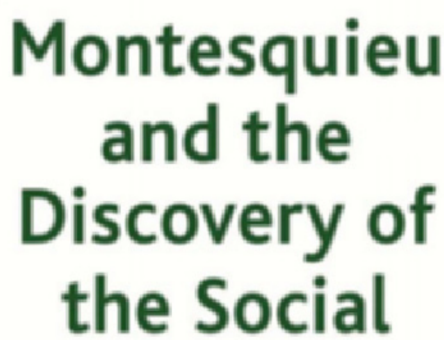
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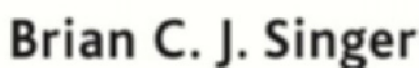
Brian C. J. Singer

Montesquieu and the Discovery of the Social

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Montesquieu and the Discovery of the Social

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York University, Canada

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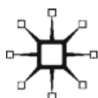

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For Jacob Zadok

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Preface and Acknowledgements

Behind the composition of most books there lies a story, often with semi-autobiographical roots. This book is no exception. Until the end of my Master's, I was enrolled in sociology programmes. My interests, however, tended to be too broad and theoretical to be contained within the confines of the latter, particularly in the 1970s. I thus moved to the newly established Programme in Social and Political Thought at York University, an interdisciplinary programme that welcomed, not without conflict, the various waves of Western Marxism, phenomenology, structuralism and poststructuralism, which were then washing up from foreign, largely European, shores. My dissertation would, in a sense, be influenced by all these currents, without being faithful to any of them. It concerned the French Revolution, understood as central to the birth of a certain political modernity, one that claimed, not without terrible equivocations, to be radically democratic. From sociological theory, I had turned to political theory and history, though the result was neither a work of political theory nor history as conventionally conceived. Instead, it sought to analyse, in as rigorous a manner as I could muster, the establishment of what I termed a 'revolutionary imaginary'.[1] It was surprising then—but perhaps not all that surprising—that when I sought to enter the academic market with an anomalous curriculum vitae, my employment opportunities appeared limited to sociology departments, as if the latter had not entirely forgotten their pretension to be 'queen' of the social sciences. Thus I became, as I would joke, a sociologist by recidivism. And in truth, the transition was not always easy, as I found myself moving from the world of late eighteenth-century France to lecturing on contemporary Brazil, urban sociology in the Bronx and family sociology during feminism's second wave. The transition was facilitated somewhat by the fact that I eventually returned to York University, having landed a position in a bilingual undergraduate department where disciplinary boundaries were not treated too seriously. Moreover, at the graduate level, I found myself teaching in, and for a while directing, the interdisciplinary programme from which I had graduated. Mention is made of these autobiographical elements because the following work seeks, in an admittedly eccentric way, a reconciliation with the curvature of my employment history. If I had earlier sought to study the beginnings of a certain political modernity by

[1] The thesis was published in revised form as *Society, Theory and the French Revolution: Studies in the Revolutionary Imaginary* (London: Macmillans Press/St. Martin's Press, 1986).

examining the revolutionary imaginary (that is not just the construction of the Revolution as an object one can make sense of, but also as a horizon of meaning in terms of which one then seeks to make sense of much else), I am proposing in this study to examine how, at the beginnings of our modernity, it became possible to imagine a specifically *social* realm, distinguishable from a political realm (inclusive of its juridical and theological dimensions). This is, in effect, a study of what I am calling the 'discovery of the social'.

It is more difficult to speak of the discovery of the social than that of the Revolution, if only because the former cannot be tied to a single, momentous event. In truth, to speak of the discovery of the social may strike the reader as ridiculous. There have, after all, always been societies and, within and between societies, social relations. Even Neolithic tribes formed societies and, presumably, had some way of speaking of their interrelations. The existence of the social, whether as noun (society) or adjective (social), appears too obvious to warrant a discovery. Its existence appears so axiomatic that, as even the most cursory search reveals, it seems impossible to define sociology without recourse to its terms. To take an example at random, Anthony Giddens writes: 'Sociology is concerned with the study of human societies.' And later: 'Sociology is a social science, having as its main focus the study of the social institutions.'[2] Other definitions will speak of *social* behaviour, *social* action, *social* relations, *social* movements and so on—blithely breaking the first rule of definition-making: that when defining a word, one does not use words that share the same root. The ubiquity of the terms society and social, when defining sociology (or social science or social theory), is such that one wonders if anything is really being signified by their employment. Indeed, the abstract emptiness of its primary signifier speaks to the dilemma of the discipline: though sociology makes a hegemonic claim to encompass all the other disciplines that address this or that aspect of collective existence, in practice, as testified by enrolment in undergraduate courses, it tends to congeal around such residual, often awkward, domains like family, deviance, demography or race relations, which the older, more prestigious disciplines, such as law, political science or economics, tend to leave to the side. Unsurprisingly, there are those who have announced the death of the social, most famously Jean Baudrillard, or who advocate its end as a mode of explanation, notably Bruno Latour.

