

# That All Tragedy is Local: Book 18 of *Spirit of the Laws*\*

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Book 18 of Montesquieu's *Spirit of the Laws* consistently defies explication. Its thirty-one chapters seem to most commentators to constitute a heterogeneous mélange, the parts bearing no or little relation to the whole – or, to express it still more precisely, there being no whole at all, there are consequently no parts. (Book 18 is the only book the number of whose chapters equals the number of books in the entire work. Its interpretative history parallels the history of the interpretation of *The Spirit of the Laws*. It is notable, moreover, that the last chapter added, chapter 28, Montesquieu prepared as he approached his deathbed, which act made the total of thirty-one chapters.) Thus, each chapter is treated *sui generis* or, at most, as related only to a handful of others. The purpose of this account is to disclose a design, both within Book 18 and within *Spirit of the Laws* as a whole.

## The Place of Book 18 in the order of *Spirit of the Laws*

Book 18 opens with the Thucydidean declaration that the bounty or stinginess of the terrain determines respectively a people's tendency toward, on the one hand, dependence and subjection or, on the other hand, industry and liberty. After illustrating this principle with a few following chapters, Montesquieu declares in his own name (chapter 10) that a people's mode of subsistence determines the number of inhabitants in

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a land (or what is the same thing, the extent of territory required to support them). But such distinctions eventuate also in differences in the civil and political conditions of peoples (chapters 13-21). Finally, Montesquieu explains the derivation of what is ordinarily called the *Salic law* from the savage or barbarian circumstances and mode of existence of the Germanic peoples (chapters 22-31).

Most of the difficulty in Book 18 derives from the final ten chapters, twenty-two to thirty-one, which constitute a vigorous and ambitious re-statement of the primitive origins of French monarchy, under the guise of re-stating the origins of *Salic laws*. Thus, at least, the matter is generally conceived by commentators, who observe correctly that those chapters did not figure in the initial manuscript and, moreover, seem to every appearance to be related to the historical material in Books 28 and Books 30 and 31. Those last books also seem to have been post-scripts to the original conception of the entire manuscript, which otherwise had concluded with the book on “The Manner of Composing Laws.” The final words of that provisional conclusion identify as “legislators” Aristotle, Plato, Machiavelli, Thomas More, and James Harrington.

This produces a difficulty that may be stated as follows: the detailed discussion of the origins and revolutions of French feudal law and theory seems to overwhelm *The Spirit of the Laws*, which is otherwise a general discussion of the conditions and resources of political founding. Moreover, that detailed history swamps the intervenient discussion (Book 29) of the “Manner of Composing the Laws.” Thus, political history seems to take precedence over political philosophy, which the teasing reference to philosophical writers as legislators (instead of the Moseses, Lycurguses, and Solons elsewhere discussed in the work) would not seem to have warranted.

Further, the completion of Book 18 by a similarly lengthy discussion of the *Salic laws* as a possible source of French feudal laws and theory seems both misplaced in relation to the political geography that is the initial point of Book 18 and also oddly detached from the material in Books 28, 30 and 31, with which it is logically and historically connected. Accordingly, the discussion of terrain and modes of subsistence that prefigure a very modern political or social geography has been aborted by what seems a whim or fancy. In place of completing the assessment of the extent to which material/physical circumstances condition moral or political attainment, Montesquieu wandered onto the disputable terrain of the relationship between civil and political law. (Brethe de la Gressaye argued that the *Salic laws*, created for individuals – and hence civil law – nevertheless extended to determine succession to the crown – and hence political law – which is the very point Montesquieu set out to refute. [Montesquieu 1950-61, 3:279]).

It is difficult to repulse the substantial weight of learned critics, from Voltaire and Crévier to Condorcet and Prichard, to Brethe de la Gressaye and Barrière, in order to establish the appearance of Montesquieu's text – namely that relations of property are fundamentally pre-political and that the circumstances conditioning them bear significantly upon the political prospects of human societies (See Addendum 1). Nevertheless, it is important to accomplish exactly that in order to justify the presentation of a straightforward reading of Book 18 as demonstrating the precise point at which mankind transitions from climate or material determinism in general to particular (and therefore local) political deliberation. Moreover, the doing so precisely fulfills the promise extended in Book 14, namely, that morals could resist climate, and thus closes

finally the discussion of material determinism as an *alternative* explanation of politics and thus a limit to political deliberation. From Book 19 to the end (Book 31) the discussion focuses on the character or “genius” of the people, commerce, the moral foundations of fecundity, religion, the influence of laws, and history, all which discussions are justifiable to the extent that a case has been made for particular political deliberation.

Taking Montesquieu as our guide, we may consider the first of the problematic books (namely, Book 28, without which the necessity to interpret Book 18 under rules of logographic necessity would not have been obvious). Book 28 immediately returns us to Book 18 and establishes the difference between that discussion and the final historical books. The difference, in a word, is that between pre-literate constitutionalism and literate constitutionalism. (Though Montesquieu does not mention Plato’s *Phaedrus*, we will see that Montesquieu’s concern with the functions of writing and reading are no less pertinent than Plato’s concern with the central question of the lawgiver.)

Initially the epigram to Book 28 (quoting Ovid, *Metamorphoses*, I, 1-2: *In nova fert animus dicere formas Corpora*) cues the reader: “My spirit leads me to speak of forms changing into new bodies.” (Unless otherwise noted, all translations are my own.) (Montesquieu 1950) Montesquieu immediately announced the change thus anticipated: “The Franks having come out of their lands, they caused the wise ones of their nation to write down the *Salic Laws*” (Montesquieu 1950, 28.1). He footnoted this opening sentence to underscore the emphasis on “write down:”

See the prologue of the *Salic Laws*. M. de Leibniz says, in his treatise on the origins of the Franks, that this law was made prior to the reign of Clovis [481-

516ce]; but it could not have been before the Franks should have come out of Germany; they did not at that time understand the Latin language. (Montesquieu 1950)

Finally, not much beyond this citation, Montesquieu insisted that, because Charles Martel and Pepin subdued the Frisians, then these laws were subsequent to that era. For, he footnotes, the Frisians did not know how to write before then. The *Salic laws* accordingly arise from pre-literate Frankish constitutionalism.

