

Cambridge University Press

978-0-521-29061-6 - The Political Theory of Montesquieu

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Excerpt

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## INTRODUCTION

## I

## Montesquieu's Mind and Influence

At the time of the American Revolution, few other theorists could rival Montesquieu's prestige in the English-speaking world. In England, the most widely accepted interpretation of its law and constitution was that of Blackstone, of whom it has been said that his plagiarism of Montesquieu "would be nauseating if it were not comic."<sup>1</sup> To the brilliant thinkers of the Scottish Enlightenment who sought to establish a historical science based on successive modes of production through which mankind moved, "Montesquieu was the Bacon of this branch of philosophy, Dr. [Adam] Smith is the Newton."<sup>2</sup>

During the debate about adopting the American Constitution, both federalists and anti-federalists argued their cases on the basis of their respective interpretations of Montesquieu. Thus Hamilton, defending the feasibility of the federal system, wrote: "Opponents . . . have with great assiduity cited and circulated the observations of Montesquieu on the necessity of a contracted territory for a republican government. But they seem not to have been apprised on the sentiments of that great man in another part of his work. . . ."<sup>3</sup> Madison phrased his theory of the constitutional separation of powers as a gloss upon Montesquieu: "The oracle who is always consulted and cited upon this point is the celebrated Montesquieu. . . . Let us endeavor in the first place to ascertain his meaning on this point."<sup>4</sup> And well into the nineteenth century, the single most important book for American lawyers was Blackstone's. His *Commentaries* was Lincoln's textbook in the law.

Two centuries after the American Revolution, Montesquieu has become in more than one sense inaccessible to the English-speaking student of political theory. *The Spirit of the Laws* has not been retranslated since the eighteenth century; his correspondence and important works, such as the "Essay on the Causes that May Affect Men's Minds and Characters," turned up only after his death, and these have not made their way into English. Of Montesquieu's once-unrivaled reputation there remain in the mind of the general reader or university student only two traces: the

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belief that Montesquieu was a crude determinist who held climate to be the unique and unmediated cause of human action and institutions; the impression on the part of social scientists that Montesquieu's theory of politics was mechanical and narrowly legal, separated, that is, from any adequate view of the ways in which government actually operates and is affected by its social setting. Both of these views are demonstrably inaccurate. Careful readers of *The Spirit of the Laws* who read as far as Book XIX know that Montesquieu was no geographical determinist, a point demonstrated beyond doubt by the "Essay on the Causes." As for the alleged legalism of Montesquieu, there is little doubt that for better or worse, his treatment of law and politics emphasized the character of the society within which such arrangements function; Montesquieu was among the creators of what is now known as political sociology.

To dispel the stereotypes of Montesquieu now prevalent, not much more is required than close attention to what he wrote. Yet even after such misunderstandings are banished, there remain genuine obstacles to the understanding of Montesquieu's meaning and significance. Of these, none exceeds in difficulty the problem created by the distinctive cast of Montesquieu's mind. As a theorist of politics, law, and society, he is perhaps more open to well-founded criticism than anyone else with a legitimate claim to being considered first-rate, both in terms of his intrinsic contributions and his subsequent influence.

As a thinker, Montesquieu comes off badly, whether considered in terms of internal consistency, of the quality of the definitions he gave words and terms, or of his capacity to design a coherent organization that would register the fundamental changes in method and matter that had occurred during the twenty years it had taken him to complete *The Spirit of the Laws*. As a jurist, historian, and political sociologist, Montesquieu has been subjected to telling criticisms of his selective use of evidence, uncritical treatment of sources, and careless construction of those classificatory schemes essential to his comparative method. Yet Montesquieu was able to surmount such great and persistent defects, and much of his work has achieved permanent value.

