

## ARTICLE

### INHERITANCE AND INCEST: TOWARD A LÉVI-STRAUSSIAN READING OF MONTESQUIEU'S *DE L'ESPRIT DES LOIS*<sup>1</sup>

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#### ABSTRACT

The premise of this article is that Montesquieu, while seen as an Enlightenment thinker who contributed centrally to the development of the social sciences before the period of discipline formation in the nineteenth century, is generally appreciated in only the vaguest of terms. To the degree that he has been seen as a social theorist rather than as a belletrist or a political writer, scholars have had to amputate major sections of his masterwork, *De l'esprit des lois* (1748). In so doing, they have tended to give false or at least only partial readings of a work whose author insisted must be read as a whole. This article proceeds in an unorthodox fashion—at least for a historian—through a reading of *De l'esprit des lois* against Claude Lévi-Strauss's *Les structures élémentaires de la parenté* (1949). Through this parallel reading, I establish that Montesquieu's treatment of inheritance bears a remarkable homology with Lévi-Strauss's treatment of incest in *Les structures élémentaires*. These authors saw their respective objects—the incest taboo, in one case, and inheritance law, in the other—as fundamental to regulating sociability itself. This technique offers a more unified reading of *De l'esprit des lois* and, in so doing, reassesses Montesquieu's contribution to modern social theory. From a methodological point of view, I am hoping to interest my readers in an alternative way of reading historical texts: juxtaposing texts or corpora that do not have the clear genetic links between them that are generally highly valued by historians. This is an example of what Robert B. Pippin has called “interanimation” and what I have elsewhere likened to the painterly technique of simultaneous contrast.

**Keywords:** Enlightenment, social science, anthropology, Montesquieu, inheritance practices, sociology, intellectual history

1. I received useful criticism on early drafts of this article at “Montesquieu's Shadow,” a conference held at Yale Law School, and in a meeting of the Forum on Law and Legalities at the University of Chicago; I would like to thank these events' organizers and participants. Four colleagues at the University of Chicago were particularly helpful during the gestation of this article: Oliver Cussen, Jan Goldstein, Joel Isaac, and Juan Wilson. I'd also like to thank the editors of *History and Theory*. Unless otherwise indicated, translations are my own.

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*La famille est une sorte de propriété.*<sup>2</sup>

For all the importance that Montesquieu accords inheritance practices in *De l'esprit des lois* (1748; *The Spirit of the Laws*), the phenomenon has received very little scholarly discussion. Thomas Pangle understood the long analysis of Roman inheritance law in book 27 as a methodological statement on the need for erudition; other commentators, to the degree that they have discussed inheritance at all, have generally assimilated it to the problem of the origin of feudal succession.<sup>3</sup> This is, at best, only half of the story. Montesquieu was far more than an advocate of feudal monarchy who clothed his views in dense layers of legal erudition. He was first and foremost a normative political thinker who, in developing his positions, laid the basis for strands of Enlightenment social theory that persist to this day. We better understand him as a foundational theorist of sociability by analyzing his treatment of inheritance in the context of a discipline that—at least once upon a time—was similarly exercised by questions of lineage and the transmission of property: anthropology.<sup>4</sup>

I will make Montesquieu's investment in sociability clearer through a *mise en parallèle* with Claude Lévi-Strauss's treatment of incest in *Les structures élémentaires de la parenté* (1949; *The Elementary Structures of Kinship*). This approach resembles a reading that I gave elsewhere, juxtaposing Montesquieu's analysis of global commerce with that of modern dependency theory to better sensitize readers to the problem of uneven development as it was broached in early modern political economy.<sup>5</sup> In that essay, I explored twentieth-century dependency theory before turning to Montesquieu's oeuvre in order to explicitly direct readers' attention to what usually remains implicit and unavowed in intellectual historians' chronologically arranged, genealogical treatments: our reconstructions of the past often take on the color of present-day theoretical (and sometimes political) commitments. I do something similar here, presenting aspects of Lévi-Strauss's *Structures élémentaires* before turning to Montesquieu's

2. Montesquieu, *De l'esprit des lois*, in *Œuvres complètes*, ed. Roger Caillois, vol. 2 (Paris: Galilimard, 1951), 684 [book 23, chapter 4, paragraph 2]. Following the usage of Bertrand Binoche and other Montesquieu scholars, the book, chapter, and paragraph designation will henceforth be rendered as book.chapter §paragraph; this information will appear, in brackets, following the page number(s) in the cited edition. Thus, the citation for this quote is Montesquieu, *De l'esprit des lois*, 684 [23.4 §2].

3. The only discussion of inheritance as an independent subject in Montesquieu that I have been able to find downplays and, in my view, ultimately misunderstands his engagement. See Aldo Nicolaj, *Il Diritto privato in Montesquieu* (Bologna: Tipografia Paolo Cuppini, 1941), 101; Thomas L. Pangle, *Montesquieu's Philosophy of Liberalism: A Commentary on The Spirit of the Laws* (Chicago: University of Chicago Press, 1973), 77; Iris Cox, *Montesquieu and the History of French Laws* (Oxford: Voltaire Foundation, 1983), 137–47; and Michael Sonenscher, "Editor's Introduction," in *Sieyès: Political Writings*, ed. Michael Sonenscher (Indianapolis: Hackett, 2003), xlvi–lii (on the question of Roman succession and representation).

4. Contemporary anthropological theory tends to refer to sociability as "sociality." I retain the older usage as there is no consistent difference in meaning between the terms.

5. Paul Cheney, "István Hont, the Cosmopolitan Theory of Commercial Globalization, and Twenty-First-Century Capitalism," *Modern Intellectual History* 19, no. 3 (2022), 883–911.

treatment of inheritance in *De l'esprit des lois*. Other examples of the controlled use of anachronism in intellectual history are Geoff Mann's plausible, highly productive reading of Hegel as a kind of Keynesian, or Robert B. Pippin's understanding of the history of philosophy as a deliberate practice of "interanimation."<sup>6</sup> Even when one attempts to give charitable and contextually accurate readings, historical texts must necessarily be brought back to life by our own particular—and thus particularly motivated—appropriations. In the words of Ulrich von Wilamowitz-Moellendorff, the spirits of these old texts only live again if they drink "the blood of our hearts."<sup>7</sup> Here we're offering Montesquieu a draft of modern structuralist anthropology, laced with a bit of Marcel Mauss's theory of gift exchange. My purpose is not to assimilate the past to the present—far from it. This way of reading can uncover otherwise obscured contextual questions related to historians' own practice; if the interpretation I offer is convincing, it should also raise questions, rooted in Montesquieu's eighteenth-century context, about why such a reading has remained inaccessible to us.

In what follows, I depict Montesquieu's treatment of inheritance regimes in *De l'esprit des lois* as a kind of ethnohistorical inquiry into the logic of social reproduction. This *marxisant* usage calls attention to a preoccupation that he holds in common with some twentieth-century anthropologists. In the opening pages of *De l'esprit des lois*, Montesquieu carefully lays out the purpose and theoretical basis of his inquiry. Here, he observes that men give themselves laws because they live "in a society that must be maintained"; several lines down, he speaks of society "subsisting" only thanks to the governments that impose laws.<sup>8</sup> The otherwise hidden logic that assures this maintenance, but discernible in the comparative and historical study of positive law, is the great subject of *De l'esprit des lois*. Such an approach reveals Montesquieu as an anthropologist in a profounder sense than the usual references, which are generally fleeting, to his relativistic cultural comparativism; his climatic theory; his contribution to stadial history (that is, the succession of modes of production); or his holistic methodological approach.<sup>9</sup> In the latter spirit, and with a similar lack of elaboration, French philosopher Vincent Descombes cited Montesquieu as an

6. Geoff Mann, *In the Long Run We Are All Dead: Keynesianism, Political Economy, and Revolution* (London: Verso, 2017), 43–80; Robert B. Pippin, *Interanimations: Receiving Modern German Philosophy* (Chicago: University of Chicago Press, 2015), 2.

7. Ulrich von Wilamowitz-Moellendorff, "On Greek Historical Writing," in *Greek Historical Writing and Apollo: Two Lectures Delivered before the University of Oxford, June 3 and 4, 1908*, transl. Gilbert Murray (Oxford: Clarendon Press, 1908), 25, quoted in Pippin, *Interanimations*, 2.

8. Montesquieu, *De l'esprit des lois*, 236 [1.3 §3] ("maintenir"), 237 [1.3 §7] ("subsister").

9. Céline Spector has mainly understood Montesquieu's anthropology as an inquiry into sociability that lays the basis for his political philosophy; see her *Montesquieu, Les "Lettres Persanes": De l'anthropologie à la politique* (Paris: Presses Universitaires de France, 1997). Beyond the title, the word "anthropology" is used only twice in this book. Thomas Hylland Eriksen and Finn Sivert Nielsen, "Proto-Anthropology," in *A History of Anthropology*, 2nd ed. (London: Pluto Press, 2013), 13, refers, as is typical of such treatments, to Montesquieu's cultural relativism and criticizes him for a kind of Orientalism à la Edward Said. See, in a similar vein, the essays in Larry Wolff and Marco Cipolloni, eds., *The Anthropology of the Enlightenment* (Stanford: Stanford University Press, 2007). Montesquieu is also credited for his contribution to stadial theory, which later transforms into the developmental accounts of cultural anthropology. See Robert Wokler, "Anthropology and Conjectural History in the Enlightenment," in *Inventing Human Science: Eighteenth-Century Domains*, ed.

inspiration for his attempt to recover methodological holism for the discipline of anthropology.<sup>10</sup>

In comparing the logic of Lévi-Strauss's treatment of the incest taboo to the logic underlying inheritance practices in *De l'esprit des lois*, I have something more ambitious in mind. Here we see two mechanisms for compelling and regulating sociability *itself*. Society and sociability were, of course, categories inherited from the Enlightenment, and the problem of sociability permeates *De l'esprit des lois*.<sup>11</sup> Lévi-Strauss would later assert his methodological claims in the name of something called "French sociology."<sup>12</sup> Returning to the regulation of sociability in the anthropological tradition, the exchange of women in Lévi-Strauss or succession in Montesquieu is considered only epiphenomenal. Sociability—not the circulation of women, cowrie shells, or plots of land per se—was the central object of study that cultural anthropologists assigned themselves. For Lévi-Strauss, the incest taboo was the paradigmatic expression of society asserting itself over nature. His structural anthropology proposed a logic that would transcend cultural and historical variations. In inheritance, Montesquieu glimpsed the struggle, expressed in law, between the claims of society and the natural familial affections that, to varying degrees, disrupted social cohesion. This struggle evinced a certain logic as well, which he exposed through his ethnohistorical inquiries into the Romans, the Germanic tribes and, later, the Frankish nobility. The comparison with Lévi-Strauss makes this logic much clearer because the preoccupation of this type of anthropology with lineage and property had, for its practitioners, immense methodological stakes for the definition of what Keith Michael Baker would later call "the social field" itself.<sup>13</sup> Cultural anthropologists such as Lévi-Strauss and Pierre Clastres ritually invoked Rousseau, but Montesquieu—though he did not emit the faintest bat's squeak of the countercultural—was perhaps more of a kindred spirit to twentieth-century cultural anthropologists than they themselves recognized. Had they gravitated, as the curious ethnographer really should, to what is

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Christopher Fox, Roy Porter, and Robert Wokler (Berkeley: University of California Press, 1995), 31–52. Wolfgang Pross has understood Montesquieu's contribution solely in terms of his climatic theory in "Naturalism, Anthropology, and Culture," in *The Cambridge History of Eighteenth-Century Political Thought*, ed. Mark Goldie and Robert Wokler (Cambridge: Cambridge University Press, 2006), 239–45. Louis Dumont has paid Montesquieu the backhanded compliment of elaborating "a kind of general sociology" (*From Mandeville to Marx: The Genesis and Triumph of Economic Ideology* [Chicago: University of Chicago Press, 1977], 62).

