

# Introduction



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This volume brings together many of the best scholars on Montesquieu today, and from a variety of traditions, to reflect on the intellectual legacy left by this formidable thinker of the Enlightenment. Montesquieu's work has been deemed important for the development of liberal democratic traditions in Europe throughout the nineteenth and twentieth centuries. Yet his work has never fully been captured by its ongoing identification with those traditions. This collection of chapters seeks to explore and exploit that tension. In various ways the authors of these chapters bring to light an added complexity to Montesquieu's thinking that allows for a rethinking of his legacy and that generates new possibilities for political lessons in a world that has changed significantly since the mid-1700s.

Most of the traditional focus on Montesquieu's legacy, particularly in Anglo-American circles, stemming from a history of interpretation of his work *The Spirit of Laws* (1748), has been in the realm of formal constitutionalism. However, scholars have recently developed a new interest in Montesquieu's observations of the more informal aspects of community, including the ways in which collective sentiment, manners, and 'moeurs' function in political community. The sensitivity to this dynamic in Montesquieu's work reflects a growing awareness within contemporary liberalism of the inadequacy of the formal mechanisms of law, constitutions, and contracts in being on their own efficient mechanisms for even the minimal demands of peace and order. Recognition of this, with the consequence of greater attention to the role of cultural norms and *moeurs* in politics, raises the possibility of not one but competing paths and manifestations of liberal modernity. One important legacy of Montesquieu's work in this context is to give us some of the tools needed to generate a plural conception of modern liberalism.

In order to highlight many of the significant themes in Montesquieu's work as well as how these themes have been carried into Western traditions of political thinking, the chapters in this volume are divided into four sections. The first section is devoted to the theme of morals and manners, or what we might loosely call "social norms and customs," as portrayed within Montesquieu's main texts. There are discussions of how these features are portrayed by Montesquieu across a number of cultural contexts, as well as how they play into his model of political liberty in the England of his day.

The second section is an exploration of the legacy of Montesquieu's thought in the later Enlightenment and early nineteenth century, with a particular focus on the appropriation and development of the theme of morals and manners. This will help to show a different intellectual legacy than that often supposed by early twentieth-century commentators on Montesquieu's work, commentators who have sometimes reduced his contribution to the history of political thought to the concept of the separation of powers.

The third section focuses on Montesquieu and contemporary studies of comparative constitutional law. Montesquieu's work has largely been studied by political theorists and scholars of comparative literature. This section offers new readings of Montesquieu's work from the perspective of comparative law as a means to assess his impact on contemporary legal scholarship as well as what his work can contribute.

The fourth and final section is devoted to the theme of Montesquieu and modern liberalism. The intent is not to assume that Montesquieu can be read straightforwardly as a liberal thinker. Rather, the idea is that Montesquieu can be seen as an inspiration for later liberalism and that this fact coupled with the recognition that there is a certain parallel to be made between Montesquieu's attempts to think through the fact of diversity and our own attempts within liberalism to do the same today make his thought of particular contemporary interest.

Five important themes cut across virtually all these chapters: the significance of Montesquieu's "anti-Jacobin" ethos; his commitment to pluralism; his interest in uncovering the dynamics through which various communities sustain their unity; the significant, though contested, nature of his methodology; and the need to rethink Montesquieu's legacy in ways that help us to rethink liberal modernity. While the chapters in this collection touch upon each of these themes in quite different ways, the authors generally agree on these fundamentals. Alongside this, there are also a number of issues that are left open by the authors for ongoing deliberation and further study.

All the contributors to this collection recognize the important legacy that Montesquieu has had into the present. Whether it be measured by casual and not so casual remarks by leading European journalists and politicians (as noted by Jean Ehrard) by recognition of the common reflex to attribute to

Montesquieu the modern constitutional notion of a ‘separation of powers’ (as noted by Michael Mosher, Cecil Patrick Courtney, Brian C. V. Singer, and Jacob T. Levy), or by the acknowledgment of the importance of the work of Montesquieu for foundational thinkers of the modern era, such as Smith, Tocqueville, Hegel, Nietzsche, and Durkheim (as noted by James Moore, David W. Carrithers, Clifford Orwin, Ran Hirschl), there is a general acknowledgment that the work of Montesquieu has been important in helping to determine a number of outlooks that constitute our modern conception of politics. All the authors in this collection share in a general consensus on this point. Furthermore, all the contributors recognize that, despite this important legacy, it is a partial legacy. They acknowledge that in many ways there are further and important resources in Montesquieu’s work for rethinking, or at least refining, our liberal modernity and how it has manifested itself in relation to political life. The compatibility of Montesquieu’s work with certain key aspects of liberalism makes him particularly well suited for helping us to shed some new light on our current preoccupations, if not to revise our common presuppositions. Still, of course, there will be limits as to how far this can go, and not all the contributors agree on either the extent to which this is possible or the manner in which his thought can be most revelatory.

Another theme acknowledged by the contributors is Montesquieu’s resistance to the application of uniform solutions or to the idea that there is one universally best constitutional form. It is recognized in various guises, such as anti-Jacobinism (Fred Dallmayr) or Montesquieu’s quarrel with Condorcet (Catherine Larrère), and a number of contributors, including Mosher, note the importance of this point, particularly to deepen the issue of Montesquieu’s known commitment to monarchy in France and to judicial independence. Courtney shows how key passages of *The Spirit of Laws* devoted to an exegesis of the English constitution demonstrate this spirit. Levy demonstrates that a focus on Montesquieu in this light is essential, as it not only demonstrates the ongoing importance of regional loyalties and appreciation for diversity and traditional privileges and immunities that characterise our legal systems today but also forces us to rethink the stark divide between ancient and modern constitutionalism that had been a standard idiom of political theory for much of the twentieth century.

Some contributors suggest that the force of Montesquieu’s anti-Jacobinism comes more from a consideration of the ontological preconditions for authority than a respect of legal custom per se. For Singer, the fact that Montesquieu separates power from law (the ultimate example being that of despotism where power exists as will without law), shows a sociological approach to the question of political order. In a similar but distinct vein, Céline Spector argues that it is the dynamic of a social network held together by similar passions that is the key to political order for Montesquieu and that laws should be regarded

as somewhat instrumental to this task. For both these contributors, law is in essence limited and constrained by what it can effect, given the nature of the social. Thus, there are two ways to view the anti-Jacobinism of Montesquieu: one, as a normative issue vis-à-vis the desirability of a recognition of legal customs and diversity within a single legal framework; and two, as an empirical issue, regarding the constraints of law as an instrument such that it cannot be implemented in the same way in diverse situations.

On a different but related point, there is general acknowledgment among the contributors to the book regarding Montesquieu's commitment to a principle of diversity or pluralism. Like liberal commitments, however, the unity of the commitment hides a multiplicity of concerns. For some, the key is moral pluralism. Larrère shows how Montesquieu's notion of the differing objects of states is an endorsement of moral plurality. While she recognises Montesquieu's invocation of universal norms, such as in his condemnation of slavery, she holds that these universal norms fix limits and thereby stand only as negative injunctions, alongside competing systems of diverse moral characteristics. Dallmayr also acknowledges the importance of Montesquieu in this light but suggests further that Montesquieu's work provides us with some resources to cross over these barriers and engage in cross-cultural understanding, something that indeed Ehrard also seeks to engage in his contribution.

For others, while moral pluralism is certainly important, of more general importance is the question of identity (within which questions of moral pluralism may be embedded). The fact that Montesquieu was a keen defender of preserving the integrity of differing groups within a polity (with certain limits, particularly with regard to religion, as acknowledged by Orwin and others) provides another challenge to modern calls for uniformity and shows how far he remains from contractarian models of liberalism where individual commitments override claims to group preservation. Mosher's contribution is particularly revelatory as to how this plays out in Montesquieu's discussion of monarchies, in contrast to the question of identity in republics.

The issue of group identity is central to Montesquieu also in relation to the more general consideration of how a civil ethos is formed and sustained. While this is looked upon by Spector in terms of the interactive effects of a similar shared passion within one political community, such as an Augustinian might view it, Larrère suggests that Montesquieu comes closer to Aristotle and indeed Machiavelli on this point and that the emergence of a civil ethos is through the interaction and indeed possible conflict of quite different-minded groups. Whatever the dynamic, it is of interest to Singer to acknowledge how this process can work to develop a sense of a symbolic order through which power can be exercised in ways separate from the authority of law. It is precisely through these means that in a monarchy there can be clear, legitimate constraints upon the supposed sovereign authority of the king.

But how can or should we trust the analysis offered by this thinker several centuries ago? It is of interest that the contributors acknowledge that the value of Montesquieu's analysis derives not from the timelessness of his logic—that is from a rationalist framework that survives through the test of time—but rather from his very attention to particular detail. This is shown in a concrete way through Catherine Volpilhac-Auger's discussion of Montesquieu's uses of sources regarding China. Her expert knowledge of the manuscripts allows her to reveal how Montesquieu as a critical thinker did not take his sources at face value but sought to develop an independent perspective by sifting through a number of competing accounts. Similarly Carrithers, Ehrard, and Larrère show Montesquieu as providing careful attention to the characteristics that *distinguish* particulars within a certain category. It is this attention to detail, then, allowing for a complex analysis of a number of social and political phenomena, rather than an *esprit de système*, that has proved to have had lasting value in his work. There may be some, such as Hirschl and Stephen L. Newman, who, from the perspective of contemporary practice of constitutional law, recognize some deficiencies, such as inattention to the politics of law (though Mosher disagrees with this and holds that Montesquieu clearly recognized how the ambitions and preconceptions of the legislator can be pernicious). However, the degree to which the broad contours of analysis offered by Montesquieu can still be followed today to begin to understand legal evolution is significant. And the urge to extend comparative legal scholarship to a greater number of both similar and distinct sample jurisdictions, as suggested by Hirschl, can only be regarded as the spirit of Montesquieu transposed to a scale made possible by modern social science.

In the midst of these general themes, there are a number of issues singled out for further deliberation and study. One issue that remains unresolved in the conversations of this volume is the exact nature and breadth of Montesquieu's pluralism. While some contributors praise his defence of universal justice, an invocation that shapes his injunctions against international aggression and his condemnation of slavery, it is not clear how Montesquieu reconciles this commitment to universalism with his vision of moral pluralism. Larrère and Dallmayr provide important indices as to how one might seek to resolve this apparent paradox.

Another question raised by these contributions is, why has Montesquieu been largely misinterpreted and thereby misappropriated? While Courtney offers some suggestions as to how the history of publishing may have had something to do with it (publishers cutting corners by only publishing extracts of a longer work and assuming that the English would for the most part be interested in the chapters directly describing their own politics), Levy suggests also that there were important political and social reasons for the shift. Ehrard, nonetheless, also reminds us that it is in the nature of Montesquieu's thought itself to be

somewhat elusive, something that can never be fully captured and thereby will always lend itself to interpretative swings.

Given the new legacy that is sketched in this collection, what can we draw from Montesquieu for current debates within liberal democracy today? Mosher offers us the paradox of the great thinker who warns us against the lure of philosophy and the search for general answers, while teaching us to embrace, albeit cautiously, a global modernity. Ronald F. Thiemann suggests that Montesquieu allows us to single out the central problem of economic inequalities plaguing contemporary democracies. Larrère further suggests that Montesquieu offers us a valuable perspective in which we can deepen our understanding of pluralism. Montesquieu leads us to recognize the social roots of all individual norms through which individuals define and may choose their conception of the good in contemporary liberal societies. Does this mean, as suggested by Orwin, that we have left nature behind us? Or does “the nature of things”—that sets limits to sovereign and legal authority and allows us to conceive of freedom as the endowed prerogative of communities into the modern era—give us a solid basis on which to define and guide our future progress?

Perhaps we must ultimately return to the more humble acknowledgment of Montesquieu that in the long run human beings are to a large degree unable to control the broader forces that shape their social and political lives. Humans are creatures of community who relate to each other and who appear on the public stage as mainly emotional beings. While this does not suggest that politics will always be unreasonable, it does suggest that the possible number of influential factors and unintended consequences is infinite and that political life can neither be controlled nor predicted. Indeed, this is the message of his image of the ultimately powerless despot. It suggests that it is not a useful enterprise to reflect at a macrolevel on the shape of the most rational society; rather, we need to start from a clearer understanding of the beings that we are and through that achieve a better understanding of possibilities and the limits to the politics we have.

In conclusion, then, this is not a collection of chapters that seeks to retrace or sketch a well-worn and established intellectual trajectory. While articulating the legacy of Montesquieu, these authors are also engaged in an act of what we might call “transformative interpretative reiteration,” that is, adapting and reshaping that legacy in the very act of expressing it. It is both the changing circumstances and new challenges of contemporary politics, as well as the richness of Montesquieu’s work, that serve as the underlying conditions for this project.