For he did surmount them. If proof is needed, it is best sought in the number of significant innovations with which he has been credited by authorities whose judgments carry unusual weight. Comte and Durkheim declared Montesquieu to be the most im-

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portant precursor of sociology. Ernst Cassirer and Franz Neumann found him to have been the inventor of that style of ideal-type analysis that culminated in Max Weber. Sir Frederick Pollock thought Montesquieu to be “the father of modern historical research” and of a “comparative theory of politics and law based on wide observations of actual systems.” He has been called the first modern practitioner of comparative law and the founder of sociological jurisprudence. To Friedrich Meinecke, Montesquieu was among the founders of that view of the past known as *Historismus* (“historicism” or “historism”), a distinctly modern perspective characterized by its relativism, holism, emphasis upon the positive value of the irrational and customary, as well as the uniqueness of every case and period. John Millar and Adam Ferguson, speaking for the Scottish Enlightenment, viewed Montesquieu as the founder of a philosophical history that aspired to the discovery of the basic laws governing human development. As for Montesquieu’s explanation of laws, institutions, and political attitudes by reference to the social system in which they functioned, Hegel judged *The Spirit of the Laws* to be the first notable use of that method, the perfection of which he considered to be his own greatest contribution to the study of man. Lord Keynes called Montesquieu the greatest French economist, “the real French equivalent of Adam Smith . . . head and shoulders above the Physiocrats in penetration, clear-headedness and good sense (which are the qualities a good economist should have).” Montesquieu’s contributions to penal law, with his attacks upon cruel penalties as unjustifiable, have been called the “Magna Carta of the citizen” and helped inspire the work of Marquis Beccaria. Montesquieu’s concept of a society as having a general spirit pervading all its aspects clearly anticipates modern cultural anthropology. Jean Ehrard has ascribed to Montesquieu some of the discoveries claimed for Marxism and the sociology of knowledge: that “the real history of men in society does not coincide with their consciousness; their actual springs of action differ from their avowed motives.” Raymond Aron and W. G. Runciman have discerned in Montesquieu the first practitioner of political sociology.<sup>5</sup>

If we shift from the consideration of Montesquieu’s method to that of his influence, what emerges is a pattern of extraordinary and deep effects upon otherwise discrepant theorists from the middle of the eighteenth century through the American and

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French Revolutions, the Terror, First Empire, and Restoration, well into the nineteenth century. In a recent survey of European political thought during Montesquieu's lifetime, one of the great scholars on that period has written:

Paris was of central importance in the years in which the *Encyclopédie* was under preparation. . . . On the other hand, even Diderot and Rousseau were completely unknown at the beginning of the forties. . . . In these years, Montesquieu negotiated and discussed with church and state, almost as if he were a political force. Sometimes he conceded and sometimes he did not, according to the circumstances. He was the real arbiter and lord of political thought of his time. He remained detached and brilliant.<sup>6</sup>

After his death, Montesquieu was honored by the addition to the fifth volume of the *Encyclopédie* of an eulogy written by d'Alembert, the co-editor with Diderot of that notable collective work of the *philosophes*. Many of the political articles were written by disciples of Montesquieu, such as the Chevalier de Jaucourt. But Montesquieu was almost as much used by the aristocratic *parlements*, which opposed reform of the kind sought by many of the *philosophes*. After the French Revolution began, he was among the principal sources for counter-revolutionary criticisms of it by both French and foreign theorists. Yet his work was much cited by the members of the Committee of Public Safety headed by Robespierre. To catalog Montesquieu's admirers in the century after his death is to chart appeals to his authority by theorists and political movements violently opposed to one other. Among them were Malesherbes, Blackstone, and Madison; Rousseau, Marat, and Robespierre; Hume, Burke, Chateaubriand, and de Maistre; Mme de Stael, Constant, and Tocqueville.

Because Montesquieu appealed to such discrepant schools of thought it may safely be assumed that his political thought was profoundly ambivalent, and that his position both in intellectual and class terms was complex, full of tensions, and abounding with paradoxes.

On the basis of what has been said about Montesquieu's defects in method and the almost unprecedented diversity of his influences, what should be concluded about him? What sort of a theorist was he? Certainly he ought to be distinguished from two other types of distinguished thinkers: the first, perhaps best exem-

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plified by Kant, whose greatest philosophical contributions stem in large part from their application of a rigorous method; the second, a type that aspires like Hegel to an encyclopedic and systematic view of the world within which politics is carefully located.