10. Vincent Descombes, *The Institutions of Meaning: A Defense of Anthropological Holism*, transl. Stephen Adam Schwartz (Cambridge, MA: Harvard University Press, 2014), xi–xii, 290–95.

11. For foundational discussions, see Keith Michael Baker, "Enlightenment and the Institution of Society: Notes for a Conceptual History," in *Civil Society: History and Possibilities*, ed. Sudipta Kaviraj and Sunil Khilnani (Cambridge: Cambridge University Press, 2001), 84–104, and E. G. Hundert, *The Enlightenment's "Fable": Bernard Mandeville and the Discovery of Society* (Cambridge: Cambridge University Press, 1994). For a compelling argument about the special importance of the category of society in Old Regime France, see Daniel Gordon, *Citizens without Sovereignty: Equality and Sociability in French Thought, 1670–1789* (Princeton: Princeton University Press, 1994), introduction and ch. 1.

12. Claude Lévi-Strauss, "French Sociology," in *Twentieth-Century Sociology*, ed. Georges Gurwitsch and Wilbert E. Moore (New York: Philosophical Library, 1945), 503–37.

13. Keith Michael Baker, *Condorcet: From Natural Philosophy to Social Mathematics* (Chicago: University of Chicago Press, 1975), vi–xii.

most obscure and deeply foreign, they might have sensed the pervasiveness—and the force—of sociability beneath the obscuring layers of erudition in *De l'esprit des lois*.

#### SOCIABILITY AND EXCHANGE: MAUSS OR LÉVI-STRAUSS?

In offering a detailed account of sociability, Montesquieu intervened in the three-century-long debate among early modern political philosophers over the origin and limits of sovereignty.<sup>14</sup> Since classical social contract theory correlated “a low level of sociability [with] a high level of state sovereignty,” Montesquieu’s rejection of man’s innate unsociability also, simultaneously, laid a predicate for a theory of limited government.<sup>15</sup> He also staked out positions about the constitutive role of exchange for society that recall Marcel Mauss’s *Essai sur le don* (1925; *The Gift*).<sup>16</sup> In the “Fable of the Troglodytes,” recounted in letters 11 to 14 of the *Lettres persanes* (1721; *Persian Letters*), the first proof of dysfunctional unsociability is not that the Troglodytes are violent but that they refuse to trade with one another; a second, related proof is that they steal each other’s wives.<sup>17</sup> Since the hyper-individualistic members of this group see no interest in preserving order through collective justice, sexual pairing is determined not by attraction or the need for family alliances but by brute nature, expressed as the right of the strongest.<sup>18</sup> While Montesquieu believed that sociability was pervasive and natural, he also thought that it varied among different types of polities; in this connection, he made a case for the superiority of France’s aristocratic social structure, which imparts a “sociable humor, an openness of heart; a joy in life, a taste, an ease in communicating its thoughts.”<sup>19</sup> These elements contribute to a lively luxury economy, based partly on the tonic effects that the constant presence of women, and the competition between men for their attention, have on sociability, which is “the source of [France’s] wealth.”<sup>20</sup> From this vantage point, one is

14. Eva Piirimäe and Alexander Schmidt, “Between Morality and Anthropology—Sociability in Enlightenment Thought,” *History of European Ideas* 41, no. 5 (2015), 571–88. Left out of account in this discussion of sociability in Montesquieu’s oeuvre is his discussion of religion (in book 25 of *De l'esprit des lois*), which he assessed almost exclusively in terms of its socializing effects.

15. Michael Sonenscher, “Sociability, Perfectibility and the Intellectual Legacy of Jean-Jacques Rousseau,” *History of European Ideas* 41, no. 5 (2015), 684.

16. Marcel Mauss, *Essai sur le don: Forme et raison de l'échange dans les sociétés archaïques*, ed. Claude Lévi-Strauss, 12th ed. (Paris: Presses Universitaires de France, 2010). See also Elena Russo, “Virtuous Economies: Modernity and Noble Expenditure from Montesquieu to Caillois,” in *Postmodernism and the Enlightenment: New Perspectives in Eighteenth-Century French Intellectual History*, ed. Daniel Gordon (London: Routledge, 2001), 67–92.

17. Montesquieu, *Lettres persanes*, in *Œuvres complètes*, ed. Roger Caillois, vol. 1 (Paris: Gallimard, 1951), 145–53 [letters 11–14].

18. *Ibid.*, 145–48 [letter 11].

19. Montesquieu, *The Spirit of the Laws*, ed. Anne M. Cohler, Basia Carolyn Miller, and Harold Samuel Stone (Cambridge: Cambridge University Press, 1989), 310 [19.5 §1]. All translations from *De l'esprit des lois* that are not my own are taken from this English edition, which will be cited in these cases.

20. Montesquieu, *De l'esprit des lois*, 558–59 [19.5 §1–2]. For a contrasting portrait, see *Lettres persanes*, 180 [letter 34]: “Cette gravité des Asiatiques vient du peu de commerce qu’il y a entre eux. . . . [C]haque famille est, pour ainsi dire, isolée.” This should be related to the discussion, above, of the Troglodytes’ refusal of commerce in general and of their hoarding of women in particular.

better poised to understand Montesquieu's otherwise mysterious obsession with the enclosure of women in Islamic societies, which he generally associated with polygamy—that is, enclosure in a seraglio. Enclosure keeps women from society, and it is precisely this antisocial, and ultimately unproductive, hoarding of people and of things that contributes to the loneliness and poverty of despotism.<sup>21</sup> Montesquieu admitted that France “could constrain its women” in the name of virtue, but he warned his readers that France would purchase female chastity at the cost of some happiness and prosperity.<sup>22</sup>

Commerce corrupts because it mixes; independently of its economic function, this sociable mixture is a source of happiness. In *Le don*, Mauss contrasted the “perpetual effervescence” of a society stimulated by exchange, including gift-giving, to the isolation, “stagnation,” and “violence” among those who, like Montesquieu's Troglodytes, refuse commerce.<sup>23</sup> This is a warning that Mauss, a socialist writing in the wake of World War I, delivered about the reduction of exchange to its directly utilitarian basis in the anonymous markets that predominate in modern societies.<sup>24</sup> In much the same way, Montesquieu, in introducing the phenomenon of commerce, warned that it atomized individuals, rendering them petty, ungenerous, and inhumane.<sup>25</sup> In refuting the Hobbesian postulate of asociality at the start of *De l'esprit des lois*, Montesquieu went further than natural law theorists, such as Samuel Pufendorf, who have derived natural sociability from the human condition of indigence and, hence, reciprocal need; to this utilitarian argument, Montesquieu added that the simple proximity of fellow creatures (“animal de son espèce”) arouses pleasure, which is increased by the opposite sex.<sup>26</sup> The principal reference here would seem to be sexual, but Montesquieu was quick to specify that the mutual charm is inspired by difference; the heightened pleasure is that of sociability itself, which, like exchange, mediates similarity and difference. Without an equalizing medium such as shared language or money, exchange is impossible; without the promise of difference—novel things, information, or perspectives—conversation and trade have no purpose.

Is it possible that the appropriate pairing, to better appreciate Montesquieu as a kind of ethnographer in search of the logic of social reproduction, is not with Lévi-Strauss but with Mauss? It was Mauss, after all, who insisted on exchange as the basis of sociability and as *the* alternative to the ever-present possibility of

21. Montesquieu, *De l'esprit des lois*, 515–16 [16.10 §4].

22. Ibid. On these themes, see Diana J. Schaub, *Erotic Liberalism: Women and Revolution in Montesquieu's Persian Letters* (Lanham: Rowman & Littlefield, 1995), esp. 22–35, 53, 56–65.

23. Mauss, *Essai sur le don*, 267 (on effervescence), 278 (on stagnation). See also Montesquieu, *Lettres persanes*, 145–48 [letter 11].

24. Mauss, *Essai sur le don*, 173: “Au fond ce sont des mélanges. On mêle les âmes dans les choses; on mêle les choses dans les âmes. On mêle les vies et voilà comment les personnes et les mêlées sortent chacune de sa sphère et se mêlent: ce qui est précisément le contrat et l'échange.”

25. Montesquieu, *De l'esprit des lois*, 586 [20.2 §2].

26. Samuel von Pufendorf, *Über die Pflicht des Menschen und des Bürgers nach dem Gesetz der Natur*, ed. Klaus Luig (Frankfurt: Insel Verlag, 1994), 72–78; Montesquieu, *De l'esprit des lois*, 236 [1.2 §7]. Montesquieu transcended entirely contractualist, utilitarian arguments about the cause of political society: “un fils est né auprès de son père, et il s'y tient: voilà la Société est la cause de la Société” (*Lettres persanes*, 269 [letter 94]). Human society is not an effect in a sequence of causes; it is more like gravity: a field of interrelated forces.

warfare: when two groups of men meet, they can reject the social bond by going their separate ways or fighting, or they can extend the social bond by trading (*traiter*) with one another.<sup>27</sup> Moreover, Mauss shared Montesquieu's deep fascination with Germanic and Roman legal systems, which he presented as connective tissue between the practices of archaic societies of the Pacific, on the one hand, and of contemporary Europe, on the other.<sup>28</sup> Mauss's work on gift exchange brings features of Montesquieu's deep investment in sociability into high relief; it certainly provides more interpretive keys than superficial references to Montesquieu as a proto-anthropologist interested in alterity or practicing methodological holism. At the same time, gift exchange only carries us so far into the determining role of sociability in Montesquieu's thought. By contrast, engaging Lévi-Strauss's structural anthropology better illuminates how Montesquieu's comparative ethnography "established," in Roger Caillois's revealing expression, "the *syntax* of innumerable connections."<sup>29</sup> It is precisely the syntax—the detail of specific elements of Montesquieu's analysis, and of their relative influence both on each other and on connected phenomena—that is missing from so many references to Montesquieu as a foundational social theorist. Lévi-Strauss and Montesquieu immersed themselves deeply in the technicalities of lineage rules, what Caillois would call their syntax, to derive typologies useful for producing explanatory systems.

Montesquieu and Lévi-Strauss sought a method for determining how, among the variations in legal strictures bearing on marriage and the transmission of property, we can always find, at root, the expression of an underlying logic or law. This law tends to the preservation of society by holding the forces of solidarity and equality in equipoise with the centrifugal forces of undisciplined human nature. Montesquieu found this law most visibly at work in inheritance regimes; Lévi-Strauss, famously, found it in the incest prohibition. For Lévi-Strauss, this prohibition is the paradigmatic instance of a broader observation that society, as opposed to nature, is defined by the existence of a self-imposed rule.<sup>30</sup> The regulation of sexuality is "*the* intervention" because, among the universal, selfish human drives (hunger and, more broadly, self-preservation), sexual coupling alone *necessarily* implicates other humans; in its very form, it produces the tension between

27. *Traiter* can also simply mean "to negotiate." See Mauss, *Essai sur le don*, 277. For a discussion of gift exchange as an alternative to state-imposed civil peace, see Marshall Sahlins, "The Spirit of the Gift," in *Stone Age Economics* (Chicago: Aldine-Atherton, 1972), 169–74.

