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Montesquieu's Liberty: Death, Security, and the Liberal Regime in *The Spirit of the Laws*

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Abstract

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Broadly speaking, this paper tackles the questions "What is liberty?" and "Is liberty good? If so, why?" Considering the innumerable understandings and defenses of liberty, this paper limits its focus to Montesquieu's account of liberty in *The Spirit of the Laws*. To summarize at great cost, liberty is roughly equivalent to security and comes into being through the separation of powers, the reformation of the criminal code, and the growth of commerce. The need for security is rooted in man's primal fear of death: Montesquieu's state of nature demonstrates that man is unique among the animals in his foreknowledge of death and the fear that results from this foreknowledge. Death inspires man at his core more than any other passion, and man's fixation on death provides a means by which one can rank regimes. In conclusion, liberty, understood as security, is good in that it addresses man's defining passion, the fear of his own death; that said, liberty cannot resolve the problem of death, as the solution to this problem lies beyond the reach of politics.

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Introduction

Liberty. The word, perhaps more than any other, forms the foundation of American political discourse. It stands as one of the three enumerated unalienable rights in the Declaration of Independence. Politicians play on the ambiguities of such a loaded word, and no politician would ever dream of proclaiming his or her illiberality. Caught up in this echo chamber, one may lose sight of one of the most obvious and important questions: Why is liberty good and why should any regime have liberty as its fundamental principle? What need does liberty satisfy on both the political and individual level? What are the foundations of this need in human nature and can one ever sate this need? If one should find liberty to be good, does it follow that the liberal regime is good or perhaps even the best regime?

In the examination of the worth of liberty, one finds no better place to start than the philosopher most responsible for the American Constitution, the philosopher whom Madison referred to as the “oracle,” Charles de Secondat, Baron de Montesquieu. His masterwork, *The Spirit of the Laws*, introduces ideas such as the separation of powers and a reformed criminal code, but it does not limit itself to liberal themes. It essays to give a comprehensive account of politics relevant to all times and all places. Because of the depth and breadth of the work, the quest to find the normative foundations of liberty will be largely contained to *The Spirit of the Laws*.

What is Liberty?

Without any further delay, one must establish what is meant by liberty. Consultation with any dictionary or encyclopedia of philosophy will yield a dizzying number of entries for “liberty.” Montesquieu himself points to the enduring ambiguity of the word: “each has given the name ‘*liberty*’ to the government that conformed to his customs or inclinations” (XI.2)¹. While Montesquieu essays to reach a clear, disinterested definition of liberty, his conclusions are far from pellucid. At the very beginning of his treatment of liberty, Montesquieu makes a crucial distinction that divides his discussion of liberty into two books (XI and XII). Expressing the “general idea” of the book, Montesquieu states, “I distinguish the laws that form political liberty in its relation with the Constitution from those that form political liberty in its relation with the citizen” (XI.1). Liberty, whatever it may in fact be, has two components—constitutional and individual.

Montesquieu’s presentation of constitutional liberty is complex, though ultimately convincing and consonant with his understanding of individual liberty. Speaking of constitutional liberty, Montesquieu quickly separates it from what he calls independence [*indépendance*]—doing simply as one wishes. First, Montesquieu explains that “liberty can only consist in the power to do that which one should want to do and in not being constrained to do that which one should not want to do” (XI.3). This definition seems strange insofar as there is a normative constraint implicit in the “should,” though it is as yet unclear what this normative constraint is.

¹ Citations without an author’s name are from Montesquieu’s *The Spirit of the Laws*. Citation format is as follows: Book Number.Chapter Number.Paragraph Number. The paragraph number only appears in the citations of longer chapters such as XIX.27.6. All translations are the author’s own.

Almost as soon as he arrives at this understanding, Montesquieu revises his definition, but rather than clarifying the normative grounds, he seems to render the definition less clear: “liberty is the right to do all that the laws allow” (XI.3). The first definition may well be vague, but the second definition seems to equate liberty and obedience. At first blush, it would seem that a North Korean is as free as a Swede in that both have the right to do what the laws allow. That said, Montesquieu offers a reasonable explanation for the apparently puzzling definition: if a citizen were able to do whatever he pleased, including that which is forbidden “he would no longer have this liberty, because others would have this same power” (XI.3). If every citizen were free to do whatever he wished, each would be free to rob others of their liberty. If one has need of example, “the independence of each citizen is the object of Polish laws; the result: the oppression of all” (XI.5). Laws and their concomitant force protect the individual; to transgress these laws is to invite anarchy at the risk of one’s own liberty.

Thankfully, several qualifications in the following chapter elucidate precisely what Montesquieu means by liberty in its relation to the constitution. First, a regime must be moderate in order for liberty to flourish: “political liberty is only found in moderate governments” (XI.4)—this condition precludes North Korean obedience from being understood as liberty. While Montesquieu does not explicitly define moderation, he earlier states, “a moderate government can, as much as it wants and without peril, relax its springs [*relâcher ses ressorts*]” (III.9). The language of springs is an allusion to the Foreword in which Montesquieu describes the principle of a government as the “spring that makes it move [*le ressort qui fait mouvoir*]” (*Avertissement de l’auteur*.1).

Montesquieu often speaks of the moderate government in direct opposition to the despotic government. The despotic government cannot maintain itself without the ever-raised fist; should the people no longer fear the despot, his reign of terror would effectively end. In contrast, moderate regimes can survive while relaxing their springs; for example, a monarchy, which by its nature “is favored by the passions and favors them in turn” (IV.5), could survive for centuries without paying fastidious attention to honor. In fact, Montesquieu presents monarchies in contrast to republics and their virtue: “in monarchies, politics accomplishes great things with as little virtue as possible; just as in the most beautiful machines, the art employs as few movements, forces and wheels as possible” (III.5). One might even say that a regime becomes moderate by acting in accord with nature; despotisms and the most brutal republics need constantly to reinforce their principles, whereas more moderate regimes seem to perpetuate themselves as though by natural laws.

Montesquieu’s understanding of power complements and enriches Montesquieu’s constitutional liberty. Power, as Montesquieu understands it, is dangerous and by its very nature tends to be abused; once power is abused, liberty is lost. Foreshadowing his subsequent praise of the English Constitution, Montesquieu writes, “liberty exists only where power is not abused; but it is a *eternal experience* that all men [*tout homme*] who have power are drawn to abuse it” (XI.4, emphasis added). Power itself then exhibits a naturally illiberal tendency; by its nature, power tends to be abused by its bearers. As power is a political necessity, legislators must contrive to control power if they wish to preserve constitutional liberty. This contrivance, contestably Montesquieu’s most famous innovation, is the separation of powers: “such that power not be abused, it is necessary

that, by the disposition of things, power stop power. A constitution could be such that no one would be constrained to do what the law does not oblige him to do and no one would be prevented from doing what the law allows” (XI.4). This separation of powers prevents an abuse of any one power, and in so doing, guarantees the constitutional liberty of the state.

To recap, constitutional liberty is first understood as the power to do what one should want to do, then as the right to do what the laws allow. These definitions, however, are only valid with the grand qualifications that the state and its laws be moderate and that there be no abuse of power. Political liberty with regard to the constitution then consists of the right to do anything the law does not forbid within moderate regimes that have institutional safeguards against abuses of power.

In order to understand political liberty, Montesquieu argues that one must understand political liberty in its relation with the citizen as well. While constitutional liberty is a complex idea supported by a relatively simple structure, the separation of powers in a moderate government, individual political liberty is a relatively simple idea supported by a labyrinthine network of mores, laws, and customs.

Defining political liberty in its relation to the citizen, Montesquieu writes, “political liberty consists of the security, *or at least the opinion* that one has of one’s security” (XII.2, emphasis added). While the qualification may seem minor, the reader is urged to take note of this qualification, as it will emerge once more in later sections of the paper. Montesquieu consistently argues that this second component of political liberty consists in the security of the individual.

Compared to constitutional liberty, individual liberty requires more complicated mechanisms. While constitutional liberty rests on a certain “ordering of fundamental laws,” individual liberty requires “mores, manners, and received examples to give to birth it and certain civil laws to favor it” (XII.1). A multitude of conditions is required to give birth to personal liberty; however, of these many components, Montesquieu ranks the civil laws as supremely important. From the Ancient Greeks to the Frankish kings, these laws seem to arise fortuitously rather than being the product of a grand, architectonic project; however, this should in no way diminish their importance: “the knowledge that has been acquired in several countries and that will be acquired in others concerning the surest rules in criminal judgments is of *more concern to man than any other thing in the world*” (XII.2, emphasis added). A complex network of culture and civil laws gives birth to individual liberty.

While Montesquieu’s two presentations of liberty seem distinct, they both ultimately point toward individual security. The right to do no more than the laws allow in a moderate, balanced regime resembles at first mere obedience; however, upon closer examination, this obedience—both the citizens’ obedience to statutory regulations and the rulers’ obedience to constitutional limits—provides the individual with security. Individuals will certainly stray from the straight and narrow, but the regime will differentiate their capricious independence [*indépendance*] from their justified liberty [*liberté*]. Enforced limits to rulers’ power will prevent tyrannical oppression. These both benefit the individual security that Montesquieu speaks of when discussing individual liberty. One might imagine that one would lead to the other or even that one would cause the other; however, each exists independently of the other: “it could come to pass that the

constitution would be free and that the citizen not be free. The citizen could be free and the constitution not. In these cases, the constitution will be free by right and not in fact; the citizen will be free in fact, but not by right” (XI.1). Though neither constitutional nor individual liberty guarantees the other, both liberties share the aim of the individual’s security.

In the midst of following the intricacies of Montesquieu’s various definitions and arguments, one may have lost sight of Montesquieu’s curious conclusion—his definition of liberty as individual security. In modern politics, lawmakers often pose political debates as an opposition between the interests of liberty and the interests of security—for example, the PATRIOT Act. Conservatives argue that the act’s measures are necessary for the sake of security; liberals argue that the act unconstitutionally infringes on fundamental civil liberties. In stark contrast to today’s debates, Montesquieu gladly conflates liberty and security, and yet, substantive differences separate liberals and conservatives on issues of national security and civil liberties.

It is worth wondering whether Montesquieu does not in fact commit the fallacy he earlier criticized, namely, that “each has given the name ‘*liberty*’ to the government that conformed to his customs or inclinations” (XI.2). Montesquieu seems to ascribe a universally compelling idea—liberty—to what is, in fact, harsh and unappealing—security. Throughout the text, Montesquieu seems to use these two distinct terms interchangeably; with that in mind, one should be aware of the ambiguities that can arise in some situations and one should also consider why Montesquieu chooses to use either “liberty” as opposed to “security” or “security” as opposed to “liberty” wherever he does.

It is also interesting to note where else the idea of security arises. While discussing the constitution of England, Montesquieu describes the “tranquility of mind [*tranquillité d'esprit*] that provides each with opinion of his security” (XI.6.2). In the previous chapter, Montesquieu catalogues the aims of various regimes citing as the aim of the famously despotic Chinese empire “public tranquility” (XI.5). Here, one sees that tranquility or security, portrayed in some lights, has a sinister air. It therefore makes sense that Montesquieu adorns the uninspiring security with the appealing trappings of the name of liberty.