Montesquieu claimed to have devised a new and rigorous method, just as he claimed unity, if not system, for his sprawling *Spirit of the Laws*. Yet in practice, he refused to choose among mutually exclusive intellectual options. By loose definitions, by availing himself to the full of his extraordinary intellectual imagination, he generated tensions among a plurality of overlapping and often contradictory explanations and perspectives. It was in this way that he kept open his intellectual universe and his power to suggest intellectual and political strategies to men and groups otherwise antagonistic. He was a daring and brilliant theorist, remarkably fertile both in general conceptual schemes and in individual explanatory hypotheses. It is nevertheless true that he frequently became impatient with his own insights. Often he phrased them in short, underdeveloped passages that might and sometimes did serve as the organizing conception of another man's treatise or book. As he wrote in a number of places, his purpose was to make men think and to do so in new ways. To tell his readers everything would be pedantic and so would risk boring them. Even though he himself was willing to make his way through enormous quantities of materials at a time when he was losing his sight, he never ceased to believe that the essence of intellectual life is tact, delicacy of touch, and the capacity to communicate the excitement of ideas, and to amuse while doing so. Thus Montesquieu's milieu left him an amateur in many respects, although he was ultimately ambivalent about accepting the judgment and style of the salons.

Like Tocqueville, perhaps the greatest of his followers, Montesquieu was an aristocrat trained as a magistrate in the tradition of comparative law rather than as a middle-class specialist with an advanced degree in a departmental specialty of the social sciences. Both Tocqueville and Montesquieu were great theorists of politics and society. Both merit their status as authors of genuine classics which still retain their power to stimulate despite changes in the world neither could have anticipated. Yet both committed errors, or fell into lapses that might have fatally flawed the work of thinkers without their compensatory virtues. It may

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even be that their achievements to some extent depend upon their defects. If one runs down the list of great political theorists, few of them turn out to have been professors within the structure of the modern specialized university as developed in nineteenth-century Germany and subsequently elsewhere. A. N. Whitehead once remarked that the great advance of this form of university organization was that the division of knowledge into departments and the further specialization of research within departments had made it possible for third-rate minds to make some contribution to their subject. But precisely such canons of method and organization of knowledge may make it difficult or impossible for certain first-rate minds to function at their best and most imaginative levels.

There is another point essential to the understanding of Montesquieu. His thought is so often fresh, flexible, and immediately applicable that his readers today may forget his precise position in the history of thought and the development of politics and society. The fact is that many distinctions that seem obvious or irresistible to us simply had not been established or recognized in his time. Montesquieu did not distinguish between fact and value. Law was a term that could be applied to the acts of legislators, to the causes alleged to explain human behavior, or to the principles of physics or biology. Some critics, therefore, summarily dismiss his work as muddled or ill informed, and indeed Montesquieu's definitions of liberty and law now are more often used as targets than as models by political philosophers. Similarly, we are apt to assume that no theorist could possibly merit attention today if he thought that aristocracies should and could play a significant part in maintaining free modern regimes. But such intellectual judgments on our part would be anachronistic, for we would not be taking into account the intellectual and political universes which defined Montesquieu's perception of alternatives.

Nor should we be complacent about the distinctions we oppose to Montesquieu's. Raymond Aron has pointed out that no one since Montesquieu has resolved his distinctive dilemma: how to explain the causes of legal, political, and social phenomena and yet retain a rational basis for condemning some governments and their actions (such as the Spanish conquest of the Americas), or certain practices that are social or religious (slavery, the Inquisition, or the burning to death of Indian widows after their husbands' deaths). Can we both explain why someone acts as he does and condemn

him morally for not having acted otherwise? Is the distinction between fact and value one that accounts for the types of moral, political, and legal evaluations we make?

One school of Montesquieu's critics has attempted to reduce his work to an ideology that rationalized the interests and prejudices of his class as it existed in the middle of the eighteenth century. Some of these criticisms are of sufficient weight so that students ought to know about them and to make up their own minds about their validity. But in order to do so, it is necessary to learn something about the society, politics, and intellectual issues of Montesquieu's time. It would be as one-sided to judge his thought and politics without reference to the situation as he himself perceived it as it would be to fail to relate them to his class position and interests.

If these issues are to be raised about Montesquieu, two questions must be answered: first, what sort of man was he and how was he shaped by his society? Second, what were the principal ideas that led him to formulate his theory as he did?