The balance of Book 28 – the longest book in *Spirit of the Laws* at forty-five chapters – goes on to account for the forms and consequences that emerged under the influence of written laws. For the purposes of this discussion, however, what matters is what existed prior to the written laws. For, although the written laws retain evidences and residues of pre-literate ways (such as trial by fire, chapters 16-18), they do not explain them, partly because the ancient ways fell into oblivion. Accordingly, the account of the ancient ways, the customs, of the Franks, is a very different thing than the account of the “civil laws among the French.” (Montesquieu 1950) The chapters at the end of Book 18 have more in common with the origins of Greek city-states than with the rise of the monarchical nation-state. Therefore, they are not misplaced.

At the outset of *Spirit of the Laws*, in the book on “laws in general,” Montesquieu had argued the necessity of what can only be called pre-literate constitutionalism. (Montesquieu 1950) By this expression we mean a uniformity of human response under diverse (indeed, almost eccentric) circumstances. Given the radical individuality of all things existing, the task of identifying laws of nature that operate generally becomes

especially complicated. In effect, the successful search should disclose a universal law in the disguise of difference.

Motion becomes the foundation of this analysis for the precise reason that it is specifically adapted to the purpose; it discloses differences of location, time, and acceleration subject to force, a uniform determinant. Book one quickly advances, however, to reveal that sources of motion are less transparent than motion itself, and dramatically so once man becomes the subject of investigation. For man hives off from creation into realms of deliberate motion – deliberation – that yield constitutions or ways of being that are variously complex. Somewhere between mute nature and deliberative humanity, Montesquieu insists, man must have been subject to more or less transparent sources of motion that operated uniformly to lead him toward deliberation – however various the outcome. Here we recognize the spirit of modern science or liberalism generally credited to Montesquieu, but we see it clearly as a ground clearing rather than a concluding argument.

Ultimately, the sources of motion that lead man to deliberation are less interesting than the prospects and forms of deliberation. That is the burden of *Spirit of the Laws*. To demonstrate that truth, however, it is necessary to demonstrate where uniform determinism ends and where deliberation begins. For that reason after Montesquieu has completed the survey of deliberate constitutionalism (through Book 13), it is nevertheless required to give, not merely a general or theoretical account of the conditions limiting deliberate constitutionalism, but a detailed account of the extent of determinism and the process or processes by which determinism ineluctably becomes deliberate constitutionalism.

Book 14 accordingly introduces the notion of climatic determinism (or the general determinism of material circumstances). It argues that general material conditions are not ultimately determinative (though they have a relative weight). Next, in Books 15-17 he considers particular human relationships in light of the weight of material determinism and poses the inquiry whether human moral purpose serves as an adequate counterweight. The affirmative response – considering the injustice of slavery, the equality of women, and the despotism of political expedience – serves to highlight the need for a demonstration of *how* mankind might move from an expected fate (slavery, subjection of women, political inequality) to that deliberate or literate constitutionalism to be called citizenship or civilization.

We derive the title of this account from the foregoing consideration. For, deliberate constitutionalism invokes an end that exceeds by necessity any one people's particular experience. Where men act deliberately, in other words, they will typically intend more than they are competent to realize. Consequently, they will eventually suffer from their very virtues, their good intentions. This dilemma appears to be founded on some degree of irreconcilability between local needs and universal principles, mirroring the theologico-political problem. Since whatever God might be, it will always exceed what man might be; and it would seem that no men anywhere could ever adequately attain or approach the divine qualities. Yet, men are truly men only insofar as they pursue that end. Montesquieu aimed to recast that dilemma.

Book 18 constitutes the reply to this inquiry, in the form, first, of a demonstration of the weight of particular or local material determinism and, second, the course of development beyond determinism. As such, Book 18 closes the discussion of

determinism in *Spirit of the Laws* (leaving scope for presentation of a particular – deliberate or literate – as opposed to a general constitutionalism).

### The Uses of Herodotus

In order to see that Book 18 moves in this manner, it is necessary to see its relationship to Book 28 (as adduced above). It is moreover necessary, or further required and thus sufficient, to see what the exact subject of Book 18 is. And here, too, there has been confusion. Generally regarded as political geography, inspired by a passage in Plutarch's "Life of Solon," the book has not been afforded the wider context it requires. We recover the wider context by revisiting the text and posing new questions about its sources. Doing this reveals reasons to widen its context beyond geography and to highlight its analysis as continuous with or in dialog with a previously established philosophical tradition.

Chapter one of Book 18 opens thus:

The bounty of a territory's land [*pays*] naturally establishes in it dependency. Folk in the countryside, who constitute most of the people there, are not so jealous of their liberty; they are too busy and too consumed by their individual [or private] business. A countryside abundant with goods fears pillage; it fears an army. . . [citation to Cicero]. Thus, government by one person is more found in fertile lands, and government by many in those that are not (which is sometimes a compensation).

The sterility of Attica's soil established popular government there, and the fertility of that of Lacedemonia aristocratic government. Plutarch tells us 'that the Cylonian sedition having been appeased in Athens, the town fell back into its old

dissension, and separated into as many parties as there were kinds of lands in the Attic territory... (Montesquieu 1950) (See Addendum 2)

The citation of Plutarch may lead one to think that Montesquieu derived this discussion of the effect of the fertility or sterility of the soil from the “Life of Solon.” Consider, for example, this commentary: “Cette citation de Plutarque montre d’où M. a tirée l’idée d’un rapport entre la forme de gouvernement et la fertilité plus ou moins grande du sol.” (Montesquieu 1950-61, 2:442n4) “Et s’appuyant sur l’autorité de Plutarque qui semble lui avoir suggéré cette idée, M. en donne pour preuve Athens et Sparte.” (2: 276)

However, the passage in Plutarch contrasts strongly with the meaning of Montesquieu’s passage. For, Plutarch emphasized Solon’s deliberation, and his “fitting the laws to the state of things... finding the ground scarce rich enough to maintain the husbandmen and altogether incapable of feeding an unoccupied and leisured multitude, brought trades into credit.” (Plutarch 1932, 110) The dissensions stilled by Solon and cited in the last paragraph of chapter one, however, bear no relation to the “sterile terrain” of Montesquieu’s penultimate paragraph. Nor does Plutarch’s account offer the contrast with a fertile Lacedemonia. An uncited comment by Thucydides is the source of the observations in Montesquieu’s penultimate paragraph, and their significance lies in the fact that dissensions did not flow from the sterility of the soil (as they had from fertility in Lacedemon) but from the free government that grew out of that sterile soil.

