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THE DEFENCE OF LIBERTY

Even before he visited England, Montesquieu was aware that it was a country with a peculiarly anti-authoritarian spirit. In the person of Uzbek, he describes the English thus. 'All the nations of Europe are not equally submissive to their princes: the impatient humour of the English, for instance, leaves their king hardly any time to make his authority felt. Submission and obedience are virtues upon which they flatter themselves but little. On this subject they say most amazing things. According to them there is only one tie which can bind men, and that is gratitude: husband and wife, father and son, are only bound to each other by their mutual affection, or by the services they do each other: and these various motives of obligation are the origin of all kingdoms and communities. But if a prince, instead of making the lives of his subjects happy, attempts to oppress and ruin them, the basis of obedience is destroyed; nothing binds them, nothing attaches them to him; and they return to their natural liberty. They maintain that all unlimited power must be unlawful, because it cannot have had a lawful origin. For, we cannot, say they, give to another more power over us than we ourselves have: now, we have not unlimited power over ourselves; for example we have no right to take our own lives: no one upon earth then, they conclude, has such a power.'¹ Referring to the English Civil War, Montesquieu wrote 'Thus the people of England, finding themselves stronger than one of their kings, pronounced it high treason in a prince to make war upon his subjects.'²

It was only after he had visited England, and united his reading of Locke and others with attendance at parliamentary debates and courts of law, that Montesquieu saw how the system worked. His account is famous, and is helpfully summarized by Sorel as follows. 'To make the laws and control their execution, there is a body of legislators composed of representatives of the people elected by a system of suffrage almost universal, for it must include "all citizens...except those who are in such a low condition that they are considered to have no will of their own;" there is an upper chamber composed of hereditary members sharing with the legislative assembly in making the laws, except those relating to taxes, in regard to which the upper chamber is granted only the right to oppose for fear lest it be corrupted by the crown; there is an executive power entrusted to a monarch, because just as legislation demands deliberation, which is the act of several persons, so execution requires volition, which properly belongs to but one; the executive has not necessarily the power of originating the laws, and takes no part in debates, but has the right to veto new laws; if there is no monarch, the executive power must not be entrusted to members of the legislative assembly, because then the two powers would be blended; the legislative assembly can judge neither the conduct nor the person of the monarch, because this would be a confusion of powers; but though the monarch is inviolable and sacred, his ministers can be called to account and punished. The two chambers meet at stated times, and each year vote on the amount of the taxes and the number of soldiers.'³ The results of this balance of powers was a set of freedoms which

¹Montesquieu, **Persian Letters**, no.105

²Montesquieu, **Persian Letters**, no.105

³Sorel, **Montesquieu**, 126-7

Montesquieu elaborated in several famous chapters of the **Spirit of the Laws**.

There was equality of law. 'Their laws not being made for one individual more than another, each considers himself a monarch; and, indeed the men of this nation are rather confederates than fellow-subjects.'⁴ Montesquieu, There was religious toleration and liberty. 'With regard to religion, as in this state every subject has a free will, and must consequently be either conducted by the light of his own mind or by the caprice of fancy, it necessarily follows that everyone must either look upon all religion with indifference, by which means they are led to embrace the established religion, or they must be zealous for religion in general, by which means the number of sects is increased.'⁵ There was intellectual freedom. 'As the enjoyment of liberty, and even its support and preservation consist in every man's being allowed to speak his thoughts, and to lay open his sentiments, a citizen in this state will say or write whatever the laws do not expressly forbid to be said or written.'⁶ There was freedom to change political allegiance. 'Every individual is independent, and being commonly led by caprice and humour, frequently changes parties.'⁷ There was freedom to engage in whatever activity or occupation one liked. In France, for instance, the nobility were kept out of trade. 'In a monarchical government, it is contrary to the spirit of commerce that any of the nobility should be merchants.'⁸ The reverse was true in England and this might be a cause as well as a consequence of political freedom. 'It is contrary to the spirit of monarchy to admit the nobility into commerce. The custom of suffering the nobility of England to trade is one of those things which have there mostly contributed to weaken the monarchical government.'⁹ In sum, this was a proud and free nation; 'As no subject fears another, the whole nation is proud: for the pride of kings is founded only on their independence. Free nations are haughty; others may more properly be called vain.'¹⁰ All of this meant that it did not really matter how competent the government was. 'In a free nation it is very often a matter of indifference whether individuals reason well or ill; it is sufficient that they do reason: hence springs that liberty which is a security from the effects of these reasonings.'¹¹

⁴Montesquieu, **Spirit**, I, 314

⁵Montesquieu, **Spirit**, I, 312

⁶Montesquieu, **Spirit**, I, 309

⁷Montesquieu, **Spirit**, I, 308

⁸Montesquieu, **Spirit**, I, 327

⁹Montesquieu, **Spirit**, I, 327

¹⁰Montesquieu, **Spirit**, I, 315

¹¹Montesquieu, **Spirit**, I, 315

In many ways Montesquieu's more general definitions of the essence of political liberty were refinements from the actual situation as he perceived it in England. He defined liberty as 'a right of doing whatever the laws permit, and if a citizen could do what they forbid he would no longer be possessed of liberty, because all his fellow-citizens would have the same power.'¹² Liberty and desire should be identical. 'In governments, that is, in societies directed by laws, liberty can consist only in the power of doing what we ought to will, and in not being constrained to do what we ought not to will.'¹³ Thus the art of good government was to harmonize individual desire and government policy, using the minimum of force. 'I have often inquired which form of government is most conformable to reason. It seems to me that the most perfect is that which attains its object with the least friction; so that the government which leads men by following their propensities and inclinations is the most perfect. If under a mild government the people are as submissive as under a severe one, the former is to be preferred, since it is more rational, severity being a motive foreign to reason.'¹⁴

There is bound to be some loss of liberty, but it should be minimal. We are told that 'In his notebook he described liberty as a good net in which the fish do not feel constrained.'¹⁵ Political liberty consisted of freedom from fear. 'The political liberty of the subject is a tranquillity of mind arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted as one man need not be afraid of another.'¹⁶ Or again, 'Political liberty consists in security, or, at least, in the opinion that we enjoy security.'¹⁷ 'Philosophic liberty consists in the free exercise of the will; or at least, if we must speak agreeably to all systems, in an opinion that we have the free exercise of our will.'¹⁸

Thus he believed that 'the safety of the people is the supreme law'¹⁹ and that 'This security is never more dangerously attacked than in public or private accusations. It is, therefore, on the goodness of

¹²Montesquieu, **Spirit**, I, 150

¹³ Montesquieu, **Spirit**, I, 150

¹⁴Montesquieu, **Persian Letters**, 81

¹⁵Shklar, **Montesquieu**, 86

¹⁶Montesquieu, **Spirit**, I, 151

¹⁷Montesquieu, **Spirit**, I, 183

¹⁸Montesquieu, **Spirit**, I, 183

¹⁹Montesquieu, **Spirit**, II, 78

criminal laws that the liberty of the subject principally depends.²⁰ England, with its freedom from torture, freedom from the inquisitorial process of Roman law and the absence of secret accusations was the paramount example of such 'liberty of the subject', so distant from the world of examining magistrates and torture over which Montesquieu in his youth had presided.

The added twist to Montesquieu's argument was that liberty was not merely desirable in itself, but seemed to lead, through trade and manufacture, to economic and thence to political power. Sorel is right that 'Montesquieu did not foresee the speedy advent and prodigious development of modern democracy. Still less would he believe it possible to organize democratic republics in vast countries.'²¹ He was also right in detecting a certain disdain in Montesquieu's tone when he wrote 'The politicians of our day talk of nothing but manufactures, commerce, wealth and even luxury!'²² Yet he is only half right when he continues that 'Montesquieu did not suspect that these manufactures, this commerce, this wealth, and even this luxury, which he considered incompatible with democracies, would one day become their corner-stone, and that this revolution would be effected in his own country and permeate all Europe.'²³

Montesquieu was living just at the point when it was becoming obvious that England and Holland and indeed much of north-western Europe, were rapidly becoming both the freest and the richest parts of Europe. This was being done by a hitherto untried route. Almost all previous nations had made wealth subservient to power, that is to say predation dominated production. But England had reversed this. 'Other nations have made the interests of commerce yield to those of politics; the English, on the contrary, have ever made their political interests give way to those of commerce.'²⁴ This is a first hint of the later theme of 'a nation ruled by shop keepers' which would be fully developed by Adam Smith.

Linked to this reversal was the curious down-grading of the military profession. Unlike every other major western country and particularly the Romans, in England 'Military men are there regarded as belonging to a profession which may be useful but is often dangerous, and as men whose very services are burdensome to the nation: civil qualifications are therefore more esteemed than the military.'²⁵ Montesquieu noted a similar development in that 'other queen of the sea, the Republic of Holland, so respected in Europe, and so feared in Asia, where its merchants behold many a king bow to the dust before them.'²⁶

²⁰Montesquieu, **Spirit**, I, 183-184

²¹Sorel, **Montesquieu**, 113

²²Sorel, **Montesquieu**, 113

²³Sorel, **Montesquieu**, 113

²⁴Montesquieu, **Spirit**, I, 321

²⁵Montesquieu, **Spirit**, I, 310

²⁶Montesquieu, **Persian Letters**, no.136

Montesquieu noted the general shift from the Catholic south to the Protestant north, which he associated with wealth, population and power. 'Before the humiliation of the power of Spain, the Catholics were much stronger than the Protestants. Little by little the latter have arrived at an equality. The Protestants will become richer and more powerful, and the Catholics will grow weaker. The Protestant countries ought to be, and are, in fact, more populous than the Catholic ones; from which it follows, firstly, that their revenue is greater, because it increases in proportion to the number of those who pay taxes; secondly, that their lands are better cultivated; lastly, that commerce is more prosperous, because there are more people who have fortunes to make; and that, with increased wants, there is an increase of resources to supply them.'²⁷ The last point, concerning the tax base, the conversion of wealth into power, is amplified thus. 'There is no Protestant prince who does not levy upon his people much heavier taxes than the Pope draws from his subjects; yet the latter are poor, while the former live in affluence. Commerce puts life into all ranks among the Protestants, and celibacy lays its hand of death upon all interests among the Catholics.'²⁸

The populousness is partly caused, as he notes, by the absence of celibacy. It is also because freedom attracts people. Montesquieu himself had personally experienced this. Not only had he seen the Huguenots flee from France after the Revocation of the Edict of Nantes in 1685, but also in Bordeaux he had seen the after-effects of intolerance of religious minorities in the way the large group of Protestants, including his wife's family, had been treated. Thus he wrote from the heart when he stated, 'The propagation of the species is wonderfully aided by a mild government. All republics are a standing proof of this; especially Switzerland and Holland, which, with regard to the nature of the land, are the two worst countries in Europe, and which are yet the most populous. Nothing attracts strangers more than liberty, and its accompaniment, wealth: the latter is sought after for itself, and our necessity leads us into those countries in which we find the former.'²⁹ Anticipating much later speculation on the role of marginalized religious minorities such as the Jews or Quakers, he wrote 'It is worthy of note that those who profess tolerated creeds usually prove more useful to their country than those who profess the established faith; because, being excluded from all honours, and unable to distinguish themselves except by wealth and its shows, they are led to acquire riches by their labour, and to embrace the most toilsome of occupations.'³⁰ This was another good reason for toleration rather than the oppression he had witnessed in Spain and France.

Montesquieu noticed that England had a very productive agriculture. Such were its surpluses that he relaxed his general rule and admitted that it could afford some luxuries. 'In England the soil produces more grain than is necessary for the maintenance of such as cultivate the land and of those who are

²⁷Montesquieu, **Persian Letters**, no.118

²⁸Montesquieu, **Persian Letters**, no.118

²⁹Montesquieu, **Persian Letters**, no.123

³⁰Montesquieu, **Persian Letters**, no.86

employed in the woollen manufactures. This country may be therefore allowed to have some trifling arts and consequently luxury.³¹ The country's obvious wealth was not based on producing unnecessary things, but in particular on its woollen manufacture and trade. They enjoy a solid luxury, founded, not on the refinements of vanity, but on that of real wants; they ask nothing of nature but what nature can bestow.³² All this was very helpful, and supplemented its greatest natural advantage, which was the fact that it was an island. The ruling nation inhabiting a large island, and being in possession of a great trade, has with extraordinary ease grown powerful at sea; and as the preservation of its liberties requires that it should have neither strongholds nor fortresses nor land forces, it has occasion for a formidable navy to defend it against invasions; a navy which must be superior to that of all other powers, who, employing their treasures in wars on land, have not sufficient for those at sea.³³

This advantage also extended to its overseas policies. It was, not, unlike war-weary France, or Italy in the expansion of Rome, lured into the folly of endless land wars. This nation, inhabiting an island, is not fond of conquering, because it would be weakened by distant conquests - especially as the soil of the island is so good, for it has then no need of enriching itself by war.³⁴ Thus it has become a 'trading people' and 'If this nation sends colonies abroad, it must rather be to extend its commerce than its dominion.'³⁵

The final ingredient for England's power arose from a cunning combination of its natural wealth and its freedom. Here Montesquieu developed an interesting idea of the relations between political balance and the use of the citizen's wealth. Montesquieu contrasted this with the usual policy of oppressive governments, as a parable. 'When the savages of Louisiana are desirous of fruit, they cut the tree to the root, and gather the fruit ... This is an emblem of despotic government.'³⁶ In such a setting of insecurity, as soon as a surplus is generated it is scooped off. This affects everybody, and in particular the chances of developing extensive merchant or manufacturing wealth. Hence it is that a merchant under this government is unable to carry on an extensive commerce; he lives from hand to mouth; and were he to encumber himself with a large quantity of merchandise, he would lose more by the exorbitant interest he must give for money than he could possibly get by the goods.³⁷

³¹Montesquieu, **Spirit**, I, 100

³²Montesquieu, **Spirit**, I, 314

³³Montesquieu, **Spirit**, I, 311-12

³⁴Montesquieu, **Spirit**, I, 310

³⁵Montesquieu, **Spirit**, I, 311

³⁶Montesquieu, **Spirit**, I, 57

³⁷Montesquieu, **Spirit**, I, 63

The high rate of interest was also a result of the insecurity and despotism. 'In those Eastern countries, the greater part of the people are secure in nothing; there is hardly any proportion between the actual possession of a sum and the hopes of receiving it again after having lent it: usury, then, must be raised in proportion to the danger of insolvency.³⁸ Ironically, therefore, the tax base shrank and less could be extracted. A vicious circle was entered. Whatever was available was taken away and every sprout was consumed. Hardly the way to encourage manufacture or even agriculture. In such a despotic state 'the incomes of the subjects would cease almost entirely, and consequently that of the prince. There would hardly be any exchange of goods among the citizens, and there would be an end of that circulation of wealth, and of that increase of revenue, which arises from the dependence of the arts upon each other; each person would live upon his land, and would take from it only just enough to keep him from dying of hunger.'³⁹ He had seen the effects of the consequent downward spiral in the case of Rome. 'No states are in greater need of taxes than those which are growing weaker, so that burdens must be increased in proportion as the ability to pay decreases. Soon, in the Roman provinces, taxes became unbearable.'⁴⁰

The reverse of this was a situation where the citizens were not molested too early and only their surpluses were regularly collected. This was the situation in a place like England or Holland. 'It is a general rule that taxes may be heavier in proportion to the liberty of the subject, and that there is a necessity for reducing them in proportion to the increase of slavery. This has always been and always will be the case.'⁴¹ The regularity and certainty, in other words a fixed amount, was also important - a theme developed by Adam Smith. For 'as the people have a certain knowledge of the necessity of submitting to those taxes, they pay them from the well-founded hope of their discontinuance; their burdens are heavy, but they do not feel their weight: while in other states the uneasiness is infinitely greater than the evil.'⁴² Furthermore, since the people identify themselves with their rulers and feel attached to their political system they will, in a free state, make voluntary sacrifices of a kind which are greater than those that can be forced out of them in a despotic ones. Again referring to England, he wrote that 'This nation is passionately fond of liberty, because this liberty is real; and it is possible for it, in its defence, to sacrifice its wealth, its ease, its interest, and to support the burden of the heaviest taxes, even such as a despotic prince durst not lay upon his subjects.'⁴³

The moral of this was that it was in the interests of both citizens and those in power that wealth should

³⁸Montesquieu, **Spirit**, I, 396-7

³⁹Montesquieu, **Persian Letters**, no.107

⁴⁰Montesquieu, **Considerations**, 171

⁴¹Montesquieu, **Spirit**, I, 214

⁴²Montesquieu, **Spirit**, I, 310

⁴³Montesquieu, **Spirit**, I, 309-10

be widely distributed. 'That very equality of the citizens which generally produces equality in their fortunes, brings plenty and vigour into all the parts of the body politic, and spreads these blessings throughout the whole state. It is not so in countries subject to arbitrary power: the prince, the courtiers, and a few private persons, possess all the wealth, while all the rest groan in extreme poverty.⁴⁴ Thus one could conclude 'that if a prince is to be powerful, it is necessary that his subjects should live in luxury; he ought to labour to procure all sorts of superfluities with as much care as the necessities of life.⁴⁵ It was a partnership, rather than an opposition. And from this derived Montesquieu's famous definition of taxation. 'Each citizen contributes to the revenues of the state a portion of his property in order that his tenure of the rest may be more secure.⁴⁶ Furthermore, the citizens trust their government and are therefore prepared to lend it immense sums in its hour of need - which would not be the case in a despotism. Such borrowing unites citizens and State even more closely. 'To preserve its liberty, it borrows of its subjects: and the subjects, seeing that its credit would be lost if ever it were conquered, have a new motive to make fresh efforts in defence of its liberty.⁴⁷

Thus a free people can attempt tasks apparently well beyond their strength, as Montesquieu had seen with the successes of the Duke of Marlborough in his battles against France, and in the expanding colonies of England. 'It is possible for it to undertake things above its natural strength, and employ against its enemies immense sums of fictitious riches, which the credit and nature of the government may render real.⁴⁸ From very early on the English had enjoyed security of real property from arbitrary seizure by the government. The Magna Charta of England provides against the seizing of the lands or revenues of a debtor, when his movable or personal goods are sufficient to pay, and he is willing to give them up to his creditors; thus all the goods of an Englishman represented money.⁴⁹ This was one of the reasons behind Montesquieu's affirmation that, as Locke and others had argued, private property should be safeguarded. 'Let us, therefore, lay down a certain maxim, that whenever the public good happens to be the matter in question, it is not for the advantage of the public to deprive an individual of his property, or even to retrench the least part of it by law, or a political regulation.⁵⁰

⁴⁴Montesquieu, **Persian Letters**, no.123

⁴⁵Montesquieu, **Persian Letters**, no.107

⁴⁶Quoted in Sorel, **Montesquieu**, 130

⁴⁷Montesquieu, **Spirit**, I, 310

⁴⁸Montesquieu, **Spirit**, I, 310

⁴⁹Montesquieu, **Spirit**, I, 376

⁵⁰Montesquieu, **Spirit**, II, 73

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Montesquieu was thus able to move back and forth between an abstract model of a wealthy, pious and liberal nation and its realization in England. Yet, beyond its island advantage, this still left open the question of why England was so different. Of course, part of the answer lay in geography and climate, but Montesquieu was not prepared to stop there. Reflecting on this very question he wrote, 'I do not deny that the climate may have produced a great part of the laws, manners, and customs of this nation; but I maintain that its manners and customs have a close connection with its laws.'⁵¹ The 'close connection', an anticipation of Weber's 'elective affinity', does not posit a necessary causal chain, but it allows Montesquieu to embark on his clear and sympathetic account of the constitutional and legal arrangements in England, an account which is very heavily based on Locke and Bolingbroke's work.

Montesquieu's greatness, as we noted earlier, lay in his recognition that the solution to many problems lay not in the things themselves, but in the relations between things. He was aware that there seemed to be a natural tendency as a nation became wealthier for it to expand and predate on others. This in turn seemed to lead to a growing concentration of power, or, put in another way, a breaking down of the division between spheres, solidifying them into one despotic whole. Freedom and progress, however, consisted in holding them apart.

The normal tendency towards despotism, even within west European nations, is best shown by Montesquieu's study of the Roman Empire. There he reveals how an inevitable pressure occurs. A small nation is successful, but its very success engenders the need to expand farther, and so it goes on. But each expansion shifts the balance away from republic and openness towards a more powerful centre so that one day the people wake up in a totalitarian state. This in turn leads to corruption and final collapse.

The model he developed for China is somewhat different. There was the same move outwards to fill the surrounding vacuum of power until the whole great plain of China was one huge Empire. In this Empire, not only, as we have seen, was religion and polity mixed, but likewise kinship and polity. He noted that 'This empire is formed on the plan of a government of a family. If you diminish the paternal authority, or even if you retrench the ceremonies which express your respect for it, you weaken the reverence due to magistrates, who are considered as fathers...'⁵² Thus kinship allegiances strengthen political ties and **vice versa**. It is a true patriarchal system, power lying in the hands of the father/Emperor. The differences between this and the Roman situation is that the Chinese is far more deeply embedded. Partly because of the geography of Europe, partly because of the agriculture, partly because of the differences of religion, China's despotism could not be overturned, unlike Rome's. From time to time China was over-run, by Mongols, Manchus and others. At other times it split into pieces. Yet it always returned quickly to its monolithic shape.

Having explained the inter-connectedness of Chinese society and government. Montesquieu continues 'Hence it follows that the laws of China are not destroyed by conquest. Their customs, manners, laws, and religion being the same thing, they cannot change all these at once; and as it will happen that either the conqueror or the conquered must change, in China it has always been the conqueror.'⁵³ The essence

⁵¹Montesquieu, **Spirit**, I, 307

⁵²Montesquieu, **Spirit**, I, 303

⁵³Montesquieu, **Spirit**, I, 302

was the absence of a separation of powers, not only between economy, society and polity, but at the level of the rulers, between legislative, executive and judiciary. Thus 'Most kingdoms in Europe enjoy a moderate government' because the prince left the judiciary powers 'to his subjects'. On the other hand, as could be seen, 'In Turkey, where these three powers are united in the Sultan's person, the subjects groan under the most dreadful oppression.'⁵⁴

The secret of liberty was thus firstly a separation of spheres - economy from polity, religion from polity, religion from economy, and society (kinship) from polity, religion and economy. This would be reflected in and re-enforced at the governmental level by the separation and balance between legislature, executive and judiciary. What was needed was both separation and balance. To prevent abuse of power, 'it is necessary from the very nature of things that power should be a check to power. A government may be so constituted, as no man shall be compelled to do things to which the law does not oblige him, nor forced to abstain from things which the law permits.'⁵⁵ For instance, 'there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.'⁵⁶ As Shklar put it, 'The central and continuous theme of the **Spirit of the Laws** is that the independence of the courts of law more than any other institution separates moderate from despotic regimes.'⁵⁷ Even within each of these there should be further separations and balances. For instance, as in England with its balance between Commons, Lords and Crown, the 'legislative body being composed of two parts, they check one another by the mutual privilege of rejecting. They are both restrained by the executive power, as the executive is by the legislative.'⁵⁸ This idea was partly derived from Locke, but as a number of authors have pointed out Montesquieu went far beyond Locke. He probably owed more to Bolingbroke and this is a case where a partial myth was created through a creative mis-reading of the English political system.⁵⁹ It would be a fruitful myth, however, for it formed the basis of the American constitution.

⁵⁴ Montesquieu, **Spirit**, I, 152

⁵⁵ Montesquieu, **Spirit**, I, 150

⁵⁶ Montesquieu, **Spirit**, I, 152

⁵⁷ Shklar, **Montesquieu**, 81

⁵⁸ Montesquieu, **Spirit**, I, 160

⁵⁹ See Shackleton, **Montesquieu**, 286, 298-301; Shackleton, **Essays**, 3ff, 7, 14; Althusser, **Montesquieu**, 88; and for a defence of Montesquieu, Morgan, **Liberty of Thought**, passim, esp. 13

The problem, of course, was how to achieve such a balance in the first place and then, more difficult still, how to prevent the balance or dynamic harmony from being lost. Montesquieu had noted the point in Roman history when 'the harmony of the three powers was lost.'⁶⁰ Things cannot stand still and the dynamic tension had to be maintained over time. These three powers should naturally form a state of repose or inaction. But as there is a necessity for movement in the course of human affairs, they are forced to move, but still in concert.⁶¹ A middling balance was essential: 'political, like moral good, lying always between two extremes.'⁶² Any excess or lurch in one direction, even something intrinsically good, when taken to its extreme, was dangerous. Anticipating Tocqueville, Montesquieu wrote that 'Democracy has, therefore, two excesses to avoid - the spirit of inequality, which leads to aristocracy or monarchy, and the spirit of extreme equality, which leads to despotic power, as the latter is completed by conquest.'⁶³

How then could the precarious balance be maintained? Montesquieu suggested that the secret lay in the power of a number of 'intermediary bodies'. We are told that 'The single most important doctrine in **The Spirit of the Laws** is Montesquieu's theory that intermediate bodies like the nobility, the **parlements**, the local courts of seigneurial justice, and the church are all indispensable to political liberty.'⁶⁴ As Sorel summarizes Montesquieu's thought, 'It is the nature of monarchy to be founded upon laws. The monarch is the source of all power, political and civil; but he exercises this power by means of channels "through which his power flows." These are "the intermediate, subordinate, and dependent powers," moderating "the shifting and capricious will of a single person." The two foremost of these powers are the nobility and clergy; the third is a body of magistrates, serving as a repository for constitutional laws, and reminding the prince of them when he seems to forget them. This hierarchy of rank is the necessary condition of monarchical government. If it is destroyed, the inevitable tendency is toward either despotism or democracy.'⁶⁵ Thus the nobility administers justice, the Parlements interpret the laws.⁶⁶

The tension between these is important, for each will be striving for supremacy. But it is essential that

⁶⁰Montesquieu, **Spirit**, I, 180

⁶¹Montesquieu, **Spirit**, I, 160

⁶²Montesquieu, **Spirit**, II, 156

⁶³Montesquieu, **Spirit**, I, 110

⁶⁴Richter 'Montesquieu', 474

⁶⁵Sorel, **Montesquieu**, 117

⁶⁶Shackleton, **Montesquieu**, 279-80

none should win completely. Their continued rivalry and inability to become dominant lay behind English liberty. 'The civil power being in the hands of an infinite number of lords, it was an easy matter for the ecclesiastic jurisdiction to gain daily a greater extent. But as the ecclesiastic courts weakened those of the lords, and contributed thereby to give strength to the royal jurisdiction, the latter gradually checked the jurisdiction of the clergy.'⁶⁷

It was like the game of scissors, paper, stone. The clergy checked the lords, the Crown checked the clergy and, presumably, the lords checked the Crown. At a lower level, Montesquieu wrote at length about the need for intermediary bodies, the power of middling level entities such as city corporations, universities, guilds and fraternities. A strong development of such special groups would prevent that despotic division between a single ruler and his court on the one hand, and an enslaved populace on the other, which characterized China and had begun to emerge in Louis XIV's France with the collapse of the provincial and national Parlements and other intermediary bodies. It was essential that there be many centres of power, each balancing the other.

It was for this reason that Montesquieu argued that far from showing the imminent collapse of the system, lively confrontations and arguments were a sign of health in a republic. A sustained harmony and peace was the sign of actual or imminent despotism. He showed 'that pluralism and its perpetual tensions and quarrels are the fundamental and necessary conditions of political freedom.'⁶⁸ His classic account of this is in relation to Rome. 'We hear in the authors only of the dissensions that ruined Rome, without seeing that these dissensions were necessary to it, that they had always been there and always had to be... To ask for men in a free state who are bold in war and timid in peace is to wish the impossible. And, as a general rule, whenever we see everyone tranquil in a state that calls itself a republic, we can be sure that liberty does not exist there.'⁶⁹

He then develops the idea of a productive tension, a harmony created through dissonance, a balanced and dynamic equilibrium of forces. 'What is called union in a body politic is a very equivocal thing. The true kind is a union of harmony, whereby all the parts, however opposed they may appear, cooperate for the general good of society - as dissonances in music cooperate in producing overall concord. In a state where we seem to see nothing but commotion there can be union - that is, a harmony resulting in happiness, which alone is true peace. It is as with the parts of the universe, eternally linked together by the action of some and the reaction of others.'⁷⁰ By a kind of paradox, the apparent harmony of despotic societies, was actually much more deeply riven by conflict, though the surface was smooth. For, 'in the concord of Asiatic despotism - that is, of all government which is not moderate - there is always real dissension. The worker, the soldier, the lawyer, the magistrate, the noble are joined only inasmuch as some oppress the others without resistance. And, if we see any union there, it is not citizens

⁶⁷Montesquieu, **Spirit**, II, 148

⁶⁸Shklar, **Montesquieu**, 59

⁶⁹Montesquieu, **Considerations**, 93

⁷⁰Montesquieu, **Considerations**, 93-4

who are united but dead bodies buried one next to the other.⁷¹ Balanced polities were vibrant, energetic, noisy, alive; despotism was united by death - a powerful image.

All of this, of course, linked back to his earlier discussions. In theory a virtuous circle was possible. Liberty would encourage trade and manufacture, which would encourage the growth of powerful intermediate power groups, such as those represented in the English House of Commons, which would further establish liberty. Yet Montesquieu was in fact extremely dubious about the sustainability of this circle. The history of the world up to his time showed, as he said, that commercial republics were short-lived. Those of Italy and Germany had collapsed. As he wrote 'Commercial powers can continue in a state of mediocrity a long time, but their greatness is of short duration. They rise little by little, without anyone noticing, for they engage in no particular action that resounds and signals their power. But when things have come to the point where people cannot help but see what has happened, everyone seeks to deprive this nation of an advantage it has obtained, so to speak, only by surprise.'⁷² It seemed unlikely that Holland or England could long continue to tread the tight-rope between success and failure, for every success carried in it the temptation to expand and such expansion would, in the end, lead to collapse.

All that Montesquieu could do was marvel at a current situation where, for a time, a reasonable sized power seemed to have got the balance right. Thus the English 'which liberty and laws render easy, on being freed from pernicious prejudices, has become a trading people.'⁷³ And this trading tied in and reinforced the liberty and the religious independence. So that the English 'know better than any other people upon earth how to value, at the same time, these three great advantages - religion, commerce, and liberty.'⁷⁴

* * *

Montesquieu's studies of the rise and collapse of Roman civilization and in particular his reading of Caesar and Tacitus on the customs of the Germanic peoples who conquered Rome, suggested an interesting theory to supplement his geographical reasons for the peculiarities of western Europe. In a sense these theories do not replace the earlier arguments. They tend to occur towards the middle and end of **Spirit** and are an attempt to provide an historical way of looking at the oddness of western Europe.

His basic premise was that in simple tribal societies there were those very values of liberty, equality and fraternity which characterized the best of current nations. Like Rousseau after him, Montesquieu believed that men were, by nature, born free and equal. The simplest people, hunter-gatherers, 'enjoy

⁷¹Montesquieu, **Considerations**, 94

⁷²Montesquieu **Considerations**, 47

⁷³Montesquieu, **Spirit**, I, 310

⁷⁴Montesquieu, **Spirit**, I, 321

great liberty; for as they do not cultivate the earth, they are not fixed: they are wanderers and vagabonds; and if a chief should deprive them of their liberty, they would immediately go and seek it under another, or retire into the woods, and there live with their families.⁷⁵ Thus slavery was immoral, for 'as all men are born equal, slavery must be accounted unnatural, though in some countries it be founded on natural reason.'⁷⁶ The problem was that what began naturally and could be protected by voting with one's feet, fleeing repression, later had to be protected by artificial means. 'In the state of nature, indeed, all men are born equal, but they cannot continue in this equality. Society makes them lose it, and they recover it only by the protection of the laws.'⁷⁷ This, in a nutshell, was the story which he wished to tell in relation to what had happened in western Europe.

Montesquieu's reading of Caesar and Tacitus suggested to him that the early Germanic societies were largely pastoralists, mixing this with hunting and gathering. 'Caesar says, that "The Germans neglected agriculture; that the greatest part of them lived upon milk, cheese, and flesh; that no one had lands or boundaries of his own; that the princes and magistrates of each nation allotted what portion of land they pleased to individuals, and obliged them the year following to remove to some other part."⁷⁸ Or again, 'It seems by Caesar and Tacitus that they applied themselves greatly to a pastoral life; hence the regulations of the codes of barbarian laws almost all relate to their flocks.'⁷⁹ Like many pastoral peoples, they were egalitarian and independent minded, both at the tribal and individual level. They enjoyed a sort of republican structure, a confederation of small chiefdoms with little hierarchy. 'Each tribe apart was free and independent; and when they came to be intermixed, the independency still continued; the country was common, the government peculiar; the territory the same, and the nations different.'⁸⁰ Thus they managed to share a territory without becoming locked into an increasingly oppressive state.

They were unusually isolated and rural peoples, as befitted their agriculture, and ruled themselves through a kind of universal suffrage. 'The German nations that conquered the Roman Empire were certainly a free people. Of this we may be convinced only by reading Tacitus "On the Manners of the Germans". The conquerors spread themselves over all the country; living mostly in the fields, and very little in the towns. When they were in Germany, the whole nation was able to assemble.'⁸¹ Any sign of

⁷⁵Montesquieu, **Spirit**, I, 277

⁷⁶Montesquieu, **Spirit**, I, 240

⁷⁷Montesquieu, **Spirit**, I, 111

⁷⁸Montesquieu, **Spirit**, II, 172

⁷⁹Montesquieu, **Spirit**, II, 175

⁸⁰Montesquieu, **Spirit**, II, 95

⁸¹Montesquieu, **Spirit**, I, 163

instituted rulers at this time is a mistake. Just as monarchy was absent in much of Europe before the Roman conquests, so 'the peoples of the north and of Germany were not less free; and if traces of kingly government are found among them, it is because the chiefs of armies or republics have been mistaken for monarchs.'⁸²

Another odd feature of these early societies was their monetary values in the midst of a pastoral economy. 'The laws of the Germans constituted money a satisfaction for the injuries that were committed, and for the sufferings due to guilt. But as there was but very little specie in the country, they again constituted this money to be paid in goods or chattels.'⁸³ Curiously for so warlike a peoples, 'Our ancestors, the Germans, admitted of none but pecuniary punishments. Those free and warlike people were of opinion that their blood ought not to be spilled but with sword in hand.'⁸⁴ Thus, having very little cash, everything became interchangeable. 'With these people money became cattle, goods, and merchandise, and these again became money.'⁸⁵

Montesquieu's view of the liberating effect of what happened, especially when compared to the effects of the conquests by the Mongols, is summarized as follows. 'Meantime an immense number of unknown races came out of the north, and poured like torrents into the Roman provinces: finding it as easy to conquer as to rob, they dismembered the empire, and founded kingdoms. These peoples were free, and they put such restrictions on the authority of their kings, that they were properly only chiefs or generals. Thus these kingdoms, although founded by force never endured the yoke of the conqueror. When the peoples of Asia, such as the Turks and the Tartars, made conquests, being subject to the will of one person, they thought only of providing him with new subjects, and of establishing by force of arms his reign of might; but the peoples of the north, free in their own countries, having seized the Roman provinces, did not give their chiefs much power. Some of these races, indeed, like the Vandals in Africa and the Goths in Spain, deposed their kings when they ceased to please them; and, amongst others, the power of the prince was limited in a thousand different ways; a great number of lords partook it with him; a war was never undertaken without their consent; the spoils were divided between the chief and the soldiers; and the laws were made in national assemblies. Here you have the fundamental principle of all those states which were formed from the ruins of the Roman Empire.'⁸⁶

The first wave of Germanic conquest was later re-enforced by a second with the Vikings. For these Montesquieu has equal praise. He wrote that Scandinavia 'was the source of the liberties of Europe - that is, of almost all the freedom which at present subsists amongst mankind.'⁸⁷ Thus, perhaps oddly to

