

**TOPICAL SEMINAR  
FRIDAY, JANUARY 17  
LEWES LIBRARY 1:30 PM**

**HOW SHOULD A DEMOCRACY PLACE LIMITS AND  
BOUNDARIES?**

Please read the two articles (Social Contract and The Spirit of the Laws) that follow. We begin with the social contract. In a previous session, “What do We Owe Each Other,” we alluded to the social contract as it applies to our duty to limit our freedoms in the interest of societal stability. Now we would like to look more specifically and more deeply at explicit and implicit limits and boundaries that are necessary to ensure:

1. The individual’s freedom to pursue her interests as these make sense to her.
2. The political structures necessary to support communal interests.
3. The role and responsibilities of private corporations.
4. The systems needed for the smooth running of essential governmental bureaucratic systems.
5. Security from domestic and international threats.

The American founding fathers relied heavily on the work done by Charles-Louis de Secondat, Baron de La Brède et de Montesquieu as they designed the American constitutional system of government. His thought on this is outlined in the attached article excerpted from the Stanford Encyclopedia of Philosophy. We have also included an edited copy of the Wikipedia article on “Social Contract.” Please read these two articles over and give some thought to the following questions:

1. What are the flaws in Montesquieu’s thought that are evident now that the American experiment is more than 200 years old?
2. Are there aspects of our society that are too limited? Are there aspects that are too broad?
3. Montesquieu says that democracies can be corrupted in two ways- the spirit of inequality (when citizens no longer identify their interests with the interests of their country) and the spirit of extreme equality (when people want to be equal in every respect). Both of these are prevalent in the current political climate. Have we reached the point of no return? If so, what will be the result?
4. In the “History” section of the document on Social Contract, Glaucon says, “They say that to do injustice is, by nature, good; to suffer injustice, evil; but that the evil is greater than the good...” This is said in the context of a conversation about the Ring of Gyges. Do you agree with Glaucon? How does this apply to your thoughts on limits and boundaries in a democracy?
5. In the “Thomas Hobbes” section of the document on Social Contract, we find this: “The social contract was seen as an ‘occurrence’ during which individuals came together and ceded some of their individual rights so that others would cede theirs.” In the context of your thoughts on question 3 above, have we ceded enough of our individual rights to establish a stable state? Have we ceded too many?

When thinking through the five questions above please consider the following:

How can a democracy set up its laws to assure people have choices in our lives, but at the same time assuring that others have the same reasonable chance to make such choices?

How much social change can a society absorb and still assure the glue that holds society together does not disintegrate?

How far should we go recognizing differences in citizens while still maintaining a sense of equity and inclusion?

How much leeway should corporations have and what effect do they have on the issues of equity and equality if they are overly powerful?

We have approximately 13 million people living in this country who are not citizens, and currently have no road to citizenship. How far should a democracy go in allowing them to participate in democratic processes?

What limits should a democracy place on the power and methods of operating, both for the political leaders and the institutions of government?

How much autonomy is acceptable for individual citizens to have when going about their daily lives?

Can a democratic society with a public commercial marketplace survive without placing requirements on how the marketplace should operate?

## Social Contract

[https://en.m.wikipedia.org/wiki/Social\\_contract](https://en.m.wikipedia.org/wiki/Social_contract)

In [moral](#) and [political philosophy](#), the **social contract** is a theory or model that originated during the [Age of Enlightenment](#) and usually concerns the [legitimacy](#) of the authority of the [state](#) over the [individual](#).<sup>[1]</sup> Social contract arguments typically posit that individuals have [consented](#), either explicitly or [tacitly](#), to surrender some of their freedoms and submit to the authority (of the ruler, or to the decision of a majority) in exchange for protection of their remaining [rights](#) or maintenance of the [social order](#).<sup>[2][3]</sup> The relation between [natural and legal rights](#) is often a topic of social contract theory. The term takes its name from *The Social Contract* (French: *Du contrat social ou Principes du droit politique*), a 1762 book by [Jean-Jacques Rousseau](#) that discussed this concept. Although the antecedents of social contract theory are found in antiquity, in [Greek](#) and [Stoic](#) philosophy and [Roman](#) and [Canon Law](#), the heyday of the social contract was the mid-17th to early 19th centuries, when it emerged as the leading doctrine of political legitimacy.

The starting point for most social contract theories is an examination of the human condition absent of any political order (termed the "[state of nature](#)" by [Thomas Hobbes](#)).<sup>[4]</sup> In this condition, individuals' actions are bound only by their personal [power](#) and [conscience](#). From this shared starting point, social contract theorists seek to demonstrate why a rational individual would voluntarily consent to give up their natural freedom to obtain the benefits of political order. Prominent of 17th- and 18th-century theorists of social contract and natural rights include [Hugo Grotius](#) (1625), [Thomas Hobbes](#) (1651), [Samuel von Pufendorf](#) (1673), [John Locke](#) (1689), [Jean-Jacques Rousseau](#) (1762) and [Immanuel Kant](#) (1797), each approaching the concept of political authority differently. Grotius posited that individual humans had [natural rights](#). [Thomas Hobbes](#) famously said that in a "state of nature", human life would be "solitary, poor, nasty, brutish and short". In the absence of political order and law, everyone would have unlimited natural freedoms, including the "right to all things" and thus the freedom to plunder, rape and murder; there would be an endless "war of all against all" (*[bellum omnium contra omnes](#)*). To avoid this, free men contract with each other to establish political [community](#) ([civil society](#)) through a social contract in which they all gain security in return for subjecting themselves to an absolute sovereign, one man or an assembly of men. Though the sovereign's edicts may well be arbitrary and tyrannical, Hobbes saw absolute government as the only alternative to the terrifying anarchy of a state of nature. Hobbes asserted that humans consent to abdicate their rights in favor of the absolute authority of government (whether monarchical or parliamentary). Pufendorf disputed Hobbes's equation of a state of nature with war.<sup>[5]</sup> Alternatively, Locke and Rousseau argued that we gain civil rights in return for accepting the obligation to respect and defend the rights of others, giving up some freedoms to do so.

The central assertion that social contract theory approaches is that law and political order are not natural, but human creations. The social contract and the political order it creates are simply the means towards an end—the benefit of the individuals involved—and legitimate only to the extent that they fulfill their part of the agreement. Hobbes argued that government is not a party to the original contract and citizens are not obligated to submit to the government when it is too weak to act effectively to suppress factionalism and civil unrest. According to other social

contract theorists, when the government fails to secure their natural rights (Locke) or satisfy the best interests of society (called the "[general will](#)" by Rousseau), citizens can withdraw their obligation to obey, or change the leadership through elections or other means including, when necessary, violence. Locke believed that [natural rights](#) were inalienable, and therefore the rule of God superseded government authority, while Rousseau believed that democracy (self-rule) was the best way to ensure welfare while maintaining individual freedom under the rule of law. The Lockean concept of the social contract was invoked in the [United States Declaration of Independence](#). Social contract theories were eclipsed in the 19th century in favor of [utilitarianism](#), [Hegelianism](#) and [Marxism](#); they were revived in the 20th century, notably in the form of a [thought experiment](#) by [John Rawls](#).<sup>[5]</sup>

□

## History

The concept of the social contract was originally posed by [Glaucón](#), as described by [Plato](#) in *The Republic*, Book II.