Montesquieu’s silence on Thucydides (with further silences on the more important portion of the Plutarch chapter on Solon and their indirect comment on Herodotus) invites an effort to contextualize the argument for the influence of terrain on political development. And it is particularly relevant that Thucydides’ counter-intuitive

observation – fertile plains breed banditry and despotism, while sterile soil spawns industry and liberty – now figures into a broader discussion of climatic or material determinism. Not only had Herodotus erred (If, Marcellinus says – inspired by Thucydides – “Herodotus does not lie.” [Thucydides 1974, 1:12,5]), it seems, by reverting to while criticizing Homeric myth, so, too had he erred by imagining that political history (the account of local tragedies) could be generalized by means of situating it in the context of special climatic features (no one person could rule Africa, Asia, and Europe). Note that I follow Benardete’s account of Herodotus throughout this discussion: “Although Herodotus does not solve this problem of his λόγος, he does show in fact that the heterogeneity of the earth forbids any part, even the best part (Persia), from conquering the whole earth... The very conditions that make for the superiority of Greece prevent its expansion except with the loss of its superiority... This fundamental defect cannot be overcome on the political level.” (Benardete 1999, 206) Montesquieu does not cite to this element of Herodotus.

Because Thucydides (actual source of the sterile soil argument) did not connect the quality of the soil with the quality of the air and the rivers, one unavoidably interrogates the partner silence that did so: Herodotus’s *Historiæ*. Surely, the forerunner of every argument from climatic determinism and the uniqueness of particular ways must be Herodotus’s magisterial work. Before we settle finally on Thucydides as authorizing Montesquieu’s departure, we need first to inquire how far Herodotus – whom Thucydides and Plutarch thought it needful to correct – provides the outer frame of Montesquieu’s analysis of the motion between history and tragedy.

It is, after all, perhaps no accident that Montesquieu's chapter 9 of Book 18 echoes Herodotus' account of the territory of the Scythians:

I don't believe one would have all of these advantages in Europe, if they left the land uncultivated; almost nothing but forests would appear there, oaks and other sterile trees. (Montesquieu 1950)

This particular observation, however, served to illustrate the general conclusion drawn in Book 14, chapter 3:

In the Roman era, the peoples of northern Europe lived without art, without education, almost without laws; and yet, by the simple good sense inherent in the coarse tissues [thick skins] of those climates, they preserved themselves with admirable wisdom against Roman puissance, to the very moment where the northern Europeans left their forests to destroy Rome. (Montesquieu 1950)

This observation, we shall see subsequently, is the predicate for Montesquieu's treating the primitive Germans as though they had no religion until they became Christian.

Remarkably, the simple common sense of a thick-skinned people provided for what Herodotus identified as the "one thing, and that the most important in human affairs, better than anyone else on the face of the earth: I mean their own preservation."

(Montesquieu 1950) By echoing Herodotus in the post-Herodotean context of the defeat of Rome, Montesquieu affirmed the constant truth of Herodotus's observation. By remaining silent about Herodotus's authority, Montesquieu subordinated Herodotus's observation to his own two similar observations. He signals this to the careful reader when in simile he invokes Ramses II by means of Herodotean usage: Sesostris (chapter 18). That conveys still more surely his comparison of the acknowledged Louisiana

Natchez and the unacknowledged Persians (both of whom worshipped the sun), when Montesquieu concludes that “the prejudices of superstition are superior to every other prejudice, and its reasons to every other reason.” (Montesquieu 1950, 18.18) That is perhaps the purest form of the Herodotean teaching. But why is it understated?

Montesquieu’s two observations open the pathway beyond superstition. First, in Book 6, chapter 2 Montesquieu identifies the one thing in the world that matters most for men to know, namely, how to render justice. He does so ironically, however, calling into question the assertion that justice everywhere should be rendered so certainly as it is in Turkey, “by the most ignorant of all peoples.” (Montesquieu 1950) Self-preservation may be assured by an ignorant people enjoying fortunate circumstances, but rendering justice requires more than circumstances – it requires deliberate or literate constitutionalism.

Thus, in Book 12, chapter 2, Montesquieu reaffirms the principle, indicating that some countries “have acquired,” and others “will acquire” yet, “knowledge” of “the most certain rules” that can be applied in criminal judgments – a knowledge that “concerns humankind more than any other thing there can be in the world.” (Montesquieu 1950) We develop a rule. The knowledge how to render justice exceeds ignorance by just so much as deliberate constitutionalism exceeds advantageous climatic or material conditions.

The second observation by which Montesquieu silently acts to place Herodotus’s teaching in perspective occurs in Book 24, chapter 1, where Montesquieu avers that Christianity “doubtlessly wishes that each people should have the best political and civil laws; for they are, after it, the greatest good that men may give and receive.” Then, to make clear his meaning, in chapter 25 of the same book, he refers back to this passage

and insists that “one said” there that “Christianity is the first good.” Finally, in Book 25, chapter 2, footnote b, he referred back to what “I have said” in chapter 25 of Book 24. Montesquieu intends the reader to pay particular attention to this claim about the “greatest good that men can give and receive.” (Montesquieu 1950)

Formally, there is no difficulty in distinguishing what men can do (give and receive are active verbs) and what God can do (the gift of Christianity is the first good). The question, however, is to know how these goods rank alongside the foregoing “most important” matter. We may reduce, for argument sake, political and civil laws to knowledge of justice. Then there are not four but three great goods: the Herodotean (natural or historical), the human, and the divine or, as we may say, deterministic goods, chosen goods, and divine goods. The silence about Herodotus in Book 18 forces us to question whether the Herodotean account of politics (predicated upon taking men’s gods as we find them) is anything more than a beginning – anything more than recognition of the intrinsic or deterministic character of nature itself. In the case, the further silence about Thucydides (Herodotus’s corrector in so many ways), forces us to discover history less in nature than in human choosing (giving and receiving), with an eye to disclose the tragedy in falling short of the divine.