28. Mauss, *Essai sur le don*, 229–40 (on Roman law), 250–55 (on Germanic law). Jack Goody critically discussed the tendency among anthropologists to use comparative data (that is, space) as a substitute for time when seeking to tell developmental stories (*Production and Reproduction: A Comparative Study of the Domestic Domain* [Cambridge: Cambridge University Press, 1976], 3–5).

29. Roger Caillois, preface to *Œuvres complètes*, 1:vii (emphasis added). Caillois never entered into details about this judgment. This sidelong reference to structuralism comes despite Caillois's sustained polemic with Lévi-Strauss. See Roger Caillois, "Illusions à rebours," *La Nouvelle Revue française* 24 (1954), 1010–24, and Roger Caillois, "Illusions à rebours," *La Nouvelle Revue française* 25 (1955), 58–70. In addition to editing Montesquieu's *œuvres complètes*, Caillois was a member of the short-lived Collège de sociologie, a collective of heterodox thinkers who drew considerable inspiration from Marcel Mauss. See Russo, "Virtuous Economies."

30. Claude Lévi-Strauss, *Les structures élémentaires de la parenté*, 2nd ed. (Berlin: Mouton de Gruyter, 2002), 37.

the individual and society, but it also temporarily resolves it.<sup>31</sup> According to Lévi-Strauss, “considered as a prohibition, the prohibition of incest merely affirms, in a field vital to the group’s survival, the pre-eminence of the social over the natural, the collective over the individual, organization over the arbitrary.”<sup>32</sup>

The incest taboo preserves society by imposing a certain equality over the distribution of women through marriage. The equality need not be absolute, but it does ensure that women will circulate in society as a whole rather than in restricted, endogamous circles that preserve the advantages of subgroups, thereby assuring that all men have *some* access to women.<sup>33</sup> Although Lévi-Strauss began by depicting this imperative in largely economic terms—the conjugal pair assures complementarity of resources and the division of labor—he concluded by assimilating it to the process, described by Mauss, of prestation and counter-prestation.<sup>34</sup> This circular exchange, enforced by the rule of exogamy, reproduces society not only in its material dimension; it also reduces conflict and symbolically affirms the social whole. This whole is stimulated, but not violently so, by the erotic presence of women who circulate in society.<sup>35</sup>

The dialectical relationship between endogamy and exogamy in *Les structures élémentaires* will be compared, later on, to the relationship in *De l’esprit des lois* between the role of civil and political law in the regulation of inheritance. Indeed, it is the striking homology between these two dyads, endogamy/exogamy and civil/political, that led me in the first place to think about the question of inheritance in *De l’esprit des lois* in terms of Lévi-Strauss’s structural anthropology. For the latter, incest itself has no objective reality such as we might establish, for instance, through modern measures of genetic similarity. What might count as incest in one human group—for example, marriage between first cousins or the marriage of a widow to her brother-in-law—might be perfectly permissible, even desirable, in another: “[The] exogamous and endogamous categories have no objective existence as independent entities. Rather, they must be considered as viewpoints, or *different but solidary perspectives*, on a system of fundamental relationships in which each term is defined by its position within the system.”<sup>36</sup> A taboo settled on first cousins does not say “do not marry your first cousin” so much as it dictates an active search for alliance and solidarity by sending mothers, sisters, or daughters out for marriage beyond the extended family (consanguineous or not) whose frontier happens to lie at first cousins.<sup>37</sup> There are actually *two* endogamy/exogamy frontiers in play at any given time (Figure 1). A society as a whole (2) can be considered an endogamous group outside of which one should *not* marry and have children; racial and religious prescriptions are two examples. The second, interior

31. *Ibid.*, 14.

32. Claude Lévi-Strauss, *The Elementary Structures of Kinship*, rev. ed., transl. James Harle Bell and John Richard von Sturmer, ed. Rodney Needham (Boston: Beacon Press, 1969), 45. All English translations from *Les structures élémentaires* that are not my own come from this English edition. For another perspective on the circulation of women, see Lévi-Strauss, *Les structures élémentaires*, 552.

33. Lévi-Strauss, *Les structures élémentaires*, 49–51.

34. *Ibid.*, 72–73. See also *ibid.*, 51–52.

35. *Ibid.*, 569–70.

36. Lévi-Strauss, *The Elementary Structures of Kinship*, 49 (emphasis added).

37. Lévi-Strauss, *Les structures élémentaires*, 552.



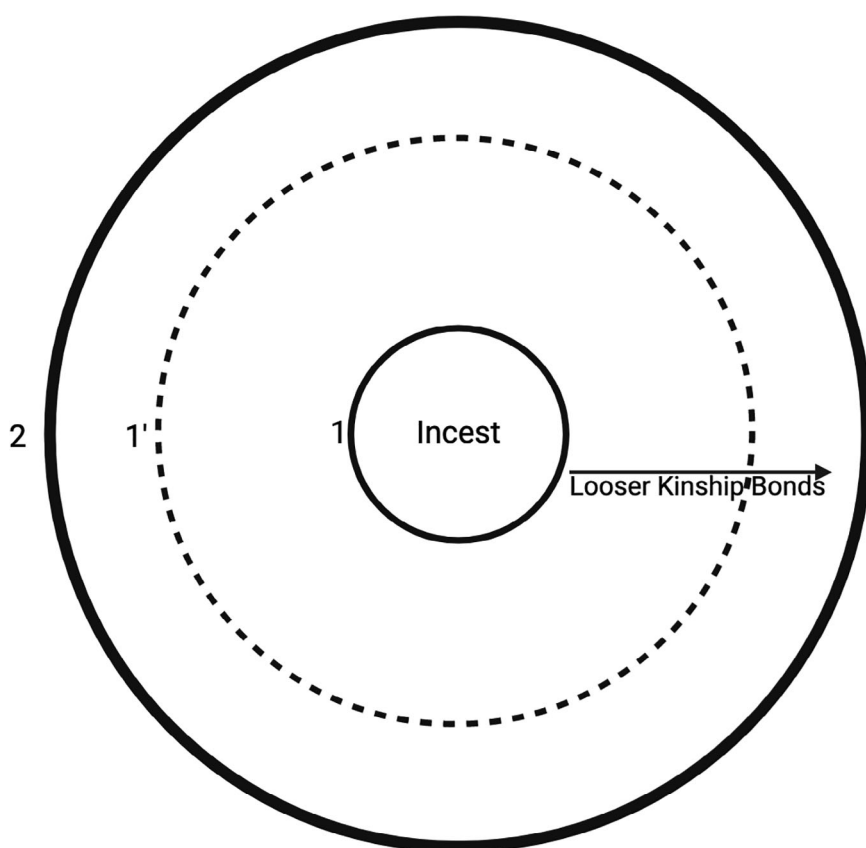


Figure 1. Endogamy and exogamy in the *Les structures élémentaires*. Image by author.

frontier (1) defines the space of tolerated endogamy within society as a whole (2); within this circle (1) lies incest.

At the point of marriage, spouses are brought from outside of circle (1) to the inside, and the fruits of that conjugal union create a family union that is a *product* of an alliance contracted with a member of the broader society; but this alliance immediately creates a high-pressure zone of in-group solidarity—the family, with its affective bonds and its property—that threatens society as a whole with fragmentation. The greater the proportion of (1) in relation to (2), the lower the level of tolerated endogamy: more, and more distant, relatives are considered taboo in this widened circle of incest; in this situation, increasingly distant relatives are required to move outside of their kinship group for marriage partners, preventing the hoarding of women, wealth, and power. This is depicted by the migration of the frontier of incest to the dashed line (1 → 1'). Certain societies, such as Peru, Hawai'i, and ancient Egypt, permit closely consanguineous marriages among elites—evincing a higher tolerance for inequality that is perpetuated through endogamy—but, in each case, the line separating incest from tolerated endogamy is bright and it is never erased: different societies simply establish the line in a different place. Returning to the paradigmatic case represented in the figure

above (that of general exchange, where one must marry outside of one's kin group but, beyond this prohibition, there is no rule dictating whom they must marry), Lévi-Strauss observed that the natural preference to hypergamy—essentially a rule of familial self-interest—will cause the entire system to seize up or to regress into clannish endogamy of one sort or another. In other words, general exchange can lead to its exact opposite when families start to hoard their women as they wait for a husband of higher rank than that of the bride. At this point, more complex marriage systems are introduced: first, bilateral systems—group A can only marry with group B—then classes within these two halves; these progressively more complicated divisions keep the wheel of prestation and counter-prestation turning. Classes may reinforce elites by dictating assortive mating—elites of group A and B intermarry, preserving their overall social dominance—but the social ideal, and indeed the reality, of reciprocity and a certain degree of equality of access to women is maintained.<sup>38</sup> The imposition of rules prevents the natural drift toward collective individualism, to borrow a phrase from Alexis de Tocqueville, among kinship groups from fully manifesting itself; underneath the diversity of kinship and marriage systems lies the reality of the rule as rule—of society asserting itself against nature. The same may be said of Montesquieu's treatment of inheritance regimes: civil and political laws are “two different perspectives” on the same phenomenon: the family's collective individualism, on the one hand, and the generality of political society, on the other, which demands the imposition and maintenance of certain kinds of equality.

#### CIVIL LAWS AND POLITICAL LAWS

Inheritance sits within a nested hierarchy of laws. The order of presentation in book 1 of *De l'esprit des lois* makes clear that government is logically posterior to “laws in general” and “natural law”; diverse types of government, or “constitutions,” maintain themselves through different positive laws, which Montesquieu divided into “political” and “civil” law: “Law in general is human reason insofar as it governs all the peoples of the earth; and the political and civil laws of each nation should be only the particular cases to which human reason is applied.”<sup>39</sup> Political law regulates relations between individuals and the sovereign within a given society, whereas civil law regulates contractual relations between individuals: “laws concerning the relation between those who govern and those who are governed . . . [constitute] the POLITICAL RIGHT. . . . [L]aws concerning the relation that all citizens have with one another . . . is the CIVIL RIGHT.”<sup>40</sup> Physical laws govern man's animal behavior, and religion and philosophy provide moral guidance; but society is governed by two related forms of law: “Made for living in society, he could forget his fellows; legislators have returned him to his duties by civil and political laws.”<sup>41</sup> Their common object explains why the political/civil

38. *Ibid.*, 10–13.

39. Montesquieu, *The Spirit of the Laws*, 8 [1.3 §11]. Left out of the account here is the *droit des gens*, or law of nations.

40. *Ibid.*, 7 [1.3 §3].