The State of Nature and Man

Arriving at the broad understanding of liberty as security, one must next question the necessity of security. Why is liberty good? Why is security necessary? What threatens man's security?

The roots of liberty's worth lie in the appraiser himself, man. Liberty is good insofar as it serves human needs or wants, and so one must understand man in order to understand liberty. Montesquieu affords the reader no more perspicacious analysis than in his treatment of the state of nature. There, man remains pure and untamed, uncorrupted and uncivilized by the later influences of society. While the state of nature was a popular tool with many of the political philosophers of the 17th and 18th centuries, each philosopher presents the state of nature slightly differently—with his own personal details and emphasis.

While the matter is complex, the state of nature seems to represent a time prior to the most significant natural laws; however, there is a tension within the peculiar relationship between the state of nature and the natural laws. On the one hand, Montesquieu writes, the natural laws are those “man would receive in the time before the establishment of societies” (I.2). The chronological reception of the natural laws suggests that the state of nature is antecedent to the natural laws that man receives.

On the other hand, in the previous chapter, Montesquieu explains how certain relations exist *a priori*, irrespective of time and observable phenomena. For instance, relations of human justice exist independent of man's state or even his very existence: “to say that there is nothing just or unjust other than that which is ordered or forbidden by positive law is to say that before a circle was drawn, all its radii were not equal” (I.1).

Much as the premise that all radii are equal is immanent in the existence of a circle, so premises about justice can be said to be immanent in humanity. It is unclear then whether the natural laws are *a priori* human properties or laws that are received in a state prior to the establishment of societies.

Since Montesquieu never explicitly connects the *a priori* relations to the four explicitly enumerated natural laws, these natural laws will be treated as received laws as the text of I.2 suggests. It is possible, even likely, that other laws, such as gravity, would fall under the *a priori* relations of I.1. From this interpretation, the state of nature would be a time antecedent to some of the natural laws—the enumerated natural laws—but not all natural laws—such as gravity or friction.

Montesquieu's state of nature then depicts man prior to the four laws of nature and positive law. To summarize this man in a word, he would be pitiable. This man “would at first feel only his weakness; his timidity would be extreme” (I.2). Montesquieu provides proof for the existence of this antediluvian man by pointing to the feral savage men periodically discovered in dense forests. Fear dominates these men: in Montesquieu's words, “everything makes them tremble, everything makes them flee” (I.2). Before the rise of positive laws or natural laws, fear dominates man.

Before one proceeds to the Second Natural Law, one must look to the original French text to understand the meaning and precise character of Montesquieu's fear. In French, two words can express fear: *peur* and *crainte*. Judith Shklar in her work, *Montesquieu*, perspicaciously analyzes the subtleties inherent in the two words: “fear [*crainte*] was for Montesquieu a physiological reaction set in motion by a ‘moral’ impulse when a command is transmitted from the soul to all the fibres of the body with

paralysing results. It is involuntary and far too imperious to be controlled, especially as it is a permanent state of foreboding, not a sudden response to danger [*peur*]" (Shklar 1987, 84). Describing man in his state before the effect of Natural Laws, Montesquieu writes, "fear [*crainte*] would lead men to flee one another" (I.2). Montesquieu specifies this fear as the physiologically rooted and paralyzing *crainte*, rather than the reactionary *peur*. For now, this etymological dichotomy helps to clarify what Montesquieu means by fear; later on, this precision will help in understanding and revealing the precise object of man's fear.

At this point, another tension within the laws of nature should be addressed. Montesquieu presents four laws of nature that describe man's essential condition in the state of nature. At first, one might easily think that Montesquieu presents the laws in order of decreasing importance; however, Montesquieu reverently explains that the law that impresses the idea of a creator on man is not among the four laws of nature, because this sacred relation "is the first of the natural laws by its importance and not by the order of laws" (I.2). This comment suggests that the following four laws of nature take their order from their chronological order in the state of nature. While this interpretation is not without its problems, it seems the most logical interpretation considering the above quotation.

The state of nature, however, is far from static; it is really as much a process—the gradual introduction of sequential natural laws—as it is a fixed state. The First Natural Law arises directly from man's essence: "in this state, each feels inferior; each hardly feels equal to the others. Such men would not therefore seek to attack one another, and *peace* would be the first natural law" (I.2, emphasis added). This natural peace

differentiates Montesquieu from Hobbes and Hobbes's war of all against all; while Montesquieu may recognize a rapacious desire to subjugate other men, he does not see this as a natural or principal desire. This primordial state of peace seems much more pacific than Hobbes's *war of all against all*. That said, rather than the work of a divine benefactor, fear of annihilation brings about this peace. The First Natural Law is fear-inspired peace.

The Second Law of Nature bears on man's most rudimentary need—nourishment. In short, man becomes hungry and thirsty and seeks nourishment: “to the feeling of weakness, man would join the feeling of his needs. Thus, another natural law would be that which drives him to search for nourishment” (I.2). Once again, the reader should take into account the physiological or carnal nature of this man. His soul seems enslaved to his body—he even devotes his intellectual activity to the body: “it is clear that his first ideas would not be speculative ideas: he would dream of the conservation of his being before searching for the origin of his being” (I.2). Throughout the First and Second Natural Laws, Montesquieu's man is enthralled to material needs and their satisfaction.

The Third Law of Nature occurs during man's first encounter with his fellow men. While fear and timidity isolate each man from the rest of his species, “marks of a mutual fear” and “the pleasure that an animal feels at the approach of an animal of its species” bring men together (I.2). These two feelings, as well as heterosexual attraction, combine to usher in the Third Natural Law: “additionally, this charm that the two sexes inspire in one another by their difference would add to this pleasure; and natural entreaty that they always make to one another would be a third law” (I.2). Montesquieu presents here the first glimpses of man's sociability. On the one hand, man seems to have the

natural seeds of sociability within him; through mutual fear and slight pleasure at seeing one another, man comes to know his fellow man. On the other hand, these interactions seem self-interested. The charm of which Montesquieu speaks is sexual attraction, which reaches its consummation in coitus by means of what the author so delicately terms “the natural entreaty.” Whether disinterested or self-interested, this provisional gathering of men occurs naturally; man is not necessarily an isolated being.

Finally, the Fourth Law of Nature leads directly to the foundation of society. Speaking of man in the purely natural state, Montesquieu writes that man “would have the faculty of knowing rather than he would have knowledge itself” (I.2). Subsequent to the Third Law of Nature, sexual union, man “succeeds in gaining knowledge [*ils parviennent encore à avoir des connaissances*]” (*Ibid*); this law does not refer to the acquisition of certain discrete facts or pieces of knowledges—instead, it refers to the ability to acquire knowledge. It remains unclear whether there is any causal connection between the Third Law of Nature and gaining knowledge or whether the Third Law of Nature is simply antecedent to the gaining of knowledge.

As for the relation between the fourth natural law and the formation of society, Anne Cohler notes a problematic trend in the causal relation between knowledge and sociability: “in book 1, chapter 2, Montesquieu moves from the ability to acquire knowledge to the desire to live in society. Social life is, then, linked to a capacity that people do not share equally” (Cohler 1988, 100). Unequal ability to acquire knowledge leads to unequal sociability, and these inequalities undermine the egalitarian foundations of universal rights. Through this knowledge, “they have therefore a new motive to unite;

and the desire to live in society is a fourth natural law” (I.2). So advances man from scared, isolated timidity to a society of men.

The modern critical reader may wonder on what grounds Montesquieu can make pronouncements about pre-historical man. In response, Montesquieu explicitly defends his claims by pointing to savages found in the forests in Germany and England; these uncivilized men lacked speech and may very well have borne a great resemblance to the ancestors Montesquieu limns. Hobbes, the first major political philosopher to use the idea of the state of nature, defends his conclusions by pointing to the querulous traits of modern man. Unlike Hobbes, Montesquieu does not find his evidence in modern, civilized man. One can also understand the state of nature as allegorical rather than historical; in such a world, the state of nature serves as an allegorical representation of man’s soul and the passions that animate it rather than an accurate, literal historical account of man.

In addition, readers may wonder why Montesquieu elects to use the state of nature rather than other historical accounts. In choosing the state of nature as the tool by which one can understand man, Montesquieu challenges the two great titans of his day: classical philosophy on the one hand and revelation and the Bible on the other. First, Montesquieu challenges the classical thesis “that man is by nature a political animal” (Aristotle *Politics*, 1253a2). Montesquieu’s man is originally apolitical and asocial; naturally atomistic, he only later enters into the political union. The suggestion that man finds his fulfillment or supreme potential in politics is wholly absent. Second, Montesquieu subtly suggests that this historical account is more accurate than its biblical counterpart. Instead of Edenic bounty, jolting penury defines man’s first moments. Instead of Adam and Eve

created in God's image, nameless scared men wander in search of sustenance. Instead of an intimate relationship with God, the impression of a creator, while putatively most important, arises only after history and the laws of nature have taken their courses (I.2). Montesquieu follows his modern predecessors in arguing by means of the state of nature and quietly relegating the claims of Classical political philosophy and the Bible.

This state of nature is harsh to man. It provides no prelapsarian paradise; instead, man is overwrought and never at ease. Aside from the preservation of his body, nature provides man with no *telos* [Ancient Greek for end, purpose, or ultimate aim] (Pangle 1973, 34); nature does not exhort man to fight well or to live nobly. It offers him no salvation. Indeed, it stands as an implicit criticism of the state of nature that man has left it; man now uses the state and technology, both human contrivances, to satisfy the needs that nature herself was unable to satisfy.

Montesquieu's state of nature provides rare insight into his understanding of man. His portrayal of the state of nature stands as a solid, immobile, universal commentary on man; this stands in stark contrast to much of the rest of his analysis, which follows a broadsweeping, Aristotelian pattern. That said, before one makes any dramatic conclusions on the basis of the state of nature, one must understand that great gulfs separate modern man from the state of nature. While all mankind shares this history, great cultural facts such as the climate, the terrain, the way of life, the religion, and other mores—in short, the spirit of the laws—influence and shape the appropriate laws for various peoples (I.3). In spite of this caveat, the state of nature provides an invaluable glimpse into man's immutable nature.

The most striking feature of Montesquieu's state of nature is the intense fear that this original man feels. His fear dominates him; it instills in him a feeling of inferiority and timidity. In response to Montesquieu, Rousseau asks, "If men do not attack one another, why should they fear one another?" (Pangle 1973, 39). Rousseau's observation is at once elementary and profound. It pointedly asks, "Why is man afraid?" From this question, Rousseau constructed a state of nature in which man was not afraid, but instead lived in a bucolic, sweet simplicity; Montesquieu, however, does not view the earliest times so favorably. In Montesquieu's state of nature, men initially flee from other men, though nature has somehow endowed all men with this mysterious timidity. While the threat of wild animals may account for some of this fear, it seems highly unlikely that the threat would be significant enough to merit this paralyzing fear. Additionally, if predators were the inspiration for this fear, every animal, except those at the very top of the food chain, would feel this fear. The fear, it seems, comes from within. After intense consideration, the most plausible cause of man's fear seems to be his own mortality; he fears death and the possibility of non-being.