Almost everyone is aware that, like all disciplines, the study of society has a history, and most would assign a relatively recent date to the origins of such study. Recent studies, moreover, have demonstrated that the terms society and social only began to acquire their current meanings during the

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[2] *Sociology: A Brief but Critical Introduction*, 2nd ed. (San Diego, CA: Harcourt Brace Janovich, 1989), pp. 8–9.

eighteenth and nineteenth centuries.[3] Briefly, the Latin root of the terms refers to companionship; and in the eighteenth century the primary meaning of society referred to the company one kept or those with whom one associated. Typically, one would associate only with those worth associating with, and the latter, according to the status hierarchies of the period, was called society or, somewhat redundantly, 'polite society'. Thus when Montesquieu, the primary figure of this work, speaks, with only minimal metaphorical slippage, of the 'society of women', he understands the convivial relations elite males maintained with elite females in the semi-public '*palais*', '*hôtels*' and '*salons*' of the ancien regime. One later etymological trajectory links this usage to the emergence of an intermediary realm between the domestic and governmental realms, at a time when the monarchic household was no longer seen metaphorically as including the entire kingdom, and when the figure of paternal authority no longer appeared to model and tie together both realms.[4] Another trajectory, which refers to the rise of social contract theory, extends the idea of society as consisting of those one associates with to include the entire political body. According to contract theory, the movement from a natural to a 'social state' results, or should result, from a general act of association, itself based on an accord to which all can agree, and which forms the basis of the political 'constitution'.[5] With the 'social contract'—and here Jean-Jacques Rousseau's influence was decisive—the term's meaning expands to the point that it could become synonymous with what would come to be understood as the 'nation-state'.[6] Already by the late seventeenth century, the term began to stretch from micro interpersonal relations to macro political entities. In a sense, the abstract

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[3] Raymond Williams, *Keywords: A Vocabulary of Culture and Society* (Glasgow: Fontana, 1976), pp. 243–7; Keith Michael Baker, 'Enlightenment and the Institution of Society', in *Civil Society: History and Possibilities*, ed. Sudipta Kaviraj and Sunil Khilnani (Cambridge: Cambridge University Press, 2001). Also Baker, 'Enlightenment and the Institution of Society: Notes for a Conceptual History', in *Main Trends in Cultural History*, ed. W. Melching and W. Velema (Amsterdam: Rodopi, 1994). As well as Pierre Bouvier, *Le lien social* (Paris: Gallimard, 2005), pp. 17–36.

[4] Hannah Arendt in *The Human Condition* (Chicago, IL: University of Chicago Press, 1958). More broadly, it is suggested by 'civil society', once the latter was separated from the state, most famously by Hegel in his *Philosophie des Rechts* (1821).

[5] Echoes can be found in the distinction made famous by Ferdinand Toennies, *Gemeinshcaft* (community) and *Gesellschaft* (society or association).

[6] Only when the nation was deemed sovereign could the nation take on a political tenor and be linked to a state (or would-be state). Under the ancien regime, the nation referred loosely to some notion of ethnic commonality, though it could be stretched to include such things as 'the nation of monks'. The term 'State' (*État*), on the other hand, when it was capitalized, was often inclusive of the entire realm (that is, 'society'), while *état*, referred to what in English is termed 'estate', as in the third estate. Only with the end of the estates, and the rise of 'civil society' did the state receive its present meaning.

emptiness of the term, the object of my complaint, existed almost from the beginning. Nonetheless, despite, or because of, its extension, the term has come to suggest a dimension of human coexistence that neither books of manners nor works of political theory can adequately address. It is the discovery of this dimension that I am calling the discovery of the social—and arguably it occurred in the eighteenth century.

Yes, people have always lived in societies, and have always spoken of their interaction in society. Some of this talk concerns the practical knowledge necessary to navigate social life—and here books of manners may be of help. Such knowledge is indispensable, but need not be expressed in the vocabulary of the social. Some of this talk is abstracted from quotidian usage, and takes on a more reflexive, theoretical character, as if established at a distance from society. This knowledge too does not require the vocabulary of the social; instead it may be communicated, for example, through political treatises. Together, the two forms of knowledge (*'connaissance pratique'* and *'connaissance connaissante',* to use Pierre Bourdieu's terms) entail what for any given society it means to know society. To speak of the discovery of the social is to point not just to a change in vocabulary, but also to all that this can mean for making sense—and also for the institutional articulation—of a life lived together. This discovery implies a change in (the terms of) knowledge, particularly abstract, reflexive knowledge, and so involves an epistemological shift. But knowing here cannot be easily separated from doing (or being), and the epistemological shift proves to be related to a change at the level of the object. To speak of a society, as opposed to a monarchic regime, is to speak of different things; and if talk of the former becomes possible where once talk of the latter alone made sense, it is because of a transformation that exceeds the terms of the political.

