

MONTESQUIEU ON COMMERCE, CONQUEST, WAR, AND PEACE

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I. INTRODUCTION: COMMERCE AS THE AGENT OF PEACE: MONTESQUIEU AND THE IDEOLOGY OF LIBERALISM

In the history of liberalism, Montesquieu, who died two hundred and fifty years ago, is an iconic figure. Montesquieu is cited as the source of the idea of checks and balances, or separation of powers, and thus as an intellectual inspiration of the American founding.¹ Among liberal internationalists, Montesquieu is known above all for the notion that international trade leads to peace among nation-states. When liberal international relations theorists such as Michael Doyle attribute this position to Montesquieu,² they cite Book XX of the *Spirit of the Laws*,³ in which Montesquieu claims: “The natural effect of commerce is to bring peace. Two nations that negotiate between themselves become reciprocally dependent, if one has an interest in buying and the other in selling. And all unions are based on mutual needs.”⁴

On its own, Montesquieu’s claim raises many issues. Montesquieu’s point is that trade based on mutual dependency discourages war. Here, Montesquieu abstracts entirely from the relative power of the states in question, a concern that is pervasive in his concrete analyses of relationships among political communities. For example, later on in the same section of the *Spirit of the Laws* he mentions that trade relations between Carthage and Marseille led to jealousy and a security conflict:

There were, in the early times, great wars between Carthage and Marseille concerning the fishery. After the peace, they competed in economic commerce. Marseille was all the more jealous, that, while equal to its

rival in industry, it was becoming inferior in power. Thus the reason for its great loyalty to the Romans. The war the Romans fought against the

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1. See THE FEDERALIST No. 47 (James Madison). See also HARVEY C. MANSFIELD, JR., TAMING THE PRINCE: THE AMBIVALENCE OF THE MODERN EXECUTIVE POWER 214 (1989).

2. Michael W. Doyle, *Liberal Internationalism: Peace, War and Democracy*, <http://nobelprize.org/peace/articles/doyle/index.html> (last visited Mar. 27, 2006).

3. All citations to the *Spirit of the Laws* are by book and chapter number. The translations are my own, based on the French text in BARON DE MONTESQUIEU, 2 OEUVRES COMPLETES: DE L’ ESPRIT DES LOIS [2 COMPLETE WORKS: SPIRIT OF THE LAWS] (Galliard/Pleiade 1951).

4. *Id.* at bk. XX, ch. 2.

Carthaginians in Spain was a source of riches for Marseille, which served as a supply port. The ruin of Carthage and Corinth increased still more the glory of Marseille. And, but for the civil wars, where it was necessary to close one's eyes and choose a side, it would have been happy under the protection of Romans, who were not jealous of its commerce.⁵

Montesquieu claims that commerce can cure "destructive prejudices" and render manners (*moeurs*) gentle.⁶ But he also, and equally emphatically, suggests that prejudices and ferocious manners impede or prevent commerce: "[In the case of the Romans and the Parthians] far from there being commerce, there wasn't even communication: ambition, jealousy, religion, hatred, manners kept everything apart."⁷ Does not then the disease itself prevent the proposed cure?

In the opening of the *Spirit of the Laws*, Book I, which sets out the view of human nature on which the work is premised, Montesquieu presents human beings as naturally timid and non-conflictual, while it is social dependency and interdependency that lead to aggression, distrust and conflict.⁸ Why then should conflict not be engendered by *trade* dependency or interdependency? For Judith Shklar, Montesquieu's meaning is that commerce and conquest are alternative means of satisfying the needs of a state: "Commerce is the object of free states, while conquest is the aim of despotic ones and, as [Montesquieu] knew, all continental monarchies as well."⁹ Yet, Montesquieu himself seems at least as much impressed with the extent to which conquest and colonialism (and indeed even genocide and mass exile) went hand in hand with the development of commerce, at least historically. He goes so far as to suggest: "The history of commerce is that of the communication of peoples. Their various destructions, and the displacement and devastation of population groups, are its greatest events."¹⁰ Elsewhere, Montesquieu states that the conquests of Egypt and India by Alexander the Great were among the events that made a great revolution in commerce, and he asks whether "it [is] necessary to conquer a country in order to have commerce with it."¹¹

For those who are inclined to reduce philosophy to a set of slogans, Montesquieu is a dangerous thinker to cite and an impossible one to understand. There is hardly a generalization in his *Spirit of the Laws* that is

5. *Id.* at bk. XXI, ch. 11.

6. *Id.* at bk. XX, ch. 1.