Defending the thesis that man's fear in the state of nature is due to his awareness of his own death, one should consider how exactly man differs from a beast. At several points in his portrayal of the state of nature, Montesquieu refers to man as an "animal" or being "unlike the other animals" (I.2). Here, Montesquieu reveals his scientific, Enlightenment colors: he chooses to describe man as an "animal"—rooted in the Latin *anima* meaning either soul or breath—instead of describing man as a creature—a creation of a higher intelligence, such as the Christian God. Montesquieu continues to talk of mankind as a species, which immediately evokes the scientific taxonomy of biology.

Man, therefore, is at least partly animal—and, as a result, at least partly scrutable to modern science.

Man, however, is not simply animalian. He is distinct from the beasts in one crucial manner: the beasts “do not have our hopes, but they do not have our *fears*; they suffer death as we do, though they lack foreknowledge of it; the majority even conserves themselves better than us, and they do not make such bad use of their passions” (I.1, emphasis added). Foreknowledge of death, then, separates man from beasts; while other factors could possibly explain man’s fears, the proximity of this fact—foreknowledge of death—and the expression of man’s hopes and fears seems to suggest a link. With the knowledge of one’s own death, one hopes for immortality and one fears the obvious, and perhaps ineluctable, death.

The Third Natural Law corroborates this account of man’s passions and fears and also brings to mind Plato’s account of erotic love in the *Symposium*. One must note that the natural entreaty issues from the charm “that the two sexes inspire in one another by their difference” (I.2); one can reasonably conclude from the heterosexuality of this union that the union is a productive or generative one. This idea then would seem to parallel Plato’s contention in the *Symposium* that a desire for immortality by living through one’s children inspires erotic love and procreation (Plato *Symposium*).

In his brief discussion of the Fourth Natural Law, Montesquieu also seems to suggest that the fear of death is the first and arguably the most powerful feeling that animates man. After the Third Natural Law, man comes to have knowledge, which leads to the formation of society: “Besides the feeling that the men have at first, they come to have knowledge; in this way, they have a *second* link that the other animals do not have”

(I.2, emphasis added). Curiously, Montesquieu does not explicitly mention a first link or even the word for link (*lien*). Considering the Third Law that directly precedes this passage, one could easily think that sex would be the first link, but sex is something of which all manner of beasts partake. Referring back to the passage that differentiates men from beasts, one remembers the fear of death as the link that distinguishes all men from beasts. Combining the two passages, one realizes that this fear of death is temporally the first passion. Looking only at the order of passions, one can justifiably see fear of death as the dominating passion, because it faces no resistance until other passions arise.

The attentive reader may very well object to man's possessing a foreknowledge of death in the state of nature. She may object that "man in the state of nature would have rather the faculty of knowing than he would have knowledge itself" (I.2). In response, one could add that the foreknowledge of death is not so much an article of knowledge (*connaissance*) as it is an awareness of some manifest metaphysical fact. One might very well feel death's cold breath on one's neck, but an abstract, conceptual knowledge of one's own death may be far off.

Given Montesquieu's accounts of men and beasts, of the Third Natural Law, and of the gaining of knowledge, one can reasonably conclude that the fear of death simply inspires this dominating and immobilizing fear in Montesquieu's primordial man. This awareness of death makes man timid and gives him a fundamentally different nature than the rest of the animals, the beasts. In order to understand fully the inspiration and ends of Montesquieu's political science and its regimes, one must be cognizant of man's definitive passion—the fear of death.

The fear of death and its titanic centrality in man's passions provide at once a satisfying defense of liberty and also a polestar by which one can judge and rank various different regimes. The fear of death allows one to compare—albeit cautiously—the myriad of distinct regimes that Montesquieu presents. It is then with a view to the preservation of life against the metaphysical necessity of death that one must consider the liberal regime, the security that its institutions promise, and the alternatives that are foregone in the pursuit of liberty.

Liberty through the Constitution: The Separation of Powers

With knowledge that Montesquieu's political liberty is equivalent to a kind of moderate security that answers to man's primordial fear of death, one may well wonder at this point how liberty comes into being. Broadly speaking, the liberal regime can be brought about through laws, mores, and natural conditions. Among the number of things that guarantee liberty or security in a state, the laws stand as the most explicit and the most visible cause of liberty.

As stated previously, liberty exists in relation to the constitution through the construction of a system in which distinct powers check one another so that no one single power becomes tyrannical enough to threaten the liberty of the individual. Ultimately, this interlocking system—the separation of powers—provides for the individual's liberty understood as security.

The theory of the separation of powers perhaps stands as Montesquieu's most famous innovation. That said, a close historical analysis indicates that Montesquieu's idea may be far from original: "it is important, first of all, to remember that he was neither the first nor the last theorist to expound the gospel of liberty through checks and balances. Harrington, Locke, and Blackstone, among others, likewise expressed favourable opinions on this subject" (Wright 1933). As for his impact on the American Constitution, some scholars argue that he was singularly influential (Wright 1933) whereas others think history has overstated Montesquieu's role in the formation of the American Constitution (Keohane 1976).

In such a debate, it seems wisest to consult the sources of Montesquieu's day, specifically, *The Federalist Papers*. In the Federalist No. 47, "The Particular Structure of

the New Government and the Distribution of Power Among Its Different Parts,” Madison, under the pen name of Publius, writes, “The oracle who is always consulted and cited on this subject is the celebrated Montesquieu. If he be not the author of this invaluable precept in the science of politics, he has the merit at least of displaying and recommending it most effectually to the attention of mankind” (Madison *Federalist Papers*). Even if the theory of the separation of powers was commonplace in Montesquieu’s time, one should not underestimate Montesquieu’s impact on the American Constitution. Be it due to the cogency of the presentation of his theory, his luck, or the tastes of the clerisy, Montesquieu’s name above all others is tied to the idea of the separation of powers and the American Constitution.

Montesquieu selects one constitution from among the myriad candidates to demonstrate the effective separation of powers. England, Montesquieu believes, “is the one nation in the world that has as its constitution’s direct object political liberty” (XI.5). Should the principles of England’s Constitution be sound, liberty “will appear there as in a mirror” (*Ibid*). Curiously, during the peroration of his presentation of the English Constitution, Montesquieu states that “it is not for [him] to examine if the English actually enjoy this liberty or not. It suffices to say that their laws establish it” (XI.6.69). Drawing from these two passages, many scholars have argued that Montesquieu is describing a theoretical or an ideal England rather than a realistic England (Rahe 2009b, 35). He does not know whether liberty will appear as though in a mirror or whether the English enjoy their liberty in fact—after all, inhospitable mores or brutal civil laws may threaten the English citizen’s security. What he does know, however, is that the

separation of powers should, barring any preponderantly powerful illiberal force, prevent any one power from assuming a tyrannical position.

The English Constitution, like all other states, has “three sorts of power: the legislative power, the executive power of things pertaining to the right of nations and the executive power of those who depends on civil law” (XI.6.1). Montesquieu later clarifies the second power as the power that “makes peace or wages, sends or receives ambassadors, establishes security, and prevents invasions” (XI.6.2). To the third power, he delegates the power of “punishing crimes or judging disputes between individuals” (*Ibid*). The second power is what is commonly known as the executive branch; the third power the judicial branch.

While these three powers seem obvious to any reader acquainted with American civics, Montesquieu’s choice of executive, judicial, and legislative powers diverges from the Aristotelian triptych of the deliberative, magisterial and judicial functions. Additionally, ancient thinkers by no means suggested entrusting different men or bodies with specific functions: in the ancient world, an individual or a political body could have justly exercised all three functions at once (Pangle 1973, 119). Acknowledging this discrepancy, Montesquieu cites this different approach as the reason why the ancients “were not able to arrive at a correct understanding of monarchy” (XI.9). The separation of powers stands as an unquestionably modern innovation of Montesquieu’s political science.

Montesquieu finds the prospect of the unification of executive, legislative, and judicial powers terrifying. While the ancients tolerated the idea of unified rule so long as the ruler was virtuous, Montesquieu foresees that “all would be lost, if one man or one

body of principal men or of nobles or of the people exercised all three powers: the power of making the laws, the power of executing public resolutions, and the power of judging the crimes and the disputes of individuals” (XI.6.6). This consolidation of powers is inseparable in Montesquieu’s mind with his despotism *par excellence*, Turkey: “in Turkey, where the three powers are united in the person of the sultan, there reigns a frightening despotism” (XI.6.7). Without the separation of powers, liberty forever teeters on the precipice of the abyss, despotism.

Montesquieu describes a system in which all three powers are delegated certain distinct powers and certain checks on other branch’s power. For instance, the executive, the “part of government, which almost always has need of instantaneous action, is better administered by one rather than by many” (XI.6.36). War and international relations would be the most obvious prerogatives of the executive power. A bicameral legislature should exercise the legislative power, divided between a body of the nobles and a body of the people; the lower house may enact laws, whereas the upper house, the body of nobles, can only veto laws (XI.6.35). Between these two powers, a system of check and balances maintain a rough equilibrium of powers.

It is the judicial power, however, that Montesquieu seems most concerned with. Rather than having a formal, permanent body to issue judgments on crimes, like the French *parlements* of Montesquieu’s day (Shklar 1987, 4), Montesquieu suggests an impermanent body drawn from the people at-large that lasts “only as long as necessity requires” (XI.6.13). Creating an impermanent, non-professional judicial branch considerably mitigates the terror that judicial branches could inflict: “in this way, the power of judging, so terrible among men, not being attached to a certain state or to a

certain profession, becomes, so to speak, invisible and null. One does not continually have judges before one's eyes; one fears the magistracy rather than the magistrates” (XI.6.14). While a class of magistrates will exist to oversee the proceedings, a temporary jury composed of non-professionals decides the question of guilty and innocence.

Unlike the current American system of checks and balances, Montesquieu's separation of powers does not include a permanent judiciary with the power of judicial review. Since *Marbury v. Madison* (1803), the judicial branch in the United States has enjoyed the power of judicial review, which is to say that the judiciary has the responsibility of reviewing the constitutionality of legislative statutes and executive orders. This constitutes the judiciary's principal check on legislative and executive power. Montesquieu does not include the idea of judicial review in his account of the separation of powers; instead, Montesquieu seems to be interested in diminishing the role of the judiciary in an effort to provide for the individual's security.

Interestingly, Montesquieu's treatment of judicial power gives one an insight into Montesquieu's view of liberty and also of man. Paul Rahe perspicaciously notes the psychological character of Montesquieu's liberty (Rahe 2009a, 98). Montesquieu pays great attention to the tremendous power that judgment and consequent punishment can have on the soul. Liberty does not wholly remove the fear of punishment—that seems politically inadvisable—but it makes punishment predictable and avoidable, putting the citizen at rest while still enforcing the necessary laws. This predictability is of such vital importance that Montesquieu explains, “in a state that has the best possible laws, a man who had undergone a trial and who would be hanged the next day would be freer than a Pasha in Turkey” (XII.2).