41. *Ibid.*, 5 [1.1 §14].

distinction is pervasive in *De l'esprit des lois*: when Montesquieu observed that "I have made no attempt to separate *political* from *civil* laws," this does not mean that he disregarded the distinction; it means that they must be treated together, as two perspectives on the same phenomenon, which is society itself.<sup>42</sup> This terminological choice itself marks his profound reorientation of the natural jurisprudential tradition; it resurfaces at key moments throughout the text; and, with its reappearance in the final paragraphs of *De l'esprit des lois*, it sounds a kind of tonic chord for the entire book.<sup>43</sup>

One of Montesquieu's most influential modern commentators, Louis Althusser, prioritized the nature/principle distinction in describing Montesquieu's political sociology and in isolating the forces that push societies from one kind of political regime to another. The evolving balance between political and civil law establishes the conditions of possibility for any particular form of government, while changes in this balance generally mark the transition to a new form; in this sense, it should be likened to the nature/principle distinction highlighted by Althusser. But as incisive and in certain respects sympathetic as Althusser's analysis was, he nevertheless ranked Montesquieu second in class because he was limited by a too exclusively political orientation. Karl Marx, Althusser believed, was able to achieve a "still profounder unity" through the science of political economy.<sup>44</sup> One hundred seventeen years after the publication of *The Wealth of Nations* (1776) and twenty-six years after the publication of volume 1 of *Capital*, Émile Durkheim delivered his own critique of political economy. In his eyes, the dominant social science of the nineteenth century mistakenly saw the division of labor as deriving from economic activity rather than understanding it as a more general expression of the way that society constitutes itself through structures of solidarity.<sup>45</sup>

In the very same way, for Montesquieu, the principal reference of the distinction between civil and political law is not politics *per se* but can be found in the broader social relations that law expresses and regulates. It is telling, in this respect, that it is in those places in *De l'esprit des lois* where Montesquieu treated the distinction between types of law (natural, civil, political, domestic, ecclesiastical, divine, et cetera) and their purposes that the word "society" appears in greatest abundance.<sup>46</sup> Attention to the political/civil distinction lays bare Montesquieu's preoccupation with property relations throughout *De l'esprit des lois*, since Montesquieu discussed the shifting frontier between civil and political law most

42. *Ibid.*, 9 [1.3 §16]. See also *ibid.*, 7 [1.3 §3], 5 [1.1 §14].

43. See Montesquieu, *De l'esprit des lois*, 994–95 [31.34]. For a useful preliminary discussion of this distinction, see Bertrand Binoche, *Introduction à De l'esprit des lois de Montesquieu* (Paris: Publications de la Sorbonne, 2015), 62–71.

44. Louis Althusser, *Montesquieu, la politique et l'histoire* (Paris: Presses Universitaires de France, 1959), 63. In leveling this judgment, Althusser ignored or tacitly rejected the sociological critique of economism, which made him insensitive to the profounder unity of Montesquieu's thought.

45. Émile Durkheim, *De la division du travail social* (Paris: Alcan, 1911). For criticisms of Smith, see *ibid.*, 1–2, 9.

46. 12 percent (13 of 108) of the occurrences of the term *société* in the whole of *De l'esprit des lois* fall in the four printed pages (.5 percent of the book) that comprise 1.3 ("Des lois positives") and 26.1 ("Des lois dans le rapport qu'elles doivent avoir avec l'ordre des choses sur lesquelles elles statuent: Idée de ce livre").

frequently when property relations were at issue. This is most notably the case in respect of inheritance practices: What kinds of property can be bequeathed, how much, to whom, and with what political consequences? As a general matter, when inheritance is heavily regulated by the state, meaning that it is the subject of political rather than civil law, this signals diminished collective tolerance for inequality and the forms of government that accompany it—that is, monarchy, aristocracy, or despotism. Montesquieu, like so many eighteenth-century thinkers, tacitly assumed what modern economists from Vilfredo Pareto to Thomas Piketty have argued: left to themselves, inequalities of property tend to increase so that, when testation is largely a civil matter—that is, the subject of free individual contract—this indicates a kind of passive choice for growing inequality.<sup>47</sup>

In Lévi-Straussian terms, one might say that property longs for incest. The law of exogamy is required to assure that it is broken up and circulates, enriching society at large and not simply individual families. Having stated the issue this way, one should nevertheless be cautious not to conflate too easily civil law—or civil society—with the unfettered marketplace; after all, civil law is intended to regulate activity in this sphere. Even if Montesquieu considered material equality to be an unalloyed good, which he emphatically did not, he saw other consequential implications in the choice between political versus civil control of property; circumstances could justify an affirmative choice for civil control of property and, hence, a drift to inequality, just in the same way that some societies permit, or even enforce, tightly endogamous marriage in order to preserve elites. One society's tragic *mésalliance* is another's Shakespearian comedy.

#### LAWS OF SUCCESSION

“Accipe, sume, cape, sunt verba placentia”—take, have, and keep, are pleasant words.<sup>48</sup> Possession makes people feel a certain way, and proper regulation of inheritance ensures the perpetuation of these passions from generation to generation. In this sense, inheritance, much like marriage rules, is a literalized economic and legal expression of the problem of social reproduction. The problem of inheritance arrives early in *De l'esprit des lois* in direct reference to the book's central explanatory mechanism—the nature/principle distinction—thus establishing succession as a leitmotif. Book 5 explores the role of laws in maintaining or undermining the principles necessary to democratic republics, aristocratic republics, monarchies, and despotisms. As Montesquieu explained, laws given to “society

47. Although there is a great deal of controversy as to the causes and ethical implications of this fact, there is a surprising consensus among economists that the wealth distribution “naturally” skews toward a log-normal (that is, inegalitarian) distribution without strong redistributive action to counter it. Vilfredo Pareto first formalized this relationship in the late nineteenth century. See Jess Benhabib and Alberto Bisin, “Skewed Wealth Distributions: Theory and Empirics,” *Journal of Economic Literature* 56, no. 4 (2018), 1261–91. Thomas Piketty's version of this thesis is expressed in a pithy equation:  $r > g$ . See *Capital in the Twenty-First Century*, transl. Arthur Goldhammer (Cambridge, MA: Belknap Press of Harvard University Press, 2014), 571–73.

48. François Rabelais, *Gargantua et Pantagruel*, ed. Henri Clouzot, vol. 2 (Paris: Larousse, 1913), 106 [book 2, ch. 42]. See also Thomas Hardy, *The Mayor of Casterbridge* (Harmondsworth: Penguin, 1978), 157 [ch. 14].

as a whole” need to establish an appropriate affective bond between individuals and the collectivity.<sup>49</sup> Recalling that the principle appropriate to a given form of government (that is, virtue/republic, fear/despotism, honor/monarchy) is the affective “spring” (*ressort*) that keeps individuals acting in a way that perpetuates a given form,<sup>50</sup> it is telling that, having established the need to legislate in order to maintain principles, Montesquieu almost immediately entered into a discussion of the laws that regulate inheritance and therefore relative degrees of equality.

In democratic republics, citizens enjoy similar pleasures by dint of their material equality. “Frugality,” or an equality of poverty, means that passions, unable to cathect themselves onto individual property, turn to general objects such as the common good. In stony, mountainous countries with poor soils, “liberty . . . is the only good worth defending.”<sup>51</sup> Virtuously poor republicans and monks lived in a similarly forced situation: the monks’ “rule deprives them of everything upon which ordinary passions rest; what remains, therefore, is the passion for the very rule that afflicts them.”<sup>52</sup> The passion for the rule is the passion for society itself, and not its benefits—the rule as rule, as Lévi-Strauss would have it. When Montesquieu likened republican virtue to the collective Stockholm syndrome that reigns in the monastery, can we doubt his skeptical reserve toward this form of government?

In democratic republics of the ancient world, virtue could be maintained only by laws of inheritance that enforce equality. In agricultural societies, inheritance laws derive in general from the desire to disperse, maintain, or engross land holdings. In these societies’ familial systems, people represented the land they owned or stood to inherit; in ancient republics seeking to maintain equality of landholding, endogamous marriages of the type that systematically agglomerated land by giving women access to multiple inheritances from closely related lines were discouraged or prevented.<sup>53</sup> In ancient Rome, this meant the insistence on agnatic succession in all cases of intestate death. (Agnatic succession runs through the male line only, whereas cognatic, sometimes called agnatic-cognatic, can run through either the male or the female. Full cognatic succession is exceedingly rare.)

The problem can also be approached from the angle of incest prohibitions. Here, Montesquieu implicitly affirmed in passing what Lévi-Strauss argued at length in *Les structures élémentaires*: it is not nature—that is, the possibility of birth defects—but the social consequences of lineage rules that dictates where the line between incest and permitted endogamy lies. In reality, inheritance and incest are expressions of the same problem, the concentration or dispersal of resources and power. In Athens, men were able to marry their consanguine sisters but were prohibited from marrying their uterine sisters. (Consanguine siblings share the same father but not the same mother, and uterine siblings share the same mother but not the same father.) This prohibition would prevent two inheritances,

49. Montesquieu, *De l'esprit des lois*, 273 [5.1 §1]. See also *ibid.*, 274 [5.2 §2].

50. *Ibid.*, 227 [“Avertissement de l’auteur”].

51. *Ibid.*, 532 [18.2 §1].

52. *Ibid.*, 274 [5.2 §2].

53. *Ibid.*, 276 [5.5 §1–2], 277 [5.5 §7–8], 279 [5.6 §1], 778 [27.1 §3].

one from the mother's side and the other from the father's side, from settling within the same conjugal unit. The Salic law, which, at its origins, prevented the women of Germania from inheriting the household, was designed not specifically to discriminate against women, Montesquieu explained, but to achieve a certain distribution of property: it was a "purely economic" law.<sup>54</sup> Legislation over landed wealth that fixes and prescribes inheritance by means of status, gender, and lineal relations means that land itself becomes a political person. Marx described the "personification of things and the reification of persons" under the capitalist mode of production.<sup>55</sup> We might analogously describe these inheritance practices as the territorialization of persons and the personification of territory; paradoxically, although it had its origin in the equal division of lands, the Salic law ultimately produced the political order of feudal Europe.<sup>56</sup>

Succession must also be regulated by inheritance laws in order to maintain the respective principles of aristocratic republics and monarchies. Aristocracies do not have the same kind of egalitarian virtue as democracies, but they must nevertheless maintain a sort of moderation that Montesquieu associated closely with limited economic inequalities. Laws to this effect should be "wise and imperceptible"—no confiscations, land redistribution (*lois agraires*), or debt cancellations.<sup>57</sup> Montesquieu was no Leveller, and indeed, he even argued against extreme measures in democratic republics.<sup>58</sup> In aristocracies, prohibiting primogeniture, among other means of preserving and consolidating noble wealth and status, prevents great inequalities within the noble class; equal inheritance laws leveled fortunes within that estate.<sup>59</sup> Without an independent executive in the form of a monarch, the concentration of wealth within the aristocracy, in addition to the legislative power they held in their assemblies, would mean that virtually every form of political and social power would fall into their hands. This could only lead to despotism. Inheritance had a role to play in Montesquieu's separation of powers.

More unequal inheritance patterns are fundamental to the "intermediate, subordinate, and dependent powers" that "constitute the nature of monarchical government."<sup>60</sup> In contrast to aristocracies, the nobility in a monarchy should enjoy those privileges that enhance and consolidate family power—primogeniture, substitutions, and *retrait lignager* (the right of a noble family to repurchase lands alienated from their domain)—in a manner similar to the discussion by Lévi-Strauss of more broadly tolerated endogamy among elites in places such as Egypt, Peru, and Hawai'i. In keeping with the territorialization of persons and the personification of territory, "noble lands, like noble persons, will have privileges. . . . [O]ne can scarcely separate the dignity of the noble from that of his fief."<sup>61</sup> Imprescriptible rights to property and the durable political power conferred by

54. *Ibid.*, 545 [18.22 §9].