They say that to do injustice is, by nature, good; to suffer injustice, evil; but that the evil is greater than the good. And so when men have both done and suffered injustice and have had experience of both, not being able to avoid the one and obtain the other, they think that they had better agree among themselves to have neither; hence there arise laws and mutual covenants; and that which is ordained by law is termed by them lawful and just. This they affirm to be the origin and nature of justice;—it is a mean or compromise, between the best of all, which is to do injustice and not be punished, and the worst of all, which is to suffer injustice without the power of retaliation; and justice, being at a middle point between the two, is tolerated not as a good, but as the lesser evil, and honoured by reason of the inability of men to do injustice. For no man who is worthy to be called a man would ever submit to such an agreement if he were able to resist; he would be mad if he did. Such is the received account, Socrates, of the nature and origin of justice.<sup>[6]</sup>

The social contract theory also appears in *Crito*, another dialogue from Plato. Over time, the social contract theory became more widespread after [Epicurus](#) (341-270 BC), the first philosopher who saw justice as a social contract, and not as existing in Nature due to divine intervention (see below and also [Epicurean ethics](#)), decided to bring the theory to the forefront of his society. As time went on, philosophers of traditional political and social thought, such as Locke, Hobbes, and Rousseau put forward their opinions on social contract, which then caused the topic to become much more mainstream.<sup>[citation needed]</sup>

## Classical thought

Social contract formulations are preserved in many of the world's oldest records.<sup>[7]</sup> The Buddhist text of the second century BCE, [Mahāvastu](#), recounts the legend of Mahasammata. The story goes as follows:

In the early days of the cosmic cycle mankind lived on an immaterial plane, dancing on air in a sort of fairyland, where there was no need of food or clothing, and no private property, family,

government or laws. Then gradually the process of cosmic decay began its work, and mankind became earthbound, and felt the need of food and shelter. As men lost their primeval glory, distinctions of class arose, and they entered into agreements with one another, accepting the institution of private property and the family. With this theft, murder, adultery, and other crime began, and so the people met together and decided to appoint one man from among them to maintain order in return for a share of the produce of their fields and herds. He was called "the Great Chosen One" (Mahasammata), and he received the title of raja because he pleased the people.<sup>[8]</sup>

In his rock edicts, the Buddhist king [Asoka](#) was said to have argued for a broad and far-reaching social contract. The Buddhist *vinaya* also reflects social contracts expected of the monks; one such instance is when the people of a certain town complained about monks felling saka trees, the Buddha tells his monks that they must stop and give way to social norms.

[Epicurus](#) in the fourth century BCE seemed to have had a strong sense of social contract, with justice and law being rooted in mutual agreement and advantage, as evidenced by these lines, among others, from his *Principal Doctrines* (see also [Epicurean ethics](#)):

31. Natural justice is a pledge of reciprocal benefit, to prevent one man from harming or being harmed by another.

32. Those animals which are incapable of making binding agreements with one another not to inflict nor suffer harm are without either justice or injustice; and likewise for those peoples who either could not or would not form binding agreements not to inflict nor suffer harm.

33. There never was such a thing as absolute justice, but only agreements made in mutual dealings among men in whatever places at various times providing against the infliction or suffering of harm.<sup>[9]</sup>

### **Renaissance developments**

[Quentin Skinner](#) has argued that several critical modern innovations in contract theory are found in the writings from French Calvinists and Huguenots, whose work in turn was invoked by writers in the [Low Countries](#) who objected to their subjection to Spain and, later still, by Catholics in England.<sup>[10]</sup> [Francisco Suárez](#) (1548–1617), from the [School of Salamanca](#), might be considered an early theorist of the social contract, theorizing [natural law](#) in an attempt to limit the [divine right](#) of [absolute monarchy](#). All of these groups were led to articulate notions of popular [sovereignty](#) by means of a social covenant or contract, and all of these arguments began with proto-"state of nature" arguments, to the effect that the basis of politics is that everyone is by nature free of subjection to any government.

These arguments, however, relied on a corporatist theory found in Roman law, according to which "a *populus*" can exist as a distinct legal entity. Thus, these arguments held that a group of people can join a government because it has the capacity to exercise a single will and make decisions with a single voice in the absence of sovereign authority—a notion rejected by Hobbes and later contract theorists.

## Philosophers

### Hugo Grotius (1625)

In the early 17th century, [Grotius](#) (1583–1645) introduced the modern idea that individuals had *natural rights* that enabled self-preservation, employing this idea as a basis for moral consensus in the face of religious diversity and the rise of natural science. He seeks to find a parsimonious basis for a moral beginning for society, a kind of [natural law](#) that everyone could accept. He goes so far as to say in his [On the Law of War and Peace](#) that even if we were to concede what we cannot concede without the utmost wickedness, namely that there is no God, these laws would still hold.

The idea was considered incendiary since it suggested that power can ultimately go back to the individuals if the political society that they have set up forfeits the purpose for which it was originally established, which is to preserve themselves. In other words, individual persons are sovereign. Grotius says that the people are [sui juris](#) (under their own jurisdiction). People have rights as human beings, but there is a delineation of those rights because of what is possible for everyone to accept morally; everyone has to accept that each person as an individual is entitled to try to preserve himself. Each person should, therefore, avoid doing harm to, or interfering with, another, and any breach of these rights should be punished.

### Thomas Hobbes' *Leviathan* (1651)

Main article: [Leviathan \(Hobbes book\)](#)

The first modern philosopher to articulate a detailed contract theory was [Thomas Hobbes](#) (1588–1679). According to Hobbes, the lives of individuals in the [state of nature](#) were "solitary, poor, nasty, brutish and short", a state in which self-interest and the absence of rights and contracts prevented the "social", or society. Life was "anarchic" (without leadership or the concept of sovereignty). Individuals in the state of nature were apolitical and asocial. This state of nature is followed by the social contract.

The social contract was seen as an "occurrence" during which individuals came together and ceded some of their [individual rights](#) so that others would cede theirs.<sup>[11]</sup> This resulted in the establishment of the state, a sovereign entity like the individuals now under its rule used to be, which would create laws to regulate social interactions. Human life was thus no longer "a war of all against all".

The state system, which grew out of the social contract, was, however, also anarchic (without leadership). Just as the individuals in the state of nature had been sovereigns and thus guided by self-interest and the absence of rights, so states now acted in their self-interest in competition with each other. Just like the state of nature, states were thus bound to be in conflict because there was no sovereign over and above the state (more powerful) capable of imposing some system such as social-contract laws on everyone by force. Indeed, Hobbes' work helped to serve as a basis for the [realism](#) theories of international relations, advanced by [E. H. Carr](#) and [Hans Morgenthau](#). Hobbes wrote in [Leviathan](#) that humans ("we") need the "terror of some Power"

otherwise humans will not heed the [law of reciprocity](#), "(in summe) doing to others, as wee would be done to".<sup>[12]</sup>

### **John Locke's *Second Treatise of Government* (1689)**

[John Locke](#)'s conception of the social contract differed from Hobbes' in several fundamental ways, retaining only the central notion that persons in a state of nature would willingly come together to form a state. Locke believed that individuals in a state of nature would be bound morally, by the Law of Nature, not to harm each other in their lives or possessions. Without government to defend them against those seeking to injure or enslave them, Locke further believed people would have no security in their rights and would live in fear. Individuals, to Locke, would only agree to form a state that would provide, in part, a "neutral judge", acting to protect the lives, liberty, and property of those who lived within it.<sup>[13]</sup>

