

LAWS AND CUSTOMS IN MONTESQUIEU GUEST EDITOR'S PREFACE

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Chapter 3 of the First Book of «*De l'Esprit des lois*» culminates in a summary blueprint of what Montesquieu means by the “spirit of the laws” that is the object of study of his new political science: “It is necessary that the laws relate themselves to the nature and to the principle of the government that is established, or that one wishes to establish – whether they form it, as do the political laws, or whether they maintain it, as do the civil laws. They should be related to the physical aspect of the country; to the climate, be it freezing, torrid, or temperate; to the properties of the terrain, its location and extent; to the way of life of the peoples, [...]; they should relate to the degree of liberty that the constitution can sustain, to the religion of the inhabitants, their inclinations, their wealth, their number, their commerce, their mores and their manners; finally, the laws are related to one another, to their origin, to the purpose of the legislator, and to the order of things on which they are established. They must be considered from all these points of view. This is what I undertake to do in this work. I shall examine all these relations; together they form what is called THE SPIRIT OF THE LAWS.” («*The Spirit of the Laws*», I, 3). Anticipating Montesquieu’s subsequent elaboration of his science, we may summarize his implicit critique and revision of the political theory of his modern predecessors as follows. They have correctly begun from the thesis that passions manifested in the behaviour and the opinions of humans, even as they are mostly found living in stable societies under legal systems, are best understood on the basis of the hypothesis that lawful political society is not natural to man, but is instead a product of human artifice, responding to the threatening barrenness of nature.

But this thesis entails a much broader and significantly deeper diversity among different types of human being, shaped by different types of lawful

social environment, than has hitherto been recognized. Each distinct nation's conventional shaping of its members moulds or remoulds the ways that individuals which they attempt to satisfy them: "Man, that flexible being, conforming in society to the thoughts and impressions of others" («*The Spirit of the Laws, Preface*»). Humankind is naturally endowed with an extraordinarily "flexible being" which, in seeking through lawful society to satisfy its basic needs, "conforming" itself into a wide variety of different kinds of political being, no one of which represents the fulfilment, or perfection, or natural culmination, of this plasticity. The acquired, but nonetheless deeply ingrained, national habits, customs, and beliefs endow each people with its own, peculiar and complex, "general spirit" (see the title of Book XIX: "*Of Laws, in relation to the principles which form the general spirit, the morals, and customs, of a nation*") – which becomes something like a second nature. Human beings – say Montesquieu – hold prodigiously to their laws and to their customs; these make the happiness of each nation, it is rare that one changes them without great shocks and a great effusion of blood, as the histories of all countries make clear.

Moreover, there is a certain degree of practical wisdom implicit in the diverse national traditions: "I have first of all considered mankind; and the result of my thoughts has been that, amidst such an infinite diversity of laws and manners (*dans cette infinie diversité de lois et de mœurs*), they were not solely conducted by their fantasies." («*The Spirit of the Laws, Preface*»). However big a role delusion and error may have played in each of the diverse legislative constructions, reasons was also at work, even it trammelled and befogged. Besides, "there is often something true in errors themselves" («*The Spirit of the Laws*», VIII, 21). Montesquieu will show how the various traditional laws and customs serve intelligible, if not always very wise, functions or purposes – related to the specific form of government. Related to the specific passions and habits needed to sustain that form of government, and related also to the specific geographical environment, the economic basis, and the nation's inherited historical practices and beliefs—both foolish and sensible. As much as the project to systematize law, the will to make sense of *mœurs* is fundamental to «*L'Esprit des lois*». In the first place, *mœurs* express collective *opinions* and *passions* and describe not only a society's needs, but also the nature of its pleasures and aversions. As the Effects which result from a plurality of causes (geographical or historical, natural, social or political), *mœurs* determine in turn behavior within a social group or nation. As a first approach, this yields a veritable circle of *mœurs*: opinions and passions, once required, produce a momentum which the *mœurs* reproduce in the form of a

second nature («*The Spirit of the Laws*», XIV, 4) – a “habit”. From this follows the given character of *mœurs*, which appear as *customs*. Simple or refined, virtuous or corrupt, the *mœurs* constitute the obstacle or adjuvant which the legislator encounters. *Mœurs* are more native than laws: thus among the earliest Romans “the *mœurs* sufficed to maintain the allegiance of slaves; no laws were needed”. Thus is posed the crucial problem of the political domain, that of the relationship it is proper to institute between the types of norms that determine behaviors, between regimes of constraint that govern men, in a word, between laws and *mœurs*: ought the political art to inform the *mœurs* or be content with a regulated adaptation – the laws attempting no more than to follow the *mœurs* derived from nature and history?

The essays collected in the present monograph issue of «*Ethics & Politics*» entitled analyze the problematic nature of this relationship between laws and customs – between *positive* laws and laws as *regularities* – in Montesquieu's political thought. The law presupposes an *ethical* background. The reflection on *mœurs* first appears in Montesquieu's work at the moment when the relationship between “nature” and “principle” of each government is exposed. Between the institutional structure of a regime and the dominant passion that must motivate men within it, the relationship is *dialectic*: to obey power and the laws supposes certain *mœurs*, which must themselves be formed and maintained by political art and law.

In particular, Riccardo Fanciullacci analyses in his article the ‘partisanship in philosophy’, in the light of the interpretation provided by Louis Althusser in his book on Montesquieu («*Montesquieu: Politics and History*»). Tommaso Gazzolo interprets the problem of costumes within the paradigmatic use that Montesquieu makes of history, particularly Roman history. Paolo Slongo examines the relationships between laws, ways of life, manners, social habits, and the legal (and social) institutions that derive from it. Diego Vernazza focuses on his article on the question of the diversity of manners in the «*Persian Letters*» and in the «*Spirit of the Laws*», Montesquieu's two major texts.