To approach the imbrication of knowing and doing here, particularly at the level of *connaissance connaissante*, I must speak of the symbolic and the establishment of a symbolic order. Every society must present and represent itself to those who live within it; that is, every society must present an order, coherence and sense, and must represent itself as orderly because it is tied to some larger principle that gives it sense and value (divine will, natural law, sovereign power, industrial progress and so on). As such, the symbolic order is established at a distance from the society's empirical reality. To speak of the symbolic is to speak to its discrepancy with, if not reality (since the reality of reality often refers to a principle that is said to give it its order and sense), then 'the real' (a term that remains agnostic concerning reality's orderliness and rationality).[7] Indeed, the symbolic order serves to

[7] The distinction used here between reality and the real in relation to the symbolic is drawn from the work of Claude Lefort, who draws these terms somewhat loosely from Jacques Lacan.

respond to the question, 'What is reality?'—both by articulating the binaries with which reality is rendered meaningful (true and false, fact and value, nature and convention, reason and passion and so on) and by tying these binaries to those larger principles that give that reality its significance (with much depending on whether these principles are deemed as transcendent or immanent). The discovery of the social involves a change in the symbolic order of society and, by implication, its reality. Let it be stated from the outset that it would be overly simplistic to describe this discovery in terms of a shift from transcendent to immanent principles.

The claim of this work is that prior to the discovery of the social, the symbolic order was largely established through the political, this latter term signifying the establishment of order, coherence and a sense of collective coexistence through relations of rule (and not to be confused with politics, which concerns the more mundane struggles for political influence or advantage).[8] As this study is largely focused on the eighteenth century, the political is understood in the terms of the period—one that sought an equation between power, law and knowledge, and that still often made overt appeals to theological assistance (as the divinity appeared as the ultimate source of all power, law and knowledge, and thus all order and sense). The discovery of the social implies a change in the symbolic order formed by the political, not least because it establishes a horizon of order and sense beyond that established by the relations of rule. This discovery, I argue, does not substitute the social for the political, but it does not leave the political, and the sense of reality it established, unchanged. The discovery of the social demands that the political confront its own limits, as it must now compose with an outside that no longer appears disorderly, incoherent and nonsensical. Such a confrontation cannot but produce strains within the political, particularly as regards the attempted equation of power, law and knowledge: for juridical law appears increasingly divided from divine and scientific law; power increasingly separated from law (of whatever type); while knowledge moves increasingly outside the orbit of both power-holders and lawmakers. At the very moment that the terms of order and sense begin to extend beyond the political's empire, the political begins to fragment.

It is because its discovery is so closely tied to the political, that I employ, contrary to ordinary usage, an adjective as a noun, and speak of the social. While the term is not my own, I want to stress the relation of the social to the political, as the social first arises from, and in opposition to, the political. As the social entails the establishment of a horizon of order and sense outside the political, it opens onto a new objectivity. As such, the discovery

[8] Again, this distinction between *le politique* and *la politique* is drawn from Claude Lefort.

of the social remains, first of all, an event in knowledge. This is why one cannot claim, according to a simplistic constructionism, that there was no society or social relations prior to this discovery, even if they can be denominated as such only after the event. But as a torsion in the symbolic order, the discovery of the social is more than an event in knowledge, more than a change in the signifier, or even the signified. It bears the marks of an emergence of a different kind of society, with a different 'mode of institution', precisely because it is implicated in a different and more complex symbolic order. As a new realm of objectivity, the social implies, in contrast to the political, a split between the presentation of an order and its representation. It is no longer the case that order is present in this world only if represented, because the representation renders present here below a law that otherwise has only a virtual, ideal existence in a realm above. Unlike, say, a juridical law, which must be represented to be obeyed, a social law can be obeyed without being known. A social law thus implies a different articulation of the visible and the invisible, and suggests a more complex relation to the symbolic. To say that the social can be presented without being represented is to say that it is not—or not necessarily—explicitly symbolic. But to claim that the social implies a horizon of order and sense beyond the political is to suggest a relation to the symbolic. Supposing that the social uncovered on the horizon is truly orderly and rational, is it then not to be equated with what we are terming reality? And as reality, does it not suggest a covert symbolic order? Or does it acquire a symbolic character only after its order and reason are known? And what then is the social reality's relation to the reality constituted by the political, with its more overtly symbolic character? Are we to speak of different symbolic orders and stratified realities, which may be in tension with each other? And what if the objects on the horizon prove neither orderly nor reasonable? Can one still speak of the social? Does it encompass 'the real'? And what if one moves onto the horizon, so that it is no longer that towards which one trains one's gaze, but that place from which one's gaze is trained; what, in short, if the social becomes not just a horizon, but a perspective? Is this social perspective to be limited to the objects that were formerly on the horizon? Or can a social perspective reverse its gaze, and consider the place from which it was first seen; that is, can the social train its gaze on the political? And if a social perspective includes both, do the objects that were on the horizon bear a privilege as specifically *social* objects? And what makes these objects social? Is it what they are, or how they're seen? Is it the nature of their order or sense, or lack thereof? Is it their objectivity, substantiality or causality? So many questions that explain why the social appears deeply enigmatic, and why, when these questions are not explicitly posed, the social appears a blob-like substance capable of covering almost everything in its seeming tautology.