While Hobbes argued for near-absolute authority, Locke argued for inviolate freedom under law in his [Second Treatise of Government](#). Locke argued that a government's legitimacy comes from the citizens' delegation to the government of their absolute right of violence (reserving the inalienable right of self-defense or "self-preservation"), along with elements of other rights (e.g. property will be liable to taxation) as necessary to achieve the goal of security through granting the state a monopoly of violence, whereby the government, as an impartial judge, may use the collective force of the populace to administer and enforce the law, rather than each man acting as his own judge, jury, and executioner—the condition in the state of nature.<sup>[citation needed]</sup>

### **Jean-Jacques Rousseau's *Du Contrat social* (1762)**

[Jean-Jacques Rousseau](#) (1712–1778), in his influential 1762 treatise [The Social Contract](#), outlined a different version of social-contract theory, as the foundations of [political rights](#) based on unlimited [popular sovereignty](#). Although Rousseau wrote that the British were perhaps at the time the freest people on earth, he did not approve of their [representative government](#). Rousseau believed that liberty was possible only where the people as a whole ruled directly through lawmaking, where popular sovereignty was indivisible and [inalienable](#). However, he also maintained that the people often did not know their "real will", and that a proper society would not occur until a great leader ("the Legislator") arose to change the values and customs of the people, likely through the strategic use of [religion](#).

Rousseau's political theory differs in important ways from that of Locke and Hobbes. Rousseau's collectivism is most evident in his development of the "luminous conception" (which he credited to [Denis Diderot](#)) of the [general will](#). Rousseau argues that a citizen cannot pursue his true interest by being an [egoist](#) but must instead subordinate himself to the law created by the citizenry acting as a collective.

[The social contract] can be reduced to the following terms: *Each of us puts his person and all his power in common under the supreme direction of the general will; and in a body, we receive each member as an indivisible part of the whole.*<sup>[14]</sup>

Rousseau's striking phrase that man must "be forced to be free"<sup>[15]</sup> should be understood<sup>[according to whom?]</sup> this way: since the indivisible and inalienable popular sovereignty decides what is good for



the whole, then if an individual lapses back into his ordinary egoism and disobeys the law, he will be forced to listen to what was decided when the people acted as a collectivity (as [citizens](#)). Thus the law, inasmuch as it is created by the people acting as a body, is not a limitation of individual freedom, but rather its expression.

Thus enforcement of laws, including [criminal law](#), is not a restriction on individual liberty: the individual, as a citizen, explicitly agreed to be constrained if, as a private individual, he did not respect his own will as formulated in the general will. Because laws represent the restraints of civil freedom, they represent the leap made from humans in the state of nature into civil society. In this sense, the law is a civilizing force, and therefore Rousseau believed that the laws that govern a people help to mold their character.

Rousseau also analyses the social contract in terms of [risk](#) management,<sup>[16]</sup> thus suggesting the origins of the state as a form of mutual [insurance](#).

### **Pierre-Joseph Proudhon's individualist social contract (1851)**

While Rousseau's social contract is based on [popular sovereignty](#) and not on individual sovereignty, there are other theories espoused by [individualists](#), [libertarians](#), and [anarchists](#) that do not involve agreeing to anything more than [negative rights](#) and creates only a limited state, if any.

[Pierre-Joseph Proudhon](#) (1809–1865) advocated a conception of social contract that did not involve an individual surrendering sovereignty to others. According to him, the social contract was not between individuals and the state, but rather among individuals who refrain from coercing or governing each other, each one maintaining complete sovereignty upon him- or herself:

What really is the Social Contract? An agreement of the citizen with the government? No, that would mean but the continuation of [Rousseau's] idea. The social contract is an agreement of man with man; an agreement from which must result what we call society. In this, the notion of commutative justice, first brought forward by the primitive fact of exchange, ... is substituted for that of distributive justice ... Translating these words, contract, commutative justice, which are the language of the law, into the language of business, and you have commerce, that is to say, in its highest significance, the act by which man and man declare themselves essentially producers, and abdicate all pretension to govern each other.

— *Pierre-Joseph Proudhon, [General Idea of the Revolution in the Nineteenth Century](#) (1851)*

### **John Rawls' *Theory of Justice* (1971)**

Building on the work of Immanuel Kant with its presumption of limits on the state,<sup>[17]</sup> [John Rawls](#) (1921–2002), in [A Theory of Justice](#) (1971), proposed a contractarian approach whereby rational people in a hypothetical "[original position](#)" would set aside their individual preferences and capacities under a "[veil of ignorance](#)" and agree to certain general principles of justice and legal organization. This idea is also used as a [game-theoretical](#) formalization of the notion of fairness.



## David Gauthier's *Morals By Agreement* (1986)

Main article: [Contractarian ethics](#)

[David Gauthier](#) "neo-Hobbesian" theory argues that cooperation between two independent and self-interested parties is indeed possible, especially when it comes to understanding morality and politics.<sup>[18]</sup> Gauthier notably points out the advantages of cooperation between two parties when it comes to the challenge of the [prisoner's dilemma](#). He proposes that, if two parties were to stick to the original agreed-upon arrangement and morals outlined by the contract, they would both experience an optimal result.<sup>[18][19]</sup> In his model for the social contract, factors including trust, rationality, and self-interest keep each party honest and dissuade them from breaking the rules.<sup>[18][19]</sup>

## Philip Pettit's *Republicanism* (1997)

[Philip Pettit](#) (b. 1945) has argued, in *Republicanism: A Theory of Freedom and Government* (1997), that the theory of social contract, classically based on the [consent of the governed](#), should be modified. Instead of arguing for explicit consent, which can always be [manufactured](#), Pettit argues that the absence of an effective rebellion against it is a contract's only legitimacy.

### Critical theories

#### Consent of the governed

An early critic of social contract theory was [Rousseau](#)'s friend, the philosopher [David Hume](#), who in 1742 published an essay "Of Civil Liberty". The second part of this essay, entitled "Of the Original Contract",<sup>[20]</sup> stresses that the concept of a "social contract" is a convenient fiction:

As no party, in the present age can well support itself without a philosophical or speculative system of principles annexed to its political or practical one; we accordingly find that each of the factions into which this nation is divided has reared up a fabric of the former kind, in order to protect and cover that scheme of actions which it pursues. ... The one party [defenders of the absolute and divine right of kings, or Tories], by tracing up government to the DEITY, endeavor to render it so sacred and inviolate that it must be little less than sacrilege, however tyrannical it may become, to touch or invade it in the smallest article. The other party [the Whigs, or believers in constitutional monarchy], by founding government altogether on the consent of the PEOPLE suppose that there is a kind of original contract by which the subjects have tacitly reserved the power of resisting their sovereign, whenever they find themselves aggrieved by that authority with which they have for certain purposes voluntarily entrusted him.

— *David Hume, "On Civil Liberty" [II.XII.1]*<sup>[20]</sup>

Hume argued that [consent of the governed](#) was the ideal foundation on which a government should rest, but that it had not actually occurred this way in general.

My intention here is not to exclude the consent of the people from being one just foundation of government where it has place. It is surely the best and most sacred of any. I only contend that it

has very seldom had place in any degree and never almost in its full extent. And that therefore some other foundation of government must also be admitted.

— *Ibid II.XII.20*

### **Natural law and constitutionalism**

Legal scholar [Randy Barnett](#) has argued<sup>[21]</sup> that, while presence in the territory of a society may be necessary for consent, this does not constitute consent to *all* rules the society might make regardless of their content. A second condition of consent is that the rules be consistent with underlying principles of justice and the protection of natural and social rights, and have procedures for effective protection of those rights (or liberties). This has also been discussed by O. A. Brownson,<sup>[22]</sup> who argued that, in a sense, three "constitutions" are involved: first, the *constitution of nature* that includes all of what the Founders called "[natural law](#)"; second, the *constitution of society*, an unwritten and commonly understood set of rules for the society formed by a social contract before it establishes a government, by which it does establish the third, a *constitution of government*. To consent, a necessary condition is that the rules be [constitutional](#) in that sense.

### **Tacit consent**

The theory of an implicit social contract holds that by remaining in the territory controlled by some society, which usually has a government, people give consent to join that society and be governed by its government, if any. This consent is what gives legitimacy to such a government.

Other writers have argued that consent to join the society is not necessarily consent to its government. For that, the government must be set up according to a constitution of government that is consistent with the superior unwritten constitutions of nature and society.<sup>[22]</sup>

### **Explicit consent**

The theory of an implicit social contract also goes under the principles of explicit consent.<sup>[23]</sup> The main difference between tacit consent and explicit consent is that explicit consent is meant to leave no room for misinterpretation. Moreover, you should directly state what it is that you want and the person has to respond in a concise manner that either confirms or denies the proposition.

### **Voluntarism**

According to the will theory of contract, a contract is not presumed valid unless all parties voluntarily agree to it, either tacitly or explicitly, without coercion. [Lysander Spooner](#), a 19th-century lawyer and staunch supporter of a right of contract between individuals, argued in his essay [No Treason](#) that a supposed social contract cannot be used to justify governmental actions such as taxation because government will initiate force against anyone who does not wish to enter into such a contract. As a result, he maintains that such an agreement is not voluntary and therefore cannot be considered a legitimate contract at all.

Modern Anglo-American law, like European civil law, is based on a will theory of contract, according to which all terms of a contract are binding on the parties because they chose those

terms for themselves. This was less true when Hobbes wrote *Leviathan*; at that time more importance was attached to consideration, meaning a mutual exchange of benefits necessary to the formation of a valid contract, and most contracts had implicit terms that arose from the nature of the contractual relationship rather than from the choices made by the parties. Accordingly, it has been argued that social contract theory is more consistent with the contract law of the time of Hobbes and Locke than with the contract law of our time, and that certain features in the social contract which seem anomalous to us, such as the belief that we are bound by a contract formulated by our distant ancestors, would not have seemed as strange to Hobbes' contemporaries as they do to us.<sup>[24]</sup>

## References

1. <sup>^</sup> "For the name social contract (or original contract) often covers two different kinds of contract, and, in tracing the evolution of the theory, it is well to distinguish them. Both were current in the 17th century and both can be discovered in Greek political thought. (...) [The first] generally involved some theory of the origin of the state. The second form of social contract may be more accurately called the contract of government, or the contract of submission... Generally, it has nothing to do with the origins of society, but, presupposing a society already formed, it purports to define the terms on which that society is to be governed: the people have made a contract with their ruler which determines their relations with him. They promise him obedience, while he promises his protection and good government. While he keeps his part of the bargain, they must keep theirs, but if he misgoverns the contract is broken and allegiance is at an end." [J. W. Gough](#), *The Social Contract* (Oxford: Clarendon Press, 1936), pp. 2–3. Modern revivals of social contract theories have not been as concerned with the origin of the state.
2. <sup>^</sup> <https://www.iep.utm.edu/soc-cont/>. Missing or empty |title= ([help](#))
3. <sup>^</sup> [https://ore.exeter.ac.uk/repository/bitstream/handle/10871/18609/Castiglione\\_Introduction.pdf?sequence=1](https://ore.exeter.ac.uk/repository/bitstream/handle/10871/18609/Castiglione_Introduction.pdf?sequence=1)
4. <sup>^</sup> Ross Harrison writes that "Hobbes seems to have invented this useful term." See Ross Harrison, *Locke, Hobbs, and Confusion's Masterpiece* (Cambridge University Press, 2003), p. 70. The phrase "state of nature" does occur, in [Thomas Aquinas's \*Quaestiones disputatae de veritate\*, Question 19, Article 1, Answer 13](#). However, Aquinas uses it in the context of a discussion of the nature of the soul after death, not in reference to politics.
5. <sup>^</sup> [a](#) [b](#) Patrick Riley, *The Social Contract and Its Critics*, chapter 12 in *The Cambridge History of Eighteenth-Century Political Thought*, Eds. Mark Goldie and Robert Wokler, Vol 4 of *The Cambridge History of Political Thought* (Cambridge University Press, 2006), pp. 347–75.

6. <sup>^</sup> [The Republic, Book II](http://classics.mit.edu/Plato/republic.3.ii.html). Quoted from <http://classics.mit.edu/Plato/republic.3.ii.html>
7. <sup>^</sup> ["Enlightenment"](#). *www.timetoast.com*. Retrieved 2016-11-10.
8. <sup>^</sup> AL Basham, *The Wonder That Was India*, pp. 83
9. <sup>^</sup> Vincent Cook (2000-08-26). ["Principal Doctrines"](#). *Epicurus*. Retrieved 2012-09-26.
10. <sup>^</sup> Quentin Skinner, *The Foundations of Modern Political Thought: Volume 2: The Age of the Reformation* (Cambridge, 1978)
11. <sup>^</sup> E.g. person A gives up his/her right to kill person B if person B does the same.
12. <sup>^</sup> Hobbes, Thomas (1985). [Leviathan](#). London: Penguin. p. 223.
13. <sup>^</sup> Gaba, Jeffery (Spring 2007). ["John Locke and the Meaning of the Takings Clause"](#). *Missouri Law Review*. 72 (2).
14. <sup>^</sup> Jean-Jacques Rousseau, *Oeuvres complètes*, ed. B. Gagnebin and M. Raymond (Paris, 1959–95), III, 361; *The Collected Writings of Rousseau*, ed. C. Kelley and R. Masters (Hanover, 1990–), IV, 139.
15. <sup>^</sup> *Oeuvres complètes*, III, 364; *The Collected Writings of Rousseau*, IV, 141.
16. <sup>^</sup> Gourevitch, Victor (1997). "Of the Social Contract". In Gourevitch, Victor (ed.). [The Social Contract and Other Later Political Writings](#). *Cambridge Texts in the History of Political Thought*. Translated by Gourevitch, Victor (2 ed.). Cambridge: Cambridge University Press (published 2018). p. 66. [ISBN 9781107150812](#). Retrieved 2019-05-11. *Is it not nevertheless a gain to risk for the sake of what makes for our security just a portion of what we would have to risk for our own sakes as soon as we are deprived of it?*
17. <sup>^</sup> • Gerald Gaus and Shane D. Courtland, 2011, ["Liberalism"](#), 1.1, *The Stanford Encyclopedia of Philosophy*.
  - Immanuel Kant, ([1797]). [The Metaphysics of Morals](#), Part 1.
18. <sup>^</sup> ["Social Contract Theory \[Internet Encyclopedia of Philosophy\]"](#). *Iep.utm.edu*. 2004-10-15. Retrieved 2011-01-20.
19. <sup>^</sup> ["Contractarianism \(Stanford Encyclopedia of Philosophy\)"](#). *Plato.stanford.edu*. Retrieved 2011-01-20.
20. <sup>^</sup> [Hume, David](#). *Essays, Moral, Political, and Literary, Part II, Essay XII, Of The Original Contract*.
21. <sup>^</sup> [Restoring the Lost Constitution: The Presumption of Liberty](#), Randy Barnett (2004)

22. <sup>^</sup> <sup>a</sup> <sup>b</sup> O. A. Brownson (1866). ["The American Republic: its Constitution, Tendencies, and Destiny"](#). Retrieved 2011-02-13.
23. <sup>^</sup> ["Gaining explicit consent under the GDPR"](#). IT Governance Blog. 2017-07-05. Retrieved 2018-02-08.
24. <sup>^</sup> Joseph Kary, "Contract Law and the Social Contract: What Legal History Can Teach Us About the Political Theory of Hobbes and Locke", 31 Ottawa Law Review 73 (Jan. 2000)

<https://plato.stanford.edu/entries/montesquieu/>

#### 4. *The Spirit of the Laws*

Montesquieu's aim in *The Spirit of the Laws* is to explain human laws and social institutions. This might seem like an impossible project: unlike physical laws, which are, according to Montesquieu, instituted and sustained by God, positive laws and social institutions are created by fallible human beings who are "subject ... to ignorance and error, [and] hurried away by a thousand impetuous passions" (SL 1.1). One might therefore expect our laws and institutions to be no more comprehensible than any other catalog of human follies, an expectation which the extraordinary diversity of laws adopted by different societies would seem to confirm.

Nonetheless, Montesquieu believes that this apparent chaos is much more comprehensible than one might think. On his view, the key to understanding different laws and social systems is to recognize that they should be adapted to a variety of different factors, and cannot be properly understood unless one considers them in this light. Specifically, laws should be adapted "to the people for whom they are framed..., to the nature and principle of each government, ... to the climate of each country, to the quality of its soil, to its situation and extent, to the principal occupation of the natives, whether husbandmen, huntsmen or shepherds: they should have relation to the degree of liberty which the constitution will bear; to the religion of the inhabitants, to their inclinations, riches, numbers, commerce, manners, and customs. In fine, they have relations to each other, as also to their origin, to the intent of the legislator, and to the order of things on which they are established; in all of which different lights they ought to be considered" (SL 1.3). When we consider legal and social systems in relation to these various factors, Montesquieu believes, we will find that many laws and institutions that had seemed puzzling or even perverse are in fact quite comprehensible.

Understanding why we have the laws we do is important in itself. However, it also serves practical purposes. Most importantly, it will discourage misguided attempts at reform. Montesquieu is not a utopian, either by temperament or conviction. He believes that to live under a stable, non-despotic government that leaves its law-abiding citizens more or less free to live their lives is a great good, and that no such government should be lightly tampered with. If we understand our system of government, and the ways in which it is adapted to the conditions of our country and its people, we will see that many of its apparently irrational features actually make sense, and that to 'reform' these features would actually weaken it. Thus, for instance, one might think that a monarchical government would be strengthened by weakening the nobility, thereby giving more power to the monarch. On Montesquieu's view, this is false: to weaken those groups or institutions which check a monarch's power is to risk transforming monarchy into despotism, a form of government that is both abhorrent and unstable.

Understanding our laws will also help us to see which aspects of them are genuinely in need of reform, and how these reforms might be accomplished. For instance, Montesquieu believes that the laws of many countries can be made be more liberal and more humane, and that they can often be applied less arbitrarily, with less scope for the unpredictable and oppressive use of state power. Likewise, religious persecution and slavery can be abolished, and commerce can be

encouraged. These reforms would generally strengthen monarchical governments, since they enhance the freedom and dignity of citizens. If lawmakers understand the relations between laws on the one hand and conditions of their countries and the principles of their governments on the other, they will be in a better position to carry out such reforms without undermining the governments they seek to improve.

#### 4.1 Forms of Government

Montesquieu holds that there are three types of governments: republican governments, which can take either democratic or aristocratic forms; monarchies; and despotisms. Unlike, for instance, Aristotle, Montesquieu does not distinguish forms of government on the basis of the virtue of the sovereign. The distinction between monarchy and despotism, for instance, depends not on the virtue of the monarch, but on whether or not he governs "by fixed and established laws" (SL 2.1). Each form of government has a principle, a set of "human passions which set it in motion" (SL 3.1); and each can be corrupted if its principle is undermined or destroyed.

In a democracy, the people are sovereign. They may govern through ministers, or be advised by a senate, but they must have the power of choosing their ministers and senators for themselves. The principle of democracy is political virtue, by which Montesquieu means "the love of the laws and of our country" (SL 4.5), including its democratic constitution. The form of a democratic government makes the laws governing suffrage and voting fundamental. The need to protect its principle, however, imposes far more extensive requirements. On Montesquieu's view, the virtue required by a functioning democracy is not natural. It requires "a constant preference of public to private interest" (SL 4.5); it "limits ambition to the sole desire, to the sole happiness, of doing greater services to our country than the rest of our fellow citizens" (SL 5.3); and it "is a self-renunciation, which is ever arduous and painful" (SL 4.5). Montesquieu compares it to monks' love for their order: "their rule debars them from all those things by which the ordinary passions are fed; there remains therefore only this passion for the very rule that torments them. ... the more it curbs their inclinations, the more force it gives to the only passion left them" (SL 5.2). To produce this unnatural self-renunciation, "the whole power of education is required" (SL 4.5). A democracy must educate its citizens to identify their interests with the interests of their country, and should have censors to preserve its mores. It should seek to establish frugality by law, so as to prevent its citizens from being tempted to advance their own private interests at the expense of the public good; for the same reason, the laws by which property is transferred should aim to preserve an equal distribution of property among citizens. Its territory should be small, so that it is easy for citizens to identify with it, and more difficult for extensive private interests to emerge.

Democracies can be corrupted in two ways: by what Montesquieu calls "the spirit of inequality" and "the spirit of extreme equality" (SL 8.2). The spirit of inequality arises when citizens no longer identify their interests with the interests of their country, and therefore seek both to advance their own private interests at the expense of their fellow citizens, and to acquire political power over them. The spirit of extreme equality arises when the people are no longer content to be equal as citizens, but want to be equal in every respect. In a functioning democracy, the people choose magistrates to exercise executive power, and they respect and obey the



magistrates they have chosen. If those magistrates forfeit their respect, they replace them. When the spirit of extreme equality takes root, however, the citizens neither respect nor obey any magistrate. They "want to manage everything themselves, to debate for the senate, to execute for the magistrate, and to decide for the judges" (SL 8.2). Eventually the government will cease to function, the last remnants of virtue will disappear, and democracy will be replaced by despotism.

In an aristocracy, one part of the people governs the rest. The principle of an aristocratic government is moderation, the virtue which leads those who govern in an aristocracy to restrain themselves both from oppressing the people and from trying to acquire excessive power over one another. In an aristocracy, the laws should be designed to instill and protect this spirit of moderation. To do so, they must do three things. First, the laws must prevent the nobility from abusing the people. The power of the nobility makes such abuse a standing temptation in an aristocracy; to avoid it, the laws should deny the nobility some powers, like the power to tax, which would make this temptation all but irresistible, and should try to foster responsible and moderate administration. Second, the laws should disguise as much as possible the difference between the nobility and the people, so that the people feel their lack of power as little as possible. Thus the nobility should have modest and simple manners, since if they do not attempt to distinguish themselves from the people "the people are apt to forget their subjection and weakness" (SL 5.8). Finally, the laws should try to ensure equality among the nobles themselves, and among noble families. When they fail to do so, the nobility will lose its spirit of moderation, and the government will be corrupted.

In a monarchy, one person governs "by fixed and established laws" (SL 2.1). According to Montesquieu, these laws "necessarily suppose the intermediate channels through which (the monarch's) power flows: for if there be only the momentary and capricious will of a single person to govern the state, nothing can be fixed, and, of course, there is no fundamental law" (SL 2.4). These 'intermediate channels' are such subordinate institutions as the nobility and an independent judiciary; and the laws of a monarchy should therefore be designed to preserve their power. The principle of monarchical government is honor. Unlike the virtue required by republican governments, the desire to win honor and distinction comes naturally to us. For this reason education has a less difficult task in a monarchy than in a republic: it need only heighten our ambitions and our sense of our own worth, provide us with an ideal of honor worth aspiring to, and cultivate in us the politeness needed to live with others whose sense of their worth matches our own. The chief task of the laws in a monarchy is to protect the subordinate institutions that distinguish monarchy from despotism. To this end, they should make it easy to preserve large estates undivided, protect the rights and privileges of the nobility, and promote the rule of law. They should also encourage the proliferation of distinctions and of rewards for honorable conduct, including luxuries.

A monarchy is corrupted when the monarch either destroys the subordinate institutions that constrain his will, or decides to rule arbitrarily, without regard to the basic laws of his country, or debases the honors at which his citizens might aim, so that "men are capable of being loaded at the very same time with infamy and with dignities" (SL 8.7). The first two forms of corruption

destroy the checks on the sovereign's will that separate monarchy from despotism; the third severs the connection between honorable conduct and its proper rewards. In a functioning monarchy, personal ambition and a sense of honor work together. This is monarchy's great strength and the source of its extraordinary stability: whether its citizens act from genuine virtue, a sense of their own worth, a desire to serve their king, or personal ambition, they will be led to act in ways that serve their country. A monarch who rules arbitrarily, or who rewards servility and ignoble conduct instead of genuine honor, severs this connection and corrupts his government.

In despotic states "a single person directs everything by his own will and caprice" (SL 2.1). Without laws to check him, and with no need to attend to anyone who does not agree with him, a despot can do whatever he likes, however ill-advised or reprehensible. His subjects are no better than slaves, and he can dispose of them as he sees fit. The principle of despotism is fear. This fear is easily maintained, since the situation of a despot's subjects is genuinely terrifying. Education is unnecessary in a despotism; if it exists at all, it should be designed to debase the mind and break the spirit. Such ideas as honor and virtue should not occur to a despot's subjects, since "persons capable of setting a value on themselves would be likely to create disturbances. Fear must therefore depress their spirits, and extinguish even the least sense of ambition" (SL 3.9). Their "portion here, like that of beasts, is instinct, compliance, and punishment" (SL 3.10), and any higher aspirations should be brutally discouraged.

Montesquieu writes that "the principle of despotic government is subject to a continual corruption, because it is even in its nature corrupt" (SL 8.10). This is true in several senses. First, despotic governments undermine themselves. Because property is not secure in a despotic state, commerce will not flourish, and the state will be poor. The people must be kept in a state of fear by the threat of punishment; however, over time the punishments needed to keep them in line will tend to become more and more severe, until further threats lose their force. Most importantly, however, the despot's character is likely to prevent him from ruling effectively. Since a despot's every whim is granted, he "has no occasion to deliberate, to doubt, to reason; he has only to will" (SL 4.3). For this reason he is never forced to develop anything like intelligence, character, or resolution. Instead, he is "naturally lazy, voluptuous, and ignorant" (SL 2.5), and has no interest in actually governing his people. He will therefore choose a vizier to govern for him, and retire to his seraglio to pursue pleasure. In his absence, however, intrigues against him will multiply, especially since his rule is necessarily odious to his subjects, and since they have so little to lose if their plots against him fail. He cannot rely on his army to protect him, since the more power they have, the greater the likelihood that his generals will themselves try to seize power. For this reason the ruler in a despotic state has no more security than his people.

Second, monarchical and republican governments involve specific governmental structures, and require that their citizens have specific sorts of motivation. When these structures crumble, or these motivations fail, monarchical and republican governments are corrupted, and the result of their corruption is that they fall into despotism. But when a particular despotic government falls, it is not generally replaced by a monarchy or a republic. The creation of a stable monarchy or

republic is extremely difficult: "a masterpiece of legislation, rarely produced by hazard, and seldom attained by prudence" (SL 5.14). It is particularly difficult when those who would have both to frame the laws of such a government and to live by them have previously been brutalized and degraded by despotism. Producing a despotic government, by contrast, is relatively straightforward. A despotism requires no powers to be carefully balanced against one another, no institutions to be created and maintained in existence, no complicated motivations to be fostered, and no restraints on power to be kept in place. One need only terrify one's fellow citizens enough to allow one to impose one's will on them; and this, Montesquieu claims, "is what every capacity may reach" (SL 5.14). For these reasons despotism necessarily stands in a different relation to corruption than other forms of government: while they are liable to corruption, despotism is its embodiment.

## 4.2 Liberty

Montesquieu is among the greatest philosophers of liberalism, but his is what Shklar has called "a liberalism of fear" (Shklar, *Montesquieu*, p. 89). According to Montesquieu, political liberty is "a tranquillity of mind arising from the opinion each person has of his safety" (SL 11.6). Liberty is not the freedom to do whatever we want: if we have the freedom to harm others, for instance, others will also have the freedom to harm us, and we will have no confidence in our own safety. Liberty involves living under laws that protect us from harm while leaving us free to do as much as possible, and that enable us to feel the greatest possible confidence that if we obey those laws, the power of the state will not be directed against us.

If it is to provide its citizens with the greatest possible liberty, a government must have certain features. First, since "constant experience shows us that every man invested with power is apt to abuse it ... it is necessary from the very nature of things that power should be a check to power" (SL 11.4). This is achieved through the separation of the executive, legislative, and judicial powers of government. If different persons or bodies exercise these powers, then each can check the others if they try to abuse their powers. But if one person or body holds several or all of these powers, then nothing prevents that person or body from acting tyrannically; and the people will have no confidence in their own security.

Certain arrangements make it easier for the three powers to check one another. Montesquieu argues that the legislative power alone should have the power to tax, since it can then deprive the executive of funding if the latter attempts to impose its will arbitrarily. Likewise, the executive power should have the right to veto acts of the legislature, and the legislature should be composed of two houses, each of which can prevent acts of the other from becoming law. The judiciary should be independent of both the legislature and the executive, and should restrict itself to applying the laws to particular cases in a fixed and consistent manner, so that "the judicial power, so terrible to mankind, ... becomes, as it were, invisible", and people "fear the office, but not the magistrate" (SL 11.6).

Liberty also requires that the laws concern only threats to public order and security, since such laws will protect us from harm while leaving us free to do as many other things as possible. Thus, for instance, the laws should not concern offenses against God, since He does not require

their protection. They should not prohibit what they do not need to prohibit: "all punishment which is not derived from necessity is tyrannical. The law is not a mere act of power; things in their own nature indifferent are not within its province" (SL 19.14). The laws should be constructed to make it as easy as possible for citizens to protect themselves from punishment by not committing crimes. They should not be vague, since if they were, we might never be sure whether or not some particular action was a crime. Nor should they prohibit things we might do inadvertently, like bumping into a statue of the emperor, or involuntarily, like doubting the wisdom of one of his decrees; if such actions were crimes, no amount of effort to abide by the laws of our country would justify confidence that we would succeed, and therefore we could never feel safe from criminal prosecution. Finally, the laws should make it as easy as possible for an innocent person to prove his or her innocence. They should concern outward conduct, not (for instance) our thoughts and dreams, since while we can try to prove that we did not perform some action, we cannot prove that we never had some thought. The laws should not criminalize conduct that is inherently hard to prove, like witchcraft; and lawmakers should be cautious when dealing with crimes like sodomy, which are typically not carried out in the presence of several witnesses, lest they "open a very wide door to calumny" (SL 12.6).

Montesquieu's emphasis on the connection between liberty and the details of the criminal law were unusual among his contemporaries, and inspired such later legal reformers as Cesare Beccaria.

#### 4.3 Climate and Geography

Montesquieu believes that climate and geography affect the temperaments and customs of a country's inhabitants. He is not a determinist, and does not believe that these influences are irresistible. Nonetheless, he believes that the laws should take these effects into account, accommodating them when necessary, and counteracting their worst effects.

According to Montesquieu, a cold climate constricts our bodies' fibers, and causes coarser juices to flow through them. Heat, by contrast, expands our fibers, and produces more rarefied juices. These physiological changes affect our characters. Those who live in cold climates are vigorous and bold, phlegmatic, frank, and not given to suspicion or cunning. They are relatively insensitive to pleasure and pain; Montesquieu writes that "you must flay a Muscovite alive to make him feel" (SL 14.2). Those who live in warm climates have stronger but less durable sensations. They are more fearful, more amorous, and more susceptible both to the temptations of pleasure and to real or imagined pain; but they are less resolute, and less capable of sustained or decisive action. The manners of those who live in temperate climates are "inconstant", since "the climate has not a quality determinate enough to fix them" (SL 14.2). These differences are not hereditary: if one moves from one sort of climate to another, one's temperament will alter accordingly.

A hot climate can make slavery comprehensible. Montesquieu writes that "the state of slavery is in its own nature bad" (SL 15.1); he is particularly contemptuous of religious and racist justifications for slavery. However, on his view, there are two types of country in which slavery, while not acceptable, is less bad than it might otherwise be. In despotic countries, the situation of

slaves is not that different from the situation of the despot's other subjects; for this reason, slavery in a despotic country is "more tolerable" (SL 15.1) than in other countries. In unusually hot countries, it might be that "the excess of heat enervates the body, and renders men so slothful and dispirited that nothing but the fear of chastisement can oblige them to perform any laborious duty: slavery is there more reconcilable to reason" (SL 15.7). However, Montesquieu writes that when work can be done by freemen motivated by the hope of gain rather than by slaves motivated by fear, the former will always work better; and that in such climates slavery is not only wrong but imprudent. He hopes that "there is not that climate upon earth where the most laborious services might not with proper encouragement be performed by freemen" (SL 15.8); if there is no such climate, then slavery could never be justified on these grounds.

The quality of a country's soil also affects the form of its government. Monarchies are more common where the soil is fertile, and republics where it is barren. This is so for three reasons. First, those who live in fruitful countries are more apt to be content with their situation, and to value in a government not the liberty it bestows but its ability to provide them with enough security that they can get on with their farming. They are therefore more willing to accept a monarchy if it can provide such security. Often it can, since monarchies can respond to threats more quickly than republics. Second, fertile countries are both more desirable than barren countries and easier to conquer: they "are always of a level surface, where the inhabitants are unable to dispute against a stronger power; they are then obliged to submit; and when they have once submitted, the spirit of liberty cannot return; the wealth of the country is a pledge of their fidelity" (SL 18.2). Montesquieu believes that monarchies are much more likely than republics to wage wars of conquest, and therefore that a conquering power is likely to be a monarchy. Third, those who live where the soil is barren have to work hard in order to survive; this tends to make them "industrious, sober, inured to hardship, courageous, and fit for war" (SL 18.4). Those who inhabit fertile country, by contrast, favor "ease, effeminacy, and a certain fondness for the preservation of life" (SL 18.4). For this reason, the inhabitants of barren countries are better able to defend themselves from such attacks as might occur, and to defend their liberty against those who would destroy it.

These facts give barren countries advantages that compensate for the infertility of their soil. Since they are less likely to be invaded, they are less likely to be sacked and devastated; and they are more likely to be worked well, since "countries are not cultivated in proportion to their fertility, but to their liberty" (SL 18.3). This is why "the best provinces are most frequently depopulated, while the frightful countries of the North continue always inhabited, from their being almost uninhabitable" (SL 18.3).

Montesquieu believes that the climate and geography of Asia explain why despotism flourishes there. Asia, he thinks, has two features that distinguish it from Europe. First, Asia has virtually no temperate zone. While the mountains of Scandinavia shelter Europe from arctic winds, Asia has no such buffer; for this reason its frigid northern zone extends much further south than in Europe, and there is a relatively quick transition from it to the tropical south. For this reason "the warlike, brave, and active people touch immediately upon those who are indolent, effeminate and timorous; the one must, therefore, conquer, and the other be conquered" (SL 17.3). In Europe, by

contrast, the climate changes gradually from cold to hot; therefore "strong nations are opposed to the strong; and those who join each other have nearly the same courage" (SL 17.3). Second, Asia has larger plains than Europe. Its mountain ranges lie further apart, and its rivers are not such formidable barriers to invasion. Since Europe is naturally divided into smaller regions, it is more difficult for any one power to conquer them all; this means that Europe will tend to have more and smaller states. Asia, by contrast, tends to have much larger empires, which predisposes it to despotism.

#### 4.4 Commerce

Of all the ways in which a country might seek to enrich itself, Montesquieu believes, commerce is the only one without overwhelming drawbacks. Conquering and plundering one's neighbors can provide temporary infusions of money, but over time the costs of maintaining an occupying army and administering subjugated peoples impose strains that few countries can endure. Extracting precious metals from colonial mines leads to general inflation; thus the costs of extraction increase while the value of the extracted metals decreases. The increased availability of money furthers the development of commerce in other countries; however, in the country which extracts gold and silver, domestic industry is destroyed.

Commerce, by contrast, has no such disadvantages. It does not require vast armies, or the continued subjugation of other peoples. It does not undermine itself, as the extraction of gold from colonial mines does, and it rewards domestic industry. It therefore sustains itself, and nations which engage in it, over time. While it does not produce all the virtues -- hospitality, Montesquieu thinks, is more often found among the poor than among commercial peoples -- it does produce some: "the spirit of commerce is naturally attended with that of frugality, economy, moderation, labor, prudence, tranquility, order, and rule" (SL 5.6). In addition, it "is a cure for the most destructive prejudices" (SL 20.1), improves manners, and leads to peace among nations.

In monarchies, Montesquieu believes, the aim of commerce is, for the most part, to supply luxuries. In republics, it is to bring from one country what is wanted in another, "gaining little" but "gaining incessantly" (SL 20.4). In despotisms, there is very little commerce of any kind, since there is no security of property. In a monarchy, neither kings nor nobles should engage in commerce, since this would risk concentrating too much power in their hands. By the same token, there should be no banks in a monarchy, since a treasure "no sooner becomes great than it becomes the treasure of the prince" (SL 20.10). In republics, by contrast, banks are extremely useful, and anyone should be allowed to engage in trade. Restrictions on which profession a person can follow destroy people's hopes of bettering their situation; they are therefore appropriate only to despotic states.

While some mercantilists had argued that commerce is a zero-sum game in which when some gain, others necessarily lose, Montesquieu believes that commerce benefits all countries except those who have nothing but their land and what it produces. In those deeply impoverished countries, commerce with other countries will encourage those who own the land to oppress those who work it, rather than encouraging the development of domestic industries and manufacture. However, all other countries benefit by commerce, and should seek to trade with as

many other nations as possible, "for it is competition which sets a just value on merchandise, and establishes the relation between them" (SL 20.9).

Montesquieu describes commerce as an activity that cannot be confined or controlled by any individual government or monarch. This, in his view, has always been true: "Commerce is sometimes destroyed by conquerors, sometimes cramped by monarchs; it traverses the earth, flies from the places where it is oppressed, and stays where it has liberty to breathe" (SL 21.5). However, the independence of commerce was greatly enhanced when, during the medieval period, Jews responded to persecution and the seizure of their property by inventing letters of exchange. "Commerce, by this method, became capable of eluding violence, and of maintaining everywhere its ground; the richest merchant having none but invisible effects, which he could convey imperceptibly wherever he pleased" (SL 21.20). This set in motion developments which made commerce still more independent of monarchs and their whims.

First, it facilitated the development of international markets, which place prices outside the control of governments. Money, according to Montesquieu, is "a sign which represents the value of all merchandise" (SL 22.2). The price of merchandise depends on the quantity of money and the quantity of merchandise, and on the amounts of money and merchandise that are in trade. Monarchs can affect this price by imposing tariffs or duties on certain goods. But since they cannot control the amounts of money and merchandise that are in trade within their own countries, let alone internationally, a monarch "can no more fix the price of merchandise than he can establish by a decree that the relation 1 has to 10 is equal to that of 1 to 20" (SL 22.7). If a monarch attempts to do so, he courts disaster: "Julian's lowering the price of provisions at Antioch was the cause of a most terrible famine" (SL 22.7).

Second, it permitted the development of international currency exchanges, which place the exchange rate of a country's currency largely outside the control of that country's government. A monarch can establish a currency, and stipulate how much of some metal each unit of that currency shall contain. However, monarchs cannot control the rates of exchange between their currencies and those of other countries. These rates depend on the relative scarcity of money in the countries in question, and they are "fixed by the general opinion of the merchants, never by the decrees of the prince" (SL 22.10). For this reason "the exchange of all places constantly tends to a certain proportion, and that in the very nature of things" (SL 22.10).

Finally, the development of international commerce gives governments a great incentive to adopt policies that favor, or at least do not impede, its development. Governments need to maintain confidence in their creditworthiness if they wish to borrow money; this deters them from at least the more extreme forms of fiscal irresponsibility, and from oppressing too greatly those citizens from whom they might later need to borrow money. Since the development of commerce requires the availability of loans, governments must establish interest rates high enough to encourage lending, but not so high as to make borrowing unprofitable. Taxes must not be so high that they deprive citizens of the hope of bettering their situations (SL 13.2), and the laws should allow those citizens enough freedom to carry out commercial affairs.



In general, Montesquieu believes that commerce has had an extremely beneficial influence on government. Since commerce began to recover after the development of letters of exchange and the reintroduction of lending at interest, he writes:

it became necessary that princes should govern with more prudence than they themselves could ever have imagined; for great exertions of authority were, in the event, found to be impolitic ... We begin to be cured of Machiavelism, and recover from it every day. More moderation has become necessary in the councils of princes. What would formerly have been called a master-stroke in politics would be now, independent of the horror it might occasion, the greatest imprudence. Happy is it for men that they are in a situation in which, though their passions prompt them to be wicked, it is, nevertheless, to their interest to be humane and virtuous. (SL 21.20)

#### 4.5 Religion

Religion plays only a minor part in the *Spirit of the Laws*. God is described in Book 1 as creating nature and its laws; having done so, He vanishes, and plays no further explanatory role. In particular, Montesquieu does not explain the laws of any country by appeal to divine enlightenment, providence, or guidance. In the *Spirit of the Laws*, Montesquieu considers religions "in relation only to the good they produce in civil society" (SL 24.1), and not to their truth or falsity. He regards different religions as appropriate to different environments and forms of government. Protestantism is most suitable to republics, Catholicism to monarchies, and Islam to despotisms; the Islamic prohibition on eating pork is appropriate to Arabia, where hogs are scarce and contribute to disease, while in India, where cattle are badly needed but do not thrive, a prohibition on eating beef is suitable. Thus, "when Montezuma with so much obstinacy insisted that the religion of the Spaniards was good for their country, and his for Mexico, he did not assert an absurdity" (SL 24.24).

Religion can help to ameliorate the effects of bad laws and institutions; it is the only thing capable of serving as a check on despotic power. However, on Montesquieu's view it is generally a mistake to base civil laws on religious principles. Religion aims at the perfection of the individual; civil laws aim at the welfare of society. Given these different aims, what these two sets of laws should require will often differ; for this reason religion "ought not always to serve as a first principle to the civil laws" (SL 26.9). The civil laws are not an appropriate tool for enforcing religious norms of conduct: God has His own laws, and He is quite capable of enforcing them without our assistance. When we attempt to enforce God's laws for Him, or to cast ourselves as His protectors, we make our religion an instrument of fanaticism and oppression; this is a service neither to God nor to our country.

If several religions have gained adherents in a country, those religions should all be tolerated, not only by the state but by its citizens. The laws should "require from the several religions, not only that they shall not embroil the state, but that they shall not raise disturbances among themselves" (SL 25.9). While one can try to persuade people to change religions by offering them positive inducements to do so, attempts to force others to convert are ineffective and inhumane. In an unusually scathing passage, Montesquieu also argues that they are unworthy of Christianity, and

writes: "if anyone in times to come shall dare to assert, that in the age in which we live, the people of Europe were civilized, you (the Inquisition) will be cited to prove that they were barbarians; and the idea they will have of you will be such as will dishonor your age, and spread hatred over all your contemporaries" (SL 25.13).