55. Karl Marx, *Capital: A Critique of Political Economy*, ed. Ernest Mandel, transl. Ben Fowkes, vol. 1 (New York: Vintage, 1977), 209.

56. Montesquieu, *De l'esprit des lois*, 277 [5.5 §5].

57. *Ibid.*, 287 [5.8 §19].

58. *Ibid.*, 278 [5.5 §11].

59. *Ibid.*, 287–88 [5.8 §19–22].

60. Montesquieu, *The Spirit of the Laws*, 17 [2.4 §1].

61. *Ibid.*, 55 [5.9 §6].

venal office serve as a moderating force against monarchs' inherently despotic tendencies; the specifically civil laws that guarantee this kind of inheritance, which Montesquieu saw as particularly numerous and complex in well-regulated monarchies, act as a counterweight to the political power of the monarch.<sup>62</sup> If we have emphasized political laws as an antidote to the drift toward inequality in the social sphere—much as Lévi-Strauss emphasized marriage restrictions as forced exogamy—here we see how civil laws encode the complementary perspective of civil society as a counterweight to despotism. Where society, including the family, loses its rights, the political sphere ceases to exist in any meaningful sense.

Indeed, despotism furnishes a case study of the complementarity of these two perspectives, the civil and the political, to social reproduction as a whole. Montesquieu's silence on the question of inheritance in a despotism strengthens the impression that he did not think that despotism, because it was inherently corrupt, was in fact a form of government at all.<sup>63</sup> Each of the sequential discussions of the laws necessary to maintain the principles of a given form of government in book 5 begins with the problem of inheritance—except for that of despotism. In its place Montesquieu inserted a parable: “When the savages of Louisiana want fruit, they cut down the tree and gather the fruit. There you have despotic government.”<sup>64</sup> Despotism destroys its own posterity, so there is no question of inheritance. One aspect of the constant corruption of despotic government—and of its ultimate weakness in contrast to the others—is the collapsing of everything into the domestic sphere.<sup>65</sup> There is no longer any differentiation between political and civil laws: “everything comes down to reconciling political and civil government with domestic government”; and without this tension, these two perspectives, neither can be preserved.<sup>66</sup> Jean Bodin's absolute sovereign is distinguished from a despot partly in the fact that the sovereign respects civil contracts—even debts inherited from his predecessor—all the while retaining the right to change any specifically political law.<sup>67</sup> It is in the context of this discussion of inheritance and its importance to maintaining the principles of various types of governments that we begin to understand Montesquieu's counterintuitive choice not to separate civil from political laws: one only makes sense in functional contrast to the other, while the maintenance of a government of laws hinges on distinguishing between the two.<sup>68</sup>

#### THE EVOLUTION OF GOVERNMENTS

Just as inheritance regimes define specific forms of government because they help maintain their principles (virtue, honor, or fear), subterranean changes

62. Montesquieu, *De l'esprit des lois*, 307–8 [6.1 §4–8].

63. *Ibid.*, 357 [8.10 §1].

64. Montesquieu, *The Spirit of the Laws*, 59 [5.13 §1].

65. Montesquieu, *De l'esprit des lois*, 293 [5.14 §9].

66. Montesquieu, *The Spirit of the Laws*, 60 [5.14 §10].

67. Jean Bodin, *Les six livres de la république* [1576] (Paris: Fayard, 1986), 217–18 [book 1, ch. 8]: “Le Prince souverain est tenu aux contracts par luy faits, soit avec son subject, soit avecques l'estranger . . . ores qu'elles ne soyent que de droit Civil.” For similar sentiment, see Montesquieu, *De l'esprit des lois*, 768 [26.15 §6].

68. Montesquieu, *De l'esprit des lois*, 238 [1.3 §16]. This point is emphasized in Binoche, *Introduction à De l'esprit des lois de Montesquieu*, 62–67.

in practice mark the transition from one regime type to another. The cultural transformations—changes in *mœurs*—that undermine one form of government, paving the way for another, can be imperceptible, but Montesquieu identified a switching point that enables us to clearly periodize the shift: the passage from civil to political regulation of testation practice, or vice versa. It would seem that, at this point, we leave any plausible reference to structural anthropology far behind, given the inherent difficulty in finding dynamic forces within a society through structuralist-functionalist analysis; this is where Lévi-Strauss’s controversial claim to have studied “cold” (that is, static) societies becomes pertinent. But it is here where Montesquieu put his own synchronic, functionalist analysis in the service of a diachronic account. Absent other indices, we can tell when the principles of a regime are out of joint with its nature—for example, the citizens of a republic are no longer virtuous—and when the law is finally amended to accommodate changes in practice. There are also cases where legislators attempt to alter testamentary practice to halt the degeneration of the *mœurs* held to maintain their form of government. To repeat, civil versus political regulation of inheritance are complementary perspectives on the same fundamental problem: the preservation of a particular kind of society and the governmental form associated with it. Like Lévi-Strauss’s exogamy and endogamy, categories that he insisted have “no objective existence as independent entities,” the political and civil domains are co-constituting even in their sometimes-violent confrontation, in much the same way as the state-society couplet.<sup>69</sup> Extreme cases show their interdependence. If the order of succession in a monarchy were judged solely by the principles of civil law, the vagaries of demography could well put a monarch from a rival dynasty, or of the wrong confession, on the throne, threatening the preservation of the state. The survival of the state is equally a *conditio sine qua non* for the maintenance of the individual property it is charged with protecting: “It is ridiculous to claim to decide the rights of kingdoms . . . by the same maxims used to decide among individuals a right concerning a drain pipe.”<sup>70</sup> At the other extreme, Montesquieu established the principle that, even where the state is entitled to seize property, it should never carry the political law that dictates this practice too far; even as it acts politically, it should view individuals and their property from the perspective of the civil law, “with a mother’s eyes,” which looks lovingly upon “each individual as the whole city.”<sup>71</sup> Each of these perspectives virtually implies the other because the state and society do not have their existence apart from one another.

The most sustained treatment of changing testamentary practice, including shifts in the domain of law it occupies, comes in book 27, which recounts the

69. On this historical dialectic, see Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, transl. Thomas Burger (Cambridge, MA: MIT Press, 1989), 19–26.

70. Montesquieu, *The Spirit of the Laws*, 512 [26.16 §8], citing Marcus Tullius Cicero’s *De legibus*, book 1 [1.4.14]. See *The Republic and The Laws*, ed. Niall Rudd and J. G. F. Powell (Oxford: Oxford University Press, 2016), 101–2. This mordant judgment could be leveled at some of the more extravagant applications of the doctrine of regulatory takings. Montesquieu had in mind here the possibility, alluded to in Montesquieu, *De l’esprit des lois*, 26.23, that Philippe V of Spain could have, by the Salic law of succession, acceded to the throne if Louis XV did not produce an heir.

71. Montesquieu, *De l’esprit des lois*, 768 [26.15 §5].



assimilation of Roman testamentary practice, which had been subject in the early republic to the political law of the Twelve Tables, to civil jurisprudence.<sup>72</sup> This largely imperceptible change marked the point when Rome began its ineluctable transformation into an inegalitarian monarchy. We recall that Montesquieu established very early on, in book 5, the centrality of inheritance practices to maintaining the (in)equality proper to each form of government. From Rome's origins under Remus and Romulus, public lands (*ager publicus*) were shared out between citizens; this practice found an analogy with respect to private property in rules of agnatic succession designed to prevent the lands of one family passing to another and thereby becoming concentrated into larger fortunes.<sup>73</sup> As discussed above, legislation over land proceeded by legislating over persons; in this case, gender and lineage considerations determined the right to inherit. Most societies consider the right of testation and inheritance a purely private matter—"expressions of the will of the one who contracts"—but early Romans understood the individual, civil act of proclaiming a will as deriving from collective political expressions of law.<sup>74</sup> Montesquieu drew the special distinction of understanding this as a matter of public (that is, political) in addition to private (that is, civil) law. The first Romans were not allowed to write wills, and if they did so, the wills had to be proclaimed publicly: "each testament was, in a way, an act of legislative power."<sup>75</sup> This judgment seems at odds with the freedom of testation that is often taken as a defining characteristic of Roman jurisprudence, but during the early republican period, intestacy was rather the norm than the exception.<sup>76</sup>

The spirit of equality in Rome, associated with the division of lands, was slowly eroded over the six centuries that corresponded to the decline of the Roman Republic, the coming of imperial rule, and, finally, the fissure of the empire. This is a story—according to Montesquieu and his Roman informants—of the rise of luxury, which both identified with increasing accumulation of fortunes by women through inheritance.<sup>77</sup> The Voconian law (169 BCE) was intended to counter the abuses that had crept into the observation of the basic "political" principle of agnatic succession by closing loopholes allowing feminine inheritance and, hence, luxury. Not incidentally, it was also during the second century BCE (133 and 122) that similarly futile attempts were made to reimpose the *lex agraria* in order to halt the illicit appropriation of public lands (*ager publicus*) by the rich at

72. Ibid., 779–80 [27.1 §11]. In the Twelve Tables, testamentary practices are discussed in table IV. See *The Corpus of Roman Law*, vol. 2, *Ancient Roman Statutes: A Translation*, ed. Allan Chester Johnson, Paul Robinson Coleman-Norton, and Frank Card Bourne (Austin: University of Texas Press, 1961), 10.

73. Ibid., 778 [27.1 §3].

74. Montesquieu, *The Spirit of the Laws*, 524 [27.1 §20].

75. Ibid., 522 [27.1 §12].

76. John A. Crook, "Women in Roman Succession," in *The Family in Ancient Rome: New Perspectives*, ed. Rawson Beryl (London: Croom Helm, 1986), 53; J. A. Crook, *Law and Life of Rome* (Ithaca, NY: Cornell University Press, 1967), 118–19. On the exceptionality of testaments in early Rome, see Michèle Ducos, "Le droit successoral romain (première partie)," *Vita Latina* 149, no. 1 (1998), 2–3. As a general matter, all three of these treatments confirm Montesquieu's narrative.

77. For further identification of luxury with women, see Montesquieu, *De l'esprit des lois*, 560 [19.8 §2].



Figure 2. Jacques-Louis David, *Les licteurs rapportent à Brutus les corps de ses fils*, 1789, oil on canvas, 323 × 422 cm, Wikimedia Commons, [https://commons.wikimedia.org/wiki/File:David\\_Brutus.jpg](https://commons.wikimedia.org/wiki/File:David_Brutus.jpg).

the expense of the poor.<sup>78</sup> Montesquieu's identification of women with luxury is utterly commonplace,<sup>79</sup> but his discussion of the naturalness of parental love, which finds its expression in the desire to leave a bequest to all of one's children regardless of sex, further illuminates a recurring theme in *De l'esprit des lois*: the inherently unnatural psychology of virtue in republican governments.<sup>80</sup> Jacques-Louis David's *Les licteurs rapportent à Brutus les corps de ses fils* (1789; *The Licitors Returning to Brutus the Bodies of His Sons*) furnishes a visual summa of the eighteenth-century obsession with self-denying republican virtue (Figure 2). It depicts a brooding Lucius Junius Brutus as his sons, having been executed by paternal order after the discovery of their treasonous conspiracy against the Roman Republic, are brought back to the paternal household; here, the conflict between the private, natural sentiments of fatherhood and the austere demands of the public sphere is conveyed in all of its ambivalent pathos.