We suggest this result for two reasons. First, the silence about Herodotus is not complete (whereas that about Thucydides is almost so) but only in Book 18. And what is said about Herodotus explicitly bears directly on the question of recognition of the ranks of the goods. Secondly, the model employed in Book 18 is actually Thucydidean, and the book is not only silent about him but misleadingly cites Plutarch (a more strenuous corrector of Herodotus) and obscures still more the roots of the argument. We learn from

the citation of Plutarch's "Life of Solon," however, that there is something to be saved in Herodotus and, to that extent, something of Herodotus to save from Thucydides and Plutarch. Far more important than the Cylonian sedition in Plutarch's account of Solon's wisdom is his insistence upon the accuracy or truthfulness of Herodotus's story of Solon's exchange with Croesus. All other intelligent readers regard this story as fable, on the ground of anachronism. (Solon lived from 640/635 to 561/560 BC, and he served as legislating archon in Athens in 594-593 BC. Croesus reigned as king in Lydia from 560-546 BC.) Plutarch was fully aware of those doubts, but deliberately chose to repeat the story as true, because it *deserved* to be true.

Montesquieu would no more expect us to fail to notice the defense of Herodotus in the "Life of Solon," than he would expect us to fail to notice the imprecise if not false attribution to Herodotus Montesquieu makes in his only explicit, textual citation to Herodotus. Before we take note of that final precursor to an interpretation of Book 18, however, it would be helpful to pause and consider the lone explicit reference to Thucydides in *Spirit of the Laws*, a reference that happens to be paired with a reference to Plutarch.

### The Uses of Thucydides

In Book 11, chapter 11, Montesquieu discussed the monarchical constitution in the heroic era in Greece in comparison with the modern monarchical constitution conforming to principles of liberty. He observed that the ancient monarchy had ill organized the three powers (*pouvoirs*) of government, placing the legislative authority (*puissance*) in the hands of the people, and the executive and judicial authorities in the

hands of the executive. Concerning the people's legislative authority, he cited Plutarch's "Life of Theseus" and Thucydides's first book in the *Peloponnesian Wars*.

It was Theseus, as Plutarch relates, who gathered together in "one city" the dispersed and industrious but dissentient people of sterile Attica. And he did so by forming a popular city, in which the authority of the people was recognized, reserving to himself only to be "commander in war and protector of laws." It were wonderful, naturally, if Thucydides were to relate similarly the founding of Athens and her carefully joined constitution. In fact, however, Theseus is not mentioned at all in Book one (which contains Thucydides's archaeology) and, indeed, not in the entire *History of the Peloponnesian War*. What Thucydides does say about the earlier times is that they did not amount to much, that no great thing was done then, that fertile lands were rife with banditry, and that Attica was "from great antiquity for the sterility of the soil free from seditions...ever inhabited by the same people." (Thucydides 1975, 15-16) Indeed, there was not then even a Greece. Moreover, Thucydides also mentions the Cylonian rebellion, noting that the continuing pollution resulting from that crisis and the manner in which it was handled provided the Lacedemonians the pretext leading on to war, namely, Pericles, the Athenian commander and a direct descendant of those who had slain the rebels in sacred precincts. (para. 126-127)

How do Plutarch and Thucydides lend support to the observation in Book 11 concerning the distribution of powers in government? Montesquieu's chief point in Book 11 is that the monarch or executive should share in the legislative power for purposes of self-defense, and that the monarch or executive should not be a judge in order to avoid the temptation to abuse. Because Plutarch's favorable account shows Theseus arranging

the constitution badly – from Montesquieu’s perspective, – that account cooperates with Thucydides account in diminishing the precedential value of early constitutionalism.

What plays a more significant role than early constitutionalism is the continuing influence of religious sanctions. In other words, Plutarch reflected the pre-

Peloponnesian wars, Herodotean view that the constitutional foundations of Theseus and later Solon were more important than the religious foundations of Greece.

(Herodotus, interestingly, nowhere mentions Theseus.)

Plutarch, following Herodotus, could praise the resolution of the Cylonian sedition for its having successfully defended the constitution, while ignoring its affront to religious sensibility (though that was doubtless evident to Herodotus in the run-up to the Peloponnesian wars). Thucydides, on the other hand, writing as an observer of the Peloponnesian wars, observed that the lingering pollution from that religious affront provided a pretext for the war that produced the greatest, and ultimately a fatal, threat to the Athenian constitution.

In sum, the textual citation of Plutarch in Book 18, chapter one serves both to highlight the significance of Herodotus in Montesquieu’s account (his specific concern with religion) and the reason for rejecting Herodotus’s authority regarding constitutionalism (Plutarch’s defense was not successful because it abstracted from religion) and to explicate the specific reliance upon Thucydides (his comprehensive although political understanding of the constitutional role of religion is superior).

#### The Establishment of Religion Independent of Nature and Choice

With this general overview established we are prepared to attempt a reading of the single, explicit textual reference to Herodotus in the entire *Spirit of the Laws*. The

reference occurs in Book 14, chapter 11, concerning “laws that are related to environmental [climatic] maladies:”

Herodotus tells us that the laws of the Jews concerning leprosy were derived from Egyptian practice. Effectively, the same maladies required the same remedies. These laws, as well as the illness, were not known by the Greeks and the first Romans. The climate of Egypt and of Palestine made them necessary; and the ease with which that malady could spread ought certainly make us feel the wisdom and foresight of those laws. (Montesquieu 1950)

This singular paragraph spawns a wealth of reflections concerning the propagations not only of diseases but also of constitutions, religions, and peoples. (It will surprise no one, by now, that Herodotus mentions neither “Jews” nor “leprosy” in Book II of his *Historiæ*.) The theoretical operation of environmental or material conditions to thwart the propagation of human communities would at least confine deliberate constitutionalism to local tragedy. While there could be learning from community to community, it would be subordinated to the determinism of circumstance.

A massive fact intrudes upon this account: Montesquieu named Herodotus and cited “Book II” for the reading here adduced. However, nowhere in Book 2, nor in the whole of Herodotus’s *Historiæ* does Herodotus even mention the “Jews.” Here, as occurs so often in *Spirit of the Laws*, the reader faces a mystery before he can attain to a reasonable reading of the text. Two possible explanations offer. One derives straightforwardly from the text, and another invokes the balance of the citations to Herodotus throughout the entire work (in footnotes rather than in the text itself).

The straightforward explanation notes that, Cohler, translating *Spirit of the Laws*, simply observes that “Herodotus nowhere mentions the Hebrews, but consider I.138 for Persian customs concerning leprosy.” (Montesquieu 1989, 240 n20) In fact Montesquieu’s reading may be more careful. In the first place, the passage in Book 1 of Herodotus’s *Historiae* occurs in a paragraph that opens with the observation that “no race is so ready to adopt foreign ways as the Persian.” (Herodotus 1996, I:138) That creates a strong presumption that Persian customs regarding leprosy are as much borrowed as the Median, Egyptian, and Greek customs that are specifically cited. Montesquieu, we may say, has supplied the specification lacking in Herodotus, obviously electing to identify the Egyptians as precursors to “the Jews.”

While it is true that there is no textual reference to “Jews” in Herodotus, Herodotus does make specific and frequent reference to “Syrian Palestinians,” including their deriving practices (such as the prohibition against swine, which Montesquieu treats as environmental in Book 24, chapter 25, and the practice of circumcision) specifically from Egypt. (II.104 cites circumcision learned by “Syrians of Palestine” from Egypt; while VII.89 cites the “Syrians of Palestine” joining with the Phoenicians to contribute 300 triremes to Xerxes’s invasion force.) Since the interactions among Persians, Egyptians, and Hebrews through much of the era about which Herodotus wrote are notable, it would be far more remarkable that Herodotus should not have mentioned Jews or the religion of the Hebrews (despite his restriction of comments on religion to “what men say”), than that he would have done so. (Herodotus 1996)

Not only did Herodotus entertain discussion of who were “the first peoples” and the comparative values or orientations of religions (even Cyrus and Xerxes, according to

the book of *Ezra*, recognized the claims of Yahweh in Jerusalem), but Herodotus's λόγος entailed foremost determining whether one ruler – and hence one faith – could master all of Asia, Africa, and Europe. Because Herodotus suggests the impossibility of such an occurrence, and the religion of the Hebrews alone raised the standard of the one true God if not the one true people, the existence of the Hebrew God challenges the Herodotean λόγος, save insofar as that god is seen as merely derivative.

If Herodotus's "Syrian Palestinians" are Hebrews (or, perhaps, even Samaritans), then Herodotus regards them as largely if not merely derivative of Egypt. Montesquieu, therefore, correctly illuminates Herodotus's λόγος by naming "the Jews" specifically. Further, by tying the Herodotean λόγος to the argument from environmental or climatic determinism, Montesquieu renders it dependent on a showing that the power of climate is absolute, failing which the claim of Yahweh must be considered anew. Moreover, in this straightforward account, it becomes urgent to reconsider that claim in light of the evident fact that the Christian God inherited the claim of Yahweh and demonstrably broke through the confining limits of the Herodotean λόγος. This fact in turn makes it necessary to re-think the relations between politics and religion, climate no longer proving a barrier to religion. Still more is required when we couple this fact with the Thucydidean insight that demonstrates the power of religious sentiment to shape or influence deliberate constitutionalism.

How does the less straightforward resolution of Montesquieu's mysterious invention of "Jews" in Herodotus alter or augment this straightforward account? When we remember that Book 18 disposes ultimately of the argument from climatic determinism (the appearance in 24.25 to the contrary notwithstanding) – and hence of

that element of Herodotus – we are left with the sole, apparent Herodotean claim that politics should not seek to alter religions. The truth of that claim must be established on grounds independent of the force of climate, and the grounds that remain are the grounds of political necessity or human will, Thucydidean grounds. (see Allen 2001) How far political necessity may inform deliberate constitutionalism, in turn, depends upon the extent to which general principles of human motion are discoverable – or, to state it differently, how far human or general goods may inform local deliberations. If Herodotus informs a discussion of the ranks of the goods, then Montesquieu’s invention of “Jews” in Herodotus may serve to show – or at least begin the showing of – how to distinguish the human goods from divine goods.

Montesquieu cites Herodotus seven times after the initial, false textual citation in Book 14, and all in footnotes occurring in Books 21 and 22. Notably, he does not cite Herodotus in Book 24, chapter 25, which concerns the “inconveniences of migrating religions” but which excepts the “Christian religion” and identifies it as “the first good.” (Montesquieu 1950) Montesquieu cited Palestine, Arabia, Egypt, and Libya [Africa], again anachronistically echoing Herodotus’s usage. Herodotus in II.47-51 described Greek religion as deriving nominally from Egypt, and he also took note of the swine prohibitions. In short, where Montesquieu could have cited Herodotus, he did not.

Montesquieu aimed to stand on different ground in his discussion of reasons for not propagating religion. His citations of Herodotus, therefore, are contained in the books on commerce and world revolutions and the use of money. Of the seven citations, all but one refer to Book IV in Herodotus, which Montesquieu cited by referring to its “muse” notation, “Melpomene,” (that is, “Tragedy”) except for the fourth citation, which

he cited simply as “Book IV.” The seventh citation refers to Herodotus I.94, but Montesquieu referred to it by its “muse” notation, “Clio” (that is, “History”). This book, though not this paragraph, of course, is the book in which an observation concerning leprosy can be found. In his final citation Montesquieu added a note concerning cultural borrowing:

Herodotus, *in Clio*, tells us that the Lydians discovered the art of coining money; the Greeks took it from them: Athenian coinage bore the impression of their ancient ox. I have seen one of these coins in the Earl of Pembroke’s collection.

(Montesquieu 1950)

Herodotus, who was always so careful to distinguish what he had “heard” from what he had “seen with his own eyes,” inspired Montesquieu to demonstrate that he could prove independently the truth of some – or at least one – of Herodotus’s claims! (Herodotus 1996)

Herodotus may have invented the story of Solon’s conversations with Croesus, King of Lydia. Yet, we may still rely upon his account of Lydian arts. The art of coinage implicates the art of wealth-getting. And the Solonian exchange with Croesus called into question the sufficiency of wealth for human happiness. Nevertheless, the art of wealth-getting seems to propagate through diverse climates (from east to west) in a way that religion – or at least untrue religion – cannot.

Each of the citations to Herodotus in Books 21 and 22 indicates a specific example of the insufficiency of the general understanding of the role of arts in advancing the human goods in the eras Herodotus described. We are permitted to think that Montesquieu believed Herodotus to be cognizant of these insufficiencies. Thus, the

foreshortening of the voyage from the Indus to the Red Sea between the time of Darius and Xerxes to the post-Herodotean era of Alexander [from 30 months to roughly 7 months] represents the order of magnitude to be applied in considering the relevance of other changes or “revolutions” affecting our understanding of the human goods (21.9). The fact that the Persian empire extended to the Indus (21.8) is not a true measure of the reach of empire, for it excluded commerce (which was left to the Greeks, 21.8). (Montesquieu 1950) Consequently Darius’s conquest of the Indies was a conquest in name only, leaving ultimately untouched not only the religion but also the people’s understanding of the conditions affecting the attainment of the human goods. The difficulty was not merely technical, however. For the absence of the compass did not prevent the Phoenicians from circumnavigating Africa, while Sataspes failed in a similar effort.

Montesquieu used the circumnavigation of Africa as a fundamental reference to the conditions and terms of material progress – that is, progressive human control over environmental circumstances. He saw the incurious Romans, ultimately, as having prevented that development which would have led to a much earlier discovery of the new world and concomitant “revolutions” in means to attain the human goods.

Here, though, our interest is only to explore reasons for the invention of the Jews in Book 14. We noted Montesquieu’s silence in Book 24, on an occasion when it would have been natural to cite Herodotus in relation to an issue that bears on the fate of the Jews. Similarly, in Book 21, chapter 20 Montesquieu discusses the “revolutions” that have affected, without changing, the Jews “from century to century.” (Montesquieu 1950) In other words, Jews somehow emerged on the other side of history, having escaped

Herodotean oblivion, and bearing their religion through countless lands and under the relentless weight of severe oppression. We might say, if we put words into Montesquieu's mouth, that Herodotus would have named the Jews, if he had had any inkling how far their faith would carry them.

The relevance of this Jewish story in this context, however, is derivable from the observation Montesquieu makes regarding the human good in Book 24, chapter one (with repeated emphasis in 24.25 and 25.1, which makes clear that Montesquieu aimed to derive general motives from particular religious experiences). That human good – “the best political laws and the best civil laws” – is predicated upon what we discover in thinking through that particular λόγος, the λόγος of Herodotus, namely, that the underlying principle of adaptation to the environment must necessarily convey the capability of mastering the environment in relation to the attainment of the human goods. (Montesquieu 1950) Thus we return to the conclusion of Book 18. (See Addendum 3)

#### Politics As Escape From History

The bulk of Book 18 focuses upon the relation of means of subsistence or use of property to political forms. Montesquieu argues that men develop constitutional forms in strict relation to the means by which they procure their livelihoods. In chapter 6 he provides three examples of human industry triumphing over climate and terrain – one each from Asia, Africa, and Europe, the Herodotean trilogy. Book 18, however, will not preserve that focus on universal human experience, opting rather to derive from general types of societies and general principles of development the particular European, and still more, French experience. In this he mirrors Herodotus's final focus on Greece's, or rather, Athens's conquests in Asia Minor. For the question has now become, not whether

all can have the same laws and gods but, rather, whether all or any can have the best political and civil laws.

Beyond the dichotomy between fertile or arid soil, Montesquieu distinguishes circumstances for men in terms of modes of subsistence. Three are fundamental: the hunting life, the pastoral life, and the agricultural life. Where the natural environment is held constant, the mode of subsistence comes to the fore. Men who are uniquely hunters or shepherds experience such constraints upon the manners and numbers in their communities that they are doomed to live either as savages (hunters) or barbarians (shepherds) (18.11). Only those who cultivate the land can both increase in number and in the arts of civilization (18.10). It is the parceling of landed property that contributes mainly to augment the size of codes of civil law. Civil laws replace the “*moeurs*” which constitute the first foundations of civil society (18.3). People who do not cultivate the land will have as many affairs to regulate by “the right of nations” as they will have few affairs to regulate by civil rights (18.12). Among the latter, authority reposes in old folk with long memories, guarding oral traditions through their constant wanderings and dispersals through forests and pastures. But since their “*moeurs*” are the “*moeurs*” of people who take slaves, women, children, and booty as occasion offers, they cling to nothing as their own by reason, apart from a fierce attachment to independence. Their laws regulate the sharing of booty and, “like our Salic laws,” pay special attention to theft (18.13). Their liberty begins with an independence so strong that it necessarily fosters political, or at least civil, liberty (18.14). Cultivation, on the other hand, produces the use of money, and then arts and “knowledges,” which in turn produce needs. Moreover, cultivation requires the establishment of signs of value in general, of which abstractions

money is the most concrete (18.15). In short, it is the holding of property that gives birth to the city of luxury and, therefore, the possibility of the ideal city. These chapters serve to distinguish the “heroic age,” characterized by brutish ignorance and unconscious atheism, from the age of deliberate constitutionalism. (Montesquieu 1950)

It is still the case, however, that the pathway of deliberate constitutionalism must be explicitly derived. Interestingly, Montesquieu provides evidence of this necessity through the negative example of injustice. Property holding not only generates “signs of value,” it also alters the character of injustices. (Montesquieu 1950) For arts and knowledges provide injustice with more subtle weapons.

In the former lands where there is no money, the thief only lifts things... nothing can be hidden, because the thief always bears with him the proofs of his conviction... (Montesquieu 1950, 18.16)

As this applies to *things* and money, it can also apply to words – that is, the capacity or incapacity to hide the truth. In the simpler situation – where there is no money – “no two truths are alike.” (Montesquieu 1950) In the complex situation we can confuse the signs of truth to hide the truth itself.

It occurs, therefore, that peoples who develop arts and knowledges place themselves in danger of being defrauded of the very goods they imagine to gain by means of their improved mode of subsistence. That makes it urgent to identify a means of procuring to them sure instruments for making their “holdings” apparent and permanent. That is the purpose of Book 18, and in particular its lengthy discussion of ancient French laws governing inheritance of the *Salic* or household property. The earlier anticipation of the discussion of the *Salic laws* (chapter 13: the primitive Germans paid special attention

to theft, “just like our Salic laws”) proves to be an exact precursor of the discussion at the end of Book 18. (Montesquieu 1950)

Before Montesquieu turns to that discussion, however, he provides a second consideration regarding peoples’ fitness for attaining the human goods. Since the principle issue is their access to laws of reason to govern their motions, not only can their material circumstances thwart the development of an understanding of laws of reason, but so too can their moral circumstances. In chapter 17 he observed that what assures the liberty of non-cultivators is that they have no knowledge of money. Now, this presupposes not only that such folk are not deliberate about their politics or their morality, but also that they are scarcely distinguishable from what Socrates identifies as the city of sows in Plato’s *Republic*. The fact that they enjoy a certain liberty is a reflection of the sterility of their lives, much as the sterility of the soil assured liberty or independence in old Athens.

Exceptions to this pattern will arise where superstition intervenes, causing people equally lacking basic knowledge and not cultivating the soil nonetheless to act deliberately. In such cases, however, not liberty but despotism results.

...the constitution of a people in Louisiana, named the Natchez, should not conform to this. Their chief disposes of all his subjects’ property and makes them labor at his whim; they cannot refuse him their heads; he is like the grand seignor. You would think that it is the Great Sesostris...

The prejudices of superstition are superior to every other prejudice, and its reasons are superior to all other reasons. Thus, while savage peoples do not naturally experience despotism, this people do. They adore the sun, and if their

chief had not imagined that he was the sun's brother, they would only have discovered in him such a miserable one as themselves (Montesquieu 1950, 18.18)

Much like Amasis in Egypt and Darius in Persia (as Herodotus related) these sun worshipping people experience despotism though their circumstances do not entail it. One might say they lord it over their circumstances due to an infelicitous superstition. Nevertheless, they do overcome their circumstances, however unhappily.

Thus, the good for man is dependent upon reason and also utterly subject to one of two conditions: either to be free of all superstitious prejudices (for superstition also has its reasons), or to be subject only to the prejudice of a true religion (as Amasis and Darius were not). This point is negatively reinforced by the example of the Tartars, who are gentle among themselves but cruel to others. "They have destroyed Asia from the Indus to the Mediterranean," which is to say the better part of the Herodotean universe (Montesquieu 1950,18.20). The Tartars are truly barbaric, having no arts, no knowledge, no needs properly so called, and no capacity for tragedy. It follows, then, that they do not observe the law of reason and probably no true political law (which must necessarily inform the law of nations properly understood).

It was in Book 17, chapter 5 that Montesquieu contrasted the slavish nature of the Tartars with the rational liberty of the Europeans ("reason makes them dependent only for the sake of their happiness"). (Montesquieu 1950) The reason to resume that narrow discussion in Book 18, chapters 19-21 is that it provides the suitable bridge to the explicit discussion of a civil law of the "Germanic peoples," of the *Salic law* in particular. That discussion, in turn, demonstrates that the civil laws of the primitive Germans – founded in a native sense of equality (17.5) – were free of the defects of irrational superstition. At

no point, whether in Book 18 or Book 28, does Montesquieu mention the primitive religion of the peoples from the Germanic forests. He treats them as if they had no religion to speak of, until they became Christians. The discussions of their superstitions in Book 28 concern exclusively the origins of their superstitions in the circumstances of their lives. Thus, while they lacked arts and knowledge in their primitive stages and did not yet cultivate the soil, they remained free to acquire arts and knowledge (hence to act deliberately based on reason) because free of the superstitions conducive to slavish *moeurs*.

### Conclusion

It is necessary to recall that the chapter on “a civil law of the German peoples” which opens the final section of Book 18 (18.22), consciously echoes the previous ejaculations toward “our fathers the Germans” found in 6.18 and 14.14, as well as the description of the discovery of the constitution of liberty in the “forests of Germany” from Book 11. Thus,

I will explain here how this particular text of the Salic law that folk ordinarily call Salic law derives from the institutions of a people who did not cultivate the land, or at least but little cultivated it (18.22). (Montesquieu 1950)

To that extent the primitive Europeans differed little from the natives of Louisiana or the Tartars. But Montesquieu had written earlier,

Our fathers the Germans dwelt in a climate in which the passions were very calm. (Montesquieu 1950, 14.14)

And still earlier he had characterized their civil practices as disordered (despite their sensitivity to personal insult or affront) (17.5):

Our fathers the Germans allowed almost nothing but pecuniary penalties... A good legislator takes a just mean: he does not always ordain pecuniary penalties; he does not always inflict corporal penalties. (Montesquieu 1950, 6.18)

We may fairly conclude, therefore, that the Germans did not deliberately order their laws or constitution at the outset. But by the time of the *Salic law*, they had found reason to act more deliberately than they had theretofore. As we observed above, this occurred even before they learned to read and write. Accordingly, it was a constricted or constrained form of deliberation. However, it was informed by a sense of the need to provide for some specific human good, which, as Montesquieu saw it, was the beginning that makes possible the eventual determination to provide for the human good in general.

It is safe to conceive that friendly circumstances conspired with a fortunate freedom from superstition to make Europe possible. For example, the failure to cultivate the land was by no means connected to the sterility of the soil or the inhospitality of the climate. We might say that the primitive Europeans simply had not thought to do so! The *Salic law*, however, is above all concerned with the dawning recognition of the power to hold land (rather than simply to wander through the forests). It defies expectation to imagine that men began to form property rights before they began to make systematic use of property. But Montesquieu aims to teach that for men to act deliberately, rather than merely in response to circumstances, already defies expectation. The arguments from the laws of motion in Book 1 established the requirement that the account of human behavior must explain why it “moves” independently of the relation of forces in nature. The localization of human life (rooting it in property) in that sense is unnatural, even as Rousseau had understood and explained in the “Discourse on the

Origin of Inequality Among Men.” The eventual presentation makes clear that an infinite variety of causes intrudes to provide such explanation, varying both as circumstances vary and still more particularly as the “particular ignorances” (the superstitions or reasons) of peoples vary.

The law, in general, is human reason, insofar as it governs all the peoples of earth; while the political and civil laws of each nation ought only to be the particular cases to which that human reason applies (Montesquieu 1950,1.3).

It was, then, the very narrow focus of the *Salic law* that made it so suitable to initiating the civil existence of a nation that might find in its development a nearer harmony to the law in general.

The Salic law desired that, when a man left children, the males would inherit the Salic land [family plot] to the prejudice of daughters. In order to know just what the Salic lands [family plots] were, it’s necessary to research just what was the ownership or the use of lands among the Franks, before they had come out of Germany...

That was a purely economic law, which gave the household and the plot connected to the house, to the males who owed to dwell in it and to whom consequently, it was best suited (Montesquieu 1950,18.22).

Montesquieu’s emphasis upon the house and the plot connected to it intends to make clear that no agricultural principle was involved at this stage. The point, then, is only the will, the deliberate will, to perpetuate a family. We may contrast this with Rousseau’s wandering savage, whose transient liaisons produce offspring but not families. The Rousseauian natural man is the child of history whom only accident can alienate from

brutalism, while Montesquieu's natural man may escape history by an act of will. From that simple design, figured in the role of property, derives the eventual struggles over the right of succession in French and other European monarchies (not altogether rationally in Montesquieu's eyes).

From this very simple and very clear perspective, Montesquieu developed in a few short chapters the entire story of the development of a nation out of the local concern to preserve families. Notions of majority (in age), principles of the capacity to contribute to the defense of what one aimed to preserve, the emergence of assemblies to redress mutual interests, and the eventual establishment of a chief emissary or king all grow out of that simple beginning. It hangs entirely upon the willful determination to make a family, against every tendency of circumstance. Indeed, one might insist, that it is primarily the deliberate construction of the family that most of all leads man to attempt to overcome the influence of circumstance or climate, and so Book 18 aims to teach. But it is necessary to mate that deliberate will with attachment to property as the fundamental identity of the family, initially, and ultimately the nation, in order to capture the range of motions that will convert the deliberate construction of the family into the deliberate constitution of the state.

Finally, however, one must account for the role of superstition/reason in order to discover what gives space for such deliberation. Consequently, Montesquieu closes Book 18 with a not so gentle reminder why this portion of the work is separated from the history proper that opens in Book 28: it fails to account for the role and origins of religion among the primitive Europeans. In fact, in the closing chapter, he speaks as if they were Christians from the beginning, although he recognizes elsewhere (particularly in his work

on the Romans, *Considerations on the Greatness of the Romans and the Causes of Their Decline*) that they had invaded Rome as mere pagans. Underlying this confusion, however, is the deeper point that must await resolution in the later books of *Spirit of the Laws*, namely, how the power of religion is to be distinguished from the power of superstition, (See Addendum 4) and whether we discover the prospects for human good from religion in particular or history (*inquiry*) in general.

#### ADDENDA:

1. We may permit J. V. Prichard to represent the class of criticism that faults Montesquieu's leaving philosophy and history unreconciled: "It is also to be regretted that the work fails to indicate its ideal; a sequel to 'The Spirit of the Laws' might, perhaps, have been expected. Having gone over the entire ground, a résumé should have been given, that philosophy might have had her place in the last chapter, derived from, yet free of, history; and that the last word in the discussion upon governments should be a description of the true type. Montesquieu might also be reproached for dwelling too affectionately on the past...inasmuch as he submits so easily to the yoke of history and psychological analysis." (Montesquieu 1878, 1:xxiv)
2. Consider the "archeology" of Thucydides: "...the fattest soils were always the most subject to these changes of inhabitants; as that which is now called Thessalia, and Boeotia, and the greatest part of Peloponnesus...; and of the rest of Greece, whatsoever was most fertile. For the goodness of the land increasing the power of some particular men, both caused seditions, whereby they were ruined at home; and withal made them more obnoxious to insidiation of strangers. From

hence it is that Attica, from great antiquity for the sterility of the soil free from seditions, hath been inhabited ever by the same people... the most potent of them, as to a place of stability, retired themselves to Athens, where receiving the freedom of the city, they long since so increased the same in number of people...”  
(Thucydides 1975, I:2)

3. *Spirit of the Laws* as a whole furthers discussion of the relationship between politics and religion well beyond this limited conclusion. For example, in Book 24.4 we establish the principle that the consideration of the political virtue of a religion is prior to consideration of its truth or falsity. Was Herodotus’s error simply the belief that the Hebrew God was a false God? At all events, Montesquieu examples this principle through the story of King Sabaco, the authority for which he cites as Diodorus Siculus, Book II. However, he could have cited Herodotus, II.139. Clearly, however, by this point silence about Herodotus is mandatory.
4. “Among barbarian peoples, priests ordinarily hold power (*pouvoir*), because they have both the authority (*autorité*) that they ought to get from religion and the *puissance* that superstition gives among such peoples. Also, we see from Tacitus that priests were greatly accredited among the Germans, that they brought police to the people’s assembly. Only they were allowed to chastise, to bind, to strike: the which they did not by order of the prince, nor for inflicting a penalty, but as from an inspiration of the divinity (always present to them that make war).

It is not necessary to be surprised if, from the commencement of the first race (the Merovingian dynasty), we see bishops as arbitrators of judgments, if we see

them appearing in the assemblies of the nation, if they so strongly influence the resolutions of kings, and if folk give them so much wealth” (Montesquieu 1950,18.31).

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