The Noble Omissions of Montesquieu: On Cicero, Claudius Appius, and the Conflict of the Orders

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Abstract

This thesis will argue that Montesquieu projects his perceived threats to French liberty onto Roman history. In defending what he views as the crucial role of noble privilege, he interprets historical accounts of early Rome to see only either the menace of a despotic ruler, and the despotic mob. Through his work in *Considerations on the Causes of the Greatness of the Romans and Their Decline, The Spirit of the Laws,* the consequences of these decisions are that he omits the potential for domineering aristocrats in his narrative. His selective moral attribution of virtuous patricians and corrupt plebeians further dismisses the possibility of rational self-interest or justice in the people, even though it was explicit in the narratives of Dionysius and Livy. Montesquieu even goes so far as to cite the cruel, aristocratic, and allegorical figure of Claudius Appius as an impartial account of the conflict in *The Spirit of the Laws.* This is all the more ironic in the context of our contemporary appreciation of Montesquieu as a thinker who, above all other things, abhorred cruelty.

As Montesquieu emphasizes repeatedly, the people often confuse their power for their liberty. The preservation of the sources of liberty - those checks on power which include noble privilege - are often the furthest thing from the mind of either a despot who seeks to uniformly simplify his domain, or the thoughtless impulses of a democratic mob. But where the Romans depicted discord caused by arrogant noble pride, he simply saw his own collapsing noble prerogatives. Due as much to his own contemporary context as to the influence of Roman thinkers like Cicero, Montesquieu takes an extremely selective approach that often ignores the valorization of moderation and *Concordia* in the narratives of early Rome. At certain junctures, moderation in the name of harmony was for him simply cowardice in the face of looming popular despotism.

This thesis highlights some shortcomings of Montesquieu's historical readings as well as the motivating political concerns that framed his understanding of the ancient world. It will rely on a close textual reading of his work, as well as a broader historiographical reading of sources concerning the Roman republic, focusing on a cross-section of the issues which defined the conflict of the orders: agrarian laws, land redemption, and debt slavery. It seeks to provide two new contributions to the current scholarship on Montesquieu's political philosophy, in both seeking to highlight his exceptional treatment of the allegorical figure of Claudius Appius, as well considering certain high-order constitutional priorities which justify redistribution.

Résumé

Cette thèse soutiendra que Montesquieu projette ses menaces perçues à la liberté française sur l'histoire romaine. En défendant ce qu'il considère comme le rôle crucial des privilèges nobiliaires, il interprète les récits historiques de la Rome antique pour n'y voir que la menace d'un souverain despotique ou d'une foule despotique. Par le biais de ses « Écrits dans Considérations sur les causes de la Grandeur des Romains et de leur Décadence » et « De l'Esprit des Lois, » et, en conséquence, il omet le potentiel des aristocrates autoritaires dans son récit. Son attribution morale sélective de patriciens vertueux et de plébéiens corrompus écarte encore plus la possibilité d'un intérêt personnel rationnel ou d'une justice populaire, malgré son explicité dans les récits de Dionysius et de Livy. Montesquieu va jusqu'à citer la figure cruelle, aristocratique et allégorique de Claudius Appius comme un compte rendu impartial du conflit dans L'Esprit des lois. Ceci est d'autant plus ironique dans le contexte de notre appréciation contemporaine de Montesquieu en tant que penseur qui, par-dessus tout, abhorrait la cruauté.

Comme Montesquieu le souligne à plusieurs reprises, le peuple confond souvent son pouvoir avec sa liberté. La préservation des sources de la liberté - ces freins au pouvoir qui incluent les privilèges des nobles - est souvent la chose la plus éloignée de l'esprit d'un despote qui cherche à simplifier uniformément son règne, ou des impulsions irréfléchies d'une foule démocratique. Cependant là où les Romains décrivaient la discorde causée par l'orgueil et l'arrogance des nobles, il ne voyait simplement que ses propres prérogatives nobles s'effondrer. En raison de son propre contexte contemporain et de l'influence de penseurs romains comme Cicéron, Montesquieu adopte une approche extrêmement sélective qui ignore souvent la valorisation de la modération et de la Concordia dans les récits de la Rome antique. À certains moments, la modération au nom de l'harmonie n'est pour lui qu'une lâcheté face à la menace du despotisme populaire.

Cette thèse met en lumière certaines lacunes des lectures historiques de Montesquieu ainsi que les préoccupations politiques qui ont encadré sa compréhension du monde antique. Elle s'appuiera sur une lecture textuelle attentive de son œuvre, ainsi qu'une une lecture historiographique plus large des sources concernant la république romaine, en se concentrant sur un échantillon des questions qui ont défini le conflit des ordres : les lois agraires, le rachat des terres et l'esclavage pour dettes. Cette thèse cherche à fournir deux nouvelles contributions à la recherche contemporaine sur la philosophie politique de Montesquieu, en mettant en évidence son traitement favorable de la figure allégorique de Claudius Appius, ainsi qu'en considérant certaines priorités constitutionnelles de haut niveau qui justifient la redistribution.

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The Noble Omissions of Montesquieu: On Cicero, Claudius Appius, and the Conflict of the Orders

Introduction

This paper will argue that Montesquieu reads his own contemporary political context into ancient Roman history. In defence of the *noblesse* of 18th century France, he selectively portrays the conflict of the orders in ancient Rome, showing a preference for the rights of patrician nobility over democratic enfranchisement. This slant skews the moral attribution of corruption towards the plebeians and away from the patricians. He omits the potential for domineering aristocrats, and further dismisses a capacity for rational self-interest to the plebeians.

The first part of this thesis will engage with this scope of historical scepticism and projection, both in Montesquieu, as well as in the Roman sources he cites. For example, Livy and Dionysius also project their own contemporary context back onto archaic Roman history, often giving voice to events and allegorical characters that reflected the turbulence and civil wars of the late republic.[1] In their writing, arrogant noble characters like Claudius Appius were used as examples of cruel and oligarchical threats to liberty, not defenders of it. They served as foils for the wiser and more moderate voices who could restore the harmony – *Concordia* - of the republic.[2] Yet Montesquieu, sympathetic to preserving noble privilege and power, repeatedly reads past these allegorical devices. He attributes Appius Claudius with a sound grasp of the conflict of the orders, describing a monodirectional conflict where jealous plebeians persistently attack the virtuous patrician order.

Montesquieu had an avowed attachment to Cicero, who was an ever present and familiar figure to the reading public of 18th century Europe. Like him, this ancient senator was

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* In my citations of primary sources, I refer to the divisions within each work provided by the author, in the format of *Book.Chapter*, (e.g. 10.11). Abbreviations for the titles of Montesquieu's works are as follows: *Spirit of the Laws, SL; My Thoughts, MT; Considerations on the Causes of the Greatness of the Romans and their Decline, CR; Discourse on Cicero, DC.* Any citations of Livy refer to his history *From the Founding of the City.* Likewise, any citations of Dionysius refer to his *Roman Antiquities.*

[1] Mary Beard, *SPQR: A History of Ancient Rome,* (London: Profile Books, 2015): 177-184; E.D. Eagle, "Catiline and the 'Concordia Ordinum,'" *Phoenix,* Vol. 3, No. 1, (1949): 15–30; M.I. Henderson, "Potestas Regia," *The Journal of Roman Studies,* Vol. 47, No. ½, (1957): 85; Arnaldo Mamigliano, "Camillus and Concord," *The Classical Quarterly,* Vol. 36, No. ¾, (1942): 115–116.

[2] Henderson, "the ideal supremacy of the people, with no detriment to the authority of a benevolent senate," pp. 85.

more weary of ascendant demagogues than the corresponding plight of plebeian debt slaves.[3] The questions of restitution, land reform, or debt cancellations are viewed by him accordingly only as the mischief of usurping populists. Yet both of these same noble voices – Montesquieu and Cicero – indulgently allow this mischief in service of an aristocratic or monarchical order: be it the right of redemption or the restitution of exiled leaders. Hidden behind their arguments against equality or debt-forgiveness is not merely a normative preference, but a constitutional prioritization that accepts such measures in all but popular states.

Montesquieu and Cicero assert this constitutional priority because to them, it rightfully expresses the justice of *inequality* in politics. In a vein of thought that might seem askew to our contemporary democratic norms, these figures value and defend a hierarchical order of privilege and call it liberty. Both accordingly view the tantalizing promises of greater equality as merely a tool for despots to gain the political support of the lower castes of society. This valorisation of inequality can explain Montesquieu's sympathy for an otherwise cantankerous character like Appius Claudius. While the narrative of *Concordia* frames such uncompromising nobles as dangerous, he views them as the last defenders of a hierarchical constitution against an irrational populace.

The second part of this thesis will further explore Montesquieu's moral stance towards the conflict between privilege and populace. In regarding the demos and demagogues, he takes an approach that again reflects Cicero, where plebeian claims for power arise from a confused passion rather than reason. This view is then contrasted with that of Augustine and of Machiavelli. The latter two writers did not overlook nor shrink from the parallel prospect of vicious and abusive nobles in the republic. They articulated the potential for both vice and virtue in higher and lower orders. According to them, in this two-way struggle the plebeians might rightfully seek political power to defend themselves from abuse.

Montesquieu is reluctant to admit such abuse, and he resists even assigning rightful political self-defence to the plebeians. As another example of this tendency, his citation of a Roman frenzy of democracy emphasizes plebeian passion, where in the narrative context it

[3] Eagle, pp. 23-25.

arrives after the patrician murder of a people's tribune. Strikingly, he even characterizes the push for plebeian political power as a kind of cowardice.[4] More often than not, he sorts such political agitations by the people into a form of mischief, a frenzy of equality, or a path to despotism. He rarely considers the possibility of a fairer allocation of political power, or a just redistribution of land, or a restorative form of debt cancellation for the plebeians, even though he admits similar schemes for the noble class in a monarchy.

As Montesquieu emphasizes repeatedly, the people often confuse their power for their liberty. The preservation of the source of liberty - those interlocking checks on power - is often the furthest thing from the mind of either a despot who seeks to uniformly simplify his domain, or the thoughtless impulses of a democratic mob. However, he often reads those perspectives into a narrative that itself holds vastly different normative undertones. The righteous self-defence of the plebeians and the cruelty of certain nobles is largely omitted from his Roman narrative, even though it was explicit in the narratives of Dionysius and Livy. This is all the more ironic in the context of our contemporary appreciation of Montesquieu as a thinker who, above all other things, abhorred cruelty.[5]

Chapter One: Historical Scepticism and Projection

Scepticism and the Other

The Roman legions, stern faced and clad in their crimson red uniforms, shields emblazoned with SPQR, marched out in single line formation down the Via Appia. This scene might make for the opening of a classic Hollywood or yet another Netflix rendition of the ancient world, yet the problem is that none of these statements correspond with historical sources. No surviving or preserved roman shields or ancient depictions of them ever bore the

[4] Montesquieu, *SL,* 11.18. "On ne sait quelle fut plus grande, ou dans les plébéiens la lâche hardiesse de demander, ou dans le sénat la condescendance et la facilité d'accorder." [One does not know which was greater, in the plebeians the cowardly effrontery to ask, or in the senate, the condescension and the complaisance to grant.]
[5] Judith Shklar, "Putting Cruelty First," *Daedalus,* Vol. 111, No. 3, (1982): 18

famous political acronym of Rome.[6] Evidence indicates that each legion had its own colour, which was often a cheaper white, brown, green or grey.[7] Our heroic citizen-soldiers marched surrounded by entourages of their military slaves.[8] What might make this iconic image seem true in the mind's eye is that it is an often-repeated motif in television and film which arguably takes a cue from recent western historical memory of global empire: the English redcoats, complete with English accents, were and are transferred to Roman imagery for the American Hollywood imagination. The image served its purpose to instill in a modern mind an implacable unity of this quasi-republican-imperial war machine, yet if we take it at face value, we might lose something important in the details.

Consider the separate colors of the troops, who distinctively adorned their shields with both the shade and animal insignia befitting their legion: this identity, as a legion, was an ardent object of pride. Each identified troop of thousands would collectively jockey with others for the accolades and respect of their commanders. Caesar famously manipulated his soldiers with their own legionary vanity. When his army despaired in Gaul and refused to continue, he sent a message through camp that he had chosen to proceed nevertheless with the tenth legion alone, for he had no doubt of their valour – inflamed, the whole army followed him.[9] It is a minor point that might not endanger a broad and encompassing argument, but the full and complete social portrait can be obscured by such selective choices.

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[6] Of actual **Shields,** three total surviving Roman relics have been discovered to date: a red scutum from 250CE Dura-Europos Syria, adorned with lions and eagles but no acronym; a colorless wooden scutum from the late republic found in Al Farum Egypt; the colorless remains of an early imperial shield uncovered at Doncaster, Yorkshire. The *Notatia Dignitatum* depicts a colorful variety of shields in late empire. Vegetius in *De Re Militari*. Book 2, states that "every cohort had its shields painted in a manner peculiar to itself," each also inscribed with the soldier's name, century and cohort.

[7] **Frescoe depictions** of Roman military tunics include: at Pompei, the house of Valerius Rufus shows a soldier in white cloak and brown tunic; at Palestrina near Rome, soldiers with white and salmon tunics with yellow cloaks; at Dura-Europos in Syria, white tunics, white or yellow cloaks, brown or red belts. **Written Records** Martial, *Epigrams,* XIV, 129, "Rome wears more brown, Gauls red;" *Historia Augusta, The Deified Claudius*, 14 the heroic Claudius is gifted "two red military tunics and a purple cloak;" Tacitus, *The Histories,* 2.89 "while the colours of four other legions were to be seen on either side," while "the prefects of camp, the tribunes, and the chief centurions, dressed in white."

[8] Jonathan Roth, "The Size and Organization of the Roman Imperial Legion," *Historia: Zeitschrift Fur Alte Geschichte,* Vol. 43, No.3, (1994): 354-357, "estimates of the number of slaves in a legion range from 400 to 1,400."

[9] Julius Caesar, *The Conquest of Gaul,* Edited by Jane P. Gartner. (London: Penguin Classics, 1983), 1.40-41.

The same holds true in how we must reflect on the historical accounts and arguments of Montesquieu, who, this paper will argue, makes similar editorial decisions to emphasize the threats of both the despotic ruler and the unthinking mob. The consequences of this decision are two-fold: he omits the potential for domineering aristocrats, and also dismisses from the people a capacity for rational self-interest or a simple motive for justice.

Each writer has their target audience, as well as their argumentative intentions. No history is immune from the flavouring of its own contemporary memory. In narrating the origins of their republic, the first-century Roman historians themselves projected their own threats and shadows onto the walls of recent civil wars.[10] In his reading of them, Montesquieu likewise takes to describing his Louis-reminiscent image of decadence combined with despotism. Each author necessarily bridged past and present for the purposes of their political perspectives.[11] The contemporary receptive context of characters, phrases, and conflicts are arguably an inescapable component of any writer's work, and they must constantly weigh this against other sources and purposes.

For example, even the style of a narrative itself can be scrutinized as much as the substantive issues mentioned. Take for example the remark in *Spirit of the Laws,* that "no people were so easily moved with public spectacles as the Romans," as Montesquieu lists the parade of episodic archaic events from the rape of Lucretia up to Marc Antony's brandishing of Caesar's bloody toga.[12] At first glance, this is a continuation of his characterization of a democratic mob that is easily swayed by emotion and rhetoric. But beneath this sequence of transformative public spectacles in Rome, one could argue, lies the rhetorical style that

[10] Beard, *SPQR,* 47, 119, 130 also highlights this transferral as a 'projection' of more recent events; see also Cristina Rosillo-Lopez, *Public Opinion and Politics in the Late Roman Republic,* (Cambridge, UK: Cambridge University Press, 2017): 106-112.

[11] Examples of retro-jecting 1st century BCE issues into archaic Rome include: Livy ascribing an agrarian Gracchi-style law to Spurius Cassius (Book 2.41); the extra-legal Senatus consultum ultimum that "the state come to no harm" (ne quid res publica detrimenti caperet); ascribing the first words of Cicero's famous indictment of Catiline to Manlius Capitolinus ("So how long are you going to exploit our tolerance?" *Against Catiline* 1.1; Livy "So how long are you going to remain ignorant of your strength?" 6.18. See also notes from B.D. Hoyos in Livy, *Rome's Italian Wars,* edited by John C Yardly and B.D. Hoyos, (Oxford, UK: Oxford University Press, 2016): 300-301. Beard, *SPQR,* 46-8.

[12] Montesquieu, *SL,* 11.15

deliberately creates a spectacle. From this perspective, Montesquieu's reading conflates historical event with the narration of history.