Montesquieu addressed, in effect, the violence that republican political virtue inflicts on the right-hand side of David's canvas: the private sphere, which is so often coded as feminine. Instead of Brutus's terrible act of justice, Montesquieu

78. Eric Nelson, *The Hebrew Republic: Jewish Sources and the Transformation of European Political Thought* (Cambridge, MA: Harvard University Press, 2010), 60–64.

79. See Montesquieu, *De l'esprit des lois*, 782 [27.1 §21], 559 [19.5 §2], 560 [19.8 §2].

80. Montesquieu seems to have to some degree taken over Cato's view of the origins of the Vornian law and repeated his anathema of the feminine luxury of the period. See Montesquieu, *De l'esprit des lois*, 783–84 [27.1 §25]. On this point, see Crook, "Women in Roman Succession," 66.

evoked the self-denial involved in disinheriting one's wife or daughters: "It is a misfortune of the human condition that legislators are obliged to make laws that oppose even natural feelings; such was the Voconian law."<sup>81</sup> Despite the strongly patriarchal bias of Roman law, which is evidenced most strongly in the doctrine of *patria potestas*, fathers often displayed great interest in, and affection toward, their daughters. Using perfectly legal dodges available to them in the civil law, which were nearly always tolerated in the highly formalistic legal culture of Rome, fathers could ensure that wives and daughters were able to inherit despite the strictures of the Voconian law.<sup>82</sup> In following their "natural sentiments," however, these fathers became "bad citizens."<sup>83</sup> David's *Les licteurs rapportent à Brutus les corps de ses fils* and early Roman inheritance practices both illustrate the denial of natural sentiment that defines the republican principle of virtue. Although no advocate of ancient republicanism, Montesquieu was not insensible to the moral grandeur of its denial of family feeling: "The law sacrificed both the citizen and the man and thought only of the republic."<sup>84</sup>

Montesquieu's ultimate preference seems to have lain not with the heroic verse in which these tragic sacrifices are naturally recounted but with the prose of familial affection. Writing to his daughter Denise after having won a financially consequential lawsuit, he reflected on the freedom that this victory would bring to his daughter: "since I won my suit, you no longer risk being sent to a convent [for lack of a suitable dowry]."<sup>85</sup> Turning to Rome, Montesquieu recounted how changes in the law caught up with private feelings and practices: "Rome, spoiled by the wealth of all the nations, changed its mores."<sup>86</sup> The Papian laws (9 CE), enacted in the wake of population decline that followed the civil wars, lifted many of the prohibitions on female inheritance on the theory that, by encouraging marriage, they would encourage childbearing.<sup>87</sup> Later, decrees by the Emperor Justinian, including Novel 118 (543 CE) and the supplementary Novel 127 (548 CE), abrogated all of the earlier political laws that enforced agnatic succession in intestacy.<sup>88</sup> At this point, the cognatic principle—favoring the female line and the male line equally—triumphed, bringing to an end the eternal war between the political disposition toward the equal division of land and the absolute freedom of testation that lay at the heart of Roman civil law.<sup>89</sup> The political law

81. Montesquieu, *The Spirit of the Laws*, 528 [27.1 §36].

82. Montesquieu, *De l'esprit des lois*, 784 [27.1 §29]. Montesquieu's judgment about family feeling and the subversion of the Voconian law is validated in Crook, *Law and Life of Rome*, 71–79. Completely left out of account in Montesquieu, and here, is the influence of Praetorian law, which had the general effect of softening the impact of "political" laws favoring agnatic succession.

83. Montesquieu, *The Spirit of the Laws*, 528 [27.1 §36].

84. *Ibid.*

85. Montesquieu to his daughter Denise, September 1743, in *Œuvres complètes de Montesquieu*, vol. 19, *Correspondance II, 1731–Juin 1747*, ed. Philip Stewart and Catherine Volpillac-Auger (Lyon: ENS Éditions, 2014), quoted in Catherine Volpillac-Auger, *Montesquieu* (Paris: Gallimard, 2017), 229.

86. Montesquieu, *De l'esprit des lois*, 788 [27.1 §41].

87. *Ibid.*, 787 [27.1 §37–38].

88. *Ibid.*, 788–89 [27.1 §42].

89. *Ibid.*, 780 [27.1 §14]. See Robert C. Fergus, "The Influence of the Eighteenth Novel of Justinian," *The Yale Law Journal* 7, no. 1 (1897), 28 (citing chapter 4, Novel of Justinian 118); and

of agnatic succession, which favored the division of lands, no longer checked the natural drift of civil society toward material inequality. In relaxing the demands of citizenship so that they were no longer in conflict with the passions of private persons, these laws helped to maintain the principle of honor in monarchies.

It is difficult to read the triumph of civil over political law recounted in book 27 as anything but a narrative, with property at the center, of cultural and political decline; because its moral corruption made it so susceptible to despotism, Montesquieu had very little sympathy for the imperial monarchy that succeeded Rome's republican period, starting with Octavian (Caesar Augustus).<sup>90</sup> And yet, in his analysis of property, sentiment, and the legal order, Montesquieu nevertheless gave a glimpse of his conviction that, because it pressed into service passions that counted as frailties of human nature (pride, family feeling, and an attachment to property), monarchy was an inherently more moderate form of government than democratic republicanism, which relied on their vigilant repression. In describing the principle of monarchical government in contrast to republics, Montesquieu observed that, in republics, private crimes are made public but that, in monarchies, public crimes are more private and hence more tolerated.<sup>91</sup> Monarchical societies enlarge the private sphere at the expense of the public, entrusting their reproduction more to the play of passions within that relatively closed domain. As these impulses move—or are forced—outward, society imposes its rule in the name of order. Here again, one sees the durability of the basic contrast, and tension, between endogamy and exogamy in the explanatory schema of French sociology.

Montesquieu's discovery of the "spirit of the division of lands" in the testamentary rules of ancient republics, and his account of its subsequent perversion as Rome grew wealthier, furnishes an interpretive key to the significance of outwardly indifferent shifts in the relative power of political and civil law.<sup>92</sup> His discussion of the Voconian law, and of the long-term political corruption it ultimately failed to check, takes place within the frame of an ostensibly stable economic structure. But his treatment of the evolution of feudal law furnishes a way of thinking about how changes in the mode of subsistence discussed in book 18 are registered on the level of law and government. The main preoccupation of this book, however, is with pastoral societies—notably, the Tatars and Franks. Non-agricultural societies practice very little commerce, consequently have no use for money, and are generally egalitarian; significantly, since there is no property in land, rules regarding its division do not enlarge the civil code.<sup>93</sup> This is the context for Montesquieu's interpretation of inheritance practice in the legal code of the Salian Franks.

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David Johnston, "Succession," in *The Cambridge Companion to Roman Law*, ed. David Johnston, Cambridge Companions to the Ancient World (Cambridge: Cambridge University Press, 2015), 201.

90. See the discussion in Montesquieu, *Causes de la grandeur des romains et de leur décadence*, in Caillois, *Œuvres complètes*, 2:171–76.

91. Montesquieu, *De l'esprit des lois*, 255 [3.5 §5].

92. *Ibid.*, 783 [27.1 §23].

93. *Ibid.*, 538 [18.13 §1].

The ostensible purpose of Montesquieu's reading is to refute the notion that the original purpose of the Salic law was to prevent female inheritance of land and that, because of this, it served as a rational historical basis to deny female inheritance of the French crown. More deeply, Montesquieu sought to give an economic reading of this law in order to demonstrate how changing social conditions completely alter the political implications of a given testamentary regime: "In order to know what these Salic lands were, one must discover what property was and what the use of the land was."<sup>94</sup> Indeed, Salic "lands" were not even agricultural lands but a small patch of ground surrounding the real property being transmitted: the house (*sala*). What little land that the Germanic Franks did cultivate came in the form, significantly, of public lands given in use for revolving terms of one year.<sup>95</sup> The house and its adjacent lands were given to males because, in these virilocal societies, women generally passed outside of the house—and therefore outside of the family lineage—at marriage and had no need of this property. The Salic law was, as Montesquieu explained, "a purely economic law" that applied only to allodial land—that is, free of feudal burdens and conferring no prerogatives—and, thus, did not serve the purpose of perpetuating a family or the land to which its power was attached.<sup>96</sup> Montesquieu described many cases among the Salian Franks and other similar peoples in which women were given preference to men when they were closer, lineally and generationally, to the *sala*; the only inflexible aspect of the law was that brothers should inherit in preference to sisters.<sup>97</sup> In those barbarian codes, such as the Visigothic, where sisters were allowed to inherit along with their brothers, women could accede to the crown; where they were not, as in the Salic law, they could not. Because these same codes lacked primogeniture, fratricidal competition often broke out upon the death of the king. In all of these cases, Montesquieu concluded that "the political law gave way to the civil law," despite the sometimes murderous competition this occasioned.<sup>98</sup>

This modal shift in law tracked the progression through stages in mode of production from hunter-gatherer, to pastoral, then to agricultural, and finally to commercial society.<sup>99</sup> The great difference in circumstances in comparison with classical antiquity was that, before the conquest of Gaul, Frankish society was basically pastoral.<sup>100</sup> In the forests of Germany, the succession of small plots of land attached to houses had limited political significance; after the conquest of Gaul—and in contrast to the practice in Germany—the military nobility occupied large tracts of agricultural land; these lands eventually became fiefs.<sup>101</sup> This transition to an agricultural economy changed the object and significance of the Salic law: from a civil law concerning of the inheritance of property, it became a political law dictating exclusively male succession to the throne.

94. Montesquieu, *The Spirit of the Laws*, 296 [18.22 §3].

95. Montesquieu, *De l'esprit des lois*, 544 [18.22 §4].

96. Montesquieu, *The Spirit of the Laws*, 298 [18.22 §10].

97. Montesquieu, *De l'esprit des lois*, 547 [18.22 §18].

98. Montesquieu, *The Spirit of the Laws*, 301 [18.22 §26].

99. This stadial theory was first discussed by Montesquieu and then adopted enthusiastically by Scottish philosophers such as Adam Smith and Adam Ferguson.

100. Montesquieu, *De l'esprit des lois*, 885 [30.3 §1] (citing Tacitus), 887–88 [30.6 §2].

101. *Ibid.*, 892–93 [30.11 §2–6].

Feudal law governing the transmission of land originated in the transposition of legal codes developed in pastoralist, barbarian societies into agrarian ones. If Montesquieu narrated the domination of civil over political law in Roman testamentary practice in a declensionist mode, he viewed the genesis of feudal law as the happiest of historical accidents: “an event which happened once in the world and which will perhaps never happen again.”<sup>102</sup> Feudal laws, according to Montesquieu, were the historical basis of the “intermediate, subordinate, dependent powers” that “constitute the nature of monarchical government”;<sup>103</sup> part 6 of *De l'esprit des lois* provides the account of how chance produced this “masterpiece of legislation,” the maintenance of which hinged on the transmission of seignorial property in land, office, and other inherited privileges.<sup>104</sup>

This process took place in two steps: first, the conversion of allodial property (*franc alleu*) into fiefs; and second, the conversion of these revocable fiefs into saleable property. At this point, fiefs became irrevocable and heritable. The establishment of fiefs favored unequal, and masculine, inheritance regimes: fief holders had to be male and maintain a certain degree of family wealth in order to discharge their military obligations.<sup>105</sup> The fief was regulated simultaneously by the civil law in its character as heritable property; and by the political law, it was subject to primogeniture because it had to remain concentrated in order to support the military duties attached to the fief. This happy composite of the civil and political law is the feudal law with its privileges, overlapping and contradictory jurisdictions, and finicky, procedural mindset. Feudal landholders exercised lordly functions of justice and imposed taxation on their lands, while venal office holders were entitled to a considerable autonomy in their execution of their duties. In this sense, both forms of feudal property established the distribution of sovereignty into intermediary powers as a principle of both political *and* civil law. In this context, the monarchical state itself must look upon the property and political power of nobles “with a mother’s eyes”—that is to say, from the same perspective of the family and of individual interests to which the state is supposed to serve as an antidote. One might say that, here, the tension between civil and political law—and in a sense between civil society and the state—is finally resolved in feudal government.

Feudal law is the tonic chord that closes *De l'esprit des lois*, but historically speaking, it is hardly the end of the story. However much France had, in his view, been blessed with moderate government by the accident of feudal law, its basis in landed property was being eroded by the rise, in the modern era, of commerce and mobile wealth. Montesquieu celebrated the restraining effect that mobile wealth had upon despotism—then, as now, moveable capital could flee to more hospitable climes. He also believed that the rise of commerce tended, even if significant national and regional exceptions did exist, to equalize the wealth among states; he believed that this rendered any pretention to universal monarchy

102. Montesquieu, *The Spirit of the Laws*, 619 [30.1 §1].

103. *Ibid.*, 17 [2.4 §1].

104. *Ibid.*, 593 [28.39 §3].

105. Montesquieu, *De l'esprit des lois*, 994 [31.34 §1], 308 [6.1 §5].

largely futile and hence made wars of aggression less likely.<sup>106</sup> The rise of commercial capitalism was the context for the increasing equality, and changing dynamics, *between* nations. But *within* these societies, he also fretted, as we have seen, about the narrow individualism—the lack of true sociability—in these admittedly less violent, richer, and more orderly places. He also believed that, left to itself, the growth of commerce tended to concentrate wealth, introducing “the disorders of inequality.”<sup>107</sup> To reduce these disorders—the indigence of the poor, the indolence of the rich, and the captivity of the state to mercantile interests—Montesquieu prescribed the equalization of fortunes through the political law of partible inheritance.<sup>108</sup> “Commerce,” he observed, “is the profession of equal people.”<sup>109</sup> Without seeking to make Montesquieu into a social democrat by such a comparison—he wasn’t any such thing—it is telling that Piketty, in observing the inherent tendencies of market economies, and the consequent drift to inequality among advanced capitalist nations since the 1970s, argued that any real solution to this problem must be conceived in explicitly political terms.<sup>110</sup>

#### CONCLUSION

In David Lodge’s 1984 campus novel *Small World*, a young master’s student, Persse McGarrigle, scandalizes a couple of academic greybeards by describing a thesis he claimed to be writing on Shakespeare and T. S. Eliot—not, as one might expect, about Shakespeare’s influence on Eliot, but of Eliot’s influence on Shakespeare. “‘What I try to show,’ said Persse, ‘is that we can’t avoid reading Shakespeare through the lens of T. S. Eliot’s poetry. I mean, who can read *Hamlet* without thinking of ‘Prufrock?’”<sup>111</sup> If this article is convincing, we should no longer be able to read *De l’esprit des lois*—in particular anything in that book touching on inheritance—without thinking of *Les structures élémentaires*. This counterintuitive juxtaposition helps us to read more deeply and broadly. We can read more deeply because, as we have seen, succession transcends the controversies provoked by *meum et tuum* in virtually every kind of society; at issue is not wealth per se but rules of social reproduction; from this reading, we see more

106. Ibid., 585 [20.2 §1]; Montesquieu, *Réflexions sur la monarchie universelle en Europe* (1734), in *Œuvres complètes*, vol. 2, esp. parts 2 and 18.

107. Montesquieu, *De l’esprit des lois*, 280 [5.6 §3]. Branko Milanović has discussed the attenuation of between-country and the simultaneous sharpening of within-country inequality in the twentieth century; see *Global Inequality: A New Approach for the Age of Globalization* (Cambridge, MA: Belknap Press of Harvard University Press, 2016), introduction, ch. 1–2. See above for the presumption in the eighteenth century of growing inequality.

108. Montesquieu, *De l’esprit des lois*, 280 [5.6 §4].

109. Montesquieu, *The Spirit of the Laws*, 53 [5.8 §12].

110. Piketty, *Capital in the Twenty-First Century*, ch. 13. See also Thomas Piketty, *Capital and Ideology*, transl. Arthur Goldhammer (Cambridge, MA: Belknap Press of Harvard University Press, 2020), ch. 17. For a criticism of this element of Piketty, see Alain Bihr and Michel Husson, *Thomas Piketty: Une critique illusoire du capital* (Paris: Syllepse, 2020).

111. David Lodge, *Small World: An Academic Romance* (London: Secker & Warburg, 1984), 52.

clearly what Raymond Aron termed Montesquieu's "sociological intention."<sup>112</sup> And we can read more broadly because the cross-section that is exposed by cutting *De l'esprit des lois* along the plane of inheritance reaches from one end of the book to the other, conveying a better sense of its coherence. At the beginning of this article, I suggested that a self-conscious use of anachronism can, in fact, lead to specifically historical questions; this is not, in fact, an ahistorical or anti-historical *jeu d'esprit*. The stylized, Lévi-Straussian reading of Montesquieu presented here suggests deep continuities between social theory at its inception in the Enlightenment and in the highly refined, disciplinary forms it took two centuries later; but it also poses intriguing contextual questions, bearing both on the eighteenth century and the present, about why certain features of this continuity remain obscure and under what conditions they become visible.

A couple of centuries ago, when inheritance preoccupied the generality of minds up and down the social hierarchy, the elaborate hermeneutic exercise taken in this article would have been unnecessary. In the nineteenth century, Tocqueville claimed to have rediscovered inheritance: "I am astonished that ancient and modern political writers have not attributed to laws of succession a greater influence on the course of human affairs. These laws belong, it is true, to the civil order; but they ought to be placed at the head of all political institutions, for they have an incredible influence on the social state of peoples, of which political laws are only the expression."<sup>113</sup> But Tocqueville certainly overstated his unique perspicacity. Not ten years before the first volume of *De la démocratie en Amérique* (1835; *Democracy in America*) appeared, there was a lengthy debate in the French Chamber of Peers—of which he could not have been unaware, given its echoes in the public sphere—over a proposed resurrection of primogeniture, designed to shore up the social basis of France's post-revolutionary aristocracy. Advocates and opponents of this measure took the profound link between property and power as a piece of self-evidence and used Montesquieu's now-ignored analysis of inheritance practices in *De l'esprit des lois* as a framework for their debate over the proper distribution of social and political power in their own society.<sup>114</sup>

Tocqueville's lament would be more fittingly aimed at the intellectual historians and political theorists who have, over the past several decades, completely overlooked this issue in Montesquieu's oeuvre. The causes are simultaneously political and methodological. We saw earlier how Althusser, who did so much to

112. Raymond Aron, *Les étapes de la pensée sociologique* (Paris: Gallimard, 1967), 27: "Or, l'intention de *L'Esprit des lois*, me semble-t-il, est de toute évidence l'intention que j'appelle sociologique."

113. Alexis de Tocqueville, *De la démocratie en Amérique*, in *Œuvres complètes*, vol. 2, ed. André Jardin, Françoise Mélonio, and François Furet (Paris: Pléiade, 1991), 52 [vol. 1, part 1, ch. 53].

114. *Archives parlementaires de 1787 à 1860: Recueil complet des débats législatifs & politiques des chambres françaises* (Paris: Dupont, 1862–1913). See, for instance, volume 46 (February–April 1826): 52–67 (11 March, Marquis de Maleville); 527–36 (31 March, Comte de Siméon); 552–58 (1 April, Comte de Cornudet); and 706–16 (6 April, Marquis de Maleville). See also volume 47 (April–May 1826): 19–20 (8 April, Comte Lanjuinais); 641–46 (8 May, Dubruel); and 687–90 (9 May, Comte Duhamel). For a discussion of this debate in general terms, and for some of the above references, see Annelien de Dijn, *French Political Thought from Montesquieu to Tocqueville: Liberty in a Levelled Society?* (Cambridge: Cambridge University Press, 2008), 71–88.



explain the extent of Montesquieu's intellectual ambition, reproached the latter for an excessively political, and therefore superficial, analysis of social facts, particularly in comparison to Marx. This judgment arose from what still remains a rather disreputable aspect of *De l'esprit des lois*, what Althusser called Montesquieu's "feudal bias" in arguing that feudal property, and the noble-dominated intermediate political powers associated with it, served as an indispensable foundation for a free and moderate monarchy.<sup>115</sup> Consequently, there is a relative dearth of scholarship on the final books of *De l'esprit des lois*—a group that constitutes a full one-quarter of its total length—on the origins of feudal law in comparison, say, with an affluence of scholarship on Montesquieu as a proto-liberal, Anglophile theorist of the separation of powers. Recently, considerable scholarly energy has been invested in understanding him as a progenitor of political economy or, in eighteenth-century terms, the science of commerce.<sup>116</sup> We'd rather not talk about the "reactionary" Montesquieu, even if this reticence limits full access to his work.

To the degree that historians of the early modern period *are* interested in problems of lineage and inheritance, these tend to be social and not intellectual historians. The turn to social history is probably best represented by the career of Peter Laslett, who began as a scholar of John Locke; indeed, his contextualist account of *The Second Treatise* furnished excellent proof of concept, *avant la lettre*, of the methods of Cambridge school contextualism.<sup>117</sup> Then, in the 1960s, Laslett helped to found the Cambridge Group for the History of Population and Social Structure. In France, while it was never reducible to this subdiscipline, the *Annales* school, following in the tracks of Marc Bloch, privileged rural history, with its emphasis on inheritance regimes, kinship, and household structure in peasant societies. In the 1960s and 1970s, representatives of this school such as Emmanuel Le Roy Ladurie made great fanfare of turning to anthropology; accordingly, references to anthropologists such as Jack Goody and Lévi-Strauss himself piled up in the literature on premodern households. Lineage and inheritance were not the territory of the embattled intellectual historian but of the cutting-edge social historian armed with anthropological theory.<sup>118</sup> A more deliberate effort must be made to see inheritance, in Montesquieu, as something more than superfluous erudition or reactionary noble ideology.

A methodologically safer route, to avoid the charge of anachronism—let alone courting it by speaking of the interanimation of historically distant texts and

115. Althusser, *Montesquieu*, 26.

116. Philippe Steiner, "Commerce, commerce politique," in *Le cercle de Vincent de Gournay: Savoirs économiques et pratiques administratives en France au milieu du XVIII<sup>e</sup> siècle*, ed. Loïc Charles, Frédéric Lefebvre, and Christine Théré (Paris: INED, 2011), 179–200; Paul Cheney, *Revolutionary Commerce: Globalization and the French Monarchy* (Cambridge, MA: Harvard University Press, 2010); Céline Spector, *Montesquieu et l'émergence de l'économie politique* (Paris: Champion, 2006); Catherine Larrère, "Montesquieu économiste? Une lecture paradoxale," in *Montesquieu en 2005*, ed. Catherine Volpillac-Auger (Oxford: Voltaire Foundation, 2005), 243–66.

117. See the introduction to *John Locke: Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1960), 1–133.

118. Gayle Rubin, "The Traffic in Women: Notes on the 'Political Economy' of Sex," in *Toward an Anthropology of Women*, ed. Rayna Rapp (New York: Monthly Review Press, 1975), 171–85 (on Lévi-Strauss).

of controlled anachronism—might have been to reconstruct a genealogical tree linking Montesquieu to Lévi-Strauss. Such an approach is useful, in part, because of its limitations and, hence, the questions it calls forth that only broad historical comparisons can answer. There is ample material available for such an exercise: society was invented as an object of inquiry in the eighteenth century, and the diverse human sciences of the Enlightenment laid the basis for the disciplines of sociology and anthropology; nineteenth- and twentieth-century discipline formation in these fields was accompanied by a process of active appropriation of Enlightenment ideas—and intellectual authority. Rousseau lay at the root, and Durkheimian sociology served as the trunk, of the genealogical tree that Lévi-Strauss drew of a tradition he called “French sociology”—a discipline that included anthropology.<sup>119</sup> For his part, Durkheim’s 1892 Latin dissertation on Montesquieu found several methodological predicates for his *La division du travail social* (1893; *The Division of Labor in Society*) in *De l’esprit des lois*. Beyond familiar but vague praise for his methodological self-consciousness and his holistic approach, Durkheim located in Montesquieu an embryonic version of the distinction between mechanical and organic solidarity that structured the *Division du travail*.<sup>120</sup> Lévi-Strauss established his filiation with Durkheim and Mauss to demonstrate, as Durkheim had with Montesquieu, the improvements made on intellectual patrimony passed from father to son. Lévi-Strauss set aside Durkheim as his more direct forbearer in favor of Mauss because the latter accepted the fundamental need for self-estrangement inherent in the anthropologist’s work; this was a move that Lévi-Strauss imputed initially to Rousseau, the “father of ethnology.”<sup>121</sup> Mauss understood that the underlying structure of the facts he observed in *Le don*—for example, the Kula ring and potlatch—pointed to the transcendent importance of exchange in *all* societies, archaic or modern, but according to Lévi-Strauss, Mauss was unable to adequately unravel the mystery of *Hau* because his analysis reproduced the “mystifications” of indigenous thought itself.<sup>122</sup> Had Mauss been in possession of the tools of psychology and structural linguistics, Lévi-Strauss argued, he could have understood the unconscious unity expressed in the various, sometimes contradictory appearances of exchange: the symbolic, organizing power of the social.<sup>123</sup>

119. According to Lévi-Strauss, “in Durkheim’s and Mauss’ work, sociology and anthropology cannot be separated” (“French Sociology,” 511).

120. Émile Durkheim, “Quid Secundatus Politicae Scientiae Institutendae Contulerit” [The Contribution of Secondat to Political Science], in *Montesquieu et Rousseau: Précurseurs de la sociologie* (Paris: M. Rivière, 1953), 51–53 (on method), 62–65 (on mechanical versus organic solidarity). This is a French translation of Durkheim’s Latin doctoral thesis of 1892.

121. Claude Lévi-Strauss, “Introduction à l’œuvre de M. Mauss” [1950], in *Sociologie et anthropologie*, 12th ed. (Paris: Presses Universitaires de France, 2010), xxxi, xxxvii, xlix–l; Claude Lévi-Strauss, “Jean-Jacques Rousseau, père de l’ethnologie” [March 1963], *Le Courrier de l’UNESCO* 22, no. 8/9 (1969), 61–63. On Lévi-Strauss and Rousseau, see also Jacques Derrida, *Of Grammatology*, transl. Gayatri Chakravorty Spivak (Baltimore: Johns Hopkins University Press, 1976), 106–15.

122. Lévi-Strauss, “Introduction à l’œuvre de M. Mauss,” xxxviii.

123. For a classic discussion, see Maurice Merleau-Ponty, “De Mauss à Claude Lévi-Strauss,” in *Signes* (Paris: Gallimard, 1960), 143–57.

In comparison to other sociological (or anthropological) traditions, the French obsessed over the specificity of the social, retaining it as their privileged object.<sup>124</sup> Lévi-Strauss always kept the social in the foreground in his analysis of the incest taboo; as we have seen, Montesquieu saw inheritance regimes as the key to understanding social reproduction in different political regimes. Lévi-Strauss saw himself as the culminating point in this tradition of “French sociology,” although he did not locate Montesquieu anywhere in a genealogy that he traced deep into the eighteenth century. The continuity in this tradition, and general failure to appreciate the nature of Montesquieu’s sociological intention, raises questions about the respective contexts in which these two figures’ contributions were made.

Of course, Enlightenment philosophes did not simply discover society as a ready-made object. Historians such as Reinhart Koselleck, Keith Baker, Daniel Gordon, and John Robertson have emphasized the political context that favored the invention of society, as a category, in Old Regime France.<sup>125</sup> In these accounts, in working to abolish the political sphere, an ambitious, overweening absolutist state summoned critique against itself, leveled in the name of society. This society fashioned itself as an independent force, an entity whose distinct needs were described, and whose rights were asserted, with the help of Enlightenment philosophes; their critical discourse mutated into the social sciences that took more definitive form in the nineteenth and twentieth centuries. As Koselleck and others following him have argued, Enlightenment social theory can be viewed as the return of the repressed—the public, overtly political discourse stifled by the absolutist state in the pursuit of peace. In this account, the high degree of abstraction and refinement achieved in the social theory of the French Enlightenment was a function of the metastasis of the French state; ultimately, this theory helped to delegitimize the absolutist state over the course of the eighteenth century. Contextual accounts of French structuralism, by contrast, often characterize this latter-day incarnation of French social theory as anti-historical and apolitical, and therefore deeply complicit with a technocratic state that also set out to abolish political contestation in the name of progress.<sup>126</sup> Others, notably Samuel Moyn, have viewed Lévi-Strauss’s structural anthropology as an essential resource for thinkers of the anti-totalitarian left such as Clastres, Claude Lefort, and Marcel Gauchet.<sup>127</sup> These authors looked to French structural anthropology for an account of spontaneous social organization, which they saw as an alternative to the

124. On the centrality of the social in this tradition, see Camille Robcis, “Lévi-Strauss’s Structuralist Social Contract,” *Yale French Studies* 123 (2013), 151.

125. Reinhart Koselleck, *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society* (Cambridge, MA: MIT Press, 1988); Gordon, *Citizens without Sovereignty*; Baker, “Enlightenment and the Institution of Society”; John Robertson, *The Case for the Enlightenment: Scotland and Naples, 1680–1760* (Cambridge: Cambridge University Press, 2005); John Robertson, “The Argument over a British Enlightenment: Why It Matters” (lecture, Nicholson Center for British Studies, University of Chicago, 14 February 2005).

126. The case is stated strongly in Kristin Ross, *Fast Cars, Clean Bodies: Decolonization and the Reordering of French Culture* (Cambridge, MA: MIT Press, 1995), 177–80. See also Robcis, “Lévi-Strauss’s Structuralist Social Contract,” 148–50.

127. Samuel Moyn, “Of Savagery and Civil Society: Pierre Clastres and the Transformation of French Political Thought,” *Modern Intellectual History* 1, no. 1 (2004), 55–80; Samuel Moyn, “Claude Lefort, Political Anthropology, and Symbolic Division,” *Constellations* 19, no. 1 (2012), 37–50.

suffocating embrace of the Leviathan state. What lies at the center of all these accounts of French sociology, from its origins to its twentieth-century apogee, is the dominating presence of a state that shapes such uniquely powerful conceptualizations of society.

This gesture toward a comparison of contexts over the *longue durée* is not intended to run all of this history together, fusing French social theory and its contexts into a single synchronic block.<sup>128</sup> Indeed, some final attention to these authors' differing contexts helps to explain why Montesquieu remains stubbornly obscure in certain respects, while Lévi-Strauss, writing in the twentieth century, sheds unexpected light on an eighteenth-century writer he completely ignored. The difficulty in reading Montesquieu now is that his sociological intention is often encased in the specialized idiom of historical jurisprudence that episodically appears in *De l'esprit des lois* and definitively takes over the final quarter of the work. Here, erudite polemics on the assimilation of barbarian legal codes in provinces of the Roman Empire, or arch dissections of works by Comte de Boulainvilliers on fiefs or the Abbé Dubos on the origins of the French nobility, had visibly, self-consciously political overtones.<sup>129</sup> The jurisprudential idiom was one of the few avenues open for political contestation in the Old Regime, but the language in which these scholarly *tours de force* are couched has the effect of pushing Montesquieu's sociological intention, in lavishing so much attention onto the problem of inheritance, into the background. Readers such as Durkheim or Descombes have sensed the depths but have been at pains to fully map them, and so they have largely characterized his contribution as methodological. In contrast, contextualist readings of his thought as a critique of absolutism, or as arguments about his views of eighteenth-century commercial society, are much more accessible and, hence, steadily accumulate further detail.

Lévi-Strauss's methodological self-consciousness was not superior to that of Montesquieu; it was merely different—and more familiar to us. He excelled at the pellucid summation of his fellow anthropologists' errors; he did so with such verve to establish his version of French sociology—the conjugation of structural linguistics with anthropology—as the most general form of the science of the social. Based as it was on unconscious symbolic structures, Lévi-Strauss's analysis advanced by making the merely latent—social reproduction—manifest at every point. In so doing, and thanks to the surprising homology between the two authors' explanatory schema, it furnishes a tool for reading Montesquieu's *De l'esprit des lois* in a similar vein; this interpretation is hardly foreign to the spirit of Enlightenment social science, which sought to understand the independence of the social sphere by spelling out its underlying laws. In this respect, *De l'esprit*

128. David Armitage discussed how to compare contexts and ideas over the *longue durée* through what he called “serial contextualism” in “What’s the Big Idea? Intellectual History and the *Longue Durée*,” *History of European Ideas* 38, no. 4 (2012), 497–99.

129. On the persistence in the Enlightenment of an erudition it claimed to eschew, see Chantal Grell, *L'histoire entre érudition et philosophie: Étude sur la connaissance historique à l'âge des Lumières* (Paris: Presses Universitaires de France, 1993). On specifically juridical erudition among parlementaires such as Montesquieu, see Dale K. Van Kley, *The Religious Origins of the French Revolution: From Calvin to the Civil Constitution, 1560–1791* (New Haven: Yale University Press, 1996), 110.

*des lois* was not so much methodologically “at war with itself,” as Baker has claimed, as partly illegible to us.<sup>130</sup>

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130. Baker, *Condorcet*, x.