7. *Id.* at bk. XXI, ch. 16.

8. *Id.* at bk. I, chs. 2-3.

9. JUDITH N. SHKLAR, MONTESQUIEU 107 (1987).

10. MONTESQUIEU, *supra* note 3, at bk. XXI, ch. 5.

11. *Id.* at bk. XXI, ch. 8.

not qualified or contradicted by another generalization, or put in question by Montesquieu's own examples. Despite Montesquieu's own insistence in the preface that the work has a plan or design, Montesquieu's manner of proceeding through self-correction (or, less charitably, self-contradiction) has led some illustrious readers to complain of its disorganization.¹²

While, as already noted, liberals consider Montesquieu a "liberal," his liberalism is seductive and subversive rather than moralistic and revolutionary. Montesquieu does not recommend the replacement of an illegitimate order, the *ancien regime*, by a legitimate regime. He is not a precursor of the (bourgeois) French Revolution, and a strain in French scholarship and political theory thus regards him as a reactionary, an aristocrat defending class interests.¹³ Montesquieu is critical of every kind of political regime, however liberal, and on the other hand, is fatalistic about power and constraint as endemic in the human condition. For Montesquieu, liberty is not seized in a single stroke that replaces the regime of Throne and Altar with the regime of rights, but is to be found in the margins of the actual power relations and, above all, in the subtle transformation of those relations from dangerous and illiberal forms of dependency into more benign and gentle forms of mutual dependency. While leading, in some circles, to the view of Montesquieu as a reactionary, this way of thinking led Louis Althusser to view Montesquieu, in some respects, as a (defective or inconsistent) precursor of a certain kind of Marxist social theory.¹⁴

II. WAR AND CONQUEST: BOOKS IX AND X OF THE SPIRIT OF THE LAWS

Montesquieu elaborates his views on war and peace prior to his systematic consideration of commerce in Books XX and XXI of the *Spirit of the Laws*. He begins his discussion of defensive force in Book IX with the proposition that all regimes, whether republican, aristocratic or monarchic, are subject to the same dilemma: if they are small, they will be destroyed by external force, whereas if they are large they will be destroyed by "internal vice."¹⁵ While carefully prepared by Montesquieu's dissections in Part I of the *Spirit of the Laws* of the internal contradic-

12. For a review of the different readings of Montesquieu's *Spirit of the Laws*, see RAYMOND ARON, *LES ÉTAPES DE LA PENSÉE SOCIOLOGIQUE* [STAGES OF SOCIOLOGICAL THOUGHT] 61–66 (Gallimard 1967).

13. *See id.* at 62–63.

14. *See* LOUIS ALTHUSSER, *POLITICS AND HISTORY: MONTESQUIEU, ROUSSEAU, HEGEL AND MARX* (Ben Brewster trans., 1972).

15. MONTESQUIEU, *supra* note 3, at bk. IX, ch. 1.

tions that plague both ancient republics and modern monarchies,¹⁶ Montesquieu's bold statement at the outset of Book IX that *no* regime can combine internal health and effective external defense represents an arresting indictment of the entire tradition of political philosophy. The search for the best regime, meaning the best "city" or the best "state," the best "closed" political community,¹⁷ is utterly futile. The achievement of sound internal governance merely leads to vulnerability and ultimate destruction by external force. Only a despot can act fully consistently in internal and external affairs.

While most commentators assume that, for Montesquieu, England is the model of the ideal constitution or regime,¹⁸ Montesquieu in no way exempts England from his verdict. Montesquieu understands political liberty not in terms of citizenship and political rights, but in terms of each individual's sense of personal security and the "tranquility of spirit" that flows from it: "the government must be such that a citizen cannot fear another citizen."¹⁹ But, if liberty is really this "tranquility of spirit" then no single political regime can guarantee liberty, even if it creates an order where one does not fear one's fellow citizens, because no single political regime can guarantee against external aggression. There are external threats to this "tranquility of spirit" that are as menacing as internal threats; as Montesquieu demonstrates in the many examples he presents in the *Spirit of the Laws*, throughout history, the lives and property of individuals have been destroyed as much through external conflict as internal oppression.

