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Céline Spector

► **To cite this version:**

Céline Spector. Montesquieu's The Spirit of the Laws in the history of liberalism. French Liberalism. From Montesquieu to the Present Day, p. 57-72, 2012. hal-02475947

**HAL Id: hal-02475947**

**<https://hal.sorbonne-universite.fr/hal-02475947v1>**

Submitted on 12 Feb 2020

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Céline Spector

Montesquieu's *The Spirit of the Laws* in the History of Liberalism

*The Spirit of the Laws* is often cited among the founding works of political liberalism. Emile Faguet, Isaiah Berlin, Raymond Aron, Thomas Pangle, Pierre Manent, Bernard Manin and Lucien Jaume all regard Montesquieu as one of the founding fathers, together with Locke, of modern liberalism.<sup>1</sup> The work features among the classics of the repertoire. As such, the quintessence of Montesquieu's philosophy rests in the "distribution of powers", condition of political liberty: since "constant experience shows us that every man invested with power is apt to abuse it, and to carry his authority as far as it will go", it is necessary that, "from the very nature of things, power should be a check to power" (XI, 4). The free constitution is a system where rival ambitions oppose but do not destroy one another. The critique of despotism also appears to support this interpretation. Montesquieu gave this regime its philosophical dignity, in which man, overwhelmed by fear, is reduced to the blind obedience of power's commandments. The figure of despotism, which has caused "infinite pains" to human nature, is undoubtedly a powerful foil: despotism is the place of the concentration and of the confusion of powers, it is also that of the negation of law, of the absence of rapid economic development and social ties, and, for the individual subjugated to the governor's whims, of violence and torment.

The liberal interpretation of Montesquieu, however, extends beyond this defence of the government of liberty. For when faced with despotism, true limit of the political, the republic does not seem to provide a model. *The Spirit of the Laws* insists on the requirements associated with republican virtue. Setting aside the institution of slavery,<sup>2</sup> the people's participation in power demands the "continual sacrifice of our persons" and of our interests,<sup>3</sup> and the abandonment of a large part of citizens' private lives and personal safety,

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<sup>1</sup> The liberal interpretation of Montesquieu is classical since at least E. Faguet (*Politique comparée de Montesquieu, Rousseau et Voltaire* (1902), Genève, Slatkine Reprints, 1981), R. Aron (*Les Etapes de la pensée sociologique*, Paris, Gallimard, 1967, chap. 1) and I. Berlin («Montesquieu», in *A contre courant*, trad. A. Berelowitch, Paris, Albin Michel, 1988, p. 200-235). Among recent interpretations, see B. Manin, «Les deux libéralismes : marché ou contre-pouvoirs», *Intervention*, n° 9, mai-juillet 1984, p. 10-24 ; P. Manent, *La Cité de l'homme*, Paris, Champs Flammarion, 1997, chap. 1 and 2 ; M. C. Iglesias, «L'Europe comme valeur : individualisme et liberté politique dans l'œuvre de Montesquieu», in *L'Europe de Montesquieu, Cahiers Montesquieu*, n° 2, 1995, p. 257-270 ; C. Larrère, «Montesquieu and Liberalism. The Question of Pluralism», in *Montesquieu and his Legacy*, R. Kingston éd., New York, SUNY Press, 2009, p. 279-301 ; L. Jaume, *La Liberté et la Loi*, Paris, Fayard, 2000, chap. 2 ; T. Pangle, *Montesquieu's Philosophy of Liberalism*, Chicago, The Chicago University Press, 1973 ; J. N. Shklar, «Montesquieu and the New Republicanism», in *Machiavelli and Republicanism*, Cambridge, Cambridge University Press, 1990, p. 265-279. For a critical perspective, see C. Spector, «L'Esprit des lois de Montesquieu. Entre libéralisme et humanisme civique», *Revue Montesquieu*, n° 2, 1998, p. 139-161 ; *Montesquieu, Pouvoirs, richesses et sociétés*, Paris, P.U.F., 2004.

<sup>2</sup> *The Spirit of the Laws* (SL hereafter), XXIII, 17. While awaiting the related publication in *Œuvres complètes* (Oxford, Voltaire Foundation), the reference edition remains that of R. Derathé, Paris, Garnier, 1973, 2 vols. In this article I will focus on an analysis of *The Spirit of the Laws*. On *Persian Letters*, see D. Schaub, *Erotic Liberalism. Women and Revolution in Montesquieu's «Persian Letters»*, Lanham, Rowman and Littlefield, 1995.

<sup>3</sup> SL, V, 19; III, 5.

all in the name of virtue. The equality and frugality required by virtue entail the renunciation of the self and of its pleasures, an “ever arduous” task that only the perpetual constraint of customs can make possible.<sup>4</sup> The corruption of men, finally, can only be avoided, in ancient cities, by the maintenance of a martial discipline.<sup>5</sup> According to Leo Strauss’s disciples, Thomas Pangle and Pierre Manent, the “secret design” of *The Spirit of the Laws* reveals itself in the critique of classical republicanism and in the praise of the modern liberal regime, considered better adapted to human nature: the commercial English republic.<sup>6</sup> Viewed in this way, Montesquieu’s liberalism is not only based on the defence of a system of laws and counter-powers susceptible of protecting man and the citizen. It is also centred on customs, and rests on the concealed praise of modern England and the defence of its “spirit of commerce”. Far more than virtue, the blossoming of interest ensures the main objectives of the State (peace, prosperity, liberty).

But what, precisely, can be said of Montesquieu’s liberalism? The use of the concept implies a retrospective reading of the work and always runs the risk of projecting onto it the interpreters’ ideological choices. Dating from the early 19<sup>th</sup> century,<sup>7</sup> the notion of liberalism is evidently foreign to Montesquieu, and he cannot be as comfortably included in this school of thought as Benjamin Constant or Alexis de Tocqueville, whom his work inspired. “Liberalism before liberalism” is a protean phenomenon, and it is certainly better to speak of a *constellation* than of a rigorous definition of the concept.<sup>8</sup> However, as long as a conventional definition can be agreed upon (classical liberalism as the theory of limited government, the protection of rights and the positive effects of interest, in the absence of virtue<sup>9</sup>), it is legitimate to question Montesquieu’s membership in the liberal “tradition”. It is therefore the interpretation of a liberal Montesquieu, which is not only the liberal interpretation of Montesquieu in the sense that it is shared by non-liberal thinkers (Straussians, republicans), which I would like to test here. Questioning the meaning of liberty, as well as the presence of a theory of “doux commerce” and of the “invisible hand” in *The Spirit of the Laws* will help to determine the relevance of the liberal interpretation and, at the same time, highlight the masking effects it produces.

## I. A philosophy of liberty

The liberal reading of Montesquieu often mentions the various parts of his work where he praises liberty – « la liberté, ce bien qui fait jouir des autres biens » (*MP*, 1797) –

<sup>4</sup> *SL*, IV, 5 ; V, 2. For an analysis of how this conception is embedded in the republican tradition, see C. Larrère, « Montesquieu et le républicanisme », *Bulletin de la Société Montesquieu*, n° 5, 1993, p. 12-28.

<sup>5</sup> *SL*, IV, 8. “As a certain kind of confidence forms the glory and stability of monarchies, republics, on the contrary, must have something to apprehend” (VIII, 5).

<sup>6</sup> See T. Pangle, *Montesquieu’s Philosophy of Liberalism*, *op. cit.*; P. Manent, *La Cité de l’homme*, *op. cit.*; *Histoire intellectuelle du libéralisme*, Paris, Hachette, 1987, chap. 5; *Les Libéraux*, Paris, Hachette, 1986, t. I, p. 218-288.

<sup>7</sup> See D. Deleule, « Libéralisme », *Dictionnaire européen des Lumières*, M. Delon éd., Paris, P.U.F., 1997, p. 645-648 ; Ph. Raynaud, « Libéralisme », in *Dictionnaire de philosophie politique*, Ph. Raynaud et S. Rials éd., Paris, P.U.F., 1996, p. 338-344.

<sup>8</sup> See B. Bachofen’s introduction to *Inventions et critiques du libéralisme. Le pouvoir, la personne, la propriété*, B. Bachofen éd., Lyon, ENS Éditions, 2008, p. 7-27, as well as the contributions to this volume.

<sup>9</sup> This classical political liberalism, of course, is very different to that of Rawls and his followers. On this point see R. F. Thiemann, « Montesquieu and the Future of Liberalism », in *Montesquieu and his Legacy*, *op. cit.*, p. 271-278. On the articulation with economic liberalism as the theory of the spontaneous harmony of private interests, see C. Spector, « Qu’est-ce que le libéralisme ? Le grand récit des origines », in *Les Libéralismes*, F. Brugère et G. Leblanc éd., Bordeaux, Le Bord de l’Eau, *forthcoming*.

and refers to his vision of the constitution of England and of the distribution of the state's powers.<sup>10</sup> Without necessarily emphasising his violent denunciation of religious intolerance, his diatribe against the Inquisition or his early denunciation of slavery, the liberal interpretation insists on the distance that separates Montesquieu from a republican conception of liberty.<sup>11</sup> Liberty, as defined in *The Spirit of the Laws*, breaks with the republican *topos*: the liberty of the people is not the power of the people, but dependence on the laws and security under the laws. Autonomy and participation in power do not equate to political liberty.<sup>12</sup> With his art of writing, Montesquieu, it is argued, expresses his preference for the "liberal republic", representative and mercantile as in England. This comes at the expense of the "participatory republic" of the ancients, and of the monarchy crippled by the vestiges of feudalism.<sup>13</sup> *The Spirit of the Laws*, in this way, is deemed to hold up the *English model* as the one best suited to human nature, the one that best guarantees the security of individuals, and the one that best satisfies the primordial desire of preservation. Republican autonomy gives way to a *negative liberty*, defined as independence within a sphere protected by the law, guaranteed by the distribution of powers within a representative system, and enabling the unfettered development of "private" behaviour. Such would be the sense of Montesquieu's liberalism: the praise of liberty under the law, combined with the praise of commerce, is a clear choice in favour of modernity.

Though appealing, this reading must be put to the test. In what sense does Montesquieu defend liberty? Chapter 2 of Book XI begins with a sceptical-sounding enumeration, expressing the diversity of opinion on the matter:

There is no word that admits of more various significations, and has made more different impressions on the human mind, than that of liberty. Some have taken it for a facility of deposing a person on whom they had conferred a tyrannical authority: others, for the power of choosing a superior whom they are obliged to obey; others, for the right of bearing arms, and of being thereby enabled to use violence: others, in fine, for the privilege of being governed by a native of their own country, or by their own laws. A certain nation, for a long time, thought liberty consisted in the privilege of wearing a long beard. Some have annexed this name to one form of government exclusive of others: those who had a republican taste applied it to this species of polity: those who liked a monarchical state gave it to monarchy (XI, 2).

In the civil state, man is the measure of liberty, which he interprets according to his passions and his beliefs, according to that which he is accustomed to: "Thus they have all applied the name of liberty to the government most suitable to their own customs and inclinations" (*ibid.*). But in place of this rhapsody, Montesquieu does not propose a simple and single definition of political liberty, which he distinguishes from philosophical liberty.<sup>14</sup> Political liberty is not defined as permission or as independence, but as liberty under the

<sup>10</sup> This reading was already that of E. Faguet, for whom Montesquieu was also the precursor of human rights (*Politique comparée de Montesquieu, Rousseau et Voltaire, op. cit.*, p. 14-17). It undoubtedly contributed to the interest which a liberal publicist, Edouard de Laboulaye, had in the work of Montesquieu, editing, in 1875, his *Œuvres complètes*.

<sup>11</sup> On these two points, which I am unable to develop here, I would like to refer to my articles, "Il est impossible que nous supposions que ces gens-là soient des hommes": la théorie de l'esclavage au livre XV de *L'Esprit des lois*", *Lumières*, n° 3, 2004, p. 15-51; "Naturalisation des croyances, religion naturelle et histoire naturelle de la religion: le statut du fait religieux dans *L'Esprit des lois*", dans *Montesquieu, l'Etat et la Religion*, J. Ehrard éd., Actes du colloque de Sofia, 6-8 octobre 2005, Sofia, Editions Iztok-Zapad, 2007, p. 40-109.

<sup>12</sup> "Democratic and aristocratic states are not in their own nature free" (SL, XI, 4). See SL, XI, 2-6; XII, 1-2; XXVI, 20; *Mes pensées* (désormais *MP*), 32, 884.

<sup>13</sup> T. Pangle, *Montesquieu's Philosophy of Liberalism, op. cit.*; P. Manent, *La Cité de l'homme, op. cit.*, chap. 1-2; P. Rahe, *Montesquieu and the Logic of Liberty*, Yale, Yale University Press, 2009.

<sup>14</sup> See B. Binoche, *Introduction à « De l'esprit des lois » de Montesquieu, op. cit.*, p. 286-296.

law: “Liberty is a right of doing whatever the laws permit” (XI, 3). Citizens are “really free” when they are “subject only to the power of the law”.<sup>15</sup> According to Montesquieu, it is necessary to distinguish between the political laws which protect the constitution (Book XI) and the civil laws which protect the citizen (Book XII). This distinction is crucial: “The constitution may happen to be free, and the subject not”, and inversely (XII, 1). It may be that the judiciary power is separate and well placed – which is the “master-piece of legislation” among a free people (XI, 11) – but that it rules along iniquitous laws. Yet the freedom of the citizen is based on the justice of the criminal procedure and on the presumption of innocence: “When the subject has no fence to secure his innocence, he has none for his liberty” (XII, 2). In order to preserve moderation, man must be protected from arbitrary laws as much as from arbitrary powers. This implies the strict limitation of “lese-majesty” and protecting the freedom of opinion. It is here that Montesquieu is closest to an individual rights theory and to a human rights philosophy.<sup>16</sup> “The knowledge already acquired in some countries, or that may be hereafter attained in others, concerning the surest rules to be observed in criminal judgements, is more interesting to mankind than any other thing in the world. Liberty can be founded on the practice of this knowledge only” (*ibid.*). Against despotism’s extreme methods, Montesquieu supports a moderate usage of the power to punish (VI, 12): great care in the qualification of crimes is necessary, alongside a range of sanctions, which are, to the extent possible, sparing in their severity.<sup>17</sup>

This is the meaning, for Montesquieu, of liberty under the law. Such a definition is indeed contrary to the “republican tradition” which founds political liberty on the collective exercise of power and on civic participation: the power of the people is not the liberty of the people (XI, 2). The liberty invoked by *The Spirit of the Laws* is undoubtedly conceived of as obedience to the law which one has given oneself, be it in ancient popular regimes or in contemporary England: “As, in a country of liberty, every man who is supposed a free agent ought to be his own governor, the legislative power should reside in the whole body of the people” (XI, 6). But the “spirit of liberty” also exists in the constitutions of monarchies (XI, 7).

Nevertheless, it is at this point that the liberal interpretations, however different they may be, stumble: for it is in appearance only that Montesquieu comes to share the Lockean definition of liberty as liberty under the law.<sup>18</sup> Montesquieu insists on the subjective perception that men have of their liberty: liberty is not security but “the opinion people have of their security” (XI, 6; XII, 1). It is a form of “tranquillity of spirit”, which is the opposite of despotic fear:

*“Les hommes qui jouissent du gouvernement dont j’ai parlé [l’Angleterre] sont comme les poissons qui nagent dans la mer sans contrainte. Ceux qui vivent dans une monarchie ou aristocratie sage et modérée semblent être dans de grands filets, dans lesquels ils sont pris, mais se croient libres. Mais ceux qui vivent dans les Etats purement despotiques sont dans des filets si serrés que d’abord ils se sentent pris”* (MP, 828).

<sup>15</sup> SL, XI, 6. There are other such formulations: “Liberty consists principally in not being forced to do a thing, here the laws do not oblige: people are in this state, only as they are governed by civil laws” (XXVI, 20, see MP, 884); liberty can consist only in the power of doing what we ought to will, and in not being constrained to do what we ought not to will” (XI, 3).

<sup>16</sup> See E. Faguet, *Politique comparée de Montesquieu, Rousseau et Voltaire*, op. cit., p. 14-17.

<sup>17</sup> Contrary to Beccaria, Montesquieu nonetheless justifies the capital punishment for prejudices to security (SL, XII, 4).

<sup>18</sup> SL, XI, 6; XII, 1-2. For Locke, “the end of law is not to abolish or restrain, but to preserve and enlarge freedom: for in all the states of created beings capable of laws, where there is no law, there is no freedom: for liberty is, to be free from restraint and violence from others...” (*The Second Treatise of Civil Government*, § 57).

Montesquieu thus repeatedly alludes to the *feeling* of liberty, which is not an abstract conscience. Concerning taxes, for example, he argues that “the duties felt least by the people are those on merchandise” (XIII, 7); yet the value of the duty must nonetheless be proportionate to that of the merchandise, for otherwise “the prince removes the disguise” from his subjects “which renders them most exquisitely sensible of their servile condition” (XIII, 8). Other expressions seem to suggest that liberty stems from government manipulation, aimed at putting to rest the subjects’ potential resistance: “The whole felicity of monarchies consists in the opinion which the subjects entertain of the lenity of the government. A weak minister is ever ready to remind us of our slavery. But, granting even that we are slaves, he should endeavour to conceal our misery from us” (XII, 25).

Therefore, one must wonder whether Montesquieu defends a real liberty, or if, *in fine*, the illusion of liberty is sufficient. Should we distinguish between a real liberty, in virtue of which the feeling of security is justified by a genuine protection of rights, and a liberty of opinion, in the manner in which real tyranny is opposed to the “tyranny of opinion”?<sup>19</sup> Book XIX of *The Spirit of the Laws*, which defends soft and moderate political action, supports this approach: “There are two sorts of tyranny; one real, which arises from oppression; the other is seated in opinion, and is sure to be felt whenever those who govern establish things shocking to the present ideas of a nation” (XIX, 3). In this second acceptation, liberty is experienced when a people is free to follow its traditions and customs: it no longer concerns the *subject of law* but the *subject of customs*, whose belief in his liberty depends on the preservation of his customs. As such, according to Montesquieu, a people like the Romans “have a more lively sense of tyranny when a player is banished than when they are deprived of their laws” (*ibid.*). Does it follow that the art of politics is an art of manipulation designed to make men *believe* that they are free – or, further still, to have them consent to their servitude? If this were the case, the liberal interpretation of Montesquieu would have to make way for a Machiavellian interpretation of the author.

In reality, things are more complex and these two interpretations must be rejected together: Montesquieu is neither a liberal looking to edify a universal theory of the protection of individuals’ rights in opposition to state sovereignty nor a Machiavellian seeking to defend an illusory liberty that the art of governing cunningly preserves. On the one hand, *The Spirit of the Laws* does not confer on institutions alone the care of protecting men against the abuse of power. Montesquieu rules out any purely constitutional defense of liberty. In England itself, only civic vigilance enables the nation to escape servitude: through the confrontation of parties and factions, it is *jealousy of liberty* which, accompanied by an irrational fear of abuses of power, preserves liberty.<sup>20</sup> If one can make a claim for Montesquieu’s liberalism, it is therefore a liberalism of “counter-powers” supported by customs, rather than a liberalism of rights.<sup>21</sup> The only universal natural laws are those of *natural defense* and of *natural modesty*, which give rise to negative prescriptions (avoid corporal or sexual punishments). As such, all liberty must be thought in situation, and the only principles that can be laid down to protect it must be formal ones (distribution of powers, presumption of innocence, strict qualification of crimes, etc.). On the other hand, Montesquieu is not strictly Machiavellian either. It is not the objective of *The Spirit of the Laws* to reflect on the conditions of the manipulation of men, and to thereby enable governors to conserve their power. Rather, it theorises the conditions of moderation, for

<sup>19</sup> This is the hypothesis of B. Binoche, *op. cit.*, p. 290-294.

<sup>20</sup> *SL*, XIX, 27. See C. Spector, « Montesquieu: Critique of Republicanism? », in *Republicanism: History, Theory and Practice, Critical Review of International Social and Political Philosophy*, vol. 6, n° 1, Spring 2003, p. 38-53.

<sup>21</sup> See B. Manin, « Les deux libéralismes : marché ou contre-pouvoirs », *art. cit.*

the benefit of peoples as much as that of princes or magistrates. Montesquieu is anti-Machiavellian on Machiavelli's ground – that of power relations in situation. The crucial concept of his philosophy, the one that enables an understanding of his struggle against Machiavellianism as well as against absolutism, is the concept of *moderation*: “I say it, and methinks I have undertaken this work with no other view than to prove it; the spirit of a legislator ought to be that of moderation; political, like moral evil, lying always between two extremes” (XXIX, 1).

This defense of the spirit of moderation clarifies the status of the *English model*, the cornerstone of the liberal interpretation. To what extent is it a model? Just as the love of equality in democracies can be corrupted into the love of extreme equality (refusal of all hierarchy) and topple into tyranny, so too can the love of liberty degenerate into the “delirium of liberty”. In certain aspects, extreme liberty is similar to absolute government: partisan divisions enslave public opinion.<sup>22</sup> Furthermore, the liberty that the English enjoy is in essence precarious and does not necessarily lead to the happiness of the people.<sup>23</sup> Not only does extreme liberty not satisfy all conditions of the political good, which is to be a middle way, but the English pay the price for their fanatical individualism – one of the reasons for their suicidal tendencies. The “free nation” is therefore not a model to be universalized – this would run counter to Montesquieu's concern for suitability to particular circumstances.<sup>24</sup> The theory of “the general spirit” of peoples leads to a liberty pluralised according to customs. Moderation, which requires a “master-piece of legislation” to balance the powers (V, 14), makes political liberty possible.<sup>25</sup> In this respect, there is no “best regime” capable of revealing its quintessence – just a “mirror” in which the principles of liberty appear, where liberty is the “direct end” of the constitution.<sup>26</sup> There is no best in politics, only a plurality of relative goods, dependent on the situation: “Human laws appoint for some good; those of religion for the best: good may have another object, because there are many kinds of good: but the best is but one, it cannot therefore change”.<sup>27</sup> Against all perfectionism, Montesquieu sets out the plural conditions of liberty. He sees man as a being of beliefs and passions, and it is his ways of thinking and of acting which form the fabric of his liberty – which is in no way the abstract liberty of a disembodied subject.

## II. The theory of “doux commerce”: social order without virtue

However, there is a different way of considering the question of the liberalism in *The Spirit of the Laws*. When reflecting on modern experience, Montesquieu highlights the

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<sup>22</sup> « In monarchies extremely absolute, historians betray the truth, because they are not at liberty to speak it; in states remarkably free, they betray the truth, because of their liberty itself, which always produces divisions, every one becoming as great a slave to the prejudices of his faction as he could be in a despotic state » (*SL*, XIX, 27, *i. f.*).

<sup>23</sup> See Sh. Krause, « The Spirit of Separate Powers in Montesquieu », *The Review of Politics*, n° 62, Spring 2000, p. 231-265.

<sup>24</sup> *SL*, I, 3: XIX, 21.

<sup>25</sup> “Political liberty is to be found only in moderate governments; and even in these it is not always found. It is there only when there is no abuse of power: but constant experience shows us that every man invested with power is apt to abuse it, and to carry his authority as far as it will go. Is it not strange, though true, to say, that virtue itself has need of limits? To prevent this abuse, it is necessary, from the very nature of things, power should be a check to power.” (*SL*, XI, 4).

<sup>26</sup> *SL*, XI, 5. This “model”, like that of Rome, serves as a yardstick to judge constitutions (XI, 20).

<sup>27</sup> *SL*, XXVI, 2. See B. Manin, « Montesquieu et la politique moderne », in *Cahiers de Philosophie politique*, Reims, n° 2-3, OUSIA, 1985, p. 197-229, published again in *Lectures de « L'Esprit des lois »*, T. Hoquet et C. Spector éd., Bordeaux, Presses Universitaires de Bordeaux, 2004, p. 171-231 ; C. Larrère, « Montesquieu and Liberalism », art. cit.

importance of softness (*douceur*): it is in these terms that the advantage of modern times over ancient times is expressed, be it in the politics of conquest<sup>28</sup> or in relation to manners and customs.<sup>29</sup> But where does this apparent softness of modernity come from? According to Montesquieu, it proceeds from multiple factors, and Christianity, by its contribution to political law and to the law of the nations, has its part to play (X, 3). Provided the normative regimes are well separated (by distinguishing, in particular, civil law from religious law), Christianity can moderate the power of princes and temper their cruelty. But, for the most part, the softness of the moderns proceeds, in Montesquieu's eyes, from commerce. The softness linked to the rapid expansion of the economy and the preeminence of interest replaces the regulation of virtue: "The politic Greeks, who lived under a popular government, knew no other support than virtue: the modern inhabitants of that country are entirely taken up with manufacture, commerce, finances, opulence, and luxury".<sup>30</sup>

This would be the new justification of Montesquieu's liberalism, apostle of modernity: in order to produce peace and liberty, modernity has no need of virtue.<sup>31</sup> The liberal interpretation, the Straussian interpretation and the republican interpretation<sup>32</sup> all converge here: in each case, the theory of "*doux commerce*" is a key element of the argumentation which seeks to found political liberty and social ties on economic trade relations.<sup>33</sup> Montesquieu underlines the moral and political effects of *interest* (qualified, in *Persian Letters*, as "the greatest monarch upon earth").<sup>34</sup> In the absence of virtue, the selfish love of profit reinforces the security of people and goods.

Firstly, commerce is soft as "a cure for the most destructive prejudices", thus appeasing the barbarity towards other peoples. The spirit of tolerance stems from the comparison of nations, as navigation brings them into contact with one another: it is therefore "almost a general rule, that wherever we find agreeable manners, there commerce flourishes; and that wherever there is commerce, there we meet with agreeable manners" (XX, 1). Commerce is soft, secondly, in that its effects – the "spirits" or dispositions which it favours – lead naturally to peace. This is due to the substitution, within acquisition, of predation with negotiation. Commerce "unites" nations, each of which finds its interest (one in buying, the other in selling), more so given that the interests cannot but satisfy

<sup>28</sup> *Romains*, XV. See *SL*, X, 3; XXIV, 3.

<sup>29</sup> For the Greeks, "society of wrestlers and boxers" who refused to apply themselves to trade, music only could dampen their natural savagery and soften manners: "these [military] exercises having a natural tendency to render people hardy and fierce, there was a necessity for tempering them with others that might soften their manners" (*SL*, IV, 8).

<sup>30</sup> *SL*, III, 3. The phrase would be adopted by Rousseau in his *Discours sur les sciences et les arts*, as well as by Benjamin Constant, who refers back to Montesquieu in his critique of Rousseau.

<sup>31</sup> Trade republics, however, represent a separate case, in which a form of ascetic ethics reigns: "This is because the spirit of commerce is naturally attended with that of frugality, economy, moderation, labour, prudence, tranquility, order, and rule. So long as this spirit subsists, the riches it produces have no bad effect" (*SL*, V, 6).

<sup>32</sup> The latter cites a "merchant humanism". See J. G. A. Pocock, *Le Moment Machiavélien*, trad. L. Borot, Paris, P.U.F., 1997 ; « Vertu, droits et mœurs », in *Vertu, Commerce et Histoire*, trad. H. Aji, Paris, P.U.F., 1998, p. 57-72 ; J.-F. Spitz, *La Liberté politique*, Paris, P.U.F., 1995, chap. VII. Among the historians of liberalism who also consider « soft commerce » to be a key element of Montesquieu's argumentation, see P. Rosanvallon, *Le Libéralisme économique. Histoire de l'idée de marché*, Paris, Seuil, 1989, p. IV, 29.

<sup>33</sup> Without using the expression, Montesquieu establishes a correlation between commerce and softness (*SL*, XX, 1). But it is A. O. Hirschman, followed by P. Rosanvallon and many others, who speaks of Montesquieu's "doux commerce" (*Les Passions et les Intérêts*, trad. P. Andler, Paris, P.U.F., 1997 ; « Le concept d'intérêt : de l'euphémisme à la tautologie », in *Vers une économie politique élargie*, Paris, Editions de Minuit, 1986, p. 7-29). I also allow myself the use of this convenient turn of phrase.

<sup>34</sup> *Persian Letters*, 106.



themselves mutually, on the basis of a genuine reciprocity.<sup>35</sup> Commerce is soft, finally, in that it tames civil violence. Within nations, the development of certain instruments of commerce and of finance condemns to powerlessness the “great exertions of authority” of which princes, through persecution and plundering, were culpable. The invention by the Jews of the bill of exchange enabled commerce to escape sovereignty’s formidable grasp and, thanks to the globalisation of financial flows, people to protect themselves, therefore to strengthen liberty as the opinion one has of one’s security (XXI, 20).<sup>36</sup> In this way, and as already underlined by A. O. Hirschman, the desire of profit acquires a new dignity. Avarice now appears as the salutary remedy for the disorder of passions (in particular princely) that moral injunctions are unable to regulate. At a time when the heroic love of glory is replaced with the lure of gains, ostentation with utility, and prestige with profit,<sup>37</sup> Montesquieu highlights the beneficial effects of interest: the increase of exchanges (material, cultural) and the increase of relations of interdependence are favourable, not just to prosperity, but to peace and to political liberty.

However, the liberal reading of Montesquieu risks, there again, omitting the subtleties and nuances of his work. Not only should his admiration for the greatness of the ancients not be underestimated, but his ambivalence with regard to the effects of the commercial society should not be overlooked.<sup>38</sup> The two are linked: Greece and Rome provide the example of noble motives, compared to the baseness of modern ambition and greed; friendship, the foundation of social ties, is in sharp contrast to contemporary individualism, itself associated with “lowly interest, which is exactly the animal instinct of all men”.<sup>39</sup> Commerce, by encouraging individuals to turn to their private interests, harms the expression of virtues and “corrupts the purest morals” (XX, 1). Far from being a characteristic of a free regime, self-centred behaviour thrives in despotic states, where, without honour or virtue, “people cannot be determined to act but through hope of the conveniences of life” (V, 17). Despotism only can reduce passion to its simplest expression, rewards to money and sanctions to corporal punishment – abolishing, in this reign of the material and quantitative, the social and political dimension of man. Furthermore, although commerce can pacify customs between men of foreign lands, it cannot be credited with a beneficial role in the formation of social ties. Not only does virtue suffer from the deployment of self-interested rationality: sociability, politeness and the improvement of taste also seem incompatible with the spirit of calculation and of “exact justice” associated with cupidity. This is Montesquieu’s assessment of Holland, where all services, even those requested by “humanity”, are for sale. But it is just as much his opinion of England. During his stay there, Montesquieu noted that social atomism and the absence of politeness were the rule: “the English are almost only ever united by ties of hatred and the hope of revenge”; “the English are busy; they do not have the time to be polite”.<sup>40</sup> Similarly, in the “commercial society” described by *The Spirit of the Laws*, where

<sup>35</sup> *SL*, XX, 2. On this mechanism, see C. Spector, *Montesquieu et l'émergence de l'économie politique*, Paris, Champion, 2006, chap. 4.

<sup>36</sup> *Ibid.*, chap. 4 and 5.

<sup>37</sup> « C'est l'esprit de commerce qui domine aujourd'hui » (*MP*, 810). « Ce qu'on appelait autrefois *gloire, lauriers, trophées, triomphes, couronnes*, est aujourd'hui de l'argent comptant » (*MP*, 1602). See *MP*, 575, 760-761.

<sup>38</sup> See J.-F. Spitz, *La Liberté politique, op. cit.*, chapter VII ; D. Carrithers, « Montesquieu and the Spirit of Modernity », in *Montesquieu's Spirit of Modernity*, D. Carrithers and P. Coleman eds., Oxford, Voltaire Foundation, 2002, p. 1-33.

<sup>39</sup> *MP*, 1253, see *MP*, 221.

<sup>40</sup> *Notes sur l'Angleterre*, in *Œuvres complètes de Montesquieu*, A. Masson éd., Paris, Nagel, t. I, 1950, p. 292. Other texts suggest a similar view: “Ces gens-là [les Français] veulent que les Anglais soient faits comme eux. Comment les Anglais aimeraient-ils les étrangers ? ils ne s'aiment pas eux-mêmes [...] Il faut donc faire comme eux, vivre pour soi, comme eux, ne se soucier de personne, n'aimer personne, et ne compter sur personne » ; “Les Anglais vous font peu de politesses, mais jamais d'impolitesses” ; « Comme on ne s'aime

“many people [...] have no desire of pleasing”, the refinement of manners is excluded. The commercial society is governed by that which is useful rather than agreeable, by work not laziness, solitude not sociability, debauchery not gallantry, strength not grace.<sup>41</sup>

In *The Spirit of the Laws*, economic ties play in this regard a contradictory role: principle of association, interest is also a principle of dissociation in the civil space. At a time when, in Europe, wealth becomes the very substance of power – to the point where “nothing in history can be compared to it”<sup>42</sup> – modern states cannot rely on interest to improve culture and maintain social ties. When, of a nation’s nature, Montesquieu commands the legislator to “leave it be”, it is not England that he evokes, but the nation of a “sociable character”, France, governed by honour, luxury and politeness (XIX, 5-6).

### III. A theory of the “invisible hand”?

However, it is still true that Montesquieu’s liberalism could find more fertile ground elsewhere: *The Spirit of the Laws* contains a traditional motif of liberalism, that of the “invisible hand”. The famous expression appears in *The Spirit of the Laws*: “each individual advances the public good, while he only thinks of promoting his own interest” (III, 7). Where passions and interests spontaneously contribute to prosperity and liberty, the art of politics seems useless. If the republic requires a reorientation of passions, the monarchy, in Montesquieu’s eyes, is less demanding: “In monarchies, policy effects great things with as little virtue as possible. Thus, in the nicest machines, art has reduced the number of movements, springs, and wheels. The state subsists independently of the love of our country, of the thirst of true glory, of self-denial, of the sacrifice of our dearest interests, and of all those heroic virtues which we admire in the ancients, and to us are known only by story” (III, 5).

It would nonetheless be unwise to project onto *The Spirit of the Laws* the paradigm of Adam Smith’s *Wealth of Nations*. It is *honour* that Montesquieu conceives according to the paradigm of the invisible hand: “It is with this kind of government as with the system of the universe, in which there is a power that constantly repels all bodies from the centre, and a power of gravitation, that attracts them to it. Honour sets all the parts of the body politic in motion, and, by its very action, connects them; thus each individual advances the public good, while he only thinks of promoting his own interest” (III, 7). *Private vices, public virtues*: in *The Spirit of the Laws*, the dominant passion of monarchies enables modern politics to do “great things with as little virtue as possible” and to avoid the unconditional obedience that characterises despotism.<sup>43</sup> It is a matter of honour, and not of interest in the strictest sense: the motivation behind action includes an interest in prestige and social recognition, and not simply an interest in goods. The motive of great acts in modern monarchies cannot be reduced to the desire of profit; it carries with it a symbolic and public dimension, in virtue of which the individual can define himself according to his code, as well as the reputation which he claims to obtain. Montesquieu notably brings into play the possibility of resistance to abuses of power, governed by honour, which can be “false” (irrational, arbitrary, even barbaric) but still “useful to the public” (enabling society

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point ici, à force de craindre d’être dupe, on devient *dur*” (*ibid.*, p. 285-287, voir également *MP*, 1136 ; *MP*, 780).

<sup>41</sup> *SL*, XIX, 27, *in fine*. See C. Spector, *Montesquieu, Pouvoirs, richesses et sociétés*, *op. cit.*, chap. 2.

<sup>42</sup> *SL*, XXI, 21.

<sup>43</sup> *SL*, III, 5 ; III, 10. On the report to Mandeville, see C. Spector, « Vices privés, vertus publiques : de la *Fable des abeilles* à *L’Esprit des lois* », in *Montesquieu and the Spirit of Modernity*, D. Carrithers and P. Coleman éd., Oxford, Voltaire Foundation, 2002, p. 127-157.

as a whole to benefit from a spirit of rebellion when confronted with abuses of power).<sup>44</sup> Publicly defending their status and eager to prove they are worthy of their rank, great men offer resistance to vile actions, involuntarily producing political liberty.<sup>45</sup>

Turning now to economic matters, Montesquieu certainly seems to subscribe to the liberal critique of mercantile practices.<sup>46</sup> Regarding commerce as an exchange generally beneficial to the various parties, he renounces the bellicose vision of the economy advocated by Colbert, who argued for customs and the naval fleet to be put at the disposal of a commercial hegemony. Book XX of *The Spirit of the Laws* is controversial: competitive trade is no longer considered a zero-sum game (the gain of one is the loss of the other), but as a place of reciprocal advantages. The riches of some create openings for others:

[...] un Etat qui ruine les autres se ruine lui-même, et que, s'il manque à la prospérité commune, il manque à la sienne. La raison en est claire. Un Etat ruiné ne peut faire d'échanges avec les autres ; les autres ne peuvent pas non plus faire d'échanges avec lui. Ce qui fait que l'on ne sent pas bien cela, c'est que l'on ne sent bien que le mal qui nous vient de la perte du commerce immédiat. Toutes les nations tiennent à une chaîne et se communiquent leurs maux et leurs biens.

Je ne fais point une déclamation ; je dis une vérité : la prospérité de l'Univers fera toujours la nôtre ; et, comme dit Marc-Antonin : « ce qui n'est point utile à l'essaim n'est point utile à l'abeille ».<sup>47</sup>

However, this critique of mercantile practices in no way implies that the state should abstain from all regulation. The freedom of commerce is not that of the traders. It is not “the power granted to the merchants to do what they please”, irrespective of the law and beyond all state regulation: “It is in the freest countries that the merchant finds innumerable obstacles; and he is never less crossed by laws, than in a country of slaves” (XX, 12). In Montesquieu’s eyes, economic and demographic regulation remain necessary not only in republics, which must maintain equality and frugality by a strict regulation of property, but also in modern monarchies, where the state must look after its interests while guaranteeing the conditions of a decent life for all: “The alms given to a naked man in the street do not fulfil the obligations of the state, which owes to every citizen a certain subsistence, a proper nourishment, convenient clothing, and a kind of life not incompatible with health”.<sup>48</sup> Contrary to the liberal representation, in which the political must not intervene in the self-regulation of the market, it is not simply a matter of “*laissez-faire*”: in wealthy countries where the rapid development of commerce and manufactures generates chronic recessions, the government finds itself invested with important duties. Incitement must replace constraint, without leading to abstention.<sup>49</sup> There is nothing analogous, in this theory, to the singular liberalism of the Physiocrats, who argued for a “natural right” to property (which Montesquieu, for his part, rejects<sup>50</sup>) and made a case for a spontaneous harmony of private interests.

<sup>44</sup> See C. Spector, *Montesquieu, pouvoirs, richesses et sociétés*, *op. cit.*, chap. 1, in English: « Honor, Interest, Virtue: The Affective Foundations of the Political in *The Spirit of the Laws* », in *Montesquieu and his Legacy*, *op. cit.*, p. 49-79.

<sup>45</sup> *SL*, IV, 2. See S. Krause, *Liberalism with Honor*, Cambridge and London, Harvard University Press, 2002, chap. 2.

<sup>46</sup> See *Montesquieu et l'émergence de l'économie politique*, *op. cit.*, introduction. I deal with the question of Montesquieu’s economic liberalism in greater detail in this book.

<sup>47</sup> *Mes Pensées*, 1694. Voir *EL*, XXII, 1, 10 ; *Mes Pensées*, 832.

<sup>48</sup> *SL*, XXIII, 29. This chapter gave rise to a progressive reading of Montesquieu (M. Leroy, *Histoire des idées sociales en France*, t. I, Paris, Gallimard, 1946, p. 127).

<sup>49</sup> D. Deleule opposes the liberalism of Hume with that of the Physiocrats (*Hume et la naissance du libéralisme économique*, Paris, Aubier, 1979).

Was Montesquieu a liberal? The historiographical problem is inseparable from the philosophical question.<sup>51</sup> However, despite the strong theses which lead the historians to include *The Spirit of the Laws* among the classics of liberalism – critique of despotism and of mercantilism, theory of the distribution and of the balance of powers, praise of social and political pluralism, defence of a “merchant humanism” which extols the advantages of commerce –, one should acknowledge the illusions of perspective and the masking effects produced by the liberal reading. Isolating certain familiar themes in a retrospective approach, it neglects the complexity of an author who seeks not only to offer an explanation for all existing institutions, but also to evaluate their effects, beneficial and harmful.

The question of the *English model* is in this regard crucial. In *The Spirit of the Laws*, England is not a model to be universalized but a privileged paradigm of the distribution of powers favourable to political liberty. The anglophile in Montesquieu, though real, must not be overestimated.<sup>52</sup> Coming from an apostle of moderation, to qualify English liberty as “extreme” is not to sing its praise. Montesquieu’s prudence is not only due to his art of writing: “Neither do I pretend by this to undervalue other governments, nor to say that this extreme political liberty ought to give uneasiness to those who have only a moderate share of it. How should I have any such design; I who think that even the highest refinement of reason is not always desirable, and that mankind generally find their account better in mediums than in extremes?” (XI, 6). Although it achieves the harmonisation of interests, the commercial society does not abolish internal discord through the softness of civility.

In the end, the liberal interpretation cannot account for the formation of social ties. In *The Spirit of the Laws*, neither the cohesion of society nor the refinement of customs stem from instrumental rationality: they proceed from a sociability founded on politeness, the effect of pride and not enlightened interest. Finally, the liberal reading does not manage to expose in all their complexity the relations between economy and politics. Montesquieu neither defends the individual conceived as a rights-holder, nor advocates the minimal state: moderation, like liberty, presupposes a “master-piece of legislation” and of prudence in order to reconcile, in situation, the power of the state and the liberty of the people.

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<sup>50</sup> See C. Spector, « Variations de la propriété : Montesquieu contre l’individualisme possessif », in *Inventions et critiques du libéralisme, op. cit.*, p. 95-116.

<sup>51</sup> See J.-F. Spitz, *La Liberté politique, op. cit.*

<sup>52</sup> See D. Carrithers, « Montesquieu et l’étude comparée des constitutions : analyses des régimes anglais et français, in *Actes du Colloque international de Bordeaux 1998*, Académie de Bordeaux, 1999, p. 235-242. As a counterpoint, see J. Dedieu, *Montesquieu et la tradition politique anglaise en France* (1909), Genève, Slatkine Reprints, 1971.