The histories of early Rome of Dionysius and Livy which he references are an example of *demonstratio* or *energeia*, a recitation style which seeks to "set events almost before the eye" of listeners; Cicero, referencing the oratory style of Caesar, described it like placing a "well-painted picture in a good light."[13] This was part style, and part structural requirement, as Livy, Dionysius and others wrote their histories to be read aloud to listening audiences. These audiences would in turn imagine this sequence of events, and the theatrical procession of victors and villains across the public square where they sat.[14] The growing rhetorical tradition of dramatic history in Rome had this intention. In the first century BCE onwards, historians often crafted such episodes for this purpose, and in order to captivate an audience often a spectacle was required.[15]

A generation before Livy, Cicero lamented the potential for this style of history in his time, commenting that Rome had matched Greece in nearly every way except heroic epic literature and history.[16] He emphasized how the oratory aspects of Greek history were eminently more pleasing than some of the ancient "bulletin-like" annalistic Roman records, which he compares to lawyers reading out the facts of a suit.[17] By inventing speeches like Thucydides and proclaiming massive armies like Herodotus, the later Roman historians created an oratorical public event that could entertain the mind's eye for all who listened: in a theatre, in a forum, or at a dinner party. This new development was part of a newly flourishing literary movement, sponsored and endorsed by an ascendant Augustus, and if Montesquieu saw in the

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[13] Andrew Feldherr, *Spectacle and Society in Livy's History,* (Berkeley: University of California Press, 1998): 4; Cicero*, Brutus,* 261.

[14] T.P. Wiseman, "Practice and Theory in Roman Historiography," *History,* Vol. 66, No. 218, (1981): 383-385, considers the argument of a reading versus a listening public where histories commonly consisted of a hundred or more scrolls or books that needed to be transported by cart.

[15] Feldherr, *Spectacle,* 4-25

[16] Cicero, *On The Orator,* 2.51-63

[17] Cicero, *On The Orator,* II; 51-63; see introduction of T.J.Luce in Livy, *The Rise of Rome,* Edited by T.J. Luce, (Oxford: Oxford University Press, 2016): xx; Wiseman, "Practice," 375-381; Arnaldo Momigliano, "Tradition and the Classical Historian," *History and Theory,* Vol. 11, No. 3, (1972): 287.

early Romans a people moved by spectacle, we might argue that it is partly because its historians wrote this history to be a spectacle.

Comparative Scepticism

It should be granted that both ancients and moderns take the spectacular accounts of said histories with a grain of salt, though some are more vocal than others about their scepticism. Livy suggested that perhaps Romulus did not ascend into the clouds but was actually murdered by his own senators.[18] In more delicate words, the myth of Horatio Cocles – who singularly defied an army on a bridge over the Tiber – was described by Livy as an act of "daring that posterity was to find more praiseworthy than credible."[19] Among Renaissance authors, Machiavelli tactically underlined the overawing effect of divine authority employed by Solon and Lycurgus, and accordingly considered Numa to have made false claims to the public about regularly consulting with a goddess.[20] Later Rousseau pinpointed the etymological roots of said Roman kings, where Rome coincidentally was the Greek word for 'strength,' Romulus for 'strong,' and Numa for 'law,' concluding that histories of these early times were likely fables.[21] An entertaining dismissal of the size of early Roman armies is elaborated by Voltaire in the *Philosophical Dictionary:* "It is so much more noble to be raised from so poor an origin to so much greatness, than to have had to double the soldiers of Alexander in order to conquer about fifteen leagues of country in four hundred years."[22] He similarly eviscerated Montesquieu's culpability for various doubtful legends and anecdotes within *Spirit of the Laws,* attacking him in numerous entries throughout the *Dictionary*. However, in summation of the book, he still agreed with the work's fundamental purposes in being "against the fanatics and promoters of slavery."[23]

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[18] Livy, 1.16
[19] Livy, 2.10
[20] Nicolo Machiavelli, *Discourses on the First Decade of Titus Livius,* Edited by Bernard Crick, (London: Penguin Classics, 1970): 1.11; Livy 1.21
[21] Jean Jacques Rousseau, *The Social Contract,* Translated by G.D.H. Cole, (London: Everyman, 1973): 4.4, noting the Greek words ΡΩΜΗ, ΡΩΜΑΛΕΟΣ, and ΝΟΜΟΣ, respectively.
[22] Voltaire, *The Works of Voltaire,* Vols. VI-VII, Philosophical Dictionary Parts 4-5, (New York: E.R. Dumont, 1764) Online Library of Liberty, https://oll.libertyfund.org/title/fleming-the-works-of-voltaire-vol-iv-philosophical-dictionary Accessed Dec 3 2022: entry on "Numbering."
[23] Voltaire, *Philosophical Dictionary,* entry on "Spirit of the Laws."

These points of dispute are pertinent, for they can reveal both the presence of scepticism in Montesquieu's time about the ancient record, as well as what intentions are behind the writing of authors ancient and modern. The threat of dogmatic authority was perceived by both Montesquieu and Voltaire in their time, in providential Catholicised narratives such as the likes of Bossuet's *Discourse of Universal History*. The purpose behind their work, be it *Considerations,* or even Voltaire's *History of Louis XIV*, was to shift the views of their contemporaries away from dogma, and to root history in a sceptical and nearly scientific understanding of cause and effect. But between them the political preferences for a pluralistic balanced constitution (Montesquieu) or an enlightened systematic monarch (Voltaire) colored their historical narratives.

We can find this tendency of taking a selective look at the classics throughout the corpus of political philosophy, and the ancients are employed in one way or another to suit a given argument. Today it is fairly common knowledge that the classical tradition was the basis for any level of education in Europe up until modernizations of the 20th century. But less obvious to readers today, who accordingly may be less familiar with the classical corpus, is the selective and contextual way in which it was used – by Augustine, by Machiavelli, by Montesquieu, and many others. We may take them at their word on Livy or Tacitus while being unaware of their selective choices. Fully situating their arguments within the context which they cite from can reveal how authors might close an eye while picking out their arguments. Bossuet is an easy target in his providential mental gymnastics. But - in the name of virtue - Rousseau's historical scepticism suddenly shrinks from naming the glorious feats of the ancients as 'fables' when they were inspired by his favoured republican patriotism. Likewise, it is apparent that Augustine will take any example of the depravity of early Rome at face value to show how their pagan gods yielded no virtue. Machiavelli in turn, who saw both selfish ambition and *virtu* in a strange symbiotic entanglement, argued that both factors made early Rome bellicose and dominant. When we witness the context within which these authors pick out their preferred pieces of ancient history, it becomes apparent that they are not wholly guided by these examples, but rather that they also guide certain examples to suit their uses.

Montesquieu for his part does not expend much of his ink voicing historiographical or sceptical concerns. As summarized by Judith Shklar, "unlike Voltaire, he was not tormented by the unreliability of all historical evidence and by the impossibility of achieving certain knowledge about the past."[24] Rather his efforts and his goals overlook these doubts. They move past "what am I?" and "what can I know?" in order to know the other; to know "who are you?" He takes travel literature and ancient history at their word so that "we can know people who are utterly unlike us."[25] His enthusiasm for the kind of scientific scepticism inaugurated by Descartes did not extend to historical scepticism about ancient sources, or as Shklar describes, his own position in relation to them.

In some ways, this tendency of Montesquieu's might be due to the perspective that the *mores* and principles of any society will not even be revealed in their written histories anyway. He makes a striking comment in *Mes Pensées,* contrasting the record of events as opposed to the moral principles of ancient Greece:

> "One must reflect upon *The Politics* of Aristotle and upon the two *Republics* of Plato, if one wants to have a just idea of the laws and of the morals of the Greeks. To search for them in their historians is as if we wanted to find our own in reading about the wars of Louis XIV."[26]

As noted by Krause, by his thinking we must peer beneath the recorded events of the Peloponnesian wars to understand its deep ideological divides – of the right of the many versus the few - which motivated these events.[27] Such epoch-shaping moments do not merely transpire but are bound up with our *mores;* they "express principled convictions about how best to live."[28] Likewise by simply reading the conquests of Louis XIV we would omit the underpinning ideological clash over noble prerogatives and the crisis of the French constitution itself. Therefore, for Montesquieu it is inherently useful and rational for us to deduce motives

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[24] Judith Shklar, *Montesquieu,* (Oxford: Oxford University Press, 1987): 26.
[25] Ibid.
[26] Montesquieu, *MT,* 1378
[27] Sharon Krause, "History and the Human Soul in Montesquieu," *History of Political Thought,* Vol. 24, No. 2, (2003): 253.
[28] Ibid.

and *mores* by inference without becoming entangled by historical scepticism. Yet it is in some ways ironic that the enemy of uniformity in political structures can himself be guilty of glossing over such deeply knotted historical nuances and conflicting interpretations. He embraces historical uniformity with the aim of establishing a scientific structure of political typologies and *mores.* To Montesquieu, liberty benefits from political tensions, but his systemizing approach does not similarly benefit from, nor seek to get entangled with, historiographical tensions.

Defending Noble Privilege Instead of *Concordia*

Nevertheless, when Cassius Dio complained of editorial despotic pressures under emperors, where "everything is said and done with reference to the wishes of the men in power at the time and of their associates," Montesquieu listened.[29] Perhaps he did because he faced the same pressures in France. Dealing with royal censors, he was forced to publish *Persian Letters* anonymously, and commonly used obfuscatory tactics in both *Considerations* and *Spirit of the Laws* to hide his criticisms. He despairingly commented in his posthumous *Thoughts* that "ever since the invention of the printing press, there are no more *true* histories:"[30]

> "Today, all books are subject to the inquisition… Princes have thereby been taught to be offended by what people are saying about them. In the past, they did not worry about it; thus, people spoke the truth."[31]

Royal correctives now oversee history with a new sense of insult, but this sense of vulnerability was more suitable to a despot than a king. A proper monarch should feel secure and high above the fray: "if in a monarchy some barb is thrown against the monarch, he is so high that the barb does not reach him."[32] When the one stoops to avenge every petty tirade, they publicly display their own insecurities, like Augustus, who forced Livy to correct his own record at the explicit instruction of the emperor.[33]

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[29] Dio, *History,* 53.19; Montesquieu, *CR,* 13
[30] Montesquieu, *MT,* 1462
[31] Ibid.
[32] Montesquieu, *SL,* 12.13
[33] Livy 4.10; see also notes of T.J. Luce in Livy, *The Rise of Rome,* 354-355.

Such insecurities, while fitting for the encroaching despotism Montesquieu felt in France, were also more becoming of the rulers of an aristocratic republic. He argued that in being nearer to the people and lesser in their grandeur, they felt the slight of such writings more acutely. Congruently, he notes the spirit of aristocracy behind the Roman Decemvirs, who enacted the death penalty for slanderous songs; the kind of slanders that were aimed to insult great citizens and "flatter the spitefulness of the people."[34] The sense of honor and insult at work in the proximity of the Roman republic is also briefly highlighted in *Considerations,* and jealousy, envy, and proximity, are repeatedly depicted as the central motive forces behind the conflict of the orders.

After expelling the kings, the patricians were subject to "odious comparisons;" they were vulnerable aristocratic rulers, rather than an infinitely unassailable king; they were present and "visible to all."[35] Strangely however, Montesquieu often chooses to highlight the jealousy, envy and hatred coming from below, rather than the prickly haughtiness of the patricians above. In his narration in *Considerations*, the location of Roman decadence and vice is consistently located among plebeians. This monodirectional narrative portrays only the virtue of the patricians, who defend themselves with "wisdom, justice, and love of country."[36] Unlike Aristotle's oligarchical city divided between slaves and masters, which equally held "envy on the one side and contempt on the other," Montesquieu chooses to simply state that there was great envy from one side.[37] The exceptions to this trend in his interpretations are few but do exist. For example, with the Decemvirs' odious law against intermarriages he lays some malicious designs at the feet of the patricians. But generally, in his summary of the conflict of the orders, the plebeians attack out of their jealousy and cowardice, and the patricians nobly defend their privileges. It is from these signs and others that this thesis argues that

[34] "The Twelve Tables," The Avalon Project, Yale University, https://avalon.law.yale.edu/ancient/twelve_tables.asp accessed Dec 2, 2022: "If any person has sung or composed against another person a song such as was causing slander or insult to another, he shall be clubbed to death." Table 8; Montesquieu, *SL,* 12.13
[35] Montesquieu, *CR,* 8
[36] Montesquieu, *CR,* 8
[37] Aristotle, *Politics,* Translated by Ernest Baker, (Oxford: Oxford University Press, 1995): 4.2, 1295b

Montesquieu, already under the royal censor, chooses to doubly edit his use of historical Rome to obviate any insult to the virtue of the noble class.

In his posthumously published work, *My Thoughts,* this envy of the lower orders is attributed to the turbulent beginnings and then the final end of the Roman republic:

> "The people of Rome, with an ever-active hatred against the nobles, changed their means without changing their ends; at first they thought of lowering them by decreasing their privilege, and then by increasing the authority of a single person."[38]

The idea of an odious nobility – vaguely hinted at in *Spirit of the Laws* - is selectively left out in his account of Rome. There is no doubt a basis for this suspicion of the demos, and similar political philosophies in the ancient Greeks lament – like Montesquieu – extremes of equality, democratic collapse, and opportunistic demagogues. But they also extend the possibility of vice, greed, and bad intentions to the privileged few. In this way, the few surviving histories of early Rome – Livy's *History from the Founding of the City*, and Dionysius's *Antiquities* - are likewise approximately balanced: there are examples of vice-laden patricians as well as bad plebeians, both can be corrupt, and both can be cruel. Allegorical heroes and villains will enter and exit the drama from both camps in the public spectacles painted by the words of these authors. Within this balanced context, Montesquieu selectively focuses on the vices of the plebeians, generally ignores those of patricians, and more so, even cites the speeches of the most allegorically cruel and arrogant character – Claudius Appius – as a source of authority in *Spirit of the Laws.*[39]

Why does he do this? Suffering under the darkness of encroaching despotism in France, Montesquieu seeks to defend the part of his country that he thinks is the best bet for maintaining liberty – the noble class. The parallels between the embattled Roman senate and Montesquieu's embattled noble orders and *parlements* - not to mention the general intention of simply using Rome as a critique of a despotic bourbon King - may have led him to neglect those sources in history that would paint his noble counterparts in a less than flattering light.

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[38] Montesquieu, *MT,* 1674
[39] Montesquieu, *SL,* 11.18, 22.22

Had he been historiographically heroic, he even might have considered how much the tales of history written by Livy and Dionysius in the first century might have been reacting to the tumult and despotism of their own recent memory – their own *Frondes* and Sun-Kings - as much as he was reacting to that of his own. These memories of Roman civil wars would position the rhetoric of bloodthirsty and cruel Claudius Appius as a clear instigator. But Montesquieu, doubly grappling with royal censorship, is arguably forced to cover one eye when it comes to sticking to his purpose of defending liberty. Drawing from his noble idol Cicero, and targeting absolutists such as Bossuet, the balance of moral attribution between plebeian and patrician is omitted in his account.

Cicero and Bossuet

Crucial to Montesquieu's vision of his own role as well as his interpretation of Roman history was the figure of Marcus Tullius Cicero, that "medieval and Renaissance archetype of republican virtue, eloquence and philosophy."[40] There is much reason for such a kinship. In their lifetimes, they both saw the menacing rise of despotic power to the diminishment of their respective ancient constitutions. They both were legally trained prodigies who ascended to a privileged political body charged with checking tyranny. Yet they were also both outsiders initially born far from the center of power, with more modest beginnings than their rivals. In his youth while penning a *Discourse on Cicero,* he said of the famous orator, "Cicero is, of all the Ancients, the one who had the greatest personal merit, and whom I would most like to resemble."[41] In the same work, not merely adulation but moral alignment colored his vision: "All the enemies of the Republic were his own: the likes of Verres, Clodius, Cataline, Cæsar, Mark Anthony, indeed all the scoundrels of Rome declared war on him."[42] Montesquieu later hesitated about the overly panegyric language in this earlier writing, yet in many ways he could

[40] JGA Pocock, *Barbarism and Religion,* Vol.3, (Cambridge, UK: Cambridge University Press, 1999): 37; Giuseppe La Bua, "Homo Novus and Nobilis: Cicero and the Formation of the 'Modern' Aristocracy*," Portraying Cicero in Literature, Culture, and Politics*, ed. Berno et. all, (Boston: Walter de Gruyter, 2022): 109; Igor Moraes Santos, "Montesquieu on Cicero. Historiographical, Political, and Philosophical Dimensions of a Modern Portrait," Ibid, 341-349.

[41] Montesquieu, *DC,* pp. 733; as well as later in *MT,* 1773 "Cicero, in my opinion, is one of the greatest minds that has ever been," cf. Santos, "Montesquieu on Cicero," 341.

[42] Montesquieu, *DC,* pp. 735

never quit this Roman orator. Mandatory in the lower levels of late 17th century French education, he had experience translating Cicero's works such as *De Officiis,* and even *de Legibus;* later in his legal education Montesquieu did the same for the *Corpus Juris*, along with larger Latin and French compendiums of law.[43] Revisiting Cicero's works again and again, in a dissertation on religion, in *Considerations,* and in his magnum opus, Montesquieu frequently cited his broad legal, social and philosophical writings. In 1750, writing to Francois Fitz-James, Bishop of Soissons, he confessed of having planned and yet failed to write a discourse on duties that could rival Cicero's *De Officiis.*[44] Lamenting this productive lapse, he said that he felt overwhelmed writing alongside the figure of this great orator of the republic, and Montesquieu's frightened "spirit fell before his."[45] On the topic of the early turbulence of the republic, some of his attachment to the orator's writings are explicitly stated, but a crucial Ciceronian passage is present but not acknowledged. Paul Rahe notes how Montesquieu makes Machiavelli's argument "his own" in the ninth chapter of *Considerations,* but directly after that concerned passage, the Baron de Brède does it again, transcribing directly from Cicero's *de Republica* onto that "equivocal thing" called a union in a body politic[46]:

> **Cicero:** "For just as in the music of harps and flutes or in the voices of singers a certain harmony of the different tones must be preserved… so also is a State made harmonious by agreement among dissimilar elements, brought about by a fair and reasonable blending together of the upper, middle, and lower classes, just as if they were musical tones. What the musicians call harmony in song is concord in a State, the strongest and

[43] L.W.B. Brockliss, *French Higher Education in the Seventeenth and Eighteenth Centuries: A Cultural History,* (New York: Clarendon Press, 1987): 126-7, 134-8; See also Andrew Lewis, "Montesquieu between Law and History," *Law and History: Current legal Issues,* eds. Andrew Lewis and Michael Lobban, Volume 6, (Oxford: Oxford University Press, 2004): 82-95.

[44] Montesquieu, *Correspondance*, eds. Gebelin and Morize (Paris: E Champion, 1914): 304-305, Letter 518, a Mgr. de Fitz-James, October 8th, 1750, "surtout je craignais un rival tel que Ciceron et il me semblait que mon esprit tombait devant le sien." [especially I feared a rival such as Cicero and it seemed to me that my spirit fell before his] cf. Santos, "Montesquieu on Cicero," 357.

[45] Ibid.

[46] Paul A. Rahe, "Montesquieu's anti-Machiavellian Machiavellianism," *History of European Ideas,* Vol. 37, 2, (2011): 130; see also Aurelian Craiutu, *A Virtue for Courageous Minds: Moderation in French Political Thought, 1748-1830,* (Princeton: Princeton University Press, 2012): 38-39.

> best bond of permanent union in any commonwealth, and such concord can never be brought about without the aid of justice."[47]
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> **Montesquieu:** "We hear in the authors only of the dissensions that ruined Rome, without seeing that these dissensions were necessary to it… What is called union in a body politic is a very equivocal thing. The true kind is a union of harmony, whereby all the parts, however opposed they may appear, cooperate for the general good of society – as dissonance in music cooperate in producing overall concord."[48]

Cicero wrote this musical metaphor in the context of his own *Republic*, intentionally bearing a clear resemblance to Plato's work of the same name, though set with reference to the domestic conflicts within Roman history.[49] The metaphorical role of music and harmony in describing a just and temperate union between the higher, middle, and lower orders of society features in many a Greek philosopher's work, but the alignment of dissonance and dissimilar elements into that mix of the roiling origins of the Roman constitution appears to be a unique to Cicero, as well as his echo in *Considerations.*

Cicero, for similarly understandable reasons, was less concerned with the corruption of the noble class than the threat of demagogues from below. Comparing the people to an animal with overpowering appetites, he makes an allegorical description – recalling the drones and honey in Plato's *Republic* in book 8 - of the way in which the plebeians abused their tribunate magistracy to prosecute former consuls: [50]

> "When the insatiable throats of the people have become dry with the thirst for liberty, and, served by evil ministers, they have drained in their thirst a draught of liberty which, instead of being moderately tempered, is too strong for them, then, unless the

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[47] Cicero, *The Republic,* Translated by C.W. Keyes, (Cambridge: Harvard University Press, 1928): 2.42.
[48] Montesquieu, *CR,* 9
[49] Elizabeth Asmis, "The State as Partnership: Cicero's Definition of 'Res Publica' in his Work 'On the State,'" *History of Political Thought,* Vol. 25, No. 4, (2004): 58.
[50] Plato, *The Republic,* ed. G.R.F. Ferrari, (Cambridge: Cambridge University Press, 2000): 8.8, "When a young man who has been brought up as we were just now describing, in a vulgar and miserly way, has tasted drones' honey and has come to associate with fierce and crafty natures who are able to provide for him all sorts of refinements and varieties of pleasure --then, as you may imagine, the change will begin of the oligarchical principle within him into the democratic."

> magistrates and men of high rank are very mild and indulgent, serving them with liberty in generous quantities, the people persecute them, charge them with crime and impeach them, calling them despots, kings, and tyrants."[51]

Early and late in Roman history, for Cicero, such leaders of the people were continuously suspect as 'flatterers.' On the comparable note of the tribunate, the Valerian law, and the Coriolanus affair, Montesquieu states with a similar distinctive contempt how this was a 'cowardly' over-reach of the power of the people:

> "The laws called *sacred* gave plebeians the tribunes, who formed a body that at first made immense claims. One does not know which was greater, the cowardly effrontery of the plebeians in asking or the complaisance and readiness of the senate in acquiescing."[52]

In framing the plebeians as either hungry, jealous, envious, or animalistic, both authors – perhaps unwittingly – perpetuate the perspective that reason, education and by extension *just intentions* are only the purview of their betters. In a strange inversion of our contemporary popular democratic norms, to him, virtuous people will submit and obey, but cowardly ones will refuse their betters and resist.

Another crucial vein of influence on *Considerations* and his later work were the divine and imperial claims of Bishop Jacques-Bénigne Bossuet, court preacher to Louis XIV, and tutor to the Dauphin. Echoing Eusebian providence, his 17th century sermons sanctioned the king as a second Constantine who was divinely ordained to create an expansive empire of peace. Montesquieu oriented much of his work to criticize and refute this providential triumphalism which viewed empire as pacifying, religious toleration as sacrilege, and intermediate powers as a resistance to almighty God.[53] While Bossuet narrated the Augustan peace as a divinely

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[51] Cicero, *The Republic,* 1.42

[52] Montesquieu, *SL,* 11.18

[53] On the influence of Bossuet's work: see Maxime LeRoy, "Retour a Montesquieu," *Hommes et Mondes,* Vol.7, No. 28, (1948): 415-416, "Montesquieu wanted to wrest the art of governing from the simple devices of Machiavelli and the providential dialectic of Bossuet;" Shklar, *Montesquieu*, 53: "Montesquieu had a special target in mind, Bishop Bossuet, Louis XIV's court theologian;" also Rahe, "The Book that Never Was," 46, 73; as well as Paul A. Rahe, *Montesquieu and the Logic of Liberty,* (New Haven: Yale University Press, 2009): 33; Richard Whatmore,

ordained preface to the birth of the saviour, *Considerations* eschewed divine cause, and emphasized the corrupting and self-destructive nature of empire.[54] However, in order to get there, Montesquieu follows Bossuet in those beginnings of the republic, where its decline was caused by – again – the lowly jealousy of plebeians.[55] As expressed by Pocock, for Bossuet, the plebeians "are given credit for resisting senatorial arrogance when this goes too far; but in general it is their demands which are excessive and the senate which is the source of all wisdom."[56] His depiction of the fall of the late Republic ignores "the well-documented portrait of the senate as a gang of corrupt oligarchs that appears in nearly all the literature."[57] The theme of *Concordia* between orders is moot, because concord can only truly come from the divine. The question of the just claims of the demos are at a far distance from the religious and monarchical purposes of Bossuet. With much to dispute on the macro scale of history with the bishop, Montesquieu shares common ground in this view of the plebeian class. The political concessions slowly granted by the patricians were sought from their "jealousy" or an "excess of extreme equality."[58] Accordingly, in the struggles of early Rome, they employ strength and superiority in numbers while the senate "defended itself by means of its wisdom, its justice, and the love of country it inspired… [and] the virtue of illustrious men.[59]"

The Natural Order of Things

On the topic of illustrious men, it is striking, to our 21st century eyes perhaps, how this line of thought within Montesquieu could be seen as parallel to a similar conservative dismissal of feminism in more recent memory. Although it might be an unconventional comparison, in many ways they are the same: the sense of entrenched power and superiority, a rightful place for higher and lower orders – and by consequence higher and lower people. The impulse for

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"Enlightenment Political Philosophy," *The Oxford Handbook of the History of Political Philosophy,* ed. George Klosko, (Oxford University Press, 2011): 306-308; Roger B. Oake, "Montesquieu's Analysis of Roman History," *Journal of the History of Ideas,* Vol. 16, No. 1, (1955): 44.

[54] Shklar, *Montesquieu,* 53.

[55] Pocock, *Barbarism,* v.3, 328; Jacques-Bénigne Bossuet, *Discourse on Universal History,* ed. Orest Ranum, (Chicago: University of Chicago Press, 1976): 349, 360, 370.

[56] Pocock, *Barbarism,* v.3, 328-9

[57] Ibid.

[58] Montesquieu, *CR,* 8; Montesquieu, *SL,* 8.2-4

[59] Ibid.

women's rights was often dismissed by reactionary critics as simply jealousy. It was a pursuit for those misguided envious ladies who "just want to be men;" meaning imitating men's rightful prerogatives by working outside the home, voting, and being politically active.[60] To some conversative perspectives, this was – as Montesquieu might describe - a frenzy of extreme equality. These women clearly just felt envious for a role that was not theirs to have and were blind to the rightful and natural differences between men and women, ruler and ruled.

These arguments and perspectives might seem retrograde in our times, and yet today women must still endure the same reasons and abject dismissals, from Mexico to the Maldives, Bali to Bangladesh.[61] Women are 'seduced' by feminist thinking just as plebeians are by their tribunes. It is not merely a misapprehension, but a presumptive way to dismiss those progressive voices who threaten a cultural status-quo. Because they lack reason, and because their rightful traditional position is here, the motive to leave it can only be by a wrong passion. The way in which this reactionary and conservative perspective aligns with Montesquieu's, or Cicero's, or Bossuet's characterization of the envious plebeians might harken back to the argumentative typologies of Aristotle, where those who are unthinking gain virtue only when rightfully ruled by others.[62] But in other ways it is simply a rhetorically effective manner of dismissing the motives of an entire class of people. In this way, there is no path where a plebeian or a woman can virtuously be selfish, they must either be a heroic republican archetype of self-denial and/or virtuously led by another thinking agent.

In the struggle for enfranchisement and equal rights, because rebellious women are boxed in as inherently unthinking, their conservative critics could only see passionate and irrational reasons for them to do what they did. But it must be added that their proper obedience itself was part of the constitution of society. Were it to break, all other subordinate

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[60] This dismissive argument was commonly used in American conservative discourse. For examples see: Jackie Brookner, "Feminism and Students of the '80s and '90s: The Lady and the Raging Bitch," *Art Journal,* Vol. 50, No. 2, (1991): 12; Donald Matthews, "Spiritual Warfare: Cultural Fundamentalism and the Equal Rights Amendment," *Religion and American Culture: A Journal of Interpretation,* Vol. 3, No. 2, (1993): 144; Paula Kassel in Ruth E. Sweeny, et al, *New Directions for Women In New Jersey,* Vol. 2, No. 4, (October 1973): 3.

[61] Graciela Enciso and Mariana Guerrero, "Migration, Organization, and Identity: The Case of a Women's Group from San Cristobal de Las Casas," *Signs,* Vol. 20, No. 4, (1995): 984; Caroline Sweetman, *Men's Involvement in Gender Development Policy and Practice,* (Oxfam, 2001): 20-31.

[62] Aristotle, *Politics,* ed. Ernest Baker, (Oxford: Oxford University Press, 1995): 1.5, 1254b20-24

relationships might be upended. This slippery slope is repeated in Plato, Cicero, as well as Montesquieu as a trope of extreme equality that does away with any and all social divisions, privileges, and honors. As Cicero explains, granting equality leads to a flood: "under such conditions even the slaves come to behave with unseemly freedom, wives have the same rights as their husbands, and in the abundance of liberty even the dogs, the horses, and the asses are so free in their running about that men must make way for them in the streets."[63] Plato likewise conflates equality of the sexes with the ascent of untameable haughty animals running through the streets.[64]

But this motif is exactly what Montesquieu envisions as the corruption of democracy in *Spirit of the Laws,* where "women, children, and slaves will submit to no one. There will no longer be mores or love of order, and finally, there will no longer be virtue.[65]" More than merely noting this chaotic equality though, he moves his emphasis on how this upending of privilege is a confusion on the part of the many, who conflate their sense of power with their liberty.[66] This logic functions two-fold in Montesquieu and in his sources. First, to him, as to Cicero and the Greeks, extreme equality presages a landslide of equalities, until a tyrant rises over the people, as well as in *Spirit of the Laws* where "a single tyrant rises up, and the people lose everything, even the advantages of their corruption.[67]" But in addition to this, there is the second argument that the unthinking demos will always be the tool of another – they are inherently confused, passionate, and inevitably just the pawn of either good or bad leaders.

For Montesquieu, like Cicero, there is a justice in *inequality* – where the lesser people stay in their place and this submission is virtuous. The state is compared to a ship at sea in need of an experienced and able captain, and it is logical that the crew should have the virtue and deference to recognize the best and follow. Likewise in politics, "nature has provided not only that those men who are superior in virtue and in spirit should rule the weaker, but also that the

[63] Cicero, *The Republic,* 1.43
[64] Plato, *The Republic,* 8
[65] Montesquieu, *SL,* 8.2
[66] Montesquieu, *SL,* 11.2
[67] Montesquieu, *SL,* 8.2

weaker should be willing to obey the stronger."[68] The spirit of extreme equality will destroy this bond of obedience, just as in women and men, where "each one wants to be the equal of those chosen to command," where either everyone will command, or no one will command, and effectively, only chaos will reign until a tyrant arrives.[69]

Virtue is the obedience of the lesser to the greater citizens for sake of stability, and in way that might seem an inversion to our modern democratic eyes, it is weak and 'cowardly' for them to resist the commands of better citizens.[70] The plebeians should humbly accept the greater good – for this inequality preserves the republic. To demand more power was a confusion, "a false idea of freedom which is contradictory to the true interests of the state."[71] By the same logic, Montesquieu criticizes the tribunate as a misdirected office, which did not resolve the issue of debt-slavery or personal liberty, but simply abrogated Rome's aristocratic constitution, and offered a path to tyranny.[72] It was by the logic of virtuous submission that Montesquieu said it was "cowardly" to demand the power of the tribunate against the patricians, and equally corrupt of the patricians to concede it.[73] It is by this same logic that today's reactionaries call empowerment corruption, and describe virtuous women as rightfully submissive to their husbands. These are the facts of hierarchical relations, and to demand more is a confusion – it is desiring equality as a husband, a judge, a magistrate, rather than being satisfied to be "equal only as a citizen.[74]"

Attributing only jealousy and unreason to this subordinate caste, one can see how the voices of those proud and bellicose senators in Livy and Dionysius can resonate with Montesquieu's perspective particularly on the threat of extreme equality to a hierarchical constitution. The character and language of Claudius Appius in the context of *Concordia* and civil war, decrying that the "the republic was being betrayed through fear and abandoned," will

[68] Cicero, *The Republic,* 1.34
[69] Montesquieu, *SL,* 8.1, 8.3
[70] Note the quote from Montesquieu, *SL,* 11.18, above.
[71] Aristotle, *Politics,* 5.9, 1310a12
[72] Montesquieu, *SL,* 11.18
[73] Ibid.
[74] Montesquieu, *SL,* 8.3

seem over the top and shrill, especially when juxtaposed to moderate senators. [75] Yet it becomes normal when set against this fear of a deluge of extreme equality and tyranny. The defence of these hierarchical honors is both a safeguard for the constitution, as well as a recognition of latent inequalities. As Cicero states, "when equal honour is given to the highest and the lowest - for men of both types must exist in every nation - then this very 'fairness' is most unfair."[76] Equality is just for them when it applies solely to the rights of citizenship, and that alone – to conflate the privileges, honours and powers of higher classes with that same equality is the downfall of the state.[77]

The bonds of inequality and obedience form part of the constitutional understanding of Montesquieu, and to his credit, exist in part to protect the civil freedom of lower castes, if not their political freedom. Yet this entrenched perspective on noble prerogatives – in either France or in Rome – leads him to neglect that historical thread of the republican *Concordia* which also highlights the potential for a corrupt and predatory noble class. The ancient histories in Livy and Dionysius did not simply speak of a confused populace and an acquiescent senate but contained *both* prospects: the moderate senator as well as the vicious one; the virtuous captain of the state and the reckless one. Embodying the latter is an almost comically repetitive figure of Claudius Appius, who returns repeatedly as an image of a contemptuous, proud, and domineering ruler.

Claudius Appius

This character's stubborn resistance to concede anything to the plebeians – not to mention his willingness to violently cull them into subservience - can almost seem correct in the reactionary context of an eternal hierarchical order resisting extreme equality. Yet, in its most immediate literary context in Livy and Dionysius's histories, Claudius Appius is an implacable figure who often pushes the early republican conflicts to the point of a violent downward spiral.

[75] Livy, 2.57
[76] Cicero, *The Republic,* 1.34
[77] Montesquieu, *SL,* 8.3

Early and often, the first century narratives by Livy and Dionysius highlight a wise senate whose magnanimity restores *Concordia* - the harmony of the orders. These annalistic histories portray the potential of societal collapse as an ongoing danger within the early republic, and this menace returns as often as do external military threats. This motif may represent both an ancient fable of Rome's beginnings 500 years before their time, as well as their own generation's recent memory of civil war, proscriptions, and bloodshed. The cast of characters features both heroes and villains of either order, where those who find compromise are called wise and moderate, while those who foment internal conflict – both tribunes and senators – are either vain or corrupt.

Claudius Appius and his patronymic descendants are featured consistently as callous advocates of an aristocratic vision of Rome. Tacitus refers to "the old arrogance inbred in the Claudian family."[78] Dionysius announces him at one point as "an enemy of the people and a champion of oligarchy."[79] According to Livy he is "a man of vehement character," and "hard-hearted by nature."[80] A contemporary translator of Livy's work, TJ Luce, summarizes the returning character as a "hidebound, not to mention supercilious, reactionary."[81] Machiavelli notes this trait inherent to the family; "the Claudii haughty and ambitious."[82] Suetonius comments that "it is well known that all the Claudii ... were always the nobles and the only upholders of the dignity and power of the patricians, and when confronted by the people were so violent and obstinate, that not even a person guilty of a capital charge could bear to change his dress or plead with the people."[83]

The various iterations of Claudius Appius are repeated throughout the successive phases of Rome's early history. The first of this noble clan is ironically a foreigner – a Sabine seeking refuge from persecution and granted land beyond the Anio river for himself and his many clients.[84] His son, also named Claudius Appius, was "after his father's clashes with the plebs,

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[78] Tacitus, *The Complete Works of Tacitus,* ed. Alfred John Church and William Brodibb, (New York: Modern Library, 1942): Book 1, p. 6
[79] Dionysius, 6.58
[80] Livy, 2.23, 2.29
[81] Livy, *Rise of Rome,* notes of TJ Luce, 307.
[82] Machiavelli, *Discourses,* 3.46
[83] Suetonius, *Lives of the Twelve Caesars. Vol: I, Tiberius*, ed. J.C. Rolfe, (Boston: Loeb Classical Library, 1914): 2.4
[84] Livy, 2.16

detested them and was detested by them."[85] His son in turn, Gaius Claudius, is injected into narrative explicitly to express dismay at the arrogance of the third iteration of this allegory: "his brother's son" – the villain of the decemvirs, yet another Claudius Appius.[86] Further on, the son of this tyrant of the decemvirs, again Claudius Appius, now the great-grandson of the original, was "an energetic youth who from earliest childhood had been brought up to hate the plebeians and their tribunes."[87] And the son this man in turn – also incredibly named Claudius Appius – 'lived up to his Claudian heritage' by setting one tribune against another.[88] There are subtle and meandering threads in Roman historical narratives, but the role of this family is neither subtle nor hidden nor meandering. It can be accepted at face value that there is a portrayal of the Claudian clan as a succession of arrogant, hateful, aristocratic enemies of the plebeians, consistent from Livy and Dionysius, to Tacitus, and even Suetonius.[89] The numerous speeches and actions of this repeated allegorical figure would overwhelm the limits of this thesis, so only a few key passages will be analysed.

While all the reasons for crafting this singular figure are not clear, some clues lie in the emotional temperament ascribed to this patrician. He is angry, proud, and often a step away from defending his aristocratic rights with violence:

> "Claudius by reason of his harshness would have done many outrageous deeds, had he not been restrained by his colleague Quinctus. For the latter, who was amiable and possessed exactly the opposite temperament, did not oppose him with anger in any matter, but in fact occasionally yielded to him, and by gentle behaviour so managed him that he found very few opportunities for irritation."[90]

Claudius can be seen as an echo of the Greek ethos of self-moderation and restraint. He exists as the ill-contained caricature of noble vanity, passion, and anger – a pride that is not mitigated

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[85] Livy, 2.56
[86] Livy, 3.15 for Gaius; 3.58 for the fraternal link to the third Appius Claudius.
[87] Livy, 4.36
[88] Livy, 4.48
[89] Wiseman, "Historiography," 389, notes the trend of "Claudii [as] arrogant and despotic sadists;" S.P. Oakley, *A Commentary on Livy, Books 6-10,* v.3, (Oxford: Oxford University Press, 2016): 357-361 *ProQuest Ebook Central,* https://ebookcentral.proquest.com/lib/mcgill/detail.action?docID=4964278. Accessed Dec 4 2022
[90] Cassius Dio, *Roman History,* ed. Earnest Cary, (Boston: Harvard University Press, 1927): 23.81.

by reason.[91] He is one of those hard-tempered individuals described by Aristotle, "who are angry at the wrong things, more than is right, and longer, and cannot be appeased until they inflict vengeance or punishment."[92] In that metaphorical link between a state and soul, he is a "rebellion within the mind" against clear-headed reflection, where "if reason holds dominion, there is no room for the passions, for anger, for rash action."[93] His rash arrogance is set next to patient reasonable senators; he advocates a stern merciless defence of privilege, and they counsel for some compromise to preserve harmony.

While this character might display a defect in his passions, from another perspective we might see him as rightfully incensed at the erosion of aristocratic rule. Although he directly seems to goad any popular dispute to the point of violence, or to advocate a harsh and cruel punishment for recalcitrant plebeians, if we truly accept Claudius Appius at his word that the constitution of Rome is under attack, we might sympathize with his outsized umbrage.[94] This is what Montesquieu does, as he quotes or references Claudius as an historical source in *Spirit of the Laws,* and attributes often jealousy or ill comportment to plebeians.[95] It is a particular point of reference where aristocratic as opposed to democratic norms can render a wholly different reading of this early phase Roman history. "All these forms of government have a kind of justice:" be it either a spirit of equality, or that of a superiority.[96] Each reading will have their own sense of narrative, and each might render Claudius either a reliable source or a narrative villain.

To contemporary democratic readers, who might sympathize with plebeian claims for suffrage, political office, not to mention abhor the plight of debt slavery, Montesquieu's treatment of the fable will seem out of step. It might appear in the text of *Spirit of the Laws,* that he nonchalantly states something akin to 'in order to inform oneself on the conduct of the seven dwarves, one need only consult the excellent speech of the evil queen.' But if we

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[91] See Cicero, *The Republic,* 1.38, anecdote on Archetaxes, "I should have had you flogged to death were I not this angry!"
[92] Aristotle, *Nicomachean Ethics,* ed. W.D. Ross, (Oxford: Oxford University Press, 1980): 5.4
[93] Cicero, *The Republic,* 1.38
[94] See Livy 2.39-30; Dionysius 6.64
[95] Montesquieu, *SL,* 22.22 (Dionysius 5.66) on debt and usury; 11.18 (Dionysius 6.24) on the power of judging.
[96] Aristotle, *Politics,* 5.1

consider his consistent characterization of the people as envious, jealous and aggressive towards a virtuous and wise senate, then the authority and judgement of Claudius' vehement defence can be quite legitimate. Further, this narrative casting of good moderate senators and evil arrogant ones is itself coloured by two normative contexts of the authors: the *populares* faction of the late republic and the Augustan return to peaceful harmony. The authors Dionysius and Livy created this totem of a senatorial villain because in their time there existed both a legacy of civil war and recent stability guaranteed by a wise princeps, who sought in his literary silver age a popular legitimation from below. The narrative ebb and flow of violent conflict and resolution repeatedly emphasizes the openness and generosity on the part of those cooler heads and more moderate minds opposed to the stubborn preservation of the patrician prerogatives.

For a listening public of the Roman imperial era, where a few generations ago, factions of a noble oligarchy had violently contested *populares'* beneficence with the *optimates'* rights of the best to rule the rest, the haughty words of Claudius Appius would be unmistakeable: "knowing as you do that all senseless creatures, particularly a rabble, behave themselves with arrogance toward the meek and with meekness toward the arrogant."[97] Yet to the eyes of the noble Montesquieu, Claudius might appear to be a Cassandra of the coming flood – the deluge of corrupt morals described by Sallust, as well as the flood of popular incursions which eroded the constitution. In this way, he was right, not simply in predicting the eventual collapse of his privileges, but constitutionally right to defend his office, and perhaps – to the eyes of aristocracy - even right by virtue of his superiority over the rabble.

Two Generals

The role of Claudius Appius in vocally resisting the demands of the plebeians leads into a parable of two separate military commanders in both Livy and Dionysius. These two distinctly display those traits than can either goad or subdue the civil conflict latent in Rome. Claudius the younger bitterly resents his own soldiers for the past political victory of the tribunate and their secession to the Sacred Mount, and in turn they likewise view him as a burdensome and

[97] Dionysius, 6.64

arrogant commander. Montesquieu's summary of the latent aristocratic tensions within a popular state could no be better demonstrated in the events that follow – which makes his reading seem even more strange.

In battle under this consul, as Livy describes, the virtue of soldiers was reversed. They revelled in defeat and avoided victory as a means to slight their general - this proud and noble political opponent.[98] Embracing failure, abandoning their standards, and even accepting death was the dishonour that became an honour to these plebeian legionnaires. Why was it so? Perhaps because, as expressed in *Spirit of the Laws,* the "excessive inequality" in this disposition of Claudius had reversed the sympathy and honour felt by his soldiers.[99] The vanity of the noble general had rendered him odious, exuding the same disdain that Montesquieu ascribed to the ban of intermarriage between the orders. When the station of the ruling class is premised on such specifically humiliating measures – that they cannot intermingle with the blood of the plebeians – it is a form of excessive inequality: rather than fostering a great and noble spirits, it is simple debasement. These "privileges of the nobility are honourable only as they are ignominious to the people."[100] In the parable of two generals, this direction of debasement is reversed, and the ignominious failure of soldiers under Claudius is now made honorable because of their hatred for him, and their urge to humiliate their political enemy.

This episode in Livy is touched upon by Machiavelli, who argues that because the Roman plebeians felt a degree of the dignity of equal power, by way of their assemblies and their tribunate, they saw commanders like Claudius as owing them an openness and sympathy befitting equals. Yet "from his harshness and severity to his soldiers, Appius was so ill obeyed by them, that after sustaining what almost amounted to a defeat, he had to resign his command. Quinctius, on the contrary, by kindly and humane treatment, kept his men obedient and returned victorious to Rome."[101] The Florentine points out the comments of Tacitus which stand to the contrary, extolling cruel, Claudian punishments to deal with a multitude, yet qualifies the comments of the Roman historian by distinct situations whereby harsh

[98] Livy, 2.59
[99] Montesquieu, *SL,* 5.8
[100] Montesquieu, *SL,* 5.8
[101] Machiavelli, *Discourses,* 3.19

punishments can be effective or totally ineffective.[102] For a supreme and distant monarch, in a social context offering no possibility of equal power or sympathy for "men who have always been subject to you," cruelty might stay their agitations.[103] However it can completely backfire with a multitude like in Rome, who have experienced a degree of equal political power and thus regarded the senators in ways as their equals. Montesquieu repeats this same logic, with regards to the distance of monarchs compared to noble rulers, as mentioned in *Considerations,* "those who obey a king are less tormented by envy and jealousy than those who live under an hereditary aristocracy… he is so far above them that they can conceive of no relationship on his part capable of shocking them."[104] In this fable of two generals however, the distance and supreme untouchability of a monarch is displayed – and we might say, misjudged – by Claudius Appius, who sees himself as so far above the plebeians that his recourse to gain obedience is simply to increase his cruelty, rather than his sympathy.

It is instructive that the very nature of loyalty is tied by Machiavelli to the pretense of equality between soldier and commander. The power and effectiveness of command flows through these channels of moderation and equal dignity. Arrogance and cruelty become self-defeating traits, as Appius Claudius' "anger and indignation… goaded his tyrannical nature to rule the army with an iron fist," yet he is consoled by his officers not to push too hard, as they "warn him not to put his authority to the test, for it depended wholly upon the willingness of those under his command to obey."[105] By contrast, we are given a loving portrait of Quinctius' command, where the "consuls and soldiers… vied with one another in goodwill and mutual support."[106] This general's easygoing nature made for a harmonious union of commander and troops, which was contextually a mirror for a more harmonious political union between patrician and plebeian. Interjected between domestic episodes of political turmoil, it serves narratively as a clear parable of how to rule, and how not to rule.

The detailed narrative of these two commanders is an allegorical reflection of two styles of aristocratic governance. One is cruel, arrogant, and ultimately ineffectual – fostering more

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[102] Machiavelli, *Discourses* 3.19; Tacitus, *Complete Works,* 3.55
[103] Ibid.
[104] Montesquieu, *CR,* 8
[105] Livy, 2.58-9
[106] Livy, 2.60

discord and violence than authority. The other is sympathetic, generous, and built on the pretense - if not the reality - of an equality between ruler and ruled. He had chosen to use it, such a fable would have been the perfect illustration of Montesquieu's counsel that good aristocratic rulers make the people forget their inferiority.[107] The first century historians constantly returned to this motif, that arrogant senators cause discord and moderate senators bring *Concordia,* in repeated episodes such as this one. Modeled on the viciousness of a noble patrician, it was a context which complimented the moderation of Augustus' peaceful rule.

The narrative intentions behind first century historians' use of these contrasts were not merely to edify virtue and moderation in the hearts of young pupils. It was written and recited within the pretext of the violence, assassinations and civil war that had scourged Roman society only a few generations ago.[108] *Concordia* – harmony of the orders – was a theme emphasized across the writers of the first century.[109] The implicit argument behind figures like Claudius Appius was the capacity for arrogant and tyrannical senators to choose the pride of their own station over the demands of governance, standing as a foil to Augustan moderation and popular concessions. These blue-blooded patricians viewed plebeian causes as existential threats and would rather push society to the brink of violence than concede.[110] Beneath Claudius' words lie the maxims of an entrenched aristocracy and a noble pride that boldly taunts the mob as much as it flouts mortal danger. Pride, arrogance, and political privilege all accompanied a perspective that saw justice in inequality, and its own superiority as a basic fact. If Montesquieu chooses to overlook the motif of *Concordia* and moderation, and oddly treat Claudius as an objective account of history, then it must be because he was sympathetic in some ways to this perspective. Not only as a member of a noble class himself, but in a deeper sense, believing that the boldness and haughty noble self-confidence, combined with a contempt for lesser plebeians, was in itself moral and right.

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[107] Montesquieu, *SL,* 5.8, pp. 52

[108] Beard, *SPQR,* 47-50; A.W. Lintott, "The Tradition of Violence in the Annals of the Early Roman Republic," *Historia: Zeitschrift Fur Alte Geschichte,* Vol. 19, No. 1, (1970): 16.

[109] Beard, *SPQR,* 177-184; R.M. Ogilvie, "Livy, Licinius Macer and the Libri Lintei," *The Journal of Roman Studies,* Vol. 48, No. ½, (1958): 44.

[110] Oakley, *Commentary,* Vol. III, 357-61; also Suetonius describes in *Tiberius,* chapter 2: the Claudii are "so violent and obstinate in their opposition to the plebeians… some of them in their contests, have even proceeded to lay hands on the tribunes of the people."

Greater Souls

Montesquieu's writing often refers to the greatness or smallness of spirits and souls, which might seem like a bit of metaphysical whimsy to modern eyes. But in other ways it can refer simply to a superiority or inferiority of countenance, pride, uprearing and ego. For instance, at the extreme, the link between despotism and self-described great spirit is made explicitly (and megalomaniacally) in reference to Rome in his *Dialogue of Sulla and Eucrates,* where the reader encounters a confessional of the first general that marched on the republic:

> "I never piqued myself on being the slave, or the worshipper of a society of my equals: and this so much boasted love is a passion too popular for such a high spirit as mine. All my actions proceeded from reflection, and principally from the contempt which I entertained for men. You may judge by the manner in which I treated the only great people in the world, how high my contempt was of all others."[111]

This spirit of Sulla is so great that he sees only equals in the Scipios, Camilluses, Coriolanuses, and Alexanders of this world. By the logic of his "great soul," he must look past his own time; this noble sense of equality strives to "seek not to have no master, but to have only one's equals for masters" and seemingly can find no equal in the corrupt late republic.[112] As he states, had he been born among barbarians he would need to usurp political power simply to avoid obedience to their ilk, and "born in a republic, I have acquired the glory of a conqueror, in seeking only that of a free man."[113] In a contemporary context, we might say this urge resembles something akin to the impulse of a conceited celebrity who demands great space simply for their ego to breath. If in this passage the basic demand of 'being a free man' is as necessary as breathing and, since Sulla possessed a rather outsized ego, his dignity does not simply incentivize but *requires* his violent ascent.

Again, the perspective of a just superiority, or a moral inequality, clashes with our sensibilities in a manner that might seem out of step with our democratic norms. However to

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[111] Montesquieu, *Dialogue of Sulla and Eucrates*
[112] Ibid; Montesquieu, *SL,* 8.3
[113] Ibid.

Montesquieu there was a latent justice in giving space for such great spirits, such as the credence monarchy could give to superiority, "there, each one having, so to speak, a larger space, can exercise the virtues that give the soul not independence but greatness."[114] Rebutting the materialism of Spinoza, he echoed the distinction between physical and spiritual necessity, citing the mental aspect of "this immense space that my spirit embraces."[115] The arrogant language of Sulla, comparing himself to Alexander, does not sound too distant from Montesquieu's claim that a noble spirit could not abide the curtailing office of a political censor, but that "the nature of honor is to have the whole universe as a censor."[116]

In a genuine way, this is a trait that he uses not to praise the megalomania of a Sulla, but to simply state that a combination of confidence and self-worth is a necessary condition of virtue. The moral value of possessing and expressing a great soul may stem in part from Montesquieu's reading of Cicero. The latter outlines four moral duties, one of which is the greatness of soul. The self-expression of this inner force was also made a moral duty by Cicero in *de Officiis* – the treatise Montesquieu confessed he sought to emulate.[117] The way he frames this pursuit is comparable in many ways to the *mores* of honor in *Spirit of the Laws* - that independence of spirit that defies external constraint. It "depends on its own caprice and not on that of another," and "glories in scorning life," it even "allows deceit when it is added to the idea of greatness of spirit" and like a proud Sulla, emphasizes "not so much what calls us to our fellow citizens as what distinguishes us from them."[118] The moral pursuit of greatness of soul is much the same to Cicero:

> "[It is] a hungering, as it were, for independence, so that a mind well-moulded by Nature is unwilling to be subject to anybody save one who gives rules of conduct or is a teacher of truth or who, for the general good, rules according to justice and law. From this attitude come greatness of soul and a sense of superiority to worldly conditions."[119]

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[114] Montesquieu, *SL,* 5.12
[115] Montesquieu, *MT,* 1266
[116] Montesquieu, *SL*, 5.19
[117] Montesquieu, *MT,* 1263
[118] Montesquieu, *SL,* 3.8, 4.1-2,
[119] Cicero, *On Duties,* ed. Walter Miller, (Boston: Harvard University Press, 1913): 1.13

Self-distinction, pride, and a righteous insubordination to either lesser men or worldly conditions are the marks of both a just Ciceronian aristocrat and a haughty nobility. The conclusion of his *Republic* sees the immortality of great figures as their souls return to "where eminent and excellent men find their true reward" in orbits among the higher planetary spheres.[120]

Armed with this countenance, a proper noble will not yield to the masses by reason of force or numbers, and Claudius is exemplary, as his "proud spirit was more than prepared to endure the abuse from the people."[121] When this character later stands trial, the small souls of the people, even in their hatred, were in awe of his greatness: "They saw that same expression in his features, the same defiant look, the same vehement speech - so much that most of the plebs feared Appius as much as a defendant as they had as a consul."[122] In the way that Montesquieu ascribes the willingness of nobles to shed their lives, or go to war for the monarch, this patrician figure confronts the mob, ready to die: "the obdurate Appius stood his ground in face of the raging storm, which doubtless would have ended in bloodshed."[123] Through the lens of his noble countenance, and by his aristocratic constitution, it was morally right to defy the rabble even to the point of violence.

The breakdown of society within the narratives of early Rome has not always and exclusively been laid at the feet of such characters, but when it was, in such allegorical vignettes as comparing two commanders, it was most certainly attributed to this uncompromising and proud temperament. The harsh and arrogant character of each Claudian figure is often offset by a more patient or humane example of patrician grace or generosity.[124] Claudius' speech during the secession was contrasted by Dionysius to the conciliatory tone of Valerius.[125] Claudius' harsh generalship is contrasted to that of Quinctius.[126] This repeated vein

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[120] Arnaldo Momigliano, "The Theological Efforts of the Roman Upper Classes in the First Century BC," *Classical Philology,* Vol. 79, No. 3, (1984): 206; Cicero, *The Republic,* 6.18-23
[121] Livy, 2.27
[122] Livy, 2.61
[123] Livy, 2.56
[124] Wiseman, "Historiography," 389-390; Oakley, *Commentary,* Vol. 3, 357-361.
[125] Dionysius, 5.64-65
[126] Livy, 2.59-60

of a bellicose and unyielding nobility is strikingly overlooked in Montesquieu's accounts, which is surprising given how well such narrative contrasts could potentially lend themselves to certain arguments – like his and Machiavelli's - on the good and bad means of governing aristocracies. The conduct of Quinctius could have shown how "modesty and simplicity of manners are the strength of nobles," where "they must seek to re-establish the equality necessarily taken away by the constitution of the state."[127]

Montesquieu arguably chose to overlook these aspects of early Rome for two major sets of reasons. The first we have largely covered, and they can be construed as a representation of positive affiliations: as the aristocratic standing, the defence of noble privilege against demos and despot, the basic belief in a just inequality. All of these perspectives might require Claudius to be a more sympathetic character in the reading of Montesquieu. The second category of reasons applies in the negative sense of those threats described in this noble's prophetic aspect: the corruption of Rome, the dangers of extreme equality, the erosion of noble privilege, and the mischief of caving into plebeian demands for debt relief, agrarian reform, or other redistributive schemes. Montesquieu views such threats in a parallel with the turbulence of his own age – ranging from the despotism of an Augustus-emulating Louis XIV to the disruptive financial schemes of John Law.

Chapter Two: The Moral Attribution of Populace and Privilege

Unity of the One and the Many

Montesquieu was rightfully concerned for the vulnerability of the few to the fickle political impulses of the many. In his own time, he saw the power of noble classes as essential in checking the domineering populist policies of the Sun King. Yet these powers had been diminished, ignored, or even crushed by Louis XIV. A similar destruction of the noble class had taken place in England, where it was buried with Charles I.[128] The echoes of this decline were foremost in his mind viewing the same erosion of patrician power in Rome.

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[127] Montesquieu, *SL,* 5.8
[128] Montesquieu, *SL,* 8.9

Montesquieu often saw the people as a ripe asset to be acquired by either an ancient Caesar or a contemporary Louis XIV. In both ages, the masses could confuse their power with their liberty and mistakenly diminish the privileges of the nobles to the detriment of the whole of society. This delirium of gaining power satiated the primal impulse of an unthinking caste, which did not and perhaps could not see its greater consequences. As he notes the confusion of the plebs in moving to exclude the patricians from their tribal *comitia,* they thusly "in order to establish democracy, ran counter to the very principles of democracy," in a "frenzy of liberty."[129] The easily swayed and less reflective plebs might seem no different than that of the French third estate, who at times fickle in history, could switch allegiance from their lords back to the monarch.[130]

Before Montesquieu's time, unitary theorists of sovereignty such as Bodin had used the example of Rome to claim that power resided wholly in the people or in the monarch, but never really in the procedurally derivative senate.[131] It was in some ways a fitting unity for the aims of both Louis XIV and the broadly catholic and illiterate third estate: each had their grievances with local nobility. There was also a simplicity in claiming a propagandic vision of unity and religious homogeneity over local nobles or religious minorities. Montesquieu's targeted critique of Augustus in *Considerations* was adjacently aimed at the pacification policies of Richilieu, Mazarin, and ultimately Louis XIV.[132] Under the supervision of the first minister Jean-Baptiste Colbert, the king's council had assembled hand-picked experts to the exclusion of the formerly eminent *corps intermediere* such as the *parlements* or the *corps judiciare,* effectively over-stepping the few in order to reform and redraw a uniform legal code for all.[133] The imagery of choice for Louis XIV also echoed the same demagogical alliance of the deified and

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[129] Montesquieu, *SL,* Book 11.16; see also Sharon Krause, "The Spirit of Separate Powers in Montesquieu," *The Review of Politics,* Vol. 62, No. 2, (2000): 240-2; Rahe 2009, pp. 134-6

[130] For example, during the Fronde rebellion, the parliament of Paris had supported Louis de Bourbon, Prince of Condé, against the king, and then betrayed him during the battle of the Faubourg St Antoine outside Paris.

[131] Jean Bodin, *On Sovereignty,* ed. Julian H. Franklin, (Cambridge: Cambridge University Press, 1992): 2.1

[132] Rahe, *Logic of Liberty,* 45.

[133] H.A. De Colyar, "Jean-Baptiste Colbert and the Codifying Ordinances of Louis XIV," *Journal of the Society of Comparative Legislation,* Vol. 13, No. 1, (1912): 68.

magnanimous Augustus.[134] In propaganda, in Versailles, in his emblem, the icon of the French crown recollected both the grandeur and the consolidation of that first citizen of the Roman Empire.[135]

Montesquieu likely also endured propagandic attempts to conflate the glory of the people and the monarch in his lifetime. These included repeated *Te Deum* ceremonies pressed with increased frequency, expenditure and importance by Louis XIV and his successors.[136] As described with scepticism in 1710 by his contemporary, Nicolas Gueudeville, "whenever the King wins a battle, takes a city or subdues a province, we light bonfires, and every petty person feels elevated and associates the king's grandeur with himself."[137] Montesquieu similarly ascribes to the masses a spirit of slavish delusion in the late republic, who "every time they heard talk about the victories of some general, they summoned him into their hearts against a haughty nobility."[138] Both parties almost revel in their powerless idolatry for a great spirit filling the space their own weakness, like their "excessive preference" for a Pompey, a Marius, or a Caesar - the rabble's love was "beyond measure," and "the temerity of the people knew no bounds."[139] The festivities coincided with the general consensus among the learned that Louis XIV was actually *losing* the war of the Spanish Succession, as well as bankrupting the country. Gueudeville watched the masses rejoice in a spectacle that defied the truth. The odious populist images overlap between Augustan Louis, a well as Julian *Iuppiter Iulius;* both are divine figures for mass self-delusion.[140]

What today we might call psychological projection, Gueudeville saw in these petty rituals, and Montesquieu saw in the democratic masses through history: powerless and petty

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[134] Orest Ranum, "Islands and the Self in a Ludovician Fete," *Sun King: The Ascendancy of French Culture during the Reign of Louis XIV,* ed. David Lee Rubin, (Washington: Folger Books, 1992): 8, 17-33

[135] Joseph Klaits, *Printed Propoganda Under Louis XIV: Absolute Monarchy and Public Opinion,* (Princeton: Princeton University Press, 1976): 12-13

[136] David B. Stein, "The French Te Deum From 1677-1744: Its History, Development and Performance*." The Choral Journal*, vol. 18, no. 8 (1978): 7-9.

[137]Cf Klaits, *Printed Propaganda,* 18; Gueudeville anonymously authored the monthly periodical *L'Espirit des cours de L'Europe* from 1699 to 1710, earning a reputation as a polemicist and satirist critiquing the Catholic church and French monarchy.

[138] Montesquieu, *MT,* 1674

[139] Montesquieu, *CR,* 11

[140] Momigliano, "Theological Efforts," 200.

souls attaching themselves to great ones. It was a delusion of power, like the modern attachment to a victorious sports team, except wrought out in public theatre and festivities. This confusion of the people made them passionately support the very forces that would undo their liberty.[141] Montesquieu sees the same within the people of England, who "always being always in a ferment, are more easily conducted by their passions than by reason, which never produces any great effect in the mind of man: it is therefore easy for those who govern to make them undertake enterprises contrary to their true interest."[142] Seeing in history and in his own time a general state of the common person in want of education and reason, we might understand how Montesquieu could instinctively view plebeians and peasants alike as easy political dupes for a despot.

Louis XIV was often like an Augustus preparing the pomp and spectacle of his popular glorification, as he personally and "unfailingly sent letters to the bishops and archbishops of France ordering them to arrange thanksgiving services throughout their dioceses" on the occasion of any import.[143] The aim was, as Gaudeville states, to distract the masses from deeper problems while and enshrining a kind of celebratory dependence. It was a tactic that Montesquieu saw in the declining state of Rome, where the masses "became the most contemptible and degenerate people in the world… familiarized to public games and splendid spectacles."[144] Whether it was yet another feast and celebration of the king - or the emperor - the people, once bribed and corrupted, could be relied upon as facile accomplices for despotism.

Only Through Selflessness

In fact, the sole condition whereby Montesquieu assigns a degree of virtue to the plebeians of Roman is in their effective self-denial. Be this denial in their valorised ancient poverty, or the refusal to take political office out of deference for the patricians. This self-denial made the ancients free, and even strong, as they were unattached and not dependent on any

[141] For the relevant passage in *SL,* 11.2
[142] Montesquieu, *SL,* 19.27
[143] Klaits, *Propaganda,* 15.
[144] Montesquieu, *CR,* 15

others. Yet he was careful to note that material poverty would not inculcate virtue if the people had been impoverished by oppression.[145] In this case, such powerless people are incapable of virtue. Accordingly, it is not for the people to acquire or covet riches, enjoy luxury, or gain too much power, but rather they are the most virtuous and free when content with little.[146]

He elaborates how this trait was particular to ancient republics. They displayed the "love of country, of the thirst of true glory, of self-denial, of the sacrifice of our dearest interests, and of all those heroic virtues which we admire in the ancients," where things were done "that we no longer see [today] and that astonish our small souls."[147] Indeed, early Rome is replete with heroic examples that fit his description: Gaius Mucius voluntarily burning his own hand to intimidate the monarchical invader Lars Porsena; Horatius Cocles challenging an Etruscan army on a bridge by himself; virtuous Lucretia taking her own life; Titus Manlius killing his own son; and Verginius killing his own daughter. These are stories of self-denial that viscerally shock us and our sense of self-interest but stand as examples of virtuous sacrifice in the name of a greater good. Like the self-flagellating Christian monks who love the laws of their own abnegation, the people are their best when they feel nothing for their own interest. Yet it makes one question whether there is any room left in Montesquieu's depiction of the common peoples across history for a mode of political action where they can advocate with rightly selfish intentions for their own just purposes and desires. Having broadly denied any rational agency to the many, his depiction of the agitating plebeians or rancorous Athenian democrats seems to always be characterised by vice and passion. As noted, jealousy, envy and hatred – not reason or justice - are the explanations for advocacy and protest in early Rome.[148]

Across cultures, rightful behaviour for the many is restricted to self-denial and self-sacrifice. In as many examples and anecdotes, it appears Montesquieu largely dismisses the possibility of the people having their own virtuous or rational self-directing capacity. Political and social forces can channel this unthinking passionate mob – be it the conditions of

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[145] Montesquieu, *SL,* 20.3
[146] Neville Morley "Political Economy and Classical Antiquity," *Journal of the History of Ideas,* Vol. 59, No. 1, (1998): 98 on Montesquieu's place in the "long-running debate on luxury," the ancient world, and political economy.
[147] Montesquieu, *SL,* 3.5; 4.4
[148] Montesquieu, *SL,* 8.4

republican virtue, love of the fatherland, or the enticements of a usurper like Marius or Catiline. Granted, to give Montesquieu his due on examples of the seduction of the plebeians by feckless rulers, he certainly does not lack for material when it comes to the historical Roman demagogues who do exactly that. Catiline notoriously promised the removal of debts to Sulla's veterans and all others who would follow him in destroying the republic.[149] Cassius, Maelius, and Manlius Capitolinus are all annalistic examples of leaders who promised land redistribution, debt forgiveness, and by their generosity aimed for a popular following that could crown them.[150] Julius Caesar spent lavishly on spectacles for the masses, and promised land for the allegiance of his soldiers.[151] Young Augustus gained the support of plebeians and soldiers by distributing the fortune left to him by Caesar, and accomplished the bloodiest of redistributions with his proscriptions.[152] Montesquieu's work reacted to the similar consolidation of power under absolute monarchy in his country, and he rightfully feared the rise of such despotic populism as the threat to his class. In this ancient society, with the retrospective perspective of a noble Appius Claudius, he sensed that the populism that had accompanied the collapse of the Roman republic.[153] The despotism of the many, as well as that of the one, would occupy his thoughts on decadence and reinforce his fears within his home country.

But this narrative misses the counterfactual scenario of a virtuous populace and a corrupt senate. There is not an attempt to describe the ways in which the plebeians may have not been attacking the patricians from envy but defending themselves from cruelty, or to ascribe their agitations to reason rather than passion. It is very rarely that he admits nobles also might threaten a political constitution and attack personal liberty. As much as he had good reason to outline the dangers he cites, his reading of Roman history does not merely highlight, but also omits. The reasons for this omission are not exhausted by the perspectives of his time alone. In the eyes of other eminent writers such as Augustine, which he read himself, the senate of early Rome was hardly virtuous. As with other writers, their intentions have colored

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[149] Sallust, *The Histories, Vols 1-2,* ed. Patrick McGushkin, (Oxford: Oxford University Press, 1994): "The Catiline War," chapters 14, 16, 36-7
[150] Livy 6.18 ; Dionysius 11.10-12
[151] Appian, *The Civil Wars,* ed. John Carter, (London: Penguin Books, 1996): 2.1, 2.48, 2.94
[152] Appian, *The Civil Wars,* 3.21, 4.12-16
[153] Montesquieu, *SL,* 19.27 on orators' agitations in ancient democracies.

their use of historical example. The Bishop of Hippo saw different threats than Montesquieu in the early republic, and it is worth contrasting how their perspectives both align and diverge.

Contrasting the Cruelty of the Pagans

When Saint Augustine wanted to convince his contemporaries that pagan gods had not protected early Rome or ensured its virtue, he highlighted the innumerable ways in which Rome was a "sink of iniquity" from its beginnings.[154] He had no hesitation in portraying the cruelty of the senatorial class both early and late in Roman history. To Augustine, the fables of early Rome are sites of murder and vanity, not virtue. The killing of Remus was a reprehensible crime; likewise the surviving Horatii brother who murdered his own sister for simply mourning her betrothed; plebeian and patrician factions are motivated only by the "vice of restless ambition."[155] His narrative of the behaviour of the senators after the expulsion of the kings described how even at the supposed peak of Roman virtue, "the fathers [patricians] oppressed the people as slaves, flogged them as the kings had done, drove them from their land, and, to the exclusion of all others, held the government in their own hands alone."[156] While he hardly spares a kind word for the motives of the tribunes either, the intent of Augustine is to cast both parties as self-interested and vicious beasts of power, whose worse impulses were only held in check by the fear of external enemies, be it the Italian cities earlier on, or looming Carthage in the late republic.[157] It was not by their inner will, by the grace of pagan gods, nor by their laws that they behaved virtuously, but simply fear checking the lust of domination. Augustine dispenses with innate republican virtue: "tear off the disguise of wild delusion and look at the naked deeds."[158]

Citing Sallust's claim that "equity and virtue prevailed among [the early Romans] not more by force of law than by nature," he coyly suggests we attribute that same virtuous nature

[154] Augustine, *City of God,* ed. and trans. Marcus Dods, (New York: Modern Library, 1950) 2.18
[155] Augustine, *City of God,* 3.14; 5.12; 15.5
[156] Augustine, *City of God,* 2.18, as well as 5.12
[157] Augustine, *City of God,* 1.30 on the argument between Cato and Scipio Nasica
[158] Augustine, *City of God,* 3.14

to the rape of the Sabines.[159] The ironical tone of Augustine's humour returns when considering the late republican dissensions. After murdering Tiberius Gracchus, eminent senators choose to erect a temple of concord as a palliative monument to domestic peace. Yet the impact of their vile deed has already poisoned the political climate. Augustine asks, "if they had any regard to consistency, why did they not rather erect on that site a temple of Discord?"[160]

One of Sallust's passing arguments was that patrician and plebeian harmony existed partly because of external threats - *Metus Hostilis* - be they the Tarquin kings seeking to return to power, or the last external source of fear, mighty Carthage. In *City of God*, Augustine takes this argument and makes it singular – dismissing Sallust's other statements about virtue in the early republic. He jumps between Sallust's account of the Catiline affair and the Jugurthine, and then to Sallust's lost histories, treating his writing as a referential whole while keeping in the general sequence of Roman history.[161] Today we have pieced together some fragments of this history, some of which are directly sourced to their quotes in Augustine, and operate with the reasonable assumption that in the fourth century CE he had access to the entire historical work.[162] The quote from Augustine, attributed to Sallust, is as follows:

> "The oppressive measures of the powerful, and the consequent secessions of the plebs from the patricians, and other civil dissensions, had existed from the first, and affairs were administered with equity and well-tempered justice for no longer a period than *the short time after the expulsion of the kings*, while the city was occupied with the serious Tuscan war and Tarquin's vengeance."[163]

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[159] Augustine, *City of God,* 2.17; "I presume it is to this inborn equity and goodness of disposition we are to ascribe the rape of the Sabine women?" The same phrase regarding innate goodness versus goodness from law, from Sallust from *Catiline,* seems to be echoed in Tacitus, *Germania,* chapter 19 "good habits are here more effectual than good laws elsewhere."

[160] Augustine, *City of God,* 3.25

[161] Augustine, *City of God,* 2.18, 3.17, 5.12; Sallust, *Histories,* "The Catiline War," chapter 9 contains the earlier citation of "equity and virtue prevailed among them not more by force of laws than of nature," then bouncing to Sallust's fragment 1.10, then referencing "The Jugurthine War," etc; see McGushkin, *Histories,* 1.10

[162] See the introductory notes of J.T. Ramsey, *Sallust's Bellum Catiline,* (Oxford: Oxford University Press, 2007): 14, 26, the sources for Sallust's writing date to 9th and 11th century MSS that show "signs of contamination… numerous corrections are made by later hands; and in quite a few instances the genuine text appears to have been glossed by the scribe."

[163] Italics added. Augustine, *City of God,* 2.18; Sallust, *Histories,* Fragment 1.10

Augustine completes a longer reference to this same fragment later in the third book of *City of God,* continuing the narrative of Sallust:

> "From that time on [after the threat was no more] the patricians treated the people as slaves, made decisions, as the kings had done, concerning their execution and flogging, drove them from their lands and acted like tyrants over the rest of the population who were now landless. Crushed by these cruel practices and above all by a load of debt occasioned by the necessity to contribute both money and military service for continual wars, the common people, armed, took up position on the Mons Sacer and on the Aventine and acquired for themselves tribunes of the people and some legal rights. The contention and strife between the two groups came to an end with the advent of the second Punic War."[164]

The final sentence is a slight 350-year leap from the legend of the secession to the outset of the second war with Carthage in 218 BCE, but this thread of corruption and mutual hostility holds his narrative together. He does not hold back in decrying the brutality of the patricians as well as the plight of the plebs in early or late republican Rome. It serves his argumentative purpose: both sides are cruel, corrupt and seek only power.[165]

Coincidentally, in *Considerations,* Montesquieu also selectively cites a fragment of Sallust from the exact same chapter (2.18) of Augustine's work. However, it is with the selective purpose of describing the general corruption and luxury of the people, rather than their oppression by the patricians, as he narrates:

> "From that time onwards the conduct of our ancestors declined, not slowly as previously, but like a torrent. The young men were so corrupted by luxury and wealth that it could justly be said, that they were men who could neither maintain their own family possessions, or allow others to do so."[166]

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[164] Augustine, *City of God,* 3.17; Sallust, *Histories,* Fragment 1.10
[165] John M. Warner and John T. Scott, "Sin City: Augustine and Machiavelli's Reordering of Rome," *The Journal of Politics,* Vol. 73, No. 3, (2011): 826, each side had the "lust of sovereignty" *libido domandi.*
[166] Augustine, *City of God,* 2.18; Sallust, *Histories,* fragment 1.13-16

This is the stage of decadence that follows the collapse of Carthage, and the removal of the final source of *Metus Hostilis* - the external threat that held domestic antagonisms in check. Montesquieu is referencing this passage as an example of how "the greatness of the state caused the greatness of personal fortunes," and subsequently poisoned Rome by creating great appetites.[167] From this opulence a generation arose that could not maintain themselves or tolerate the wealth of others.[168] However the chapter he references in Augustine is making a slightly different argument. As cited above, the *City of God,* is meant to demonstrate a sinfulness and corruption throughout the entire course of Rome's history; Montesquieu is contrastingly using this passage to portray corruption as a social change – a decadence from frugal virtue - linked with inundations of wealth wrought from conquest.

Compared to Augustine, Montesquieu is much more generous to the leading class. True to his categorical assessment, the senate is great not cruel, and plebeian jealousy acts like an irresistible force:

> "The patrician families always had great prerogatives. These distinctions, great under the kings, became much more important after the kings were expelled. This caused jealousy among the plebeians, who wanted to bring down the patricians."[169]

Jealousy is again cited as the root cause, even though in the narratives of Livy, Dionysius, and Augustine's Sallust above, the crisis debt-slavery is the impetus for the plebeians to secede. This same explanation of jealousy wrought by democratic mores and personal proximity is repeated in *Considerations,* where in discussing the initial stages of the Roman republic, Montesquieu notes the "odious comparisons" of governing nobles are more intolerable than a distant monarch.[170]

The factors of debt-slavery, physical torture and oppression are left out of most of Montesquieu's narrative, and only really examined in depth briefly in his section on

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[167] Montesquieu, *CR,* 10
[168] Montesquieu, *CR,* 10
[169] Montesquieu, *SL,* 11.13
[170] Montesquieu, *CR,* 8

punishments and personal liberty in *Spirit of the Laws*.[171] He was not unaware of the cruelty. He notes the fable of the debtor covered in scars, the ordinances on selling children in the twelve tables, the right to send defaulters across the Tiber to be sold; yet he chooses to instead to show this moment as another where the irrational people are moved to a hasty decision.[172] Even though Shklar cites him as "the most distinguished of those moralists who hated cruelty most of all," in these moments, defending noble prerogatives, he turns a blind eye to noble cruelty.[173] Claudius Appius is the allegorical emblem of that vain cruelty which Augustine highlights. His response to political foment is to become crueller: to inflict harsher and more humiliating punishments in order to humble the people.[174] If Shklar asked him to clarify if by that he meant "the wilful inflicting of physical pain on a weaker being in order to cause anguish and fear," he would heartily nod in the affirmative.[175] On this point we can only further emphasize the purposeful selectivity in Montesquieu's assessment of the early Roman republic.

The plebeians and their representatives in these histories speak a language of self-defence and political power. Like contemporary reactionaries dismissing equal rights for women, these jealous motives are assumed. The *mores* of this democratic envy envisioned by Montesquieu are his interpretations superimposed. His resulting systemic explanations may be of greater value in the broader corpus of political philosophy, but in a simple and factual way, in early Rome he gets it wrong. Especially in the light of these cruel episodes, it would be more straightforward to admit that the plebeians were oppressed and were motivated to gain power in order to prevent their oppression, not wholly by an adjacent motive of jealousy and spite. At one point Augustine accosts the reader: "you see what kind of men the Romans were, even so early as a few years after the expulsion of the kings?"[176] Corruption is eternal for him, where

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[171] Montesquieu, *SL,* 12.21, *On the cruelty of laws concerning debtors in a republic.*
[172] Montesquieu argues that the plebeians choose political liberty instead of civil liberty, and instead of fixing the laws like Solon, they confusedly created the tribunate to defend bad laws, and even risk tyranny. On the fable of the debtor and the ancient meaning of virtuous wounds on the front or shameful wounds in the back, see Matthew Leigh, "Wounding and Popular Rhetoric at Rome," *Bulletin of the Institute of Classical Studies,* Vol.40, (1995): 195-215; Coriolanus passage in Dionysius, 7.62; Marius passage in Sallust, *Jugurthine War,* chapter 85.
[173] Shklar, "Cruelty," 17.
[174] Livy, 2.29
[175] Shklar, "Cruelty," 17.
[176] Augustine, *City of God,* 2.18

the early and late republican cooperative behaviour was simply a function of external threats.[177] Yet in a significant way, Augustine acknowledges the cruelty of the early patricians where Montesquieu sweeps over the details.

We might admit that like anyone, Montesquieu can fairly pick up a fact to contribute to his arguments as the basic requirement for any philosophy of politics that attempts to engage with history. Shklar says as much by emphasizing the paralyzing "unreliability" and "impossibility" of an enterprise seeking to secure any fact from the doubts of historical scepticism.[178] But this example and others should show how he may often draw from the work of another writer without drawing from, or dealing with, the context from whence it comes. As reiterated by Voltaire in his entry on *Spirit of the Laws*, slightly exaggeratingly, "it is melancholy, that in so many citations and so many maxims, the contrary of what is asserted should be almost always the truth.[179]" It is because Montesquieu might be so intent on building an argument for the value of noble intermediary powers that the caveats and qualifying details of said sources are necessarily abridged or smoothed over in favour of the whole.

Murder and the Context of a "Frenzy of Liberty"

Many crucial episodes in the history of the Roman conflict of the orders are sequential, which each side subsequently escalating the conflict. Were one to take a single episode on its own, without addressing precipitating events, it can easily flip either the patricians or the plebeians into an aggressor or a victim. It might be a timeless and universal law of political manipulation - or misinformation - that you can pigeonhole an action of one side by taking one instance of escalation out of the context of the greater whole; highlighting one act but not the sequence of actions that led to it.

The lack of context plays a part in Montesquieu's depiction of the democratic excess that led the plebeians to exclude patricians from the tribal assembly. To him, it was the confusion of the mob, where they obliged the prominent families and their clients to be subject

[177] Sallust, *Histories,* fragment 1.13-16
[178] Shklar, *Montesquieu,* 26.
[179] Voltaire, *Philosophical Dictionary,* "Spirit of the Laws"

to a legislative body within which they had no part.[180] This exclusion was an extreme to Montesquieu - it was illogical and emblematic of plebeian vice. As he describes the move, "in order to establish democracy, it ran counter to the very principles of democracy."[181] The people were in a "frenzy of liberty," so drunk with power and envy that they forgot the very principles of equality.[182] He argues that beneath this action was the same motive of jealousy: "There were no rights to dispute under the Decemvirs, but when liberty returned, jealousies could be seen anew; so long as some privileges remained to the patricians, the plebeians took them away."[183] Yet again this is an episode taken from Roman history without its context, used to build up a portrait of unending and all-consuming plebeian jealousy that omits a very specific act of patrician cruelty.

The exclusion of patricians and their clients from the tribal assembly arose from a specific event - and it was not jealousy - it was murder of a sacrosanct tribune. In the sequence of escalations, after having seen consul after consul face indictment by the tribunes upon the completion of their term of service, the patricians conspire to defend themselves by killing one of these sacrosanct magistrates of the plebs.[184] They apparently did not think that tribunate made the republic "more perfect," as it had been lauded by Cicero, praised by Dionysius, and even by Machiavelli, citing it as a channel for frothy roiling energy of the people.[185] Their patience and wisdom had expired, and violence was the answer. In this narrative, the hateful frenzy of patricians is shown to be equally capable of extremes.

In a deed that Livy narratively describes as "terrible" and a "grim precedent," patricians first conspired in nighttime meetings, and then decided to kill the tribune Genucius.[186] This was not an infamous deed in the eyes of the wise ruling class. Livy narrates widespread contentment among the patricians: "nor did the senators moderate their Joy… so little regret did any of them have for this unjust act that even those who had had no part in it wanted to be

[180] Montesquieu, *SL,* 11.16
[181] Ibid.
[182] Ibid.
[183] Ibid.
[184] Livy, 2.54
[185] Montesquieu, *SL,* 5.11; Machiavelli, *Discourses,* 1.2-1.5; Dionysius, 7.65
[186] Livy, 2.54

thought guilty."[187] Having fled at the news of the murder, the plebeians and surviving tribunes eventually return to the forum, and antagonisms escalate to the point where the city is about to devolve into open war: "The bystanders were galvanised and readied themselves as if for battle. It was clear that the situation had reached a point of no return; the dictates of religion, public law, and personal rights would count for nothing."[188] As the sequence continues, a prominent centurion plebeian soldier named Volero then refuses to be levied for military service below his rank. The lictor of a consul summons him for physical scourging. Volero then appeals to a tribunate and then to the people, who rush to his physical defense. A full-scale violent fight breaks out which sees the sacred lictors assaulted and the symbolic fasces broken. Fleeing the forum, the senate retreats to their assembly where "after many harsh proposals were made, the older senators prevailed, who would not brook a fight."[189] The menace of civil war, and the looming prospect of a downward spiral of violence, again appears and is forestalled by moderation.

Livy's narrative jumps to the next year, where Volero is elected tribune of the plebs for the spectacle of his resistance, yet he becomes the voice of moderation: "Despite everyone's expectation that he would use the office to wage a vendetta against the consuls of the year before, he placed the public good before personal resentment and refused to assail consuls by so much as a word."[190] The tribune then contented the population to not seek vengeance, but instead proposed the first restrictions of the tribal assembly as a pacifying concession during the moment of imminent civil conflict. *Concordia* returns briefly, violence is avoided, though the law is not yet passed. This episode directly prefaces the allegory of the two commanders discussed above.

This is the mutual antagonism and viciousness of both plebeian and patrician cited by Augustine and Machiavelli, where lacking an external source of fear, domestic hatreds eventually eclipse the force of domestic law, religion, and decency. It is a phenomenon they

[187] Ibid.
[188] Livy, 2.55
[189] Ibid.
[190] Livy, 2.56

indict as endemic to mankind, be it either in original sin or eternal ambition. Yet it is also a recurring motif in these histories of the oscillating narratives of the discord and harmony of the orders. They are chosen and emphasized both from early Roman legend as well as their authors' recent experience of late republican civil war. The murder of sacrosanct Genucius echoes the murder of Asellio, if not the more infamous murders of the Gracchi tribunes.[191] These stories speak to a first century public that had endured the reality of civil breakdown. They or their parents saw violence in the forum, they knew the names listed by the proscriptions in its avenues, and the murder of sacrosanct politicians was not legend but reality. The moderation of either a patrician or plebeian in this light is a resolution to turmoil both within and without – in this recited story, the right action of a heroic figure brings back *Concordia,* restores the republic, and perhaps even restores the emotional state of the first-century listener, all to its rightful balance.

The great irony is to read the words of Montesquieu stating that plebeian incontinence and patrician wisdom are "easily sensed in the narrative of the embroilment" during the conflict of the orders, specifically on these points of the secession, the tribunate, and debt slavery.[192] To him, when Appius spoke on the irregularity of those spendthrifts, there "was no argument with the avarice of those who lent money."[193] This anti-democratic streak of Montesquieu often casts the fall of the Roman republic as the process where a wise but weakened aristocracy slides into the form of a popular state, finally succumbing to a demagogic despotism. The patricians are the victims, not perpetrators of this decay.

Yet this instance of the process he describes - regarding the restriction of the tribal assembly - occurs right after the wise patricians collectively murder a sacrosanct tribune. Violence and civil breakdown follows, with concord restored by another tribune of those corrupt and jealous plebeians no less. It is not the only time where patricians visit arbitrary violence upon the people, and even sacred Cincinnatus is implicated by his wayward son Caeso,

[191] Appian, *The Civil Wars,* 1.54; Beard, *SPQR,* 47-50.
[192] Montesquieu, *SL,* 22.22
[193] Ibid.

who was prone to beat up plebeians for sport.[194] Not only does Montesquieu shift his macro-narrative to assign fault to a jealous populace, but in doing so he eschews culpability for wrong action by the patricians. We might understand how this small difference could be moot in the context of a larger 18th century debate on the providence and peace of an Augustan Louis XIV, but in some ways, it is quite serious. When applied to broader constitutional theories, his accompanying dismissals of debt-relief, agrarian reform, and other forms of largesse are all consequently pigeon-holed back into this same monodirectional perspective of an all-consuming populist despotism.

Through the early histories, many plebeian grievances are mentioned: debt-slavery, poverty, and agrarian reforms, as well as often suffering such violent attacks for only sport and contempt. Montesquieu does not deny the suffering, but calls it a question of civil liberty, rather than political liberty.[195] But to obscure the cruel patrician character behind these actions, and further state that the plebeians did not need political power to contend with the patricians - simply better laws from the benevolent senate - ultimately seems either deflective or naïve. Obstinately sticking to his formulation of noble prerogatives, Montesquieu depicts even the mere tribunate as a political mistake that risks tyranny. But we might ask, like Augustine, "don't you see what kind of men the Romans were?"[196] Tyranny was already here – in the hands of the lictors, in the mouth of Claudius Appius, and in the blood on the forum. Contemporary research estimates the slave population of republican Rome and other ancient cities as between a quarter to a third; but the numbers Montesquieu cites in *Spirit of the Laws* are even larger.[197] The twelve tables, enacted by the Decemvirs, drew the line at selling your son into slavery more than *three times.*[198] What people should suffer as he describes and think it wrong to seek power for themselves?

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[194] Livy, 3.11
[195] Montesquieu, *SL,* 12.21
[196] Augustine, *City of God,* 2.18
[197] Mary T. Boatwright, *Peoples of the Roman World,* (Cambridge: Cambridge University Press, 2012): 22-25; Neville Morley, *The Roman Empire: Roots of Imperialism,* (New York: Pluto Press, 2010): 90; Montesquieu, *SL,* 3.3 lists Athens as having twenty thousand citizens and four hundred thousand slaves in Athenaeus, *The Deipnosophists*, 6.103
[198] The Twelve Tables, 4.2: "If a father surrender his son for sale three times, the son shall be free."

Such grievances are rarely framed as questions of justice due to the people, but simply as topics used by the tribunes to rouse up the unreflective and jealous masses.[199] The agitations of the plebeians are attributed to their warrior spirit, or their incontinence in times of want. Debt cancellations and land redistributions are all schemes by which demagogues or Cicero's "flatterers of the people" find a ladder to climb to power, but never considered as right restorative actions that can be committed by the right actors. Despite praise for Solon in Athens, or Agis and Cleomenes in Sparta, similar measures are depicted as pernicious in Rome.[200]

Largesse and its consequences

On the point of debt-relief, land reform, and questions of distributive largesse, there is a tension in Montesquieu regarding the mixed aristocratic and democratic character of Rome. Certain forms of generosity and redress which could restore the constitution in the former can alternately destroy it in the latter:

> "It is a fundamental maxim, that largesses are pernicious to the people in a democracy, but salutary in an aristocratical government. The former make them forget they are citizens, the latter bring them to a sense of it."[201]

Examples of the latter effects abound in Livy and Dionysius, if Montesquieu had wanted to cite them. In early Roman history, to simply even pre-empt the possibility of a demagogue, the Senate chose to restore plebeian loyalty and harmony by proactive magnanimity.[202] Yet keeping his eye on late republican Catilines, the very same behaviour – expunging debts, granting land, yielding offices to the plebs – is negatively labeled by Montesquieu as everything from a "complaisance" to cowardly effrontery.[203] To Cicero it is simply theft: "What is the

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[199] Montesquieu, *CR,* 8: "discontented with the patricians, the people withdrew to Mons Sacer;" "the people were supported, or rather, animated by the tribunes;" "the people employed their strength…the senate defended itself;" continuously, plebeians are not victims but rather aggressors portrayed as fickle and jealous.
[200] Ibid.
[201] Montesquieu, *SL,* 5.8
[202] See for instance in Livy 2.9 this explicit comparison of popular demagogues and a wise and generous senate.
[203] Montesquieu, SL, 11.18

meaning of an abolition of debts, except that you buy a farm with my money; that you have the farm, and I have not my money?"[204]

On such schemes, both were adamant that blanket amnesties or restoration would upend any republic: "no confiscations, no agrarian laws, no expunging of debts; these are productive of infinite mischief."[205] In a democracy, loyalty would be drawn away from the state to whichever generous demagogue or senator delivered on these promises; in an aristocracy however, by the same act, the generosity of the leading class would only edify its superiority. It seems that Rome was already considered too close to a popular state to allow for the beneficial effects in the latter case. The fear of the corrosive impact of these measures overpowers their restorative function to Montesquieu, Cicero, and even allegorical Claudius. In their writings, the prospect of forgiving debt is vehemently resisted with all the same force and rhetoric as they would resist extreme equality.

Cicero would state that those who "propose that money loaned should be remitted to the borrowers, are undermining the foundations of the commonwealth," for it is the "particular function of the state and the city to guarantee to every man the free and undisturbed control of his own particular property."[206] To Claudius, debt relief poses such a fundamental threat that his speech even summons those horrific visions of the streets filled with haughty animals frenzied with equality. It would punish those who had virtue and reward those who were "the most unprincipled and the laziest of the citizens."[207] According to him, the disincentivizing ripple-effects would spell the end: "neither the husbandmen would any longer sow and plant their lands, nor the merchants sail the sea and trade in foreign markets, nor the poor employ themselves in any other just occupation."[208] Montesquieu renders a similar conclusion, quoting from Xenophon's *Banquet,* where the poor become masters over the rich: "I am a king; I was before a slave: I paid taxes to the republic; now it maintains me: I am no longer afraid of losing,

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[204] Cicero, *On Duties,* 2.23
[205] Montesquieu, *SL,* 5.8
[206] Cicero, *On Duties,* 2.22; similar arguments in *de Republica* with Scipio stating that "there is no *res populi,"* meaning a transfer of total political control to the people, cf. Asmis, "Cicero's Definition of 'Res Publica,'" 588.
[207] Dionysius, 5.66
[208] Ibid.

but I hope to acquire."[209] The rights of property are not just essential, but more essential than whatever cruel suffering the plebeians might endure, or what citizenship they might be reminded of by such gestures of largesse.

Debt protests and debt cancellations would be repeated in Rome through its history, as well as other societies in the ancient Mediterranean and near east. Part of our contemporary economic understanding grasps this widespread pattern where agrarian economies, combined with variable harvests, would inevitably aggregate wealth and debts into a point of crisis.[210] Yet ideologically speaking, it is a peculiar topic that seems to so undermine the view of constitutional order that such authors would express their opposition with prophetic and dire predictions. If defending traditional hierarchical roles evoked the same response above, we might consider how contract, property and debt obligations are not mere legal arrangements, but as Cicero expresses, something fundamental to the function of the state itself. Moreso, if we consider the ancient background society composed predominantly of either slaves or subsistence workers who feared slavery from debt, then the powerful attractive pull of such political promises could perhaps rightly seem dangerous. Enough people in fear and want may have created the ancient equivalent of a debt-slave fifth column, eager to support anyone who would reset the scales. The supreme power of annulling debts, as well as tipping the constitutional balance of society, meant that those who executed such power could either be rightfully kings or threatening despots. They could be "those who pose as friends to the people" in order to subvert the state, or justly praised for rebalancing a broken one.[211] To Montesquieu, this was the destructive power of John Law's financial schemes – that some were elevated so high and others brought so low in such a short time that chaos reigned, and the political balance of power was upended.[212]

Yet debt relief or forgiveness was not totally unheard of in either antiquity or in Montesquieu's time. After the death of Louis XIV he himself suggested the French crown

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[209] Montesquieu, *SL,* 8.2
[210] Jean Andreau and Raymond Descat, *The Slave in Greece and Rome,* (Madison: University of Wisconsin Press, 2011): 28; Morley, *The Roman Empire,* 73-77.
[211] Cicero, *On Duties,* 2.22
[212] Shklar*, Montesquieu,* 18

repudiate the debt of the clergy in exchange for future tax payments.[213] Cicero lauded the scheme of Aratus of Sicyon in a similar vein of a just compensation for stolen noble estates.[214] Both praised the cancellation of debts by Solon's *Seisachtheia* in Athens as a measure that crucially re-established the Athenian constitution.[215] Similarly, the acts of Agis and Cleomenes restored a share of property to all citizens of Sparta with the aim of rebalancing society, and reinvigorating its constitution.[216] Montesquieu's own financial debt suggestions had this proviso of political balance in mind, maintaining the relative position all: "there was to be no relative deprivation at all, are therefore no real injury."[217] He supported land redistribution if it restored balance to a monarchy, arguing that the right of redemption was a positive in restoring the standing of noble families, where by some prodigal relations some had lost their historical castles and grounds.[218] Executed by the right person for the right reasons, in the right constitution, Solon was praised, yet the Gracchi and the tribunes produced only chaos. What might make this sort of largesse so menacing to Montesquieu is the factor of dependence, loyalty, and effectively king-like beneficence which accompanies it.

Take an example in the early republic: a fabled noble named Maelius made a habit of giving out large amounts of grain to the plebs during a famine. His fellow patricians viewed this behaviour as seditious; he was said to be aiming at kingship and then he was unceremoniously indicted and killed.[219] It might shock our contemporary perspective that mere charity can be so politically charged as to merit execution. But in the age of ancient republics, this is how kings legitimated themselves, while simultaneously subverting the popular dependence on the few: they gave generously to the people, they forgave debts and royal obligations, and by these measures they could check and even upend the influence of their noble class. It was not Maelius' designs on plebeian stomachs which threatened his peers, but his eminent rise in relative stature. The same held true for Cassius, who in seeking to allot a greater share of

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[213] Shklar, *Montesquieu,* 17-18
[214] Cicero, *On Duties,* 2.23
[215] Montesquieu, *SL,* 2.2, 5.6, 11.21; Cicero, *On Duties,* 1.22, *The Republic,* 2.34; Aristotle, *Constitution of Athens,* 12.4
[216] Montesquieu, *CR,* chap 3
[217] Ibid.
[218] Montesquieu, *SL,* 5.8-9, 31.33-34 discusses on the right of redemption.
[219] Livy, 4.13-14

conquered land to plebeians, was equally suspected and then executed.[220] The last of the three early executed demagogues, Manlius Capitolinus, had wickedly paid the debts of hundreds of plebeians facing slavery as a consequence of their defaults.[221]

On this question of debt relief, political balance, and the contextual depiction of a right or wrong-intentioned actor, one might wonder whether either a Cicero or Montesquieu can also be guilty of a certain ambivalence. They praise redistribution in certain contexts but forestall its potential in others, and sometimes even in the same instance. While Montesquieu would praise Agis and Cleomenes saving Sparta from crisis in *Considerations,* later in his unpublished thoughts he said they immediately initiated a kind of tyranny.[222] In discussing the corruption and wealth in the late Roman republic, he had also favourably cited a speech of Tiberius Gracchus: like Sparta in crisis, the tribune addressed a pitiful situation where barely a few hundred citizens who could meet the land requirements of military service. Considering redistribution and debt relief, Gracchus asks the nobles if it is worth weakening and disenfranchising the military "in order to have a few more acres of land than other citizens."[223] Rather than disturbing the constitution, in this context it seems Montesquieu directs us to view the Gracchi as having attempted to restore it. Those who by contrast view contract and property as the highest purpose of the state might in turn be guilty of that accusation spoken by Cato, who accosted the senate in valuing "your mansions and villas, your statues and pictures, at a higher price than the welfare of your country.[224]" If we consider this reversal of moral attribution, then the shrill tone of Claudius', Cicero's, and even Montesquieu's dramatic resistance to debt relief might sound simply like protests of oligarchs valuing their wealth above all else.

How fundamental to the constitution are property contracts, deferential hierarchies, and military defence? Each can be prioritized over another given a certain perspective – in Montesquieu's case, it would depend on the typology of the state. Redeeming formerly noble-

[220] Livy, 2.28-30
[221] Livy, 6.20
[222] Montesquieu, *MT,* 1744
[223] Montesquieu, *CR,* end of chapter 3
[224] Sallust, *Histories,* "The Catiline War," chapter 52.

held lands would overrule property rights but benefit a monarchical constitution. He also argues that largesse can increase the people's deference to an aristocracy. Such debt amnesties or land redistributions can therefore sacrifice the rights of property for a higher constitutional priority. The confiscations and debt amnesties in Rome that occurred in the crises of the second Punic war were similarly noted. However, if these measures connote good aristocratic behaviour, then a failure to implement them – a failure to heed the Gracchi – is bad behaviour, and the more callous aspect of the Claudian allegory seems apt, especially in the narrative context of restoring harmony.

It was common knowledge in the ancient world that a ruling class who failed to provide largesse at crucial moments poses constitutional risks. The danger of a propertyless fifth column during war was noted by the ancient Greek military writer Aeneas Tacticus, in his treatise on sieges:

> "It is of primary importance to win over the mass of the citizens to a spirit of loyalty, both by other influences and in the case of the debtors by the reduction or complete cancellation of interest[225]"

The language of Tacticus describes these citizens as 'ready to pounce' on their creditors in times of war.[226] Thucydides describes debtors killing their creditors during the war in Corcyra.[227] This danger is akin to "the wolf Augustus once said he held by the ears."[228] The secession of the plebs might be viewed likewise, where an aristocratic Rome was willing to cede some of their privileges for sake of the higher order value of military defence and public solidarity. But on this note of land redistribution, the Gracchan thesis holds an omen for the future catastrophe of the republic, in tandem with that of eminent generals put forth by Montesquieu.[229] If a lack of moderate conduct forced the plebeians to turn to the tribunate, then we might attribute the

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[225] Tacticus, "How to Survive under Siege," in *The Complete Works of Tacticus,* eds. Alfred John Church and William Brodribb, (New York: McGraw-Hill, 1964), 14.1.
[226] Robin Lane Fox, "Aineias the Author: Who, Where and When?" *Brill's Companion to Aineas Tacticus,* (Leiden, NL: Brill, 2018): 34.
[227] Thucydides, *History Of The Peloponnesian War,* ed. M.I. Finley, (London: Penguin, 1954): 3.81
[228] Pocock, *Barbarism,* v.3, 57.
[229] Pocock, *Barbarism,* v.3, 50-51.

same neglect to the landless fifth column to the late republic. In the same way that the ideologies of Plato and Aristotle underlie the Peloponnesian War, one wonders whether beneath this situated and absolute defence of property lay the intentions of accumulation and oligarchy, with similar dire consequences.

In this context, the primacy of property, contract and hierarchy seems misplaced, and likewise Montesquieu's reactions to the Gracchi or the right of redemption appear to be ambivalent depending on their social or political context. A constitutional argument from Aristotle underscores this priority logic: were property and contract the sole function of the sate, then "Etruscans and Carthaginians would be in the position of belonging to a single state; and the same would be true to all people who have commercial treaties with one another.[230]" Such functions – hierarchy, property, contract – are the necessary but not the sufficient functions of a polity. Aristotle construes them into a composite ideal type, but we can consider how his rebuttal can be used to prioritize higher or lower order constitutional necessities. In this way Montesquieu sees Gracchan 'mischief' relative to a popular state. He situates property, or its redistribution, in relation to the typology of the politics concerned, and prevaricates: approving with an Agis or Tiberius Gracchus at one point and then seeing despotism in the next.

On these ancient clashes over land and debt-relief, Montesquieu focuses on the threat of usurping demagogues to the neglect of other threats – be they avaricious senators or general civil discord. He frames redistribution in the late republic as a symptom of corruption and luxury rather than a moral or political imperative. As a consequence, the question of the justice that might be due to the plebeians – by virtue of their position in the constitution and not their envy or jealousy – is overlooked. It might have been better understood in the frame that Aristotle provides. Largesse, while either pernicious in a democracy, or against Cicero's "particular function" of property rights, could nevertheless restore constitutional balance – not merely in a flight of fancy, but in a serious conception on the obligations of either a ruling class or a king. This might seem strange because today we would view the questions of debt relief or hierarchical deference with the skew of a modern democracy: the former might be deleterious

[230] Aristotle, *Politics,* 3.9 1280a25

and unnecessary in a commercial society with bankruptcy laws; the latter seems hopelessly backward if not bigoted. But in the ancient age of the Mediterranean, the restoration of those relative positions within society – the one, the few, and the many – was part of the crucial and sufficient condition of a harmonious state, and often the definition of liberty itself.

Deror and Debt

On a large bell on display in Philadelphia, the words "Proclaim liberty Throughout all the Land unto all the Inhabitants Thereof" are etched onto its copper surface. These famous words of the Liberty Bell are taken from the Old Testament of the bible, the book of Leviticus 25, where God tells Moses to proclaim a Jubilee year every 50 years. The Jubilee was a tradition for the annulment of debts, the return of land to their original families, and the liberation of any slaves who lost their freedom for failure to pay back a loan. Translated as 'liberty,' the original Hebrew word דְּרוֹר (pronounced *deror*), approximately means "flowing, a free run, release" and references a tradition stretching back to several other near-eastern civilizations. These agrarian societies under kings conceived of debt-cancellation as a periodic way to restore the political balance of society, not to mention boost the status and power of the sovereign. But in addition, just as agricultural fortunes varied in the times of either Gaius Gracchus or Joshua, this institution was also a way to avoid the accumulation of a propertyless, debt-enslaved fifth column. The rest of Leviticus 25 describes the right of redemption of land that was lost, property and houses that were sold, and the service of fellow Israelites for their freedom:

> "If any of your fellow Israelites become poor and sell themselves to you, do not make them work as slaves. They are to be treated as hired workers or temporary residents among you; they are to work for you until the Year of Jubilee.[231]"

There is much to interpret about the purpose of this institution, not to mention the development of accompanying theological strands like the Hillel the Elder and the Prozbul in the 2nd century BCE, which would cancel the debt cancellation of the *deror*. But it must be remarked that this was not a novel innovation of the kingdom of Judea, and that periodical debt-cancellation was a widespread practice in many if not all near eastern civilizations of the

[231] Leviticus, 25:39-40, text of New International Version, *The Complete Evangelical Parallel Bible,* 297.

period. Had he benefitted from our contemporary archaeology, Montesquieu might have even penned another chapter in *Spirit of the Laws* on this cross-cultural practice.

Lagash, Babylon, Assur, Isin, Karum Kanesh, and other city-states populating modern-day Turkey, Iraq and Syria each had similar royal traditions in issuing a decree restoring confiscated land, and freeing debt slaves.[232] Scholars have traced the Judean tradition of *deror* to the Akkadian word *andurārum* meaning restoration, freedom and release, as well as its links to Sumerian *amargi* – a return to the mother, or 'the original condition.[233]' It was both a political balancing act and a piece of royal propaganda. Etched stone steles would emphasize the suffering of the people to reflect the benevolence of the ruler in freeing them:

> "He freed the inhabitants of Lahash from usury, burdensome controls, hunger, theft, murder, and seizure. He established liberty [amargi].[234]"

In practice, cuneiform inscriptions recovered from the Old Babylonian period up to the Neo-Assyrian empire show a tradition of royal restoration. *Andurārum* was shortened to *durāru* between royal proclamations in stone to legal documents in clay tablets, forming part of the etymological argument about *deror*.[235] Debt slavery was common in subsistence economies, but as wealth and power metastasized over time in the aggregate, reciprocal subsistence bonds of debt gave way to predatory usurers seeking more and more indentured labor.[236] Wealthy estates consolidated power. The same debt crises that existed in early Rome were faced by these societies, with an accompanying exploitation of children as labour to sell: "The strong man lives off what is paid by his strength, and the weak man off what is paid by his children.[237]"

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[232] Michael Hudson, *…And Forgive Them Their Debts: Lending, Foreclosure and Redemption from Bronze Age Finance to the Jubilee Year,* (Dresden, GR: Islet-Verlag, 2018): 29-31, lists over 50 examples of such declarations through Lagash, Babylon, Assur, Isin, and others.
[233] Hudson, *Debts,* 5; Nels Bailkey, "Early Mesopotamian Constitutional Development," *The American Historical Review,* Vol.72, No. 4, (1967): 1223
[234] Bailkey, "Mesopotamian Constitutional Development," 1223.
[235] Josine Blok and Julia Krul, "Debt and its Aftermath: The Near Eastern Background to Solon's *Seisachtheia*," *Hesperia: The Journal of the American School of Classical Studies at Athens,* Vol. 86, No. 4, (2017): 628
[236] Hudson, *Debts,* 63.
[237] Bailkey, "Mesopotamian Constitutional Development," 1230

The countervailing practice of restoration was akin to the monarchical right of redemption. For the same reason that Montesquieu would argue nobles cannot lose their lands and their standing, these kings restored an original position, upending property rights in order to restore the set of relative positions which had already been upended.[238] Although an annulment of debts or a return of previously sold noble land could generate separate problems, rulers from Sargon to Hammurabi evidently felt this must be balanced against a higher consideration. On the one hand, such measures could be critiqued by Montesquieu as yet more despotic abuse for the benefit of the wealth of a tyrant. Yet even granting the self-interest in their political image or their relative power, there were more intricate considerations built into these proclamations. In some ways, *deror* might be seen as a nascent form of contemporary institutional protections. It was many things simultaneously: a royal check on the accumulation of wealth within noble families; a primitive bankruptcy protection, which gave both borrowers and lenders regularity at a certain interval; a guarantee for the military caste, as well as way to shore up support in times of war. There was legal practice and precedent around such declarations. Clay tablet rulings found in Babylon show legal practice and contestation around each decree: when was the proclamation made, and when was the loan, etc.[239]

Debt relief and land redemption could be done by the right people, for the right reasons. These declarations did not let loose the dogs of extreme equality but formed part of a difficult balancing act. The same crisis measures stretched from the near east all the way into Athens. Blok and Krul recently have made the explicit connection in the style and substance of *andurārum,* Solon's *seisachtheia*, as well as the book of *Nehemiah* in the Old Testament.[240] In each, the public proclamation of a poetic stele monument heralded liberty and the restoration of the constitution in reaction to debt-slavery and political turbulence.

Today we consider our bodies and persons to be inalienable goods. Without plunging into these philosophical reasons for this, we generally might say that our sense of individual rights ascribes to a modern consensus of human dignity and the basic logic of consent and

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[238] Shklar, *Montesquieu,* 17-18.
[239] Hudson, *Debts,* 177; Brok and Krul, "Debt and its Aftermath," 628-628.
[240] Blok and Krul, in "Debt and its Aftermath," make this link the main argument of their paper.

contract. Montesquieu expressed a similar sentiment about the civil liberty of Roman debt slaves and slavery at large.[241] The law code of Hammurabi in the 2nd millennia BC also held there to be inalienable goods, however on an understandably less modern logic. Sections 36-38 of his cuneiform inscriptions would bar from sale or foreclosure any "field, garden, and house" of a chieftain or soldier of his kingdom.[242] The right to exchange and buy property was annulled if it endangered or eroded the soldiering class's means to sustain itself and provide collective defence – echoing Gracchus' concerns of late Rome, or Agis and Cleomenes of Sparta. In both the ancient and the modern sense, inalienability is derived from a superseding purpose beyond private property: the higher priority of human dignity and consent today, or the demands of ancient military self-defence in the other. Similar inalienable goods which are indispensably necessary to the social position of the owner, as well as the greater well-being and constitution of society, are articulated in ancient, medieval and even modern legal codes. A creditor could not seize a farmer's ox in either Babylon or in the book of Job; a warrior's armor or the peasant's plow in the code of Gortyn on Crete; Norman laws forbade seizing the horses of a count, or the armor of a knight; the Magna Carta forbade taking farming implements and cattle of peasants; and even today in the US state of Vermont there is a provision that defaulting debtor may keep one cow, two goats and three beehives.[243]

If he was forced to ignore the cruel character and abuse of ancient patricians, Montesquieu must have had the similar overarching requirements in mind. The prerogatives and standing of noble families were inalienable because of their critical role in the constitution. Because of this crucial importance, he arguably chose to overlook patrician cruelty and corruption for two sets of reasons. The first are his positive affiliations: the aristocratic standing, the defence of noble privilege against demos and despot, the basic belief in a just inequality. The second category of reasons applies in the negative sense of perceived threats: extreme equality, upending property rights, and the mischief of caving into plebeian demands

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[241] Montesquieu, *SL,* 15.1-2

[242] Hudson, *Debts,* 23; "The Code of Hammurabi," *The Avalon Project,* translated by L.W. King, (New Haven: Yale University, 2008) https://avalon.law.yale.edu/ancient/hamframe.asp Accessed 3 Dec 2022, "37. If anyone buy the field, garden, and house of a chieftain, man, or one subject to quit-rent, his contract tablet of sale shall be broken (declared invalid) and he loses his money. The field, garden, and house return to their owners."

[243] Hudson, *Debts,* 45

for debt relief, agrarian reform, or other redistributive schemes. Montesquieu saw such threats in a parallel with the turbulence of his own age – ranging from the despotism of an Augustus-emulating Louis XIV to the financial chaos of John Law's Mississippi company schemes.

Conclusion – Constitutions and Contexts

Appius Claudius sees political concessions as a zero-sum game of mutual domination. For narrative purposes, this character is allegorically depicted to be immune to any notion of concord. The basic sense of responsible governance is absent in this persona, whereas other senators would castigate this misuse of power, and blame the very creation of the tribunate on their own lack of moderation:

> "Now that they [the plebeians] have fallen love with it [the tribunate], they will assuredly never give it up - particularly when we have failed to moderate our own power in order that they might less feel the need of protection.[244]"

The senators themselves make the argument that plebeians sought the tribunes from fear of domineering patricians, accepting the responsibility for pushing them to take such measures. Within the context of the physical confrontations in the forums, as well as the fear of looming debt-slavery on their persons, the plebeians sought "power to check power," to use Montesquieu's words.[245] Yet in his reading of the trajectory of the Roman state, and its key allegorical figures, this cruelty is overlooked in lieu of his purposeful defence of noble privileges and offices against a jealous unthinking mob.

Among its many religious and royal acclaims and proclamations, the Rosetta stone discovered by Napoleon's army in 1799 was also found to proclaim a cancellation of debts, and freedom for debt slaves. The large stele announced in 196BC, on the one-year anniversary of the coronation of 13-year-old Ptolemy V, that there would be a remittance of debts owed to the royal state, and that those in prison for a failure to pay were granted their freedom. The context for the proclamation was essentially a kingdom beset on all levels by turmoil – it was at the point of siege described by Tacticus. This included a recent insurrection and foreign threats

[244] Livy, 3.52
[245] Montesquieu, *SL,* 11.4

from the neighbouring Seleucid kingdom. The announcement was a populist political calculation from those priests in guardianship of young Ptolemy. A similar stele was carved in an age of crisis in Athens, 337BC, on the order of Eucrates – possibly the one from Montesquieu's dialogue – proclaiming a law against tyranny that would reward any Athenian who killed a conspirator that sought to overthrow the demos.[246] This monument was created as Athens was beset by turmoil – it had just lost the battle of Chaeronea and was now compelled by Alexander and Phillip to march with them against Persia. Their former ally against Macedon, Thebes, had seen its own rulers expelled and a garrison installed. Philip's terms were more lenient for Athens, yet even so, independence was lost, and the stele was a monument of constitutional resistance in the face of an existential threat.

In either the cynical populisms of the Rosetta stone, or the futile defiance of Eucrate's law, these public monuments were not inherently populist devices, but rather were so defined by their context. Insofar as the *andurārum* of near-eastern regal power protected liberty, or Solon set Athens on the right course, or Agis and Cleomenes reinvigorated Sparta, Montesquieu might be forced to admit that such blanket measures cannot solely be described as a path to tyranny. But his reading of early Rome takes this path, in either framing the populace as unthinking, sympathising with their allegorical enemy Claudius, or leaving the control of their political liberty to a trusting submission. This portrayal betrays a selective reading of the historical texts, specifically the thematic narrative of republican *Concordia.*

We can take Voltaire's investigation on the statements of "Captain John Perry, an Englishman," as emblematic of this difficulty with Montesquieu. The captain is referenced in *Spirit of the Laws* as a brief anecdote, testifying to the despotic character of Russia. Voltaire looks up this source and argues that in truth his words denote if anything, a proclamation against turning Russian subjects into slaves.[247] While this labyrinthian nit-picking is not a threat to Montesquieu's main purpose - and Shklar makes it clear that it was necessary to disengage from investigating every little factoid – when aggregated they can be problematic. The

[246] There are several prominent Eucrates in Greek history. The one proclaiming a law against tyranny in the face of Philip and Alexander might be appropriate for Montesquieu's purposes in the *Dialogue* with Sulla.
[247] Voltaire, *Philosophical Dictionary,* "Slavery, section III;" also Montesquieu, *SL,* 15.6

inexactness of some of these examples combined with his broad indictment of the plebeians should demonstrate how intentional selectivity can have a compounding effect, ultimately resulting in an altogether different narrative.

Taking so many instances out of context, as Shklar states, to "know people who are utterly unlike us," might end up compounding into a simple reflection of our likeness.[248] This narrative reflection occurs for Montesquieu as well as the Roman historians. Livy and Dionysius grappled with the collapse of their own republican politics, not to mention their political class. Woven into the early narratives of the clash of the orders are references that remarkably resemble their own recent turbulence. Demagogues Manlius or Maelius, or the proud city-bound noble Claudius Appius, or even the assassinations of tribunes, are all recast into early Rome. The stories were designed to entertain, explain, heal, and legitimate their current imperial era to their audience. Montesquieu, like them, wrote for his own audience and time. But where the Romans depicted discord and ancient pride, he saw France's collapsing noble prerogatives. Harmonious moderation in this context was cowardice in the face of despotism.

As he observed the ideological currents of Plato and Aristotle beneath the wars of Athens and Sparta, so too, behind the first century annalists like Livy and Dionysius he could have seen ideologies and reflections offering *Concordia* in an age that has been rent by civil war. But Montesquieu does not see it – maybe perhaps because he is consumed by his own threats. As a consequence, when he looks at Rome, he simply sees himself. Ultimately, he makes selective editorial decisions to emphasize the critical role of the Roman senate and its patricians in the early and late days of the republic. Opening the twentieth book of *Spirit of the Laws,* Montesquieu remarked how he was swept away and some subjects "deserve to be treated in a more extensive manner than the nature of this work will permit."[249] Had time permitted, the questions of justice due to the plebeians, the capacity of redistribution for the right reasons, as well as the constitutional basis for land reform or debt relief would have, and should have, formed part of his narrative of the early republic.

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[248] Shklar*, Montesquieu,* 26.
[249] Montesquieu, *SL,* 20.1

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