But, in Book IX, Montesquieu does suggest that there *is* a form of political association that can combine internal good governance with effective external defense: a republican federation.²⁰ This is a "society of societies" that results from the merging of previously sovereign political

16. Ancient republics are maintained by "virtue"—an almost fanatical overcoming of private interest for the sake of the common good, of which military virtue is the peak—but even this virtue is not enough to guarantee that a small republic will be able to defend itself against a larger power, especially one with the latest military technology. Once a republic becomes large, however, private ambition and interest declare themselves: "interests become particular; a man feels first of all that he can be happy, great, glorious, without his homeland; and soon he can be great alone, on the ruins of his homeland." *Id.* at bk. VIII, ch. 16. On the other hand, when a monarchy covers a large territory, it is difficult to assure the obedience of the officials, lords, etc., that are required to administer the parts of this large territory, since they operate far from the capital. Because of this problem, a large monarchy tends to degenerate into a despotism. *Id.* at bk. VIII, ch. 17.

17. *Id.* at bk. I, ch. 3.

18. See, e.g., MANSFIELD, *supra* note 1, at 230.

19. MONTESQUIEU, *supra* note 3, at bk. XI, ch. 6.

20. *Id.* at bk. IX, ch. 1.

bodies (*corps politiques*).²¹ Montesquieu credits the form of republican federation with the fact that in Europe, Holland, Germany and Switzerland have been able to become “eternal republics.”²² At first, Montesquieu suggests that the model of a republican federation can only work if the entities that form the federation are themselves republics: “The spirit of monarchy is war and aggrandizement; the spirit of the republic is peace and moderation. These two types of governments cannot co-exist in a republican federation, except in a forced manner.”²³ But, Montesquieu then mentions an institutional innovation that can solve this difficulty: Germany is in fact composed of both former principalities and free cities.²⁴ This is possible because Germany has given itself a “chief,” a leader of the federation as a whole.²⁵

The existence of an independent level of governance at the federal level demarcates the republican federation from confederations such as the ancient Greek leagues, which proved unstable and ultimately not “eternal.”²⁶ Removing the obstacle created by the mixed nature of the regimes of the different members of a republican federation, the possibility of this federal level of governance eliminates the only constraint explicitly mentioned by Montesquieu on the capacity of a republican federation “to expand through new associates united with it.”²⁷ Montesquieu, who emphasizes throughout the *Spirit of the Laws* the relationship between domestic laws and factors such as climate and culture, does not apparently consider these factors as fatal to the merging of societies into a republican federation. Far from his ultimate teaching being one of relativism or determinism, Montesquieu’s detailed examination of the particularities of domestic laws in their relation to the local, by giving the local its due, allows one to believe that the local and the particular can co-exist with a (potentially) universal legal system. The differences in laws produced by the effects of climate, local culture, geography, etc., can be handled through a federal union, either through complete devolution of regulation in areas where these factors are naturally determinative, or through subsidiarity (room to deviate from, or adjust federal law to reflect local contingencies).

By attributing differences in the laws to fixed particularities such as climate, Montesquieu is usually regarded as taking the side of difference

21. *Id.*

22. *Id.*

23. *Id.* at bk. IX, ch. 2.

24. *Id.*

25. *Id.*

26. *See id.* at bk. IX, ch. 1.

27. *Id.*

against that of universality, and thus as the precursor of historicism.²⁸ On the contrary, he is preparing the ground for a certain kind of universalism by attributing the particularities of domestic or local laws to factors *other* than unbridgeable divides of belief and value, conflicting gods and demons—to use Max Weber’s turn of phrase—which would make it *impossible* for different peoples to live together in peace. Montesquieu is perhaps the original thinker of “path dependency”: within each political community the laws reflect a dynamic relation between the form of government and other factors that, historically, would naturally have influenced lawmaking in that particular setting (climate, etc.).²⁹ There is a diversity of laws, both over time and among different political communities at a given time, which would at face value make any project depending on legal harmonization or integration seem utterly unrealistic. However, differences in laws that are attributable to “path dependency” of individual societies may well be tractable to degrees of harmonization. Once one understands legal differences as the consequence of the different “paths” that particular societies have taken, rather than as expressions of conflicting *ideals* of government, they ought to be negotiable in the service of the project of federation.

Thus, in looking at the laws as they have developed historically in the different ideal types of regime—monarchy, republicanism/democracy, aristocracy—Montesquieu shows that the actual differences in laws are not so much a product of the ideal type of government as of the interaction of that ideal type with many accidental and contingent factors. Understood as legal integration, the merging of a monarchy with a republic, for example, is something very different than the attempt to wed together two conflicting ideal forms of government. We must face diversity and understand it, in order to overcome it as an obstacle to *universal* legality, and further understand that *universal* legality can entail something less than full homogenization of positive law, i.e., accommodating differences that are non-threatening to the “spirit” of the laws.

Admittedly, Montesquieu attributes *some* particularities of laws to differences in religious convictions in different societies, but these differences, for Montesquieu, usually amount to “prejudices” or “superstition,” which are susceptible to being removed as interaction between peoples and individuals increases, whether through commerce, immigration or

28. Shklar, for instance, finds it difficult to reconcile Montesquieu’s apparent “universalism” in the condemnation of oppression with his apparently deterministic view of law. SHKLAR, *supra* note 9, at 96–98.

29. For an overview of the concept of “path dependency,” see Paul A. David, *Path Dependence, Its Critics, and the Quest for ‘Historical Economics’* (2000), <http://129.3.20.41/eps/eh/papers/0502/0502003.pdf>.

intermarriage. It is notable that the distinctive domestic laws criticized by Montesquieu as fanatical or against nature tend to be attributed by him to prejudice, not to the kinds of local factors that might explain “reasonable” differences between laws. These are laws that deserve to be removed even by imperial conquest. Such laws are presented by Montesquieu as even less “reasonable” than despotism.

Montesquieu’s remarks about war and conquest in Books IX and X must be understood in light of his dramatic presentation of a continuously expanding republican federation as the only adequate solution to the problem of politics. He begins with the proposition that between “nations” the use of offensive force is “regulated” by the *ius gentium*.³⁰ Under the *ius gentium*, the legitimate use of offensive force is based on the natural right of self-preservation. However, the right of self-preservation in the case of peoples results in a broader scope for the use of force than in the case of individuals. An individual can only exercise the right of self-defense on those “immediate occasions where he would be lost if he waited for the assistance of the laws.”³¹ In the case of societies, the effectiveness of the right of self-defense depends largely upon the possibility of pre-emption. Even in time of peace, where another society has acquired the power to destroy it, a society must be able to attack preemptively; the law, including the police, cannot be counted on to intervene to prevent the destruction of the weaker power by the (now) stronger one.³² Following Thucydides here, Montesquieu suggests that any peace among nations is intrinsically unstable; the temptation of states to exploit peace to increase their (relative) power is in the nature of things, and irresistible for certain regimes.³³ This leads to insecurity on the part of other states and a (justifiable) collapse of the peace. Only if international law were able to equalize power between states could this insecurity be avoided, and the right to preemption legitimately narrowed or limited to situations of immediate attack. In a world of sovereign states, significant differences in relative power appear to Montesquieu as inevitable. By contrast, a republican federation is well suited to integrating both small and large states and mediating the implications of differences in size peacefully, through federal institutions.³⁴

30. MONTESQUIEU, *supra* note 3, at bk. X, ch. 1.

31. *Id.* at bk. 10, ch. 2.

32. *Id.*

33. According to Thucydides, the truest cause of the Peloponnesian War was the growth of Athenian power, which made other cities, and eventually Sparta itself, insecure. THUCYDIDES, *THE HISTORY OF THE PELOPONNESIAN WAR* 15 (Richard Crawley trans., Longmans, Green & Co. 1874).

34. See MONTESQUIEU, *supra* note 3, at bk. IX, ch. 3.

In a remarkable single stroke, Montesquieu endorses the right to conquest as a necessary implication of the right to self-preservation. He bluntly accepts the possibility that the only way of countering the security threat that led to the use of force in the first place is to conquer and colonize the enemy. However, through grounding the right to conquest in the natural right of self-preservation, Montesquieu places a set of derivative legal constraints on the manner in which the right to conquest may be exercised. Strategies such as the destruction or enslavement of the conquered people are contrary to the natural right of self-preservation; they are *only* justifiable if there is no other means of eliminating the security threat posed by the conquered people. At the same time, the exercise of the right to conquest, which at the end of the chapter Montesquieu qualifies as a “necessary, legitimate and unfortunate (*malheureux*)” right, “always leaves an immense debt to be paid, to vindicate oneself before human nature.”³⁵ The ideal way of paying this debt, in the case of a republic, is to provide the conquered state with good administration and good civil laws.³⁶

Moreover, conquest can “destroy harmful prejudices” that may be an obstacle to different peoples being integrated or living together in a single political community.³⁷ Here, Montesquieu gives two examples: the peace treaty that Gelon made with the Carthaginians, which prohibited the practice of burning children, and Alexander the Great’s prohibition on the Bactrians sending their elderly parents to be eaten alive by big dogs. Alexander’s interdiction, Montesquieu tells us, was a “triumph that he won over prejudice.”³⁸

Alexander provides Montesquieu’s model for benign or beneficial conquest and empire:³⁹

He resisted those who wanted him to treat the Greeks like masters, and the Persians like slaves; he thought only of uniting the two nations, and making the distinction between conquering and conquered people disappear. He abandoned, after the conquest, all the prejudices that had served him in conquering. He adopted the manners (*moeurs*) of the Per-

35. *Id.* at bk. X, ch. 4.

36. *Cf. id.* at bk. X, ch. 9.

37. *Id.* at bk. X, ch. 4.

38. *Id.* at bk. X, ch. 5.

39. Alexander the Great’s significance for Montesquieu is noted by Catherine Larrère, who comments that “Alexander thus becomes the image of modernity found in the midst of ancient ages. . . .” Catherine Larrère, *Montesquieu on Economics and Commerce*, in MONTESQUIEU’S SCIENCE OF POLITICS: ESSAYS ON THE SPIRIT OF LAWS 335, 354 (David W. Carrithers et al. eds., 2001).

sians, in order not to make them discontent with taking the manners of the Greeks. . . .⁴⁰

Alexander encouraged mixed marriages, a practice of which Montesquieu approves in other contexts as well. “After a certain passage of time, all of the constituent elements of the conquering state are connected to those of the conquered state, by customs, intermarriage, law, associations and a certain conformity of spirit.”⁴¹ This renders trust and peace possible based on *equality* between the peoples and the individuals who constitute them, and servitude of the conquered people definitively unnecessary to ensure the security of the conquering society. By degrees, empire is transformed into republican federation; the obstacle to republican federation that Montesquieu flagged in Book IX:III—namely, that sovereign states of equal power, jealous of their sovereignty, are unlikely to be inclined to surrender it to federative power—does not prevent an *empire* from becoming a republican federation.⁴²

III. LUXURY COMMERCE AND ECONOMIC COMMERCE

Montesquieu’s view of commerce and its relation to war and conquest depends on a crucial distinction that he draws between the commerce of

40. MONTESQUIEU, *supra* note 3, at bk. X, ch. 14.

41. *Id.* at bk. X, ch. 3.

42. Here, I have been influenced in my interpretation by Alexandre Kojève. Kojève cites the very same practice of Alexander the Great emphasized here by Montesquieu as the original model for the creation of the Universal and Homogenous State, a federal juridical order capable, in principle, of encompassing the entire world. According to Kojève:

What characterizes the political action of Alexander in contrast to the political action of all of his Greek predecessors and contemporaries, is that it was guided by the idea of *empire*, that is to say of a *universal* State, at least in the sense that this State had no *a priori given* limits (geographical, ethnic, or otherwise), no *pre-established* “capital,” not even a geographically and ethnically fixed center destined to exercise political dominion over its periphery. To be sure there have at all times been conquerors ready to extend the realm of their conquests indefinitely. But as a rule they sought to establish the same type of relation between conquerors and conquered as that between Master and slave. Alexander, by contrast, was clearly read to dissolve the whole of Macedonia and of Greece in the new political unit created by his conquest, and to govern this unit from a geographical point he would have *freely* (rationally) chosen in terms of the new *whole*. Moreover, by requiring Macedonians and Greeks to enter into mixed marriages with “Barbarians,” he was surely intending to create a new ruling stratum that would be independent of all rigid and given *ethnic* support.

Alexandre Kojève, *Tyranny and Wisdom*, in LEO STRAUSS, ON TYRANNY 135, 170 (Victor Gourevitch & Michael S. Roth eds., rev. and expanded ed. 2000) (emphasis added).

luxury and economic commerce. The commerce of luxury serves the needs of the few and, above all, the political elite.⁴³ Unlike economic commerce, it is not so much based on reciprocity and competitive advantage as on the fantastic consumption demands of a small ruling class, which cannot be satisfied within the boundaries of the community that they rule. The commerce of luxury is entirely consistent with the spirit of the conquerors—and indeed of despotism—as Montesquieu shows in his discussion of Portugal and China.⁴⁴ The commerce of luxury that is based on conquest and empire is exploitative; it is not economically rational in the sense of being conducive to the general economic welfare either in the conquering or the conquered state. Montesquieu uses the example of the colonial commerce of Spain:

It is a bad kind of wealth . . . which does not depend on the industry of the nation, the number of inhabitants, nor the cultivation of the earth. The king of Spain, who receives great sums from his customs house in Cadiz, is in this respect but a very rich individual in a very poor state. Everything passes directly from the foreigners to himself without his subjects having any part; this commerce is independent of the good or bad fortune of his kingdom.⁴⁵

Montesquieu explains the difference between the commerce of luxury and economic commerce in the following way:

Commerce is related to the constitution. In an autocracy, it is usually based on luxury, and whatever it may do to serve real needs, its principal object is to procure for the nation engaged in it everything that can serve the vanity, whims and fantasies of the ruler. In a mixed regime, it is more often based on economy. Merchants, who keep an eye on all the nations of the earth, bring to one what they take from another.⁴⁶

Economic commerce is, in its origin, the commerce of the impoverished, the powerless, and the oppressed. People who either lack a fertile territory or have been deprived of their territory (Montesquieu mentions Jews and other displaced peoples) manage through work to create something of value to others, which can then be traded to meet the basic needs of self-preservation.⁴⁷ Whereas the logic of the commerce of luxury is *taking* something of value from others in order not to have to make it oneself, economic commerce is based on helping oneself through indus-

43. MONTESQUIEU, *supra* note 3, at bk. XX, ch. 4.

44. *Id.* at bk. VII, ch. 6 (discussion of China); *id.* at bk. XX, ch. 20 (discussion of Portugal).

45. *Id.* at bk. XXI, ch. 22.

46. *Id.* at bk. XX, ch. 4.

47. *Id.* at bk. XX, ch. 5.

try that *gives* something of value to others. Montesquieu says of Marseille:

The barrenness of the terrain led its citizens to economic commerce. They had no choice but to be hardworking, to provide what nature had denied; they had to be just in order to live among barbarian nations that were the key to their prosperity, and to be moderate so that their government was always calm. . . . One has seen everywhere that violence and conflict give birth to economic commerce, when human beings are constrained to be refugees, in marshes, on islands, in the far reaches of the ocean, and even its limits.⁴⁸

Economic commerce is natural in the sense that it is based on actual needs that human beings have as human beings, or closely rooted in those needs (contributing to self-preservation, basic comfort and security). The commerce of luxury, by contrast, reflects the capacity of certain human beings to acquire material needs that are detached from nature, based on fantasies and prejudices.

This allows us to understand better Montesquieu's remark that "[t]he natural effect of commerce is to lead to peace."⁴⁹ This remark applies to *economic* commerce: the reciprocity of natural human needs is served through peaceful mutual dependency. In this kind of commerce the buying and the selling nation both receive something of which they are naturally needful. But commerce driven by luxury seeks to take what will serve its fantastical needs from wherever that thing can be found, regardless of reciprocity. Where necessary, such taking may well be by force—hence, conquest and exploitation.

As well, the commerce of luxury has quite different internal effects than economic commerce. As Montesquieu suggests, the commerce of luxury may leave the general population of a state worse off; if the commerce of luxury is not based on exploitation of *other* peoples through conquest and colonialism, it may well be based on exploitation of one's own people. Montesquieu gives the example of Poland:

A few lords possess entire provinces; they press the workers so they can have a greater quantity of wheat that they can send abroad and obtain the things that their luxury demands. If Poland had no trade with any nation, these peoples would be happier. The powerful, who would having nothing but their wheat, would give it to the peasants in order to live; too large domains being in their charge, they would share them with their peasants; everyone would find leather and wool in their flocks, there would no longer be an immense cost in the making of clothing; the pow-

48. *Id.*

49. *Id.* at bk. XX, ch. 2.

erful, who always love luxury, and who could not find it other than in their own country, would encourage the poor to work.⁵⁰

It is the harshness of political rule and the lack of familiarity with the “commodities of life”—and not climate or culture—that, for Montesquieu, best explains poverty in the South:

There are two types of poor peoples: those that the harshness of the government has rendered such; and these are incapable of hardly any virtue, because their poverty is part of their servitude; the others are only poor for having disdained, or not having known the commodities of life; and these can do great things, for their poverty is part of their liberty.⁵¹

Poverty should not be associated with laziness or indolence as a hard-wired cultural characteristic. Under exploitative political rule, people are poor and idle not because such necessities as they require are available without toil, but because their labor benefits not themselves but the luxurious tastes of their masters. In a “free” subsistence society, people are poor and appear idle, not knowing or caring much about the “commodities of life”; they focus their energies elsewhere.

Montesquieu’s distinction between the commerce of luxury and economic commerce plays a major role in his analysis of the political morality of commerce and its legal regulation. In free societies, which are characterized by economic commerce rather than the commerce of luxury, there is more, not less regulation of commerce than in societies characterized by political servitude. “Freedom of commerce is not a capacity given to merchants to do what they want; that would more likely be servitude. That which disadvantages the trader does not, for that, disadvantage trade.”⁵² Commerce can serve the interests of building national wealth and creating employment, but it may well not do so without government regulation. An example that Montesquieu gives is that England prohibits the export of its wool.⁵³ By such a prohibition, we can surmise, England assures itself of a trade in cloth and clothing made from English wool, which benefits the public interest more than a trade in wool itself, because in addition to those employed in the production of wool, England now has many who are employed in the production of cloth and clothing for global markets.

The commerce of luxury, as opposed to economic commerce, tends toward monopolies of trade in certain products or with certain countries.

50. *Id.* at bk. XX, ch. 23.

51. *Id.* at bk. XX, ch. 3.

52. *Id.* at bk. XX, ch. 12.

53. *Id.*

Montesquieu is very critical of these kinds of restrictions, as well as the granting of exclusive privileges to particular merchants or trading companies on certain routes of commerce: “The true maxim is to not exclude any nation from one’s commerce without great reasons.”⁵⁴ In fact, contestation of control or monopoly rights over commerce with a particular country or region turns commerce into a zero-sum game, leading to jealousy, concern with relative gains, and possible military conflict.⁵⁵ The attempt of Spain and Portugal to stabilize this competition by dividing the world into two commercial empires failed: “[T]he other nations of Europe did not leave them in peace to enjoy their division: the Dutch chased the Portuguese out of almost all of East Asia and various nations made settlements in the Americas.”⁵⁶ Montesquieu describes a world where economic commerce is always susceptible to being frustrated both by the ambition of political elites to co-opt it for their own needs—to make it or remake it into the commerce of luxury⁵⁷—and by the susceptibility of governments to give traders special privileges and monopolies that limit the ability of commerce to spread wealth and employment widely, both within states and globally.

IV. WAR, CONQUEST AND ECONOMIC COMMERCE

Although war and conquest often result in the disruption of economic commerce⁵⁸ and the expansion of luxury commerce through colonialism, according to Montesquieu, war has also contributed positively to the development of economic commerce. First of all, as we have already discussed, war has resulted in peoples being displaced and put in a situation of necessity that spurred their commercial spirit. Secondly, as Montesquieu emphasizes in his discussion of Alexander the Great—a central figure in both the chapters of the *Spirit of the Laws* on war and conquest, and those on commerce—conquest can lead to the discovery of routes of navigation that open up new possibilities for economic commerce.⁵⁹ Conquest can increase the knowledge of the world that is essential to economic commerce, but often inhibited by religion and prejudice. And, finally, as Montesquieu had indicated in his discussion of Alexander the Great in the chapters of the *Spirit of the Laws* on war and conquest, conquest can lead to intermixing of peoples and customs and the actual *re-*

54. *Id.* at bk. XX, ch. 9.

55. *Id.* at bk. XXI, ch. 21.

56. *Id.*

57. *Id.* at bk. XX, ch. 8.

58. *Id.* at bk. XXI, ch. 5.

59. *Id.* at bk. XXI, ch. 8.

moval of prejudices that limit or inhibit communication between peoples, including commerce.

The fact that war and conquest have actually spurred, or contributed to the development of, economic commerce—even if they have also destroyed it in certain places and for certain periods of time—does not really provide much support for the hope Montesquieu appears to hold out, that commerce will lead to a stable peace. The pacific aims and manners of people who engage in commerce may have the effect of making states dominated by such people less bellicose, but if other states regard commerce as a means of taking wealth to satisfy the needs of their political and social elites, or as a zero sum game for the world's resources, why should economic commerce with its pacific aims and manners triumph? As Pierre Manent suggests, “[a]fter all, the benefits of commerce exemplified by [commercial peoples] only have a place in the interstices of general violence sustained by traditional war-like politics, politics *as usual*, and appear then to depend for their very existence on this violence.”⁶⁰

To appreciate Montesquieu's answer to this objection, one should begin with his observation that trading peoples have responded to violence by ingeniously protecting themselves against rapacious and bellicose powers. Montesquieu's example is that of “letters of exchange,” whose invention Montesquieu attributes to the Jews.⁶¹ Through the storing of wealth in intangible form, commerce “can elude violence.”⁶² The ability of any individual state to suppress this transnational activity becomes limited, and thus “[w]e have begun to cure ourselves of Machiavellianism, and we continue to cure ourselves day by day.”⁶³ Absolute sovereignty shows itself as a myth, and the attempt by the sovereign to use instruments of coercion to control that which exceeds the limits of his territory shows itself as mere imprudence. Moreover, whereas in the past commerce may have been dependent on the bellicose state and its conquests to chart previously unknown territory and open up routes of trade and navigation, the means of doing so are now in the hands of the traders themselves, thanks to the compass: “Today one discovers lands by sea voyages; in early times, one discovered seas by the conquest of lands.”⁶⁴

But “letters of exchange” surely depend upon trust, probity and perhaps legality (at least a *lex mercatoria*) for their effectiveness. They suggest the possibility of a legal order beyond a state or closed political

60. PIERRE MANENT, *LA CITÉ DE L'HOMME* [THE CITY OF MAN] 62 (Fayard 1994).

61. MONTESQUIEU, *supra* note 3, at bk. XXI, ch. 20.

62. *Id.*

63. *Id.*

64. *Id.* at bk. XXI, ch. 9.

community, just as Alexander the Great's model of "empire," mixing different peoples and their customs, suggests the possibility of a social order beyond the state or closed political community.

By making sovereignty less effective, Montesquieu appears to propose, a transnational commercial order will also make it less attractive, at least in the long run. And, just as the sovereign has been rendered less capable of depriving the transnational commercial class of its property and profits, the sovereign cannot easily destroy their knowledge of different lands and their customs. Knowledge of this kind allows a certain liberation from national or religious prejudice (which ultimately occurs, according to Montesquieu, due to ignorance of ourselves, i.e., our common humanity, and can only be cured by knowing others). Commerce depends on knowing *and* trusting the other. The grounds for keeping peoples apart become questionable if such trust is possible. The practice of commerce through trust and reciprocity implies a common language of human needs and, minimally at least, of cooperation to meet those needs.

This is a different beginning point for understanding the problem of social coordination than that adopted by the older political philosophers, who sought to establish what is the legitimate or the best political order, or closed political community. It is a beginning point closer to Montesquieu's own in the *Spirit of the Laws*, which is a state of nature where human beings are essentially oriented toward the satisfaction of basic needs and where their sense of timidity or vulnerability precludes them from imagining the idea of dominating others, even in order to satisfy those basic needs. In the state of nature, vulnerability has the consequence of keeping human beings apart, not just of keeping them from fighting. It thus precludes the arts of peace as well as of war. Commerce represents the idea of human society based not upon rule or domination but mutual neediness. Any closed society (*chaque societe particuliere*) has the effect of making human beings forget their timidity or vulnerability, giving them the feeling of "force"⁶⁵; they thus become war-like towards other closed societies and try to dominate one another on the inside. Commerce, by contrast (that is to say, commerce that is not itself the product of the ambition and avarice of closed societies and their leaders), means the dependency on others for meeting one's natural human needs—the needs based in comfortable and secure self-preservation—or, in short, the ground of social interaction. It does not lead to a sense that one has the power to take from the other what one wants, but rather that one must win it freely. This is illustrated by Montesquieu in identifying the commercial spirit with the spirit of peoples who have not had a terri-

65. *Id.* at bk. I, ch. 3.

torial state, or whose territorial state has been taken away from them.⁶⁶ These peoples have been cured of—or are free of—the illusion of “force” that comes from being in a closed, “sovereign” political community on a defined territory.

V. CONCLUSION

Commerce does not guarantee or secure peace in a world of sovereign states; rather, commerce represents for Montesquieu an alternative to a world of sovereign states, of closed political communities—a model of peaceful social cooperation that requires laws and conventions, certainly, but of a transnational, transpolitical kind. We now understand the meaning of Montesquieu’s notion that the model for law is not *nomos* (the custom or way of a particular society or community) but something more universal, a concept of order or structure that is prior to and more fundamental than *nomos*.⁶⁷ However, while implicit in the idea of law, the transnational, transpolitical order must be built out of the diverse *nomoi* of existing political communities. Commerce, by illustrating how stateless merchants have maintained an order among themselves to sustain exchange across the most diverse societies, helps point the way.

The first stage is indicated by the idea of a republican federation suggested in Book IX of the *Spirit of the Laws*. Montesquieu’s deepest practical intent is the federalization of closed political societies through legal integration, with the laws chosen being those most favorable to freedom; this is what informs his obsessive concern about the differences of positive laws and the sources of those differences. Perhaps we should not project onto his sober spirit the actual project of world government or a universal liberal society. But, without some such conception, his contentions about the relationship of commerce, war and peace collapse into a set of contradictions, paradoxes and tautologies.

66. *Id.* at bk. XX, ch. 5.

67. *Id.* at bk. I, ch. 1.