If I am proposing to return to the eighteenth century and examine the discovery of the social in its origins, it is to turn to these questions.

I want to recover a sense of the original significance of the social, before it became such an empty, if promiscuous, signifier. What, in truth, was discovered? What were the epistemological moves that made its discovery possible? What were its implications? And why, despite the expansiveness of the domains that the social opened up for investigation, does the social appear so fragile and insubstantial? It is only after one has returned to the unfamiliarity of the past, and recovered something of what has slipped beneath the surface of our modernity, that one can begin to respond to these questions. And it is only after responding to these questions that one can begin to respond to the further question: is the social a concept worth saving? And what elements of the concept are worth saving?

In the attempt to understand the discovery of the social, this work focuses on Montesquieu's *De l'Esprit des lois*.[9] I am not the first to claim Montesquieu as the first sociologist, social scientist or social theorist. There is a long list of authors, largely French, who have made this claim, including such disparate figures as Émile Durkheim, Louis Althusser and Raymond Aron. In contradistinction to these authors, I do not think it prudent to speak of a single, definitive origin. Even if one stays within France, there have been others who could vie for the title. There are the ideologues, who first coined the term 'social science'[10]; there is Henri de Saint-Simon, and the man who was once his secretary, Auguste Comte (who coined the term 'sociology'). There is Émile Durkheim (who occupied the first chair in the discipline); or to consider someone who predates Montesquieu, one could follow the lead of Michel Foucault, and advance the name of Henri de Boulainvilliers.[11] Alternatively, one could cross the channel, and bestow the honour on certain figures of the Scottish Enlightenment (though they themselves might have bestowed the honour on Montesquieu[12]). Or one could go further afield and cite Ibn Khalddun. This is without speaking of all the anticipations, foreshadowings and other portents that can be detected, beginning with the ancient Greeks. It would, in truth, be foolish to reduce so large

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[9] The work is usually translated as *The Spirit of the Laws*, but David Carrithers has recently made a case for the work to be translated as *The Spirit of Laws*. As I can see good reasons for both the inclusion and exclusion of the second definitive article, I tend to take the coward's way out, and revert to the original French. 'Introduction', in *Montesquieu's Science of Politics: Essays on the Spirit of Laws*, ed. David W. Carrithers, Michael A. Mosher and Paul Rahe (Lanham, MD: Rowman & Littlefield, 2001), p. 5.

[10] Robert Wokler, 'Ideology and the Origins of Social Science', in *The Cambridge History of Enlightenment Political Thought*, ed. Mark Goldie and Robert Wokler (Cambridge, UK: Cambridge University Press, 2006), pp. 688–709.

[11] *'Society Must be Defended' Lectures at the Collège de France, 1975–76*, trans. David Macey (New York: Picador, 2003 [1997]).

[12] John Millar in 1787 claimed that Montesquieu opened the path, being the Bacon of moral philosophy, as Adam Smith was its Newton. Cited in Bertrand Binoche, *Introduction à De l'esprit des lois de Montesquieu* (Paris: PUF, 1998), p. 18.

and significant a discovery to a single, gestational moment. There had to be multiple births—some of them partial or stillbirths—for the social to be established as a horizon of knowledge. As such, the choice of a beginning point cannot be based on a strictly empirical claim. In the absence of a simple linear and cumulative history, one must marshal other reasons of a more strategic or theoretical character.

There are several reasons why I have chosen Montesquieu—beyond simply my familiarity with eighteenth-century France and the Enlightenment. First, an examination of *De l'Esprit des lois* clearly demonstrates that the social first arises from the political; the book is also, and is often read primarily as, a work of political theory. Second, in this book one can uncover several definitions of the social (as horizon, perspective and substance), evoking different usages (epistemological, ontological and historical), where each definition develops almost logically from the previous one. This contrasts with the often simplistic, even reified, understandings of the social that came after him. There is another reason for my attraction to Montesquieu. Although he illuminated many aspects of what would become our modernity, he remains in crucial respects a man of the ancien regime, even by the standards of his time. It is my claim that if he were more modern (that is, more enlightened, liberal or English like, say, Voltaire), he would not have discovered the social—and one could then argue more forcefully for a nineteenth-century birth. I have chosