

Montesquieuan Moments: *The Spirit of the Laws* and Republicanism

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In addressing this topic, let us start by setting to one side the question of whether Montesquieu was a republican, in any sense of the term. He almost certainly was not one, as a matter of subjective political identity. No reader of the *Persian Letters* can miss the evidence of flirtation with republican sentiment in the novel – the morality tale of the corruption of the Troglodytes, or Usbek's declaration that "Monarchy is in a state of tension, which always degenerates into despotism or republicanism."¹ But Montesquieu left this youthful radicalism behind with the Regency, according to an account of his intellectual development that today commands a wide consensus.² Following this view, by the time Montesquieu came at mid-career to the *Considerations on the Greatness of the Romans*, he had been won over to the doctrines of *doux commerce* associated with Melon and Voltaire. The mercantile prosperity and individual liberties of contemporary England now seemed vastly superior to the "virtues" of ancient Rome, with its destructive cycle of conquest and corruption. In the course of writing *The Spirit of the Laws*,

¹ Charles de Secondat, baron de Montesquieu, *Persian Letters*, trans. C. J. Betts (New York: Penguin, 1973), 187 (Letter 102).

² First sketched long ago by Melvin Richter, this account of Montesquieu's intellectual and political development has recently been taken up and elaborated by Paul Rahe and Michael Sonenscher. See Melvin Richter, *The Political Theory of Montesquieu* (New York: Cambridge University Press, 1977), 41-5; Paul A. Rahe, "The Book That Never Was: Montesquieu's *Considerations on the Romans* in Historical Context," *History of Political Thought* 26 (2005): 43-89; and Michael Sonenscher, *Before the Deluge: Public Debt, Inequality, and the Intellectual Origins of the French Revolution* (Princeton: Princeton University Press, 2007), ch. 2.

however, Montesquieu changed his mind once more. Doubts about England now combined with a deepened appreciation of monarchy to produce the mature typology of the treatise. Its prescriptive centerpiece was Montesquieu's analysis of modern European monarchy, whose "moderation" distinguished it sharply from both republics, in either their "democratic" or "aristocratic" forms, and despotisms, whose natural home lay outside Europe. As befits a text whose goal was to give "everyone . . . new reasons for loving his duties, his prince, his homeland and his laws," *The Spirit of the Laws* furnished the French monarchy in particular with an elaborate historical justification stressing the millennial solidarity between royal state and noble class.³ The peculiar attractions of the "republic disguised as a monarchy" across the Channel remained, but England provided no general model for the states of continental Europe. As for the "virtuous" republics of Sparta, Athens, and Rome, these belonged to a storybook past, as historically remote from modern Europe as the Muslim and Chinese despotisms were geographically.

This is the view of Montesquieu's politics that is set forth at great length in Michael Sonenscher's spectacular account of the intellectual origins of the Revolution in *Before the Deluge*, and there can be little doubt about its accuracy. I pursue a different question in this essay, which has less to do with the prescriptive profile of *The Spirit of the Laws* than with its sources and its influence, irrespective of its author's intentions. Where should we situate Montesquieu within a wider account of republicanism in early modern Europe? There appears to be only one recent attempt to answer this question. In a lecture on "Montesquieu and the New Republicanism" delivered in 1987, the late Judith Shklar began with a characteristically crisp assertion: "Montesquieu did for the latter half of the eighteenth century what Machiavelli had done for his century: he set the terms in

³ Montesquieu, *The Spirit of the Laws*, trans. Anne M. Cohler, Basia Carolyn Miller, and Harold Samuel Stone (New York: Cambridge University Press, 1989), xlv.

which republicanism was to be discussed."⁴ In contrast with Machiavelli, Shklar argued, Montesquieu confronted absolute monarchy at its strongest in the regime of Versailles. In this context, Montesquieu's crucial move was to expose what Shklar called "the Augustan charade" – the Bourbon monarchy's systematic effort to cloak itself in the ideological mantle of the Roman Republic. This ideological unmasking came at a cost, however. For the result, in effect, was to declare the historical obsolescence of the egalitarian, virtuous republics of classical antiquity, which had no place among the far larger, more commercial monarchies that dominated modern Europe. If this was a price that Montesquieu himself was willing to pay, Shklar explained, many of his most faithful readers were not. Despite its author's reservations about republics, *The Spirit of the Laws* turned out to inspire two novel and very different kinds of republicanism in the second half of the century. In France, Rousseau crafted a "theoretical" republicanism out of Montesquieu's portraits of classical Sparta and Rome – holding up a critical mirror to modern society as a whole in the first *Discourse*, developing a theory of democratic legitimacy in *The Social Contract*, and refashioning republicanism as a "preventive psychotherapy" in *Emile*.⁵ In the English colonies of North America, meanwhile, it was not Montesquieu's depiction of the ancient republics that resonated, but his analysis of the anomalous English polity, animated not by egalitarian "virtue" but by a passion for individual liberty, protected by an elaborate constitutional machinery. This was the blueprint for self-limiting government that served the American founders at Philadelphia.

If such, then, was the gift of Montesquieu to modern republicanism – inspiring both a Gallic version, running through Rousseau to Robespierre, and American variant, finding fullest expression in "Publius" – what were its sources? Where did Montesquieu stand in relation to earlier currents of republican

⁴ Judith Shklar, "Montesquieu and the New Republicanism," in *Machiavelli and Republicanism*, ed. Gisela Bock, Quentin Skinner, and Maurizio Viroli (New York: Cambridge University Press, 1993), 265-79.

⁵ *Ibid.*, 270.

thought in Europe? On this subject, Shklar had virtually nothing to say. Her reticence in this respect is surprising and not merely because her lecture was published in a volume, edited from Cambridge, devoted to the legacy of Machiavelli. Although Shklar had been perhaps the most prominent of the early admirers of J. G. A. Pocock's *The Machiavellian Moment*, she nevertheless complained that Pocock's reconstruction of an "Atlantic republican tradition" had given us *Hamlet* without the Prince by somehow forgetting France. Reviewing Pocock's edition of Harrington in 1978, Shklar wrote,

By blurring the lines, and treating us to so huge an array of insignificant Englishmen, one loses sight of what specific character Harrington or republicanism might ever have had. Yet it was a European ideology, the quintessence of radicalism until it reached its epitome and death in Robespierre's virtuous terror. Just as Hobbes was a European philosopher and not just the devil's Englishman, so Harrington was part of a continuing trend in European radicalism. Its terminal point is not the petty party squabbles of the reign of Queen Anne, but the French Revolution.⁶

Given these views, one might have expected a treatment of Montesquieu and the *new* republicanism to have included some consideration of his relation to his predecessors, Machiavelli and Harrington in particular. Still, Shklar need not be unduly faulted for having skirted the issue, for she was far from alone in this regard. It is a striking fact that, despite many calls over the years for an effort to expand the Cambridge conception of an "Atlantic republican tradition" to include French political thought, no large-scale attempt at this has ever been made. The closest we have to it is Jonathan Israel's account of the origins of what he terms "modern democratic republicanism" in *The Enlightenment Contested*.⁷ His interpretation, however, is confined to the late

⁶ Judith N. Shklar, "Review of *The Political Works of James Harrington* by J. G. A. Pocock," *Political Theory* 6:4 (1978): 561.

⁷ Jonathan Israel, *The Enlightenment Contested: Philosophy, Modernity, and the Emancipation of Man, 1670-1752* (New York: Oxford University Press, 2006).

seventeenth and early eighteenth centuries and owes very little to the "tunnel history" of republicanism of the Pocock-Skinner variety. Now it may well be the case that the latter has long since outlived its usefulness; after all, the American obituary of the Cambridge "paradigm" was written some fifteen years ago.⁸ Nevertheless, I want to offer some hypotheses along these lines, focused entirely on *The Spirit of the Laws*. This is a large enough subject in itself. All there is space for is a brief glance at two "moments" in the text, which touch centrally upon the issue of Montesquieu's relations to a wider "Atlantic republican tradition." That done, we can revert to the larger question of Montesquieu's contribution to the political thought of the second half of the century – to what might well be termed, in fact, "the age of the republican revolution."

First and foremost among these "moments," of course, is the formal analysis of the republic as one of the three basic forms of government, whose presentation extends across the first eight books of *The Spirit of the Laws*. Montesquieu's typology distinguishes between the "nature," or objective structure, of republics, monarchies, and despotisms and the subjective "principle" that sets them in motion. By its nature, then, as Montesquieu writes in Book II, "republican government is that in which the people as a body, or only part of the people, have sovereign power"; accordingly, there are two sub-types of republic, "democracy" and "aristocracy."⁹ Specifications for each sub-type follow. The question of suffrage is the central issue in the make-up of a democracy, equivalent to that of succession in a monarchy, since "in a democracy the people are, in certain respects, the monarch; in other respects, they are the subjects." As for the other form of republic, "[t]he best aristocracy is the one in which the part of the people having no share in the power is so small and so poor that the dominant part has no interest in oppressing it. . . . The more an aristocracy approaches

⁸ See Daniel T. Rodgers, "Republicanism: the Career of a Concept," *The Journal of American History* 79 (1992): 11-38.

⁹ Montesquieu, *The Spirit of the Laws*, 10.

democracy, the more perfect it will be, and to the degree it approaches monarchy, the less perfect it will become."¹⁰ In Book III, Montesquieu moves on to the "principles" of his governments, distinguishing sharply between the "virtue" that animates republics and the "honor" and "fear" that move monarchies and despotisms, respectively. "Virtue, in a republic," we learn at the start of Book V, "is a very simple thing: it is love of the republic; it is a feeling and not a result of knowledge; the lowest man in the state, like the first, can have this feeling."¹¹ This "feeling" assumes a slightly different shape in the two kinds of republic. In a democracy, virtue is simultaneously "love of equality" and "love of frugality." Montesquieu is quite clear about what this means in practice. Insisting that "if one is to love equality and frugality in a republic, these must have been established by the laws," he canvasses a wide range of institutional expressions of these values, including schemes for communal ownership or equal division of property, cultural censorship, educational leveling, and sumptuary laws. Virtue is also the principle of aristocracies but in an attenuated form: "The spirit of moderation is what is called virtue in aristocracy; there it takes the place of the spirit of equality in the popular state."¹² The examples to which Montesquieu refers in his analysis of both kinds of republic are drawn overwhelmingly from classical antiquity, from the histories of Sparta, Athens, and Rome in particular. Indeed, the unbridgeable gulf separating the classical world from modern Europe is a persistent theme of this part of *The Spirit of the Laws*. It was lack of virtue, Montesquieu suggests, that doomed "the impotent attempts of the English to establish democracy among themselves" a century ago: "The political men of Greece who lived under popular government recognized no other force to sustain it than virtue. Those of today

¹⁰ Ibid., 10, 17.

¹¹ Ibid., 42.

¹² Ibid., 51.

speak to us only of manufacturing, commerce, finance, wealth, and even luxury."¹³

Such was Montesquieu's account of republican government. Every student of eighteenth-century political thought knows what happened next: this portrait of "virtuous" republics, together with the concomitant assertion that monarchies were animated by a different and to many eyes lesser "principle," unleashed a firestorm of criticism and protest. This debate – the "*querelle de l'Esprit des lois*" – assumed such proportions that Montesquieu was prompted to add a forward to the 1757 edition of the treatise in which he insisted that what he meant by "virtue" was "*political* virtue" and that alone. But by then the damage was done. Marisa Linton has recently provided a very precise estimation of its scale in her commanding study of *The Politics of Virtue in Eighteenth-Century France*. By her account, Montesquieu more than any other single figure was responsible for establishing the umbilical connection between "virtue" and republicanism, so fraught with consequences for revolutionary politics.¹⁴ Focusing on the injury to monarchical legitimacy, Michael Sonenscher reaches even more dramatic conclusions:

The novelty was not so much the ascription of love of country and of equality to a republic, but the glaring omission of them both from the concept of monarchy set out in *The Spirit of Laws*. The omission served to establish a clear line of demarcation between the two, so that in a sense the modern distinction between republics and monarchies could be said to have begun with Montesquieu.¹⁵

But if Linton and Sonenscher are correct in these judgments, then they raise an obvious question. Intellectual achievements as crucial as these cry out for explanation of some kind. What enabled *The Spirit of the Laws* to play so pivotal a role in the political thought of its epoch? More specifically, what were the sources of Montesquieu's typology, analysis of republican

¹³ Ibid., 22-3.

¹⁴ Marisa Linton, *The Politics of Virtue in Enlightenment France* (New York: Palgrave, 2001).

¹⁵ Sonenscher, *Before the Deluge*, 150.

government, and sharp distinction between it and monarchy? With these questions, we arrive at one of the essential conundrums of eighteenth-century intellectual history. For there is neither scholarly consensus on their answers nor even any sustained and authoritative account of Montesquieu's political thought in its wider context. Montesquieu remains the most neglected of the giants of early modern political thought. The sole intellectual biography of him in English is nearing a half-century of service; the volume of writing devoted to his works, in any language, is dwarfed by that devoted to Hobbes, Locke, or Rousseau. The result has only been to give credence its author's proud claim that *The Spirit of the Laws* is an "offspring without a mother."¹⁶

In any case, all there is space for in this essay is to draw attention to two recent gestures in Montesquieu's direction, both exceptions to the general embargo on attempts to connect the French case to a wider account of early modern republicanism. One comes from a surprising source. Among the many critics of the Pocock-Skinner genealogy of early modern republicanism, none has been more stringent than the English historian David Wootton. His latest salvo, an essay titled "The True Origins of Republicanism," is a contribution to a volume commemorating Venturi's *Utopia and Reform in the Enlightenment*.¹⁷ In it, Wootton describes Venturi's book as "still the best account of eighteenth-century republicanism" precisely for having ignored its "classical" ornamentation in order to concentrate on the actual historical experience of contemporary Europe, from the city-states of Italy and Switzerland to the Dutch Republic, England, and even Poland. Pocock's "classical republicanism" and "civic humanism" and Skinner's "neo-Romanism" in particular, Wootton argues, are hopeless anachronisms whose career in recent historiography has been made possible only by neglect of

¹⁶ Montesquieu, *The Spirit of the Laws*, v.

¹⁷ David Wootton, "The True Origins of Republicanism: the Disciples of Baron and the Counter-example of Venturi," in *Il repubblicanesimo moderno: L'idea di repubblica nella riflessione storica di Franco Venturi*, ed. Manuela Albertone (Naples: Bibliopolis, 2006), 225-57.

the most basic facts of linguistic history. There was no equivalent at all for the modern term "republic" in ancient Greek, and *res publica* in classical Latin is a quintessential *faux ami*, never used to designate a form of government different from and opposed to monarchy. That sense of the term, together with its association with values such as "liberty" and "equality," is a thoroughly modern – and dubious, in Wootton's eyes – confection with virtually no roots in the classical world and precious few in the early modern.

What, then, *are* the origins of modern republicanism, according to Wootton? They are Italian, in the first instance. Wootton finds a lonely pioneer in Ptolemy of Lucca, who, in the very early fourteenth century, adopted an idiosyncratic misuse of the Greek *politeia* to refer to something close to our "republic." But the real turning point came a century later, in Savonarola's Florence, when Bartolomeo de Scala defined monarchy, aristocracy, and "republic" as three distinct forms of government, the latter alone having liberty as its goal. The path was now open toward Machiavelli's even blunter typology – republics or principalities – and more radical politics. Still, it took two more centuries for the original meaning of the Latin term *res publica*, on vivid display in Bodin and still current throughout the seventeenth century and beyond, to be set aside permanently. One critical element in the success of the Machiavellian usage, Wootton suggests, was Amelot de la Houssaye's translation of Tacitus, the sole classical author who used *res publica* in any way remotely resembling the modern sense. But the chief precondition for the consolidation of the modern republican tradition was the coupling of natural rights theories of equality with widespread hostility towards monarchy, accomplished only in the course of the eighteenth century.

Wootton stops short of naming Montesquieu as the final culprit in the emergence of modern republicanism, but only just, since its latest illustration is Jaucourt's article "Republic" in the *Encyclopédie*, lifted straight from the pages of *The Spirit of the Laws*, and Wootton can also praise Venturi in this fashion: "By setting the question of the classical tradition to one side Venturi

avoided an intellectual confusion which has bedeviled the discussion of republicanism ever since Montesquieu."¹⁸ As for the nature of that "confusion," Eric Nelson's *The Greek Tradition in Republican Thought*, by far the most important recent effort to re-imagine the history of early modern republicanism as a whole, contains a very striking account of it. An American student of Skinner's, Nelson begins with an effective gesture of defamiliarization, urging us to distinguish sharply between Greek and Roman political thought. Plato and Aristotle had no use for freedom as "non-dependence" in the Roman sense; they favored the philosophic happiness of the contemplative life (*vita contemplativa*) over the active pursuit of imperial glory, and they saw justice in terms of conformity to nature rather than the possession of property. The central token of Greek political thought, the notion of an egalitarian distribution, or at least regulation, of property for the good of the community as a whole became the "agrarian law" anathematized in the Roman tradition. The contrast established, Nelson then follows the career of "Greek" republicanism in early modern Europe. His narrative largely tracks that of *The Machiavellian Moment*, taking the reader from Machiavelli to Madison via Harrington, though with two important differences. The story begins with an analysis of More's *Utopia*, which marked the launching of a modern Platonism, while between England and America there falls an extended intermezzo devoted entirely to Montesquieu. One chapter traces the sources of latter's thinking about republics to a chain of "neo-Harringtonians" including Neville, Moyle, and Trenchard then establishes Montesquieu's philosophical debts to Leibniz and, especially, Shaftesbury. From there, Nelson moves to a detailed account of the treatment of republics in the *Persian Letters*, the *Considerations on the Romans*, and *The Spirit of the Laws*. The great achievement of the latter, he argues, was to fuse

¹⁸ Ibid., 225. It is worth adding that Montesquieu was the eighteenth century's greatest student of Tacitus; see Catherine Volpilhac-Ager, *Tacite et Montesquieu*, Studies on Voltaire and the Eighteenth Century (Oxford: Voltaire Foundation, 1985).

Montesquieu's double English inheritance, from the neo-Harringtonians and Shaftesbury, into a single whole in its formal analysis of the republic. The resulting portrait of the virtuous republics of antiquity was something like the distilled essence of the "Greek" tradition: "Montesquieu's republics were, indeed, as Greek as they come."¹⁹ Nelson's foray into French territory continues just a bit further, looking at the uses to which Rousseau and Mably put Montesquieu's "Greek" republicanism. His account then moves across the Atlantic to the founding of the United States, finishing with a retrospective through the lens of Tocqueville.

It remains to be seen whether the notion of a distinct "Greek tradition" of republicanism has scholarly legs or not, but few readers will deny the remarkable illumination that Nelson brings to the central topic of property in classical and early modern political thought. It will surely be impossible to look at the history of the notion of an "agrarian law" in quite the same way again. For our purposes, however, what is most striking about *The Greek Tradition in Republican Thought* is the central place it accords to Montesquieu in its genealogy of modern republican ideas. In a review of the book, John Dunn rightly claims that "Nelson . . . brings out more carefully and illuminatingly than any previous interpreter the nature and depth of Montesquieu's borrowings from England's seventeenth-century republicans."²⁰ But Nelson's account acquires a still more vivid relief when it is coupled with the interpretation suggested by David Wootton. If the latter is right, the plumb-line separating modern usages of the term "republic" – and thus modern republicanism – from its antecedents is the conceptual opposition with "monarchy." In Wootton's view, this sense of the term was completely absent in classical antiquity and evolved much later than is typically thought in early modern history. An exotic usage in the texts of Scala and Machiavelli, the idea of the "republic" as the polar

¹⁹ Eric Nelson, *The Greek Tradition in Republican Thought* (New York: Cambridge University Press, 2004), 176.

²⁰ John Dunn, "Review of *The Greek Tradition in Republican Thought*, by Eric Nelson," *English Historical Review* 120 (2005): 1441-2.

opposite to monarchy reached its maturity only in the eighteenth century. Indeed, as Sonenscher suggests, all signs point to *The Spirit of the Laws* as the text which did more than any other to establish the new sense of the term once and for all. For Wootton, this outcome was possible only once natural rights egalitarianism had reached a certain level of diffusion in the context of a growing disenchantment with monarchy. But if Eric Nelson is correct, Montesquieu added one other element to this mixture. In Nelson's account, *The Spirit of the Laws* also marked the moment in which the "Greek" tradition of republicanism, hitherto confined to the utopian, Machiavellian, or "neo-Harringtonian" margins of European thought, suddenly moved to center stage. Whether or not this projection onto a classical screen involved a deplorable "confusion," as Wootton holds, it seems to have been central to Montesquieu's success in fixing the image of the "republic" for his readership – above all, in associating it permanently with the idea of "virtue."

At the same time, however, Nelson has surprisingly little to say about a notion widely held to be central not just to the neo-Harrington inheritance but to the entire "Atlantic republican tradition" as it was originally conceived by Pocock. This is the idea of the "mixed government," whose classical sources would seem to be quintessentially Greek, their canonical instances being the portrait of Sparta in Plutarch's *Life of Lycurgus* and Polybius' analysis of the Roman constitution. For Pocock, "mixed government," blending and balancing democratic, aristocratic, and monarchical components in a single constitution, was Machiavelli's own solution to the "moment" bearing his name, the problem of political instability in time. From Florence, the idea migrated northward where it received a warm reception in seventeenth-century England during the Civil War and the long transition to a post-absolutist constitution. Conceived as a utopian ideal by Harrington, it was later deployed in defense of an interpretation of the "ancient constitution" in opposition to William III and the Hanoverian Settlement, by his "Country Party" successors. Now thoroughly naturalized in the anglophone world, the idea of a libertarian

"balanced constitution," increasingly connected with the adjacent notion of a "separation of powers" and the emergent language of "checks and balances," moved across the Atlantic in the eighteenth century, where it was central to the Whig radicalism that fired the American Revolution and to the intellectual innovations that resulted in the Constitution of 1787.

The later chapters of *The Machiavellian Moment*, describing the career of "civic humanism" in England and the British colonies of North America, are littered with references to *The Spirit of the Laws*, as are the founding texts of scholarship on republicanism in America that anticipated and inspired Pocock's account: Bernard Bailyn's *The Ideological Origins of the American Revolution* and Gordon Wood's *The Creation of the American Republic*.²¹ But Montesquieu remained in all of them an offstage eminence, clearly important as a transmitter or amplifier of republican ideas, but central to none of their stories. Beyond him, we encounter another enormous lacuna in scholarship on political ideas in France: the lack of any synthetic study of constitutional thought from the sixteenth to the eighteenth centuries informed by the themes and methods of the Cambridge school. A French equivalent to *The Ancient Constitution and the Feudal Law* would be a daunting undertaking, of course.²² Among the many challenges to such a project is the fact that in France, too, the notion of the "mixed government" or "balanced constitution," which was not without some sixteenth-century roots, became in the course of the eighteenth century profoundly entangled with the terminology of both the "separation of powers" and "checks and balances." As David Wootton has pointed out in another recent essay, the

²¹ J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton: Princeton University Press, 1975); Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, MA: Belknap Press, 1967); and Gordon Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill: University of North Carolina Press, 1969).

²² J. G. A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century* (New York: W. W. Norton, 1967).

scholarship on these notions is strikingly asymmetrical.²³ In addition to a mountain of writing on the "mixed government" itself, Cambridge-style and otherwise, there is a rich and detailed literature on the "separation of powers" whose high points are the studies by Gwyn and Vile, the latter now available in a revised edition.²⁴ The history of the idea of constitutional "checks and balances," on the other hand, has received much less attention. Wootton's own essay on it is by far the best account. On his telling, the notion of "checks and balances" featured in *The Federalist's* defense of the Constitution of 1787 had a double origin. It emerged through the amalgamation of two prior and hitherto distinct traditions of constitutional thought: the idea of a "balance" of various parts of and parties to governments, which descended from the Plutarch-Polybius tradition of the mixed government, and the concept of a "separation" of governmental agencies or "powers," which developed independently in the sixteenth and seventeenth centuries. The union of the two can be dated to around 1700, when metaphors drawn from the world of self-regulating machinery began to circulate widely. In the course of its development through the eighteenth century, however, a large change overtook the unified idea of "checks and balances." In its initial versions, which we owe above all to the "neo-Harringtonian" succession, the object of the checking and balancing tended to be "executive" power, the "monarchical" component in a mixed constitution. By the century's end, however, in the context of the "democratic" revolutions that swept across the Atlantic world, the entire tradition had come to focus on another component altogether: the threat to liberty posed by democratically elected legislatures. If the ultimate institutional expression of "checks and balances" in this sense

²³ David Wootton, "Liberty, Metaphor, and Mechanism: 'Checks and Balances' and the Origins of Modern Constitutionalism," in *Liberty and American Experience in the Eighteenth Century*, ed. David Womersley (Indianapolis: Liberty Fund Press, 2006), 209-74.

²⁴ William B. Gwyn, *The Meaning of the Separation of Powers* (New Orleans: Tulane University, 1965); and M. J. C. Vile, *Constitutionalism and the Separation of Powers*, 2nd ed. (Indianapolis: Liberty Fund Press, 1998).

was the American constitution, as Wootton suggests, its initial mature and self-aware textual occurrence came in de Lolme's *Constitution of England*.

The name of de Lolme, scourge of Rousseau and profound admirer of Montesquieu, brings us to the question at hand: where does *The Spirit of the Laws* fit into this larger story of the evolution of constitutional ideas? Any brief answer runs obvious risks of simplification or exaggeration. But let me propose the following hypothesis, at least provisionally. Montesquieu ought to be regarded as the pivotal figure in the modernization of early modern republican ideas; specifically, *The Spirit of the Laws* marked the precise point at which the notion of the "mixed government" – which had hitherto served as a kind of container inherited from classical antiquity in which the emergent ideas of a "separation of powers" and "checks and balances" could incubate – was sent into retirement. The gesture of dismissal is most visible at that "moment" in the treatise in which the shadow of the "mixed government" impends most forcefully but is, in fact, deliberately not invoked: Montesquieu's own analysis of the English constitution in Chapter 6 of Book XI, which has some claim to being the single most influential piece of political writing of the eighteenth century. What is sometimes overlooked in discussion of this all-too-familiar text, however, is that in terms of the formal typology of *The Spirit of the Laws*, England is plainly a "mixed government" in the full Plutarchian and Polybian sense of the term. The closest Montesquieu ever comes to letting the name slip is the notorious glancing remark in Book V to "a nation where the republic is disguised as a monarchy."²⁵ In fact, Montesquieu scatters references to various kinds of "mixtures" of forms throughout even the formal presentation of the typology, but he never systematizes them. The essential thrust of the typology is toward the differentiation of the three main forms of government whose "natures" and "principles" are

²⁵ Montesquieu, *De l'esprit des lois*, ed. Victor Goldschmidt (Paris: Garnier-Flammarion, 1979), 1:196 (book V, ch. 19), my translation.

so sharply distinguished that they come to seem mutually exclusive.

The long chapter on England only arrives once Montesquieu has finished presenting the typology in Part One. Part Two functions something like an appendix to its predecessor, addressing two ancillary matters – military affairs and "political liberty" ("the right to do everything the laws permit") – before Montesquieu moves to the famous theory of the climate in Part Three. England appears as the "one nation in the world whose constitution has political liberty for its direct purpose," and the extended analysis that follows revolves entirely around the notion of the "separation of powers." Indeed, this was surely the crucial moment in the long history of that idea, when, after its long British incubation, it was now presented to a far wider audience than it had ever enjoyed before. Montesquieu concluded his analysis of the English government in this fashion:

Here, therefore, is the fundamental constitution of the government of which we are speaking. As its legislative body is composed of two parts, the one will be chained to the other by their reciprocal faculty of vetoing. The two will be bound by the executive power, which will itself be bound by the legislative power. The form of these three powers should be rest or inaction. But as they are constrained to move by the necessary motion of things, they will be forced to move in concert.²⁶

Montesquieu makes no attempt to conceal the social content behind this formal language; the three "powers" in question are a democratic lower chamber, an aristocratic upper, and a hereditary monarch. Yet Montesquieu tacitly set aside the *name* "mixed government" both in order to highlight the language of the "separation of powers" and also no doubt because of the threat the label itself posed to the fundamental structure of the typology itself. As Wootton suggests, Montesquieu was still some distance away from the version of "checks and balances" to be found in de Lolme and "Publius": he still held the ideas at

²⁶ Montesquieu, *The Spirit of the Laws*, 164 (book XI, ch. 6).

arm's length from one another and attributed them to a distant Spartan past rather than to the neo-Harringtonian innovators actually responsible for them. But a decisive move away from the latter had nevertheless occurred. The very name of the "mixed government," still central to the inheritance from the English republicans, had been left behind; the path was now cleared toward its "modern" successor, usefully freed of so much embarrassing social baggage.

That episode does not quite exhaust the occasions when the shadow of the "mixed government" falls across the pages of *The Spirit of the Laws*. There is a sense in which monarchy itself, the prescriptive centerpiece of the treatise, betrays signs of a telltale heterogeneity. According to Montesquieu's typology, what distinguishes monarchy from despotism are the "intermediate, subordinate, and dependent powers" on which its "fundamental laws" depend, the only one of which that is specified, of course, being "nobility." Indeed, the "fundamental maxim" of monarchy turns out to be "no monarch, no nobility; no nobility, no monarch." Several hundred pages later, *The Spirit of the Laws* concludes with an exhaustive historical reconstruction of "an event which happened once in the world and will perhaps never happen again": the emergence of "Gothic government," which Montesquieu describes, in Book XI, as "a mixture of monarchy and aristocracy." But the ultimate fate of Montesquieu's analysis of monarchy – exhibit A, so to speak, in Sieyès's assault on the Old Regime in *What is the Third Estate?* – is a demonstration *a contrario* of precisely why modern republicanism had at all costs to jettison any association with the "mixed government."

The end of the Old Regime returns us to our starting point, Shklar's account of Montesquieu's contribution to the "new republicanism" of the eighteenth century. Thus far, we have canvassed some of the ways in which its missing background might be filled in by specifying Montesquieu's relation to his predecessors. *The Spirit of the Laws* should be seen as standing precisely at the juncture between "early modern" and "modern" republicanism; it was the point at which the touchstone of modern republicanism, the conceptual opposition between

republics and monarchies, was first presented to a vast audience across the European world. It was also the moment when the "mixed government," an august ideal inherited from classical antiquity but incompatible with the egalitarian norms of modernity, was finally given a decent burial. The result was Montesquieu's commanding depiction of not one but *two* models of republicanism: a "classical" version, whose central theme was the umbilical connection between republics and "virtue," and what might well be termed a "proto-liberal" one, whose keynote was an elaborate constitutional machinery for the protection of individual liberties. Paradoxically, the proximate sources of both were the same. Montesquieu was the direct heir of an extremely rich tradition of English republicanism, born in the context of the Civil War and Republic and developed in and through the passage from the Restoration to the Hanoverian Settlement. His contribution to his own epoch was to perform a sort of triage operation with this inheritance, discarding some elements in it altogether – the mixed government – while clearly analyzing and labeling what remained, for his own heirs.

What bearing does this view of Montesquieu's relation to the earlier "Atlantic republican tradition" have on the later eighteenth century? It seems unlikely that anyone returning to Shklar's account today, in light of the scholarship on republicanism produced in the interim, would be tempted to draw quite so stark a contrast between the French and anglophone worlds. Confining ourselves to the French zone, two brief remarks suggest themselves. Firstly, although there is no doubt about the centrality of Rousseau to French political thought, it is also clear that it is a distortion to view the history of republicanism in the second half of the century exclusively through the lens of his *Discourses* or *Social Contract*. This is one of the central lessons of the panoramic story recounted in Linton's *Politics of Virtue in Eighteenth-Century France*. Linton never suggests that the political uses of the idea of "virtue" were republican alone. She does, however, convincingly demonstrate that Montesquieu's *politicization* of the concept in *The Spirit of the Laws* marked a fateful juncture in the political culture of the

Old Regime, launching a classical-republican understanding of "virtue" that went from strength to strength in and through the great ideological and political struggles of the epoch, from the Maupeou "coup" to the events of the pre-Revolution. If the ascendancy of the politics of virtue was the work of many more hands than those of Rousseau, it was also far less "theoretical" than Shklar's account implied. Indeed, as the latter acknowledged, this was a narrative whose climax would come only with the practical politics of Jacobinism itself. A full reconstruction of the history of republicanism in France from the Old Regime to the New is still some distance off, although forthcoming books by Dan Edelstein and Andrew Jainchill will fill in some crucial missing pieces.²⁷ No one doubts, however, that a central strand in this story will be the line that runs directly from *The Spirit of the Laws* to Robespierre's tremendous vindication of classical republicanism in his February speech on political morality. At the same time – the second point – it is clearer than ever today that the other side of Montesquieu's contribution to modern republicanism, the constitutional analysis that led straight to *The Federalist* in Shklar's view, was a bequest to the French as well as to the Americans. The pervasive extent of Montesquieu's influence on the constitutional thought and practice of all phases of the Revolution was a point argued by Bernard Manin in his lucid contribution to the Furet-Ozouf *Critical Dictionary of the French Revolution*,²⁸ and it has been confirmed in great detail by the most important recent work on various forms of constitutional republicanism of the Revolution: Sonenscher's *Before the Deluge* and Whatmore's *Republicanism*

²⁷ Andrew Jainchill, *Reimagining Politics after the Terror: the Republican Origins of French Liberalism* (Ithaca, Cornell University Press, forthcoming); Daniel Edelstein, *The Terror of Natural Right: Republicanism in Eighteenth-Century France, 1699-1794* (Chicago: University of Chicago Press, forthcoming).

²⁸ Bernard Manin, "Montesquieu," *Critical Dictionary of the French Revolution*, ed. François Furet and Mona Ozouf, trans. Arthur Goldhammer (Cambridge, MA: Harvard University Press, 1989), 728-41.

in the French Revolution.²⁹ Montesquieu remained a commanding presence even, or especially, when his authority was challenged.

The paradox here, again, is that the various contributions of *The Spirit of the Laws* to modern republicanism were the gifts of a conservative monarchist, a loyal subject of the Bourbon monarchy. Did it make a difference that this particular subject was also the most eloquent spokesman for both branches of the French nobility, robe and sword alike? In the opening pages of the first volume of *The Age of the Democratic Revolution*, R. R. Palmer unhesitatingly pointed to Montesquieu as the most profound analyst and advocate of those "aristocratic" political institutions whose final destruction began in 1776.³⁰ From today's vantage-point, it is possible to wonder whether "republican" might be a more appropriate term than "democratic" for the half-century cycle of revolutions that followed in the Atlantic world down to the end of Bolivar's career.³¹ If Palmer was not wrong in grasping the depth of Montesquieu's social commitments, he probably underestimated how much those revolutions also owed to the portrait of the classical republics and the constitutional analysis set forth in *The Spirit of the Laws*. The laws of unintended consequences apply to intellectual history no less than to the other branches of the discipline. Were it still necessary to identify the single culprit most responsible

²⁹ Sonenscher; and Richard Whatmore, *Republicanism and the French Revolution: An Intellectual History of Jean-Baptiste Say's Political Economy* (New York: Oxford University Press, 2000).

³⁰ R. R. Palmer, *The Age of the Democratic Revolution: A Political History of Europe and America, 1760-1800*, 2 vols. (Princeton: Princeton University Press, 1959-64), 1:56-60.

³¹ A fuller discussion of Montesquieu and republicanism would have to encompass the term "democracy" as well, for there is every sign that *The Spirit of the Laws* also marked a threshold in the diffusion of the term. It is surprising that John Dunn's *Democracy: A History* (New York: Atlantic Monthly Press, 2006), which quite rightly highlights Robespierre's role in the history of the idea, skips over Montesquieu in its account of the build-up to the French Revolution and concentrates instead on the far more marginal figure of d'Argenson.

for the ideological shipwreck of the Old Regime, an ironist of history might be tempted to suggest, "Come back, Voltaire and Rousseau, all is forgiven – *c'est la faute à Montesquieu.*"