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## II

### Montesquieu's Life and Milieu

Montesquieu was born in 1689, the year of the Glorious Revolution in England; France was still ruled by Louis XIV. Montesquieu esteemed the English Constitution, which he described in some of his most familiar passages in Book XI of *The Spirit of the Laws* as realizing liberty and embodying the separation of powers. His striking analysis of English society, which he thought excelled all other countries in wealth, in liberty, and in piety, is to be found in Book XIX. For many commentators, then, Montesquieu is the very prototype of a liberal, different from Locke only in details.<sup>1</sup> But to others who have written about Montesquieu, this Anglo-American view of him as a bourgeois liberal is a grave misunderstanding based upon historical anachronism and the failure to specify his class position. For them, Montesquieu was a reactionary landowning magistrate and aristocrat who detested Louis XIV because of his curbing of the nobility and his success in creating a

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centralized national administration. Seen from such a perspective, there was nothing progressive, nothing moral about Montesquieu's condemnation of Louis XIV in the *Persian Letters*. Thus when he portrayed Louis XIV as a despot who had violated the ancient constitution of France, when he condemned the Sun King for having impoverished his country by constant and indefensible resort to war as an instrument of national policy, it was only class propaganda.<sup>2</sup>

It is true that Montesquieu was an aristocrat born into a society based upon inequality and hierarchy; it is true that both his distaste for centralized bureaucracy and his arguments supporting absolute monarchy were characteristic of his class. But neither the central principle of his political philosophy nor the organizing categories of his analysis of politics, society, and law can be reduced to a mere class ideology. In tracing the pattern of his life it will become clearer to what extent Montesquieu was typical of his class, religion, and age, and to what extent his views were transformed by an extraordinarily complex mind, distinctive political vision, and a novel approach to the study of man and society.

Montesquieu's family derived from both the nobility of the sword and that of the robe.<sup>3</sup> The family's genealogy could be traced back 350 years, which in Montesquieu's view, made it neither particularly ancient nor new. Yet birth was not everything in Montesquieu's own scheme of things. He was a magistrate, member of the Academy of Bordeaux, and a local notable in that city. Later in England, he was elected to the Royal Society, the very center of physical sciences, and became a Freemason. He was a landowner who liked, as he would say, "to feel his money under his feet." Often he was enmeshed in litigation with his neighbors and peers. It would not be farfetched to describe him as involved in seigneurial relationships with his peasant-tenants, whom he called "my vassals." Of his crops, wine was the most important. It was sold in an international market which flourished in times of peace and was badly damaged by the wars that occurred so often because of the French royal policy of grandeur and mercantilism. It was England, France's major international rival, that was the principal purchaser of Bordeaux wines. Although much of the city's wealth was based on trade with the West Indies, where sugar production depended upon slavery, Montesquieu was uncompromising in his hostility to slavery in any of its forms.

When he died, Montesquieu left a capital of 650,000 livres, four-fifths of which was in land. His annual income seems to have been about 25,000 livres. Although this was considerably less than the 200,000 livres earned annually by Voltaire, we know that an income of between 12,000 and 15,000 livres was enough for a person of Montesquieu's class and tastes to live comfortably in Paris and to be regarded as rich elsewhere in France.<sup>4</sup> Once he was free to choose his own mode of life, Montesquieu divided his time among the salons of Paris; his family estates in the country near Bordeaux where he did most of his writing; and the city of Bordeaux, which then had the amenities and good company of a cosmopolitan commercial city.

What sort of a person Montesquieu was, we know from his correspondence, his volumes of reflections, reading notes, and impressions of his own travels, most of which have never been translated. When they were collected and published in their entirety, one critic wrote:

One has only to open [them] . . . to be hooked. Believing that we are reading an author, we discover a man, Montesquieu. He comes down from his pedestal, leaves his pulpit, and becomes again a living being surrounded by his books; free, a jolly companion, a friend of women who knows them well; an agile critical spirit who lives to discover the truth, which he never allows himself to invent or to exaggerate; a good friend, human, amused, curious about life, benevolent and intelligent.<sup>5</sup>

Another valuable aspect of these private papers is that we can learn how Montesquieu himself viewed crucial political and social relationships that otherwise would have to be inferred from his printed works. How aristocratic, how bourgeois were his attitudes toward money and family? His *Pensées* tell us: "I have not neglected (I believe) to add to my estate: I have made considerable improvements on my lands. But I felt that I was doing so more to convince myself of my capacity to do so than in order to become richer."<sup>6</sup>

How proud was he of his birth? In his papers, there is a genealogy he had himself drawn up for either his son or grandson. It begins with the self-mocking comment: "Although it is a very foolish thing to begin with a genealogy, nevertheless it is well that I give you some knowledge of your ancestors."<sup>7</sup> He then wrote: