustain "the fundamental laws" of the kingdom "against the momentary & capricious will of one alone" by forming "intermediary channels through which power flows." The monarch creates the most important of these "intermediary channels" by delegating judicial responsibility: his "true function is to establish judges & not to judge himself." Were he or his ministers to act as judges themselves, Montesquieu observes, "the constitution would be destroyed, the intermediary dependent powers would be annihilated: one would see all the formalities associated with judgments cease; fear would seize all minds [*esprits*]; one would see pallor on every visage; no longer would there be confidence, honor, love, security," or even "monarchy" (1.2.4, 6.5–6, 2.11.11). Were he, instead, to name commissioners to judge a particular case, the result would be no better, arguably worse, and "useless" to boot—for the subterfuge would be transparent, and he would thereby "attack" and "weaken liberty" more effectively than if he acted as a judge himself (2.12.22).

In Montesquieu's France, as we have seen (I.3, above), the most essential of the intermediary dependent powers are the parlements. These, he tells us, borrowing a religious metaphor customarily deployed by Jansenist barristers in describing the courts,⁶³ are like certain, especially dependable interpreters of the Bible. They serve as a "depository for the laws," independent of the royal council and "the momentary will of the prince." These exercise the right of remonstrance: they "announce the laws when they are made"; they "recall them when they are forgotten"; and they "ceaselessly cause the laws to come forth from the dust where they are buried" (EL 1.2.4). These bodies, Montesquieu emphasizes, prevent the prince's salutary promptness in executing the laws from degenerating into haste. They "never better obey than when they proceed tardily & carry into the affairs of the prince that reflection that one can hardly expect from the lack of enlightenment [*des lumières*] in the court concerning the laws of the state & from the precipitancy of its councils" (1.5.10). It is with the parlements in mind that Montesquieu writes, "Just as the sea, which seems to wish to cover the entire earth is brought to a halt by the seaweed & grasses [*herbes*] & the least bits of sand & gravel found on the shore, so monarchs whose power seems without limits are

brought to a halt by the smallest obstacles & submit their natural haughtiness [*fierté*] to complaints & entreaty [*prière*]" (1.2.4).⁶⁴

The existence of a depository for the laws independent of the prince does much more than encourage rational policy-making on his part. These bodies serve as "tribunals." They "render decisions," and these decisions, Montesquieu asserts, "ought to be preserved; they ought to be a subject for teaching & learning in order that one may judge here today as one judged here yesterday & the property & the lives of citizens here may be as secure & fixed as the constitution of the state itself." It is this that Montesquieu celebrates: the "fastidiousness [*délicatesse*]" of the judges, the manner in which jurisprudence becomes its own peculiar "art of reasoning," even the fact that confusion creeps in as different judges rule and suits are ably or poorly defended. Montesquieu admits that in the end there will be "an infinity of abuses," for these "creep into all that passes through the hands of men." But he dismisses this as "a necessary evil that the legislator will correct from time to time as contrary to the spirit of moderate government" (1.6.1). The crucial fact is that "the formalities of justice" give rise to "the liberty & security of the citizens," for "the pains, the expenses, the delays, even the dangers attendant on justice are the price that each citizen pays for his liberty." In "moderate states," Montesquieu insists, "the head of the least citizen is accorded consideration [*est considérable*]," and "one does not relieve him of his honor & goods except after an extended examination: one does not deprive him of his life except when the fatherland itself attacks it; & it does not launch such an attack without leaving him every possible means for defending" that life (1.6.2). Montesquieu makes much of the fact that monarchy is distinguished from despotism by "the security" that it confers on "the great" (1.6.21). Where Machiavelli was concerned chiefly with the integrity of the state and its success in conquest and war, Montesquieu gives priority to "the security of individuals."⁶⁵ It is "in moderate governments," where the obstacles to the abuse of power are many, that "gentleness [*la douceur*] reigns" (1.6.9).⁶⁶

It would be tempting, then, to suppose that the government of England was conceived by Montesquieu as a variant form of monarchy.⁶⁷ In more than one passage, he seems to take this for granted (2.9.9, 11.7),⁶⁸ and the notion is by no means patently absurd.⁶⁹ After all, in England there reigned a king whose ministers saw to the execution of the laws; and though Great Britain was obviously too large to sustain itself as a republic, it possessed a territory of middling size, well suited, so Montesquieu says (1.8.17), to monarchy. Moreover, Montesquieu associates monarchy not only with political moderation but with liberty as well.⁷⁰

To this hypothesis, however, there are insuperable objections. Quite early on, Montesquieu remarks in passing that "the English, in order to favor liberty, have

eliminated all the intermediary powers that formed their monarchy" (1.2.4),⁷¹ and, soon thereafter, he adds that "the English nobility were interred with Charles I under the debris of the throne" (1.8.9).⁷² Nowhere does he even intimate that love of honor is the passion that sets the English polity in motion.⁷³ England may be, as he puts it, monarchical in disguise—but it is monarchical neither in its nature and structure nor in its principle.⁷⁴ It would appear, then, to be *sui generis*.⁷⁵

Here, we must pause and contemplate another approach, for by a process of elimination we have demonstrated that the English polity cannot be understood in terms of the political typology introduced by Montesquieu with such fanfare at the beginning of his book. Before starting over, before attempting once again to determine whether England's government has a "principle" and just what this "principle" might be, before considering at length what is revealed by the fact that "political liberty" is this polity's particular "object," we must attend to Montesquieu's cryptic claim that, in *The Spirit of Laws*, "the author's design" cannot fully be discovered "except in the design of the work" (Préf.), and we must ruminate on the peculiar manner in which he structured his *Spirit of Laws*.

In this particular context, we must focus our attention on the meaning of Montesquieu's failure to include a full discussion of the English form of government within the eight books constituting what he designated as the first part of his work, where to the unsuspecting glance it would seem to belong; and we must sort out the significance of his decision to delay taking up this crucial matter until the central book of what he designated as Part Two, after what seems like an irrelevant digression on the capacity of the various polities to project power in time of war. It is in light of the architecture of the tripartite book that Montesquieu suppressed in 1734 that his design in 1748 can most easily be discerned, as we shall soon see.