This psychological need for security also shows itself at the beginning of the chapter when Montesquieu mentions the “tranquility of mind [*tranquillité d'esprit*]” (XI.6.3), which the modern liberal regime produces. The separation of powers does more than simply construct a certain kind of physical government. It positively soothes man’s psychological woes. It directly addresses the heart of his insecurity.

Of the two liberties, constitutional and individual, Montesquieu first addresses constitutional liberty; he proceeds by adducing the English Constitution as an example of the liberal regime. Through the separation of powers and a system of checks and balances, the individual comes to have a ‘tranquility of mind’ that redounds to the advantage of his liberty. For now, the very psychological character of man’s liberty, and of the fear that demands this liberty, should be noted. Montesquieu next addresses the other component of political liberty, liberty in its relation with the citizen.

Liberty in its Relation with the Citizen

Liberty in its relation with the constitution comes about through the separation of powers; however, it is important to note that neither the presence of constitutional liberty nor the presence of individual liberty guarantees the presence of the other (XII.1). It remains, then, to see how a legislator introduces individual liberty into his regime.

As stated earlier, political liberty in its relation with the citizen “consists of security, or at least of the opinion of one's security” (XII.2). Insofar as both liberties, constitutional and individual, share the same ultimate *telos* [Ancient Greek for end or aim], security, they seem apparently similar; however, these two distinct liberties demand separate legal measures. In contrast to the institutional separation of powers, the goodness of criminal law protects the individual's liberty: “this security is never more attacked than in public or private accusations. It is therefore on the goodness of criminal law [*bonté des lois criminelles*] that the liberty of the citizen principally depends” (XII.2). Individual liberty, by the means of “good” criminal law, prevents unjustified accusation irreparably damaging the citizen's security.

Montesquieu states that accusations, above all else, have the greatest potential to threaten the individual's liberty, but what accusations does Montesquieu have in mind? Public accusations could include claims of witchcraft or heresy that lead to inquisitions and auto-da-fés (XII.6); the possibility of anonymous letters of accusation (XII.24)—notably seen in Lion's Maw in Venice (XI.6.8)—also hang like the Sword of Damocles over the defendant's head. Private accusations might become disastrous in a criminal trial if the defendant's fate hangs on the testimony, or accusation, of one sole witness (XII.3). Clearly, these sorts of accusations injuriously threaten the individual's liberty.

Once one sees what criminal law tries to prevent, one can then begin to have an understanding of the goodness [*bonté*] of criminal law. Advances in criminal law seem to have taken place somewhat fortuitously; rather than “being perfected all at once” (XII.2), criminal law has evolved over time with the retention of liberal laws and the disposal of oppressive laws. Experience distinguishes liberal criminal law from illiberal criminal law, and Montesquieu writes that the accumulation of this knowledge “is of more concern to humanity than any other thing in the world” (XII.2). Good criminal law provides the citizen with psychological and physical security: as with the predictability of the constitutional powers mentioned above, the predictability of criminal law is so significant that a man “who had been tried and who would be hanged in the morning would be freer than a pasha in Turkey” (*Ibid*). The dead-man-walking is freer than the pasha, because he has a reasonable prediction of his fate and derives a sense of security from this predictability. The pasha, on the other hand, is always subject to the vicissitudes of fortune and the unbridled passions of his subordinates; his life is forever precarious.

One can also understand the goodness of criminal law by its correspondence with the nature of the crime: “this is the triumph of the liberty, when criminal laws draw each penalty from the particular nature of the crime” (XII.4). What precisely is the nature of the crime? Montesquieu enumerates four sorts of crimes: those that attack religion, those that offend mores, those that threaten tranquility, and finally those that threaten security (*Ibid*). Penalties for the crimes of blasphemy or sacrilege “should consist of the privation of all the benefits that religion gives” (*Ibid*). This, and nothing further, is the appropriate limit for human vengeance on behalf of the divine; indeed, “evil arises from this idea—

that it is necessary to avenge on behalf of the divine” (*Ibid*). Law from finite, human knowledge cannot possibly hope to understand infinite, divine vengeance.

Instead of human vengeance, Montesquieu advises that the matter be left between the divine and the offender: “but in the actions that offend the divinity, where there is no public action, there is no material of the crime; everything takes place between the man and God who knows the measure and time of his vengeance” (XII.4). This solution and its inaction certainly irked the religious zealots of Montesquieu’s time, but Montesquieu wrote always with a view to liberty and security and was well aware of the tyrannies that arose under the Spanish Inquisition. So potent are penalties connected with blasphemy that he warns of the illiberal potential of accusations of religion.

Somewhat impiously pairing heresy and magic, Montesquieu explains that “the accusation of [magic and heresy] can threaten liberty in an extreme way and be the source of countless tyrannies” (XII.5). Montesquieu’s treatment of religious crimes before the other three sorts indicates the gravity of religiously inspired retribution. His prescription for religious crimes is simple. In response to blasphemy or sacrilege, penalties within the religious body—excommunication, for example—are permissible; legislators should abstain from further penalties and leave the matter between the offender and the divine.

The second class of crimes concerns those crimes that offend mores. These crimes concern “public or particular continence, that is to say, the regulation of the manner in which one should enjoy pleasures attached to the usage of the senses and pleasures attached to corporeal union” (XII.4). These laws modestly strive for decency rather than

security: the appropriate penalty drawn from the nature of the crime would be a minor penalty, such as shame, fines, or a loss of face (*Ibid*).

Crimes that offend mores deserve lenient penalties for two reasons. First, crimes against mores themselves do not threaten the security of the state or the individual; these are consensual, victimless crimes whose most tangible product is a sense of shame. While religion, morality, and politics all condemn homosexuality, there is no need to intently hunt homosexuals; instead, one should establish an efficient police and let the joys of procreative love prevail over homoerotic love (XII.6). Second, sexual promiscuity occurs in large measure due to the climate. Warmer climates cause nerves to become acutely sensitive, and “with this delicacy of organs that one feels in hot countries, the soul is sovereignly moved by everything concerning the relation between the two sexes: everything aims at this object” (XIV.2). The scientific roots of sexuality and continence mitigate the individual’s culpability in crimes that offend mores. The legislator should prescribe lenient penalties for crimes against mores, because they do not threaten the state security and natural forces, such as the climate, drive men toward either continence or concupiscence.

Montesquieu’s legal recommendation on mores foreshadows his later account of commerce’s effect on mores. For the sake of security, Montesquieu advises men to forego harsh punishments for indiscretions that simply offend mores. Montesquieu later praises the softening effect of commerce in producing more peaceful mores. Insofar as civilized mores, as opposed to austere mores, lead to greater security, Montesquieu’s legal recommendation not to defend austere mores aggressively may in fact be a cunning attack on the austere and strict religious mores that threaten security. While austere or

pious mores may be impressive, maintaining them through excessive punishments threatens security.

The third class of crimes concerns those crimes that attack public tranquility but do not harm security. Montesquieu provides the example of a breach of police as an example of this third category of crimes. These crimes merit somewhat stiffer penalties, such as prison, exile, or corrections (XII.4). The last category of so-called penalties is the most telling; Montesquieu's hope here is that society can rehabilitate criminals and "calm uneasy souls and bring them back into an established order" (*Ibid*). Crimes that disrupt tranquility without threatening security deserve corrective measures that rehabilitate the criminal as oppose to making him suffer.

The final class of crimes deals with the gravest crimes, those crimes that threaten security. Montesquieu even makes an etymological distinction between the penalties [*peines*] of the first three classes and the punishments [*supplices*] doled out for behavior that threatens public security. Crimes against security demand *lex talionis*, the law of identical retribution drawn from the Code of Hammurabi²: "this punishment is a kind of talion by which society deprives a citizen of his security because he has deprived or has wanted to deprive another of his liberty" (XII.4). The new draconian punishments join the new appellation in suggesting that crimes against security are *sui generis*.

These crimes specifically threaten liberty and so merit judicious retributions and no tolerance. More than simply being drawn from the nature of the crime, these punishments are also derived "from reason and the sources of good and evil" (*Ibid*). Unlike religion, mores, or tranquility, Montesquieu believes that security, at its core, deals with the questions of good and evil. Crimes against security are of paramount

² If a man put out the eye of another man, his eye shall be put out. §196

importance to the liberal state. Whereas blasphemy, licence, and moderate public unrest only threaten the security of the individuals obliquely, murder or assault threaten the very foundations of justice and liberal society and so should be met with the full force of the law.

Through his presentation of the four kinds of crimes, Montesquieu avers that crimes can only ever consist of external actions. One should punish murder, rape, and disorderly conduct, because they are external actions, but it would be tyrannical to punish anything other than an external action. Montesquieu adduces Marsyas, a satyr slain by Dionysius for the crime of dreaming of Dionysius's murder, to point out the "great tyranny" of punishing men for their thoughts or their dreams (XII.11). In addition to thoughts, indiscreet words (XII.12) and writings, with the exception of high treason, (XII.13) should also be beyond the consideration of punishments. Montesquieu's crime regulates and punishes external acts with little if any regard for the offender's soul or his intent: the thoughts and writings of the citizen should be left alone in the interests of security.

The individual's security rests on a multitude of conditions, and the most important of these conditions is criminal law. By analyzing the nature of crimes, Montesquieu arrives at a criminal law that takes as its goal the security of the individual; it avoids punishments in matters that do not directly bear on security—heresy, homosexuality, or promiscuity—and it swiftly punishes crimes that directly threaten security, like murder. The refined system of criminal law and the separation of powers stand as the legal conditions that advance liberty; however, liberty is not solely advanced through legal reforms.

Commerce as the Guarantor of Liberal Mores

In a similar vein to the separation of powers and the liberal reformation of criminal law, Montesquieu advocates commerce on the grounds that it provides for the individual's liberty. In contrast to both the separation of powers and reformed criminal law, commerce establishes liberty through means largely independent of the law. Rather than changing a regime's laws, commerce seeks to change the citizens' mores and to make these mores more amenable to liberty.

In discussing commerce's impact on the liberal regime, Montesquieu often refers to the mores that issue from commerce. The word "mores" is a translation of the French *moeurs*, meaning the habits of a people or their habits concerning right and wrong. Though similar to manners, mores concern the soul rather than external conduct: "the difference between mores and manners is that mores concern themselves with internal conduct, and manners, with external conduct" (XIX.16). The topic of mores most often arises in the discussion of the government that most profoundly alters its citizens' souls—republican regimes. Montesquieu points to austere and severe mores—insensitivity to fear or the cold—as the causes of Spartan glory, and the Spartan regime needs austere mores so as to survive. In order to orient the soul away from its passions, a brutal education is necessary, as will be mentioned later. Modern mores, in contrast to Spartan mores, are much more pacific and interested in acquisition rather than warfare. The softening effect of commerce of which Montesquieu speaks refers to a transition from the Spartan mores of notable asperity to the more moderate, bourgeois, modern mores.

Montesquieu begins the first of his books on commerce in an unprecedented manner. Montesquieu adorns it, unlike any of the nineteen preceding books, with an

invocation to the muses. What is one to make of such an honor? One should note that Montesquieu did not afford such an honor to god, liberty, or ancient virtue. The most obvious conclusion to draw from this invocation is the worth of commerce; perhaps, as Montesquieu sees it, commerce is of such vital importance that it merits a divine entreaty. On the other hand, the subject of commerce leads to his being “overwhelmed with pain, fatigue, and boredom” (XX.*Invocation aux muses*). Rather than honor or inspired virtue, continual toil animates commerce, and whereas honor or virtue may vitalize the citizen, commerce leaves the merchant weary, if somewhat more financially secure. The invocation then aims to emphasize both the importance and arduousness of commerce.

Thomas Pangle in his work *Montesquieu’s Philosophy of Liberalism* draws attention to the satirical nature of this invocation: Juvenal’s original invocation calls into question the very virginity of the Pieridian Virgins.³ Interestingly, this invocation appears immediately after Montesquieu’s parting words in the previous chapter⁴ (Pangle 1973, 202): commenting on England, and by extension the modern commercial state, Montesquieu states that there “one would see many Juvenals before finding a Horace” (XIX.27.71). In the spirit of gentle satire befitting the commercial state, one should not take Montesquieu’s invocation too seriously; he greatly esteems commerce, though he is far from its disciple. This nuanced position reflects the life of a man who was at once a member of the nobility of the robe and also a wine merchant himself (Shklar 1987, 3). His appreciation of commerce does not blind him to the austere and arduous toil it often comprises.

³ *Speak to me Pieridian Virgins—and you should give me aid, in return for flattering you with appellation of Virgins* (Pangle 1973 202)

⁴ XIX.27

The epigraph that precedes Book XX also illuminates Montesquieu's undertaking. "That which great Atlas taught [*Docuit quae maximus Atlas*]" adorns the beginning of Montesquieu's treatment of commerce. The epigraph alludes to a passage of the *Aeneid* in which Atlas teaches Iopas to play music on an instrument made of gold. Montesquieu aspires to play this titanic role in making commerce musical or beautiful: "in his epic on commerce, Montesquieu likewise teaches how to make gold musical, how to fashion commerce and finance so that human life is bettered and beautified" (Schaub 1995, 144). Like Atlas, Montesquieu wishes to make beautiful and appealing the dry, if not dismal, science of commerce.

As opposed to an artistic exhortation, the author first appeals to the reader's sense of reason; Montesquieu thinks commerce such a boon that he infuses it with scientific language—one of the greatest gifts a man of the Enlightenment could give to an idea. Montesquieu writes laconically, "commerce cures destructive prejudices" (XX.1). Montesquieu later adds that thanks to the spread of commerce, "we have begun to be cured of Machiavellianism" (XXI.20). While its precise meaning is not clear, Machiavellianism here can be understood as a broad allusion to either violent republican politics—as in *The Discourses on Livy*—or the equally violent monarchical politics based on "virtue" rather than security—such as in *The Prince*. The metaphor of politics' curing society dates back at least to Plato, though the Enlightenment's deep appreciation of science invigorates again the idea of "curing" society. Rather than the indifferent transfer of material from one set of hands to another, Montesquieu imbues commerce with sanative properties; it cures society of its destructive prejudices.

Commerce cures society of its destructive prejudices by penetrating men's souls and mollifying their mores. Commerce cures destructive prejudices, because "it is almost a general rule that wherever there are gentle mores, there is commerce; and wherever there is commerce there are gentle mores" (XX.1). Gentle mores arise in part from a cosmopolitan comparison of mores. To use a Holmesian⁵ formulation, commercial nations present their citizens with a marketplace of mores from which individual citizens can choose the most favorable: "commerce has caused the knowledge of every nation's mores to penetrate throughout: they have been *compared*, resulting in great benefits" (XX.1, emphasis added). Crucially, gentle mores redound to the peace and security of a nation; commerce then befits the modern liberal regime by creating individual with mollified mores.

Montesquieu then moves beyond the individual and looks to soften international relations, that is to say, to move toward a more peaceful state of international relations. The global order is an uneasy one that vacillates between declared war and a precarious international peace—what Montesquieu calls the right of nations, "the laws which bear upon the relations that various peoples have with one another" (I.3). While Montesquieu treats security within states at greater length, one should not lose sight of the insecurity in the international order. Indeed, paradoxically, though princes and pashas are eminently powerful and free to do as they wish within their state, the precarious international situation means that these men never understand the tranquility of mind that political liberty brings (Krause 2005 89). War and defense are of such importance that Montesquieu devotes the entirety of two books (IX and X) to them. Considering Montesquieu's time, one immediately thinks of the fanciful campaigns of Louis XIV to

⁵ Oliver Wendell Holmes and his "marketplace of ideas"

enlarge his own empire. While specialized, modern armies require a relatively small percentage of the population to become soldiers, monarchies would require a greater share of the population and republics would even demand the service of all fit male citizens. War, especially the needless wars of Montesquieu's time, made ever the more sanguinary by increasingly sophisticated technology, threatens the individual's security, much as illiberal laws and tyranny do, though perhaps to a lesser extent.

Unsurprisingly, Montesquieu's strategy for decreasing the incidences of war is commerce. Trade brings nations closer together, creates interdependence, and by doing so, makes war less likely: "the natural effect of commerce is to bring peace. Two nations that trade together become dependent on one another: if one has an interest in buying, the other has an interest in selling; and all the unions are founded on mutual needs" (XX.2). Montesquieu does not intend to establish an immutable causal relationship but rather a typical association between trade and peace. In fact, commerce today seems to render nations more peaceful to one another. If commerce flourishes between two nations, war becomes less likely, and if war becomes less likely, the security of both nations' citizens will be increased.

Montesquieu also argues that the historical progression of commerce also provides the individual with greater security. Independent commerce, manifest in free letters of exchange, has the potential to act independent of—and perhaps even contrary to—political power; following the model of the separation of powers, a wealthy independent class of traders could trade more freely and may even have power they could wield against the prevailing power to prevent a tyrannical invasion of an individual's liberty. Montesquieu compares commercial liberalism and its outspoken support of trade

with Aristotelian Scholasticism and its criticisms of unbridled commerce: “we owe to the speculations of the Scholastics all our troubles that have accompanied the destruction of commerce; and to the avarice of princes, the establishment of a thing that places it in some way out of their power” (XXI.20). Commerce redounds to the advantage of liberty by attenuating the power of political figures and instilling a spirit of moderation

Much as Montesquieu remains continually concerned with moderation in his treatment of constitutional powers and criminal law (Sullivan 2006), Montesquieu applauds commerce, because it encourages moderation. Speaking of the convalescence from Machiavellianism, Montesquieu notes the spirit of moderation: “that which one previously called *coups d'état* would, independent of their horror, today only be imprudences” (XXI.20). As a result of commerce, men seem to desire political power less than wealth; the splendid *coups d'état* that constitute virtue in Machiavelli's world seem less attractive and even imprudent to the man whose principal concern is material aggrandizement. The spread of commerce moderates and circumscribes political powers that could threaten liberty.

Montesquieu's account of the nature of and history of commerce is certainly helpful, though one should not read it as a guarantee of widespread commerce among nations or an instance of historicism. Some scholars have argued that the historical and natural antecedents of commerce make global commerce “inevitable” (Cohler 1988, 24). In contrast, Montesquieu's commerce does not seem to follow a strictly predictable pattern: “commerce, sometimes destroyed by conquerors, sometimes repressed by monarchs, wanders the earth, fleeing from where it is oppressed, resting where it is left to breathe” (XXI.5, emphasis added). Commerce does naturally occur where it is not

repressed, in fact, thanks to innovations such as letters of exchange, the European continent enjoyed a surge in commerce from 1550 up until the publication of *The Spirit of the Laws* in 1748. But to assume the inevitability of widespread commerce from that fact seems erroneous: commerce, though fortified by modern innovations, is not immune to the political actions of king and conquerors. While commerce generally flourishes where it is not inhibited, it is not in any way fated: to conceive of the inevitability of widespread commerce in *The Spirit of the Laws* is to misunderstand Montesquieu.

History seems to suggest that commerce successfully softens mores, though the suggestion that commerce could elevate the character of mores is absent: “One could say that the laws of commerce perfect mores, and by the same token, that the same laws destroy mores. Commerce corrupts pure mores; this is the subject of Plato’s complaints: it polishes and softens barbaric mores as we see every day” (XX.1). Commerce perfects gentle mores and weakens austere mores. With commercial enticements, it is unlikely that any citizen will undertake the Spartan education and become militantly self-sufficient and inured to cold and fear. Instead, commerce readily provides him with relatively cheap material goods, like blankets or food; additionally, the average man will profit by this commercial interdependence—though not strictly self-sufficient or desensitized to the cold, he now no longer needs to spend years in a painful, unnatural education. Later, in the 19th century, the observation of fewer extreme mores finds voice again in Tocqueville’s account of the United States. Montesquieu, with the corroboration of future observers, draws the connection between the extent of commerce in a nation and the softening of its mores.

Poverty and austere mores are crucial to the wonder of ancient virtue: those who have despised the commodities of life “are able to do great things, because this poverty was a part of their liberty” (XX.3). The Spartans lived lives of fabled poverty, and as a result, three hundred soldiers held off an army hundreds of times their size at Thermopylae. From his earlier comments in Book V, it would seem that Montesquieu believes that the spirit of commerce can reconcile commerce and ancient virtue: “It is true that, when a democracy is founded on commerce, it can very well happen that a few have great wealth and that the mores are not corrupted. This is because the spirit of commerce brings with it the spirit of frugality, economy, moderation, work, wisdom, tranquility, order, and rule. Thus, while this spirit subsists, the riches it produces have no bad effect. The evil arrives when the excess of riches destroys this spirit of commerce” (V.6).

Montesquieu separates the production of commerce, which may instill the bourgeois virtues of honesty and frugality, from consumption, especially conspicuous consumption, that may lead to moral decay. It is unclear exactly how Montesquieu would envisage the separation of production and consumption in the ancient republic, if this separation is indeed possible. The most conceivable means of enjoying the benefits of production without suffering the ills of crass consumption would be to export excess goods irrespective of foreign demand and prevent the import of luxury goods irrespective of domestic demand. Such a nuanced trade policy is certainly possible, though it seems unlikely to take root in a republic, which emphasizes limited trade rather than an increasingly complex one.

As for the civic roots of this commerce, the question remains, what, if not the love of money, motivates this austere patriot to engage in commerce? Can one have commerce

without having material gains or the excess of wealth? Could it honestly be that the love of equality would lead one to enrich oneself and to make oneself unequal? Ultimately, civic republicanism wishes to reorient the passions from narrowly selfish pursuits to communal goals; commerce, on the contrary, indulges individual passions. While plausible at first, a synthesis of commerce and civic virtue seems impossible because of the exigencies that civic virtue demands of the citizen.

In fact, amidst the luxury and the gentle mores, the only possible brilliance or distinction lies in grand economic undertakings: “yet, in the states that subsist by the commerce of economy, the greatest undertakings are made, and there exists there a daring not found in monarchies” (XX.4). While commerce has mollified man’s savagery, it also plunges man into mediocrity; while Montesquieu speaks of a spirit of “daring [*hardiesse*]” (*Ibid*) in the modern man, this daring is limited to economic dealings—heroism and chivalry are forgotten. Commerce eliminates the possibility of great ancient virtue, and in its stead, provides elaborate business proposals to entertain and challenge men.

Commerce may provide fertile soil for liberty to flourish, but one should not ignore its pernicious effects on society. Some have argued that commerce augments a natural sociability and makes men more compassionate by giving them reason to interact more frequently. That said, the basis and character of this union deserves further examination. Writing on the spirit of commerce, Montesquieu explains that “if the spirit of commerce unites nations, it does not similarly unite individuals” (XX.2). This sentiment echoes Montesquieu’s previous comment that the English—perhaps the most commercial people in Montesquieu’s day—were “confederates rather than citizens”

(XIX.27.62). Rather than a collection of wills directed toward a common good, the will of each individual Englishman is distinct—as with rulers in international relations.

Between countries, commerce and the pursuit of wealth create an interdependence that strongly discourages warfare; between people, commerce embroils men in competition, allowing selfish passions to divide men—witness the envy and jealousy of the English (XIX.27.6). Commerce then leads to unions of convenience and necessity rather than the deeper social bonds of friendship or camaraderie.

Commerce provides another mixed blessing by inspiring a love of exact justice. On the one hand, the spirit of commerce naturally opposes banditry. This opposition appears to benefit a nation; now, belongings and lives are secure from pillaging vandals. On the other hand, the spirit of commerce also opposes “those moral virtues that make it so that one does not always discuss one’s own interests and one can neglect one’s own interests for those of others” (XX.2). Altruism and hospitality—by Montesquieu’s own admission, “very rare in the countries of commerce” (*Ibid*)—along with brigandage are casualties of the spirit of commerce. Much as with the confederate-citizen distinction, commerce seems to make men more civil and perhaps more compassionate (XV.3)—they are less likely to plunder or to trade slaves—though perhaps less generous or hospitable.

Perhaps most troubling is the aimlessness of commerce. Montesquieu describes a certain kind of commerce, specifically, the Dutch whaling industry, as “a kind of lottery and each is seduced by the prospect of a golden ticket. Everyone likes to play; and the wisest men play willingly when it does not have the *appearances* of gambling with its irregularities, its violence, its dissipation, the loss of time, and even of life itself” (XX.6, emphasis added). This reading of the passage suggests that this commerce at its roots is a

socially sanctioned form of gambling; unlike gambling, it has shame and masks the base nature of the pursuit so as to entice the wisest men. That said, just as with gambling, this commerce—and for that matter, conceivably, all commerce—fails to give its participants a meaningful life or a meaningful *telos*—or end. The farmer justifiably looks to his harvest and the sustenance it provides as his *telos*, and the warrior may look to either glory or victory as his own end. In contrast, the trader seems to lack this end: commerce often leads to dissipation, aimlessness and ultimately wiling one’s life away.

Much like the state of nature, the commercial life seems to lack goals or a defining end (*telos*). One can continue to accrue wealth in this lottery, but commerce itself does not provide any guide as to the means by which one can ethically profit or the manner in which one should spend it. Montesquieu agrees here with Aristotle insofar as the accumulation of money can never serve as an end in itself: “wealth is evidently not the good we are seeking; for it is merely useful and for the sake of something else” (Aristotle *Nicomachean Ethics*, I.5). While the commercial life provides man comfort and more gentle comrades, it cannot provide him a guiding purpose or the meaning of life.

Despite the harsh rendering of the commercial life, this life redounds to the benefit of the liberal regime and security. Men become consumed with material pursuits, and while this is hardly a noble way of life, it is far from dangerous. In fact, this materialism may distract men from their own death or the fear of their own death; while the anxieties of modern commercial life seems undesirable, they are preferable to anxieties that revolve around one’s own death. Moral and political fanaticism will become considerably less likely and so will inquisitions and massacres. Aimlessness,

after all, seems less destructive than a spirited sense of purpose whose end threatens the security of men the world over.

Commerce, in addition to constitutional and statutory laws, helps to usher in liberty. Though, one must not only look to that which produces liberty; one must also look at the effects of liberty. Accordingly, in the next section, Montesquieu considers the mores, manners, and character of the English, the people who have had the greatest exposure to liberty.

England and the Mores that Issue from the Liberal Regime

In Books XI and XII, Montesquieu explains the legal measures necessary to secure liberty, but it is only later that he considers the manner in which liberty shapes a people. Montesquieu presents the mores, manners, and character of the English as examples of the social ramifications of liberty. One might justifiably esteem Sparta because of the ferocious mettle of Spartans. In a similar vein, one's judgment of England or the liberal regime should take into account the citizens it produces.

To view England's constitutional arrangement as static would be mistaken; once created, it too effects change. Much like climate, religion, and history, the laws of a nation can profoundly impact its citizens' mores and manners. With the case of England, Montesquieu specifically insists that the mores do not arise coincidentally, but as a direct product of the constitutional arrangement: "I spoke in Book XI of a free people; I gave the principles of its constitution: let us see the effects that must follow, the character that could be formed, and the manners that result from it" (XIX.27.2). The English Constitution, both changes individual sentiments and passions and alters social relationships between men.

As a result of the English Constitution, passions abound among the English. Montesquieu points to Book XI, Chapter 6, the chapter that concerns the separation of powers, as the cause of these passions. The ceaseless contestation and jockeying for power makes the English "heated," and as a result of this, England "could be more easily drawn by its passions than by its reason" (XIX.27.22). Additionally, the permissiveness of the state concerning moral crimes leads to a people in whom "all the passions being

free, hatred, envy, jealousy, the ardor for enriching and distinguishing oneself would appear in their fullest extent” (XIX.27.6).

It is hard to overstate the significance of these passions on the English spirit. In spite of the moderation and regulation that the separation of powers affords, the English live in a perpetually frenzied state: Thomas Pangle even goes so far as to describe “the ceaseless motion of competitive individual ambition and acquisitiveness” as “the fundamental characteristic of life in England” (Pangle 1973, 147). So profound is the jealousy that England “would become sovereignly jealous; and it would be afflicted more by the prosperity of others than it would enjoy its own prosperity” (XIX.27.32). The state relies on its passions to such an extent that if a force were to deprive England of its passions, “it would be like a man struck down by illness” (*Ibid*). Thanks to the contentiousness of the English government and the laxity of its criminal law, this liberal regime seems to incite all the passions in its citizens.

From a moral perspective, the state of the English people doubtless seems troubling; from an aesthetic perspective too, their condition seems deficient, though not egregiously so. Montesquieu suggests that England lacks delicacy and taste: “their poets would more often have this original crudeness of invention than a certain delicacy given by taste; one would find there something that more approaches the strength of Michelangelo than the grace of Raphael” (XIX.27.73). The English will have artists and *hommes d’esprit*, to be sure, but they will be much rarer: the appeal of commerce will distract many potential *hommes d’esprit* away from august interests. The English Constitution promulgates commerce and base passions at the expense of aesthetics, grace, and the pursuit of artistic achievements.

English Constitution also molds the passions of the English people in a profound way that hearkens back to the state of nature. The English Constitution has political liberty as its direct object; England, in contrast to a terrifying and uncertain despotism, should provide its citizens with security. Paradoxically, however, the English worry over the security of their security: “they fear seeing escape a good that they feel, that they hardly feel, and that can deceive them; and the fear [*crainte*] always enlarges objects. The people would be anxious [*inquiét*] about their situation and would think themselves in danger during the moments of their greatest security” (XIX.27.11).

This passage is perhaps deeper and more profound than any of the others in this chapter. Most salient, the regime whose direct object was liberty, or security, cannot achieve total security—mental security. Total security seems unattainable, and it seems that men are inexorably insecure; at the times of greatest protection, they go so far as to worry about the duration and efficacy of this protection. Additionally, the passage evokes man in the state of nature. Man in the state of nature is fearful and anxious; in England, despite the impressive advancements in security and well-being, man still manages to fear something.

The anxiety [*inquiétude*] that characterizes the English challenges the very core of the liberal project—the creation of enduring security. Paul Rahe argues that this admission threatens the liberty of the Englishman and more importantly makes the English unhappy. As an alternative, moderate France with its indulgence of vanity and ‘honor’ seems to have a comparable level of security without the neuroses that accompany English liberty (Rahe 2009b, 46).

Another reading of English *inquiétude* suggests that this anxiety is positively salutary. First, the fear the English feel arises from harmless political sensationalism as a result of political competition and the separation of powers; though it bears the same name, it is no kin to despotic fear (Courteney 2001, 284). Anxiety, the emanation of attentive watchfulness, prevents the people from becoming complacent to unjust usurpations of power (Courteney 2001, 282). Montesquieu himself praises alertness in the defense of liberty: “slavery always begins with sleep. But a people who never rests in any situation, who thinks always, and finds all places painful can hardly get to sleep” (XIV.13). One can easily imagine Montesquieu agreeing with Courteney’s line of argument.

That said, the reader, if not Montesquieu, should wonder: how happy are the English? They are among the most free, but if their freedom consists of paranoia rather than happiness, what is its worth? Montesquieu does not often consider happiness [*bonheur*] as a political good; in fact, explicit mentions of happiness seem to occur in illiberal settings. In the ancient republic, the citizens enjoy a share, civic happiness (III.5), and the zealot expects unimaginable happiness that makes him contemptuous of civil law and corporeal punishments (XXIV.14). In the liberal state, the state provides for one’s security—the ability to pursue happiness—but the state remains agnostic on the questions of happiness so as not to threaten the individual’s security.

The English Constitution alters not only the passions of the English but also English society. The separation of powers divides governmental power, but it also has a factious impact on the English people. This constant agitation tends to weaken both salutary and pernicious social bonds: “as each individual, ever independent, would follow

many of his caprices and fantasies, he would often change his party...and often, in this nation, one could forget the laws of friendship as well as the laws of hatred” (XIX.27.9). Ancient ideas of citizenship fall into desuetude and the individualism of Englishmen leads to them to become “confederates rather than citizens” (XIX.27.62).

The separation of powers also fragments social life. On an individual level, man feels less at ease: “but men this proud, living a lot with themselves, would often find themselves in the middle of unknown people; they would be *timid*, and one would see in them, most of the time, a bizarre mix of awful shame and pride” (XIX.27.69, emphasis added). Man not only feels alienated, but he is also timid; the timidity reminds the reader of man in the state of nature whose governing sentiment was timidity. The disquiet of the English state and the anxiety of the state of nature once again show a curious kinship.

On a cultural level, this rampant individualism deprives men of great works of art. Montesquieu earlier criticizes the quality of English art, and it seems this atomism may be part of the cause: “the character of the nation would appear especially in its intellectual works, in which one would see withdrawn men who would have thought by themselves” (XIX.27.70). In short, man in England is lonely, and as a result, his personal happiness and the quality of art suffer.

One might then wonder, among a people so divided and shamelessly self-interested, how does the state defend itself? The issue is a pressing one to which Montesquieu is not blind. In ancient republics, virtue, understood as love of the homeland, drove men to fight and die for their country; in England too, patriotism inspires men to fight, though this patriotism is of a much more self-interested character. The English recognize that their government provides them with liberty, and insofar as

the English wish to preserve this good, they are willing to fight: “this nation would love prodigiously its liberty, because this liberty would be true; and it could happen that, in order to defend this liberty, the nation would sacrifice its goods, its comfort, its interests; that it would bear the heaviest taxes that even an absolute prince would not dare to impose on his people” (XIX.27.23). Because the English believe the survival of the state to be in their own interest, they willingly sacrifice their goods and subject themselves to high taxes.

In a nation so driven by the passions, one might expect a passionate call to arms. Instead, patriotism seems to issue from cool, calculated knowledge: “as this nation would have a certain *knowledge of the necessity* of submitting to these heavy taxes, it would pay them with the well-founded expectation of not paying more; the burdens there would be heavier than the feeling of these burdens” (XIX.27.24, emphasis added). Reason and an understanding of necessity convince men to serve their country in a time of war.

The character of this patriotism is markedly different from any of the other regimes. Self-interest, the individual’s interest in the preservation of liberty, always buttresses any call to fight for the preservation of the state. In part, Englishmen willingly defend England, because they have invested in it with their taxes and its conquest would constitute a significant economic loss: “to preserve its liberty, England would borrow from its subjects; and its subjects who would see that its credit would be lost if the country was conquered, would have a new motif for defending England’s liberty” (XIX.27.26). English sacrifices also take a strictly material form: Montesquieu cites their willingness to part with large shares of their goods and comforts, though he never mentions their willingness to part with their own lives. Montesquieu leaves this logical

conclusion unspoken, because the loss of one's life gainsays the rationale for fighting in the first place—the security of the individual. While the English may bear stiffer imposts willingly, their selfishness and ultimate reluctance to die on behalf of their country qualifies this patriotism.

While England provides incentives for men to fight willingly for the country, the liberal regime, by its design, will embroil itself in wars less frequently. The liberal regime would “be drawn to become commercial” (XIX.27.29). By means of commerce, the liberal regime forms trading partnerships and international interdependency. England, for instance, cannot easily grow oranges, so it must trade with Spain for its oranges; this discourages war between England and Spain. As Montesquieu pithily puts it, “the natural effect of commerce is to bring peace” (XX.2). By engaging in commerce, wars become infrequent, and so do the human sacrifices that war exacts.

If one were to judge regimes by their continence, their artistic accomplishments, their peace of mind, or their happiness, one would certainly not present England as the best regime. The depravity and small-souls of the English repel the critic who longs for ancient virtue. The crude arts offend the critic of refined sensibilities. The anxiety of the English and the fractured society would disconcert those interested in happiness, that is to say, everyone.

Strangely, England's mores, manners, and character that directly issue from liberal laws serve as articulate criticism of the liberal regime. That said, one must keep in mind liberty's advantages. It provides for security against death, the essential, driving passion of humanity. One can bear jealous neighbors and shoddy art, so long as one's

most basic needs are met. A complete analysis of liberty, however, would be incomplete if it did not fully consider the alternatives to liberty and the society it produces.

Alternative Regimes

Montesquieu limns a perspicacious analysis of the passions that inspire the English, the constitution and civil law that govern them, the mores of the English, and the effects of the commerce that dominates their economy. In so doing, he gives the reader a thorough insight into the nature of the modern regime. That said, in order to judge the worth of this modern regime, it is useful to consider it in comparison with other viable alternatives. Thanks to Montesquieu's ecumenical approach, such consideration is possible. Three principal alternatives stand in contrast to the modern liberal regime: the ancient republic, the moderate monarchy, and Rome. While despotism is technically an alternative, its visceral unpleasantness for anyone aside from the despot precludes it from seriously competing for the claim of the best regime.

The Ancient Republic

Doubtlessly fresh in the minds of the classically educated men of Montesquieu's day, the possibility of resurrecting city states based on virtue serves at once as a tempting alternative and a serious challenge to the authority and goodness of the modern liberal regime. Without reference to the civic republicans of the 18th century, one need only think of the wonder and reverence with which modern men view Athens and Sparta. Montesquieu's analysis in the *Spirit of Laws* is in part so persuasive because he fully considers the possibility and worth of ancient republics.

As opposed to the modern liberal regime, virtue defines and motivates the ancient republic. Republics are states in which "the people as a body, or certain families, have the sovereign power" (III.2). Virtue, understood as the "love of one's country" (*Avertissement de l'auteur*.1), vitalizes the republic. This virtue pervades the state and

society with impressive results: “the majority of ancient peoples lived in government that had virtue for their principle, and when it was full force, they did things that we no longer see today and that astonish our small souls” (IV.4). One need only think of Battle of Thermopylae, in which 300 Spartan soldiers repelled up to 80,000 Persian soldiers. The production of modern films, such as *300*, about such heroic ancient feats testifies to their unimpeachably impressive character. It is hard indeed to imagine Spartans’ returning the favor and marveling at the wonder of modern fables, such as Joyce’s *Ulysses*. The resurrection of the ancient republic brings with it the resurgence of impressive, even heroic, feats, and so appeals to the modern man.

In addition to its deserved renown, the republic proves practically sound. Technological advances aside, the republic provides perhaps the best defensive forces. Its soldiers are of a tough mettle. So long as the republic stands, virtue, or feverish patriotism, inspires it; with such virtue, a republic’s army will have no trouble filling its ranks. Additionally, the political system—direct democracy in most republics—is satisfying insofar as every citizen feels that he has voiced his own opinion. The republic satisfies both the practical and ideological needs of its citizens.

Appealing as it may be, the ancient republic—in fact, rather than in idea—is seriously deficient and perhaps even contrary to human nature. Because of the laws in one and the threat of violence in the other, monarchies and despotisms do not have need of indoctrination or severe education (III.3). Lacking an elaborate social structure and the capricious use of violence, republics must ensure through education that their citizens never stray from the path of civic virtue. Without this, the republic becomes like “molted

skin and its power is no more than the power of a few and the license of all” (III.3). In order to survive, republics must have a specific type of education.

The sole end of the republican education is to inculcate in citizens a passionate love of the homeland: “all depends therefore on the establishing of this love in the republic, and it is to this inspiration that the education must be attentive” (IV.5). This education does not inspire deep thought or philosophy; instead it seems more akin to brainwashing. Its monomania is also far from pleasant. The distinctive character of virtue leads to a distinctive education that consists of “a renunciation of the self, which is always a very painful thing” (IV.5). Absolutely necessary to the survival of the republic, this education painfully goes against the grain of human nature.

The republic also insufficiently accounts for the security of the individual. From a constitutional level, there is often an insufficiently complex political structure that invites usurpation and imperils the individual. Looking at the tumultuous histories of ancient republics, one sees the distinct possibility of tyrants—notably Peisistratos and the Thirty Tyrants—in the most sophisticated and impressive states. At the level of criminal law, the state metes out punishments as brutally as it educates its children. In response for poking out the eyes of a bird, Athens sentenced one of its boys to death (V.19). The punishment here totally disregards the nature of the crime and serves more to threaten the individual than to inflict proportionate punishment.

Finally, the individual’s security can come under attack if the state is unduly belligerent. Republics generally engage in little trade (V.6) and so the citizens do not feel the pacifying effects of commerce. To live in a state as ferociously bellicose as Sparta is, by itself, a threat of one’s own security. Additionally, the state would compel every male

citizen to join the army in times of war, so war would threaten not a specific class, but the entirety of adult male citizens. The constitution, civil law, and foreign policy of the republic all threaten the individual's security.

Monarchy

Monarchy, prevalent in Montesquieu's Europe, stands as a viable alternative to the modern regime. Monarchies maintain the graceful manners, aesthetic appreciation, and the chivalry that the modern regime lacks. If one needs proof of this refinement, Montesquieu and his insight were the products of a monarchy—to say nothing of Montaigne, Descartes, or Pascal. Of all the regimes, monarchy challenges most forcibly the liberal regime's claim to the best way of life.

Beyond aesthetic accomplishments, the monarchical regime also provides for the individual's security. On the one hand, the profusion of ranks and honors—kings, dukes, nobles, ecclesiastical officials, etc.—and their many unique prerogatives follow the model of the separation of powers. Indeed, the executive that Montesquieu speaks of when discussing England is not a Prime Minister or a President, but a King.

On the other hand, the complexity of a monarchy's law approximates the reformed civil penal code in Book XII. As a result of history, one finds "in the laws [of monarchies] so many rules, restrictions, and extensions that multiply particular cases and make the law seem like an art of reasoning itself" (VI.1). Men naturally hunger for the simplicity of swift justice (VI.2), though formalities "increase in the case where honor, fortune, life, and liberty of citizens is cared for" (VI.2). In spite of this desire for swift justice, technicalities serve the individual liberty of the citizen. Though not as precise as

the prescriptions of Book XII, historical precedent and procedures afford the citizen some level of individual security in monarchies.

Even more impressive, the monarchy addresses man's primal passion the fear of his own death. Much as the avarice of the commercial modern regime may distract the citizen from his own mortality, so an encouragement of vanity or *amour-propre* in monarchies might do likewise. Glory, for instance, might inspire men to forget, if only briefly, their mortality and to endure the dangers of war with their eyes always set on the great accolades that can be theirs. Montesquieu's first work, *The Persian Letters*, notes not only the political utility of glory, but also its psychological underpinnings: "it seems that we add to our being when we can transport ourselves into the memory of others: this is a *new life* that we acquire and that become to us as precious as the life we have received from heaven" (Montesquieu *Lettres Persanes*, LXXXIX, emphasis added).⁶

Glory not only animates men, it gives them, in a way, a new life—life in the vision of the other. Through this quasi-life, one forgets the burdens and mortality of the current life, and so uneasiness, characteristic of the English, does not arise among the French. Montesquieu pithily summarizes his thoughts on glory as follows: "the desire for glory grows with the liberty of subjects and diminishes with it" (*Ibid*). Contrary to what one may expect, this indulgence of passions leads to a fully functioning society that serves as a "passable substitute" for the ancient political society based on virtue (Keohane 1980 408). The individual feels secure, because thoughts of glory have dragged his mind away from his own carnal insecurity.

⁶ Specific passage was brought to the author's attention by Paul Rahe's treatment of *amour-propre* (Rahe 2009b 45).

From this account, monarchy provides for the individual's security so impressively that Paul Rahe even argues that the French monarchy, whose direct object is not liberty, provides its citizen with a truer liberty than the English modern regime that takes political liberty as its direct object. In striving for vanity, the French "become inattentive to their natural insecurity as men" (Rahe 2009b, 46). This cannot be said of the English whom anxiety haunts like an odious specter. Additionally, in the French case, the pursuit of glory unwittingly leads to "a spirit of liberty and tranquility of mind which contribute far more to their happiness than the political liberty established by England's laws but not enjoyed by her citizens" (*Ibid*). Monarchy, at least in some measure, provides for constitutional and individual liberty, and by indulging the *amour-propre* of its citizens, it renders them at once happier and freer.

Of the conceivable alternative regimes to the modern enterprise, monarchy most appeals to the liberal man; further examination, however, reveals its flaws and questions its worth. In Montesquieu's appraisal of monarchy, one should always keep the political behemoth who hung over Montesquieu's early years in mind—Louis XIV. When Montesquieu speaks of the corruption of monarchies in VIII.6, he may as well have written a history of Louis XIV. Later on in Book VIII, Montesquieu assigns the natural end of monarchies: "rivers run to the sea: monarchies lose themselves in despotism" (VIII.17). As the king centralizes power, the checks and balances of constitutional liberty and the ancient prerogatives of individual liberty become moot.