⁸²Montesquieu, **Persian Letters**, no.131

⁸³Montesquieu, **Spirit**, I, 376

⁸⁴Montesquieu, **Spirit**, I, 91

⁸⁵Montesquieu, **Spirit**, I, 376

⁸⁶Montesquieu, **Persian Letters**, no.131

⁸⁷Montesquieu, **Spirit**, I, 268

us today when we have forgotten that the word French comes from 'Franks', Montesquieu stressed the Germanic roots of not just much of Europe, but in particular France. He wrote that 'Our ancestors, the ancient Germans, lived in a climate where the passions were extremely calm.'⁸⁸ He believed that 'it is impossible to gain any insight into our political law unless we are thoroughly acquainted with the laws and manners of the German nations...'⁸⁹

The spread of Germanic civilization helped Montesquieu explain a mystery, that is the uniform and unprecedented spread of an original and new form of civilization in western Europe which grew from the ashes of Roman civilization. 'I should think my work imperfect were I to pass over in silence an event which never again, perhaps, will happen; were I not to speak of those laws which suddenly appeared over all Europe without being connected with any of the former institutions.'⁹⁰ In fact, of course, although these laws bore little connection to the Roman civilization which he had studied so closely, they emanated directly from that system described for the Germans by Caesar and Tacitus for 'Such is the origin of the Gothic government amongst us.'⁹¹ This is the system which he admired and whose roots he wished to discover, for they clearly did not lie in Rome. 'The feudal laws form a very beautiful prospect. A venerable old oak raises its lofty head to the skies, the eye sees from afar its spreading leaves; upon drawing nearer, it perceives the trunk but does not discern the root; the ground must be dug up to discover it.'⁹²

The discovery of the roots was not merely of antiquarian interest for Montesquieu believed that the quintessence of liberty in modern Europe, that is the separation and balance of powers, had been first expressed in them. And it is therefore not surprising that he should make a great leap across the centuries by joining what he saw in the constitutional balance of early eighteenth century England to what he had read in Tacitus. 'In perusing the admirable treatise of Tacitus "On the Manners of the Germans", we find it is from that nation the English have borrowed the idea of their political government. This beautiful system was invented first in the woods.'⁹³ It is not clear from this whether Montesquieu saw a straight continuity, or a conscious re-invention in England. He had neither the sources nor the time to fill in the detail of what happened over the intervening one and a half millenia. This will be a task taken up, as we shall see, by Tocqueville. What is important is to note that Montesquieu's theory gives him not

⁸⁸Montesquieu, **Spirit**, I, 232

⁸⁹Montesquieu, **Spirit**, II, 196

⁹⁰Montesquieu, **Spirit**, II, 171

⁹¹Montesquieu, **Spirit**, I, 163

⁹²Montesquieu, **Spirit**, II, 171

⁹³Montesquieu, **Spirit**, I, 161

only a stick to beat contemporary absolutisms in Europe with, but an hypothesis to explain the differences within Europe.

Drawing on hints in Montesquieu's work, his theory can be put as follows. After the collapse of Rome, much of Europe was covered by a low density Germanic civilization, with its freedom and equality. Then over much of continental Europe, hierarchy and despotism began to re-assert itself as a necessary consequence of growing wealth and military confrontation. An expression and re-enforcing of this move towards what Tocqueville would call 'caste' and towards absolutism, was the re-introduction of Roman law and the Roman Catholic religion. In essence Europe lost its freedoms to a resurgent Roman civilization - and this was most evident in southern and central Europe, for instance in France. For reasons which Montesquieu does not elaborate, this returning tide became weaker the further north one went. So England, an island in fact and in law, retained its basically Germanic social structure, political system and monetary values. Thus, with its Germanic Protestantism added to this, it seemed an oasis (with Holland) in a desert of threatened despotism.

Montesquieu had seen the process occur in his studies of Rome; the movement from small, egalitarian, societies, through increasing centralization of power, finally to absolutism and despotism. And he believed he discerned the same process in his own France. He writes of a visit to a library where the histories of all the modern nations are laid out. "Here are the historians of France, who show us to begin with the power of kings taking shape; then we see it perish twice, and reappear only to languish through many ages; but, insensibly gathering strength and built up on all sides, it achieves its final stage: like those rivers which in their course lose their waters, or hide them under the earth; then reappearing again, swollen by the streams which flow into them, rapidly draw along with them all that opposes their passage."⁹⁴ It culminated in the near absolutism of Louis XIV when almost all the intermediary, counter-vailing, forces were crushed. In particular, the regional parliaments had withered. 'Parliaments are like those ruins which are trampled under foot, but which always recall the idea of some temple famous on account of the ancient religion of the people. They hardly interfere now except in matters of law; and their authority will continue to decrease unless some unforeseen event restores them to life and strength. The common fate has overtaken these great bodies; they have yielded to time which destroys everything, to moral corruption which weakens everything, and to absolute power which over-bears everything.'⁹⁵

What was particularly sad, Montesquieu thought, was that the ancient foundations of freedom in Germanic laws and customs had been lost, and been overlain by the revived, absolutist and imperial, Roman laws. This Roman triumph had been made complete by Roman religion which had joined with Roman law. Speaking of France, Montesquieu asked 'Who would imagine that the most ancient and powerful kingdom in Europe had been governed for ten centuries by laws which were not made for it? If the French had been conquered, it would not be difficult to understand, but they are the conquerors. They have abandoned the old laws made by their first kings in the general assemblies of the nations; and, singularly enough, the Roman laws which have been substituted, were partly made and partly digested by emperors contemporary with their own legislators. And, to make the borrowing complete, and in order that all their wisdom might come from others, they have adopted all the constitutions of the

⁹⁴Montesquieu, **Persian Letters**, no.136

⁹⁵Montesquieu, **Persian Letters**, no.93

Popes, and have made them a new part of their law: a new kind of slavery.⁹⁶

Montesquieu's historical work was undertaken over two centuries ago. We may wonder how far it stands the test of time, and how far it has been refuted by subsequent research. Here we are fortunate to have a detailed study by Iris Cox on 'Montesquieu and the history of French laws' which compares his work in great detail with that of more recent scholars. She summarizes her findings thus: 'in my judgement, Montesquieu's historical account stands up well in the light of modern knowledge. His account is comparatively short, but his statements on most of the points he regarded as important in connection with his theory about the spirit of the laws of France are supported in the works to which I have referred.'⁹⁷ She lists all his major sections, from the 'organization of early German society, the facts of the Frankish invasion of Gaul' through to 'the gradual re-emergence of Roman law in a different form', and finds that 'all these stages in Montesquieu's outline of development may be found in the pages of Chenon, Lot and other modern historians.'⁹⁸ She finds only two matters on which he may be mistaken and which affect his story: 'One is the question as to whether people were free, in Merovingian and Carolingian times, to choose under which law they would live', the other is 'whether, from Merovingian times onwards, the administration of justice was ordinarily attached to the grant of land'.⁹⁹ Neither of these possible areas of misinterpretation affect the more general account which I have summarized.

* * *

When Montesquieu died his close friend the Earl of Chesterfield wrote the following tribute to him. 'His virtues did honour to human nature; his writings justice. A friend to mankind, he asserted their undoubted and inalienable rights with freedom, even in his own country, whose prejudices in matters of religion and government he had long lamented, and endeavoured, not without some success, to remove. He well knew and justly admired the happy constitution of this country, where fixed and known laws equally restrain monarchy from tyranny, and liberty from licentiousness. His works will illustrate his name and survive him as long as right reason, moral obligation, and the true spirit of laws shall be understood, respected, and maintained.'¹⁰⁰

A century and a half later his French biographer, the historian Sorel, wrote a similar appraisal. 'We have had sublimer philosophers, bolder thinkers, more eloquent writers, sadder, more pathetic, and more fertile creators of fictitious characters, and authors richer in the invention of images. We have had no more judicious observer of human societies, no wiser counsellor regarding great public interests, no man who had united so acute a perception of individual passions with such profound penetration into

⁹⁶Montesquieu, **Persian Letters**, no. 101

⁹⁷ Cox, **Montesquieu**, 21

⁹⁸ Cox, **Montesquieu**, 21

⁹⁹ Cox, **Montesquieu**, 21

¹⁰⁰Collins, **Montesquieu**, 177

political institutions, - no one, in short, who has employed such rare literary talent in the service of such perfect good-sense.¹⁰¹

These descriptions praise Montesquieu's mixture of high intelligence and courage. He managed to speak out against cruelty, slavery and absolutism despite the dangers. More importantly, he kept his regard for liberty, his freedom of spirit, alive despite the pressures of the French State and the Inquisition. One way to explain his achievement is to take the final message of his **Lettres Persanes**. Throughout the book the absolutist Usbek has been trying to break the spirit of the women in the harem. He believes he has at least achieved this in the case of his favourite Roxanne, whom he had raped into submission. Then, in the last letter she writes to him as she dies from self-poisoning, she exults that all his oppression has failed. In the midst of tyranny, watched and guarded and punished, she has kept her spirit and soul free. We can hear Montesquieu's voice in hers, as he writes to the absolutist forces of his time. 'How could you think that I was such a weakling as to imagine there was nothing for me in the world but to worship your caprices; that while you indulged all your desires, you should have the right to thwart me in all mine? No: I have lived in slavery, and yet always retained my freedom: I have remodelled your laws upon those of nature; and my mind has always maintained its independence.'¹⁰² Thus it is absolutism which collapses, not the individual conscience. 'For a long time you have had the satisfaction of believing that you had conquered a heart like mine: now we are both delighted: you thought me deceived, and I have deceived you.'¹⁰³

Through his integrity and support for liberty Montesquieu provided a model which would later inspire the two greatest revolutionary movements towards liberty of modern times. He was constantly cited and quoted by the figures in both the American and French revolutions and Jefferson's declaration of independence and the rights of man was based on his inspiration.

What, then, has this dialogue with Montesquieu contributed to an answer to the two riddles posed at the start of this book, namely why what were the forces which have made the development of human civilizations so slow and painful, and then what has enabled the 'progress' of mankind to be so amazingly rapid during the last three hundred years? In terms of approach, his elaboration of a comparative, structural and 'ideal type' methodology strengthens the case for believing that these are a fruitful way to approach the problem. He also provides a detailed historical account.

In terms of theory, there are a number of important contributions; the difficulties and precariousness of liberty, the relations of spheres and the tendency towards a rigid overlap of domains, yet the necessity of separation, political pluralism and liberty in order to create a virtuous spiral. Other important ideas include : the dangers associated with being conquered, islands and liberty and the importance of the size of political units on the likelihood of despotism. Above all, he lays out a preliminary historical account of how the escape may have happened. He shows the natural tendency of the rise and then destruction of centres of freedom, but he then shows through his examination of European history how England just managed to avoid this tendency. He appreciates the crucial role and nature of feudalism and shows how

¹⁰¹Sorel, **Montesquieu**, 28-9

¹⁰²Montesquieu, **Persian Letters**, no.161

¹⁰³Montesquieu, **Persian Letters**, no.161

everywhere (except England) feudalism degenerated into caste and absolutism. He also considers the important case of China.

Among other useful ideas are those concerning the temptations to conquest which ruined the Roman Empire, the importance of Protestant Christianity as a religion of liberty, the importance of climate and the surprising advantages of having poor natural resources, and the advantages of ecological and geographical diversity in encouraging trade. He also noted the beneficial effects of commerce on 'morals', the enormous effects of rice cultivation on population and social structure, the devastating effects of the Mongol invasions, the dangers of over-taxation, and the ways in which liberty in turn, at least for a while, leads to wealth. Finally there is his analysis of the system of checks and balances, of the role of Common Law and parliament, and of secondary powers, and in the maintenance of liberty once it had been achieved. Ultimately Montesquieu saw the solution to the riddle in the accidental emergence of a balance of powers between lords, clergy ruler and people, always fragile but somehow long maintained in England.

With Montesquieu we have a first approximation to an answer. Not only do we know how an answer might be constructed, but large parts, particularly on the geographical and historical side, have been partially filled in. Yet a partially completed answer is even more tantalizing and beckons us on to our next encounter with one of Montesquieu's greatest disciples, Adam Smith.