In addition, an embrace of *amour-propre* may lead to a distraction from the *fear* of death, but such a distraction may lead to one's actual death. An ardent desire for glory may soon replace the fear of death in the soldier's imagination, but it does not make the

bullets any less real, or lethal. In fact, glory seems to bring the citizen to face greater danger than what he would encounter in a pacific state; this sense of honor inspires men to brazenly confront mortal peril without any guarantee of their safety. While the state is impressive and refined, the despotic tendencies of monarchy—as seen in Louis XIV—and its bellicose tendencies cast a shadow on the monarchy’s ability to provide for its citizens’ security.

Rome

In addition to the great city-states of Greece, Rome also stands as an appealing ancient alternative to the modern regime. Rome seems to provide to some degree for the individual’s security. On a constitutional level, Montesquieu presents Rome prior to the foundation of the Republic as an example of the separation of powers. In the time of the first five kings, Rome’s constitution “was monarchical, aristocratic, and of the people, and such was the harmony of power that one saw neither jealousy nor dispute in the first kings” (XI.12). As for the individual’s security, Montesquieu cites Livy who once said of the Romans: “never has a people loved moderation more in their punishments” (VI.15). Rome not only guarantees its citizens liberty, it also provides for martial glory and imperial grandeur. The modern regime may enjoy an empire, as England did for centuries, though commerce and commercial ties will drive the empire; in Rome, martial glory serves as the engine of the Roman Empire. Rome seems to provide for liberty as well as providing a choiceworthy way of life.

In spite of its appeal, a myriad of problems afflict Roman liberty. The mechanisms behind the Roman separation of powers are less reliable than the English system: great coups—from Servius Tullius, to the Decemvirs, to the establishment of the

Empire--seem to occur with little fanfare. Fortunately, in most of these instances, the Roman people saved their liberty amidst the violent swings of power; however, Rome's history of tyranny and the fragility of its liberty show the ineffective separation of powers in Rome (Wright 1933 169). Rome's putatively liberal criminal code also fails in protecting the individual's liberty; due in large measure to the republican foundations of Rome, accusations—those things that most threaten individual liberty—abound. As a result of this encouragement of accusations, “one saw a type of dreadful men, a troupe of informers, appear” (VI.8). In contrast to Livy's word, the history of Rome shows many eruptions of injudicious cruelty when it came to trying and punishing citizens (VI.15). Considering the security of the state and the individual, Rome is seriously deficient. Additionally, its direct object of “expansion” (XI.5) encourages needless wars that threaten the lives of Rome's citizens.

In most ways, the criticisms against the Roman state are very similar to, if not wholly the same as, the criticisms of modern monarchy. Both states have insecure means of ensuring the separation of powers, and both systems embrace glory-driven expansionism. In fact, so similar are these two systems, that Paul Rahe has suggested the Montesquieu's critique of Rome is a veiled critique of the policies of Louis XIV. Montesquieu's full treatment of Rome, *Considerations on the Causes of the Greatness of the Romans and Their Decline*, disapprovingly addresses the themes of expansionism and centralization with the suggestion that the centralization and aggrandizement of Louis XIV would usher in the downfall of France (Rahe 2009b). Ultimately, Rome shows itself vulnerable to many of the same criticisms of moderate monarchy.

Among these three types of regimes, the modern, moderate monarchy best provides for the individual's security; historical prerogative and legalistic technicalities provide for constitutional and individual liberty, and vanity distracts the individual from the thought of his own death. That said, even this regime does not adequately provide for the individual's security. The modern regime directly aims at liberty; its constitution, its laws, its economy, its mores all aim at this good, and so the liberty or security the English enjoy is more durable than the liberty or security of other regimes.

The Role of Religion in the Liberal State

Because of the constraints of this paper, religion will be treated much more briefly than it deserves. Throughout *The Spirit of the Laws*, Montesquieu offers a broad analysis of religion ranging from the laws of divine beings to the climatological roots of religious practices to metempsychosis. Like the rest of the tome, his account of religion has exhaustive aspirations. That said, for the purposes of this paper, the author will only consider religion insofar as it bears on political liberty.

In opposition to his successor, Alexis de Tocqueville, Montesquieu sees religion as a force for instability. With the American Puritans in mind, Tocqueville credits religion with a stabilizing force that prevents the wild forces of liberty from tearing the state and society asunder; however, Montesquieu has prior history—the Spanish Inquisition (XXV.13) and the religious wars in France during the 16th century—in mind. Religious zeal serves as the fuel for many of accusations that so gravely threaten individual liberty (XII.2); one need look no further than the Salem Witch Trials in the United States to see the grave threat religiously motivated accusations can constitute.

Religion, by its very design, brings men's attention away from the life at hand and draws it to the next, eternal life. On the one hand, religion assuages man's fear of death, in effect, by negating it. To borrow from Donne, "One short sleepe past, wee wake eternally/And death shall be no more" (Donne Holy Sonnet X). To remain agnostic on the veracity of its claims, one can nevertheless say that religion comforts fearful men and suggests itself as the solution to the problem of death. In assuaging anguished souls, the claims of religious revelation provide some measure of security.

On the other hand, this peace, found outside of politics, threatens the authority of politics not only in the most profound matters, but also in the obedience to everyday law. Montesquieu himself explicitly considers the problem of disobedient zealots: “the idea of a place of reward necessarily brings with it the idea of a break from punishments, and when one hopes for one without fearing the other, civil laws no longer have force... By what means can the laws contain a man who believes that the greatest punishment that the magistrates can inflict upon him will only end in a moment in which his happiness begins?” (XXIV.14). The modern phenomenon of suicide bombers evinces the eternal problem of punishing those who hold “death in contempt” (*Ibid*); religion promises these men rewards in the next life, and this promise leads men to despise death to the great detriment of the security of society. Rather than providing for the individual’s security, religion ultimately threatens individual liberty by inviting accusations and rendering the law effete in constraining the acts of zealots.

The revelations of Christianity, the religion central in Montesquieu’s mind, claim to provide the greatest, unimpeachable security—eternity in heaven away from dangers. In direct contradiction of its aspirations, religion threatens security. As a result of these threats, it then becomes prudent for the regime principally concerned with security, the liberal one, to downplay or to minimize the role of religion in society.

Because of the inherently destabilizing effects of religion, the liberal regime whose prime interest is security should concern itself with lessening the influence of religion and perhaps destroying it outright. Attacking religion outright has disastrous consequences; the religion is never seriously damaged, and between the fear of religious law and the fear of anti-religious criminal laws, “souls become monstrous” (XXV.12).

While an aggressive confrontation of religion is ineffectual in limiting religion's impact, subtler measures are not: "it is more certain to attack religion by favors, by commodities of life, by the hope of fortune; not by that which makes one remember it, but by that which makes one forget; not by that which makes one indignant, but that which throws one into half-heartedness when others passions act on our souls and those that religion inspires are silent. General rule: when changing a religion, invitations are stronger than punishments" (XXV.12).

One can imagine many secular invitations, though of all the many enticements, commerce seems to best befit the modern age. In fact, Thomas Pangle goes so far as to call commerce the "engine of religious liberation" (Pangle 2010, 99). In a later section, Pangle coyly notes, "as the commodities of life become secure, Montesquieu confidently asserts, God's voice gradually ceases to be heard by human beings" (Pangle 2010, 103). The modern liberal regime invites men away from religion and its destabilizing dangers through the enticement of commerce.

Viewing commerce as a counter religious tool accords with Montesquieu's modern sensibilities. In fact, Montesquieu notes the historical decline of religion in the liberal state: "with regard to religion, as in this state, each citizen would have his own will and, as a result, would be drawn by his own lights or fantasies, it would happen that either each would have a lot of indifference for all sorts of religion whatever denomination they be, with the result that everyone would be drawn to embrace the main religion or that one would be zealous in general, with the result that sects would multiply" (XIX.27.46). That the religious trends of the United States and England—the two most populous Common Law regimes—are captured in Montesquieu's dichotomy

should not escape the reader's attention. History has vindicated Montesquieu's postulations—both the United States and England enjoy great security without serious threat of domestic religious extremism. Commerce relegates the importance of religion, and in so doing, further provides for the individual's security.

Montesquieu does not think religion *per se* or the existence of a divine creator threatens the individual's security. That said, the claims and injunctions of revealed religion do. In Montesquieu's age and the preceding century, religious warfare, jew-baiting, and inquisitions all marred the public peace. Insofar as the state concerns itself with security, as the liberal state does, the state has an interest in drawing men away from these threatening injunctions. By overshadowing religion with other desirable pursuits, like commerce, violent religious injunctions become less appealing and society becomes more secure.

Conclusion

Over the course of the paper, it has become apparent that Montesquieu's understanding of liberty is bifurcated and roughly equivalent to security. The need for this security arises out of man's defining fear of death in the state of nature. In terms of laws, the constitutional separation of powers and revised criminal code lead to the foundation of liberty in a state; in terms of mores, commerce softens mores and makes a trading people more disposed to liberty. As a result of this liberty, one hardly envies the mores and manners of the English; that said, in comparison to other alternative regimes, the modern, liberal regime best provides for the citizen's security.

The value of liberty lies in its direct response to man's primal passion, the fear of death. Liberal laws prevent the state's committing random violence or tyranny, and commerce attempts to create neighbors of a gentle disposition. Of all regimes, the liberal one best addresses the problem of death; however, even it cannot resolve once-and-for-all the problem of death. Death comes to man later and more predictably in the liberal regime, but it comes nevertheless. An appraisal of liberty and the liberal regime must then follow one of two paths.

On the one hand, one can appraise liberty as good. It addresses the most central passion that man undergoes and does its best to prevent death. Yes, ultimately, it cannot prevent death entirely, but it would be unreasonable to ask for politics to solve the problem of death. At some basic level, it provides for security, without which one would not be able to enjoy fully every other good. Despite the anxiety it may bring, men seem to be relatively content and their one most basic fear is addressed as much as politics can address such fears.

On the other hand, one could well judge liberty to be bad. In attempting to providing for security against death, liberty gives itself an impossible task. It serves as the justification for a crass society and an abandonment of the impressive aims of glory and greatness, and yet it is not capable of accomplishing what it sets out to do. As the metaphysical necessity of death cannot be resolved through liberty, why not choose a nobler regime? If liberty is seen as good only insofar as it provides security against death itself, one can make the argument that liberty cannot possibly succeed in its task, and so one is justified in not calling it good.

Ultimately, one must praise liberty as a good whose merit rests on its ability to confront the fear of death rather than death itself. The task of confronting death itself lies outside politics—the promise of eternal life in religion or the promise of fame in the annals of history. In some measure, liberty assuages the fear of death by guarding against death itself; however, liberty provides no guarantee against death itself. In conclusion, Montesquieu's liberty is good, because it addresses man's primal passion, the fear of death, and allows him to live a relatively happy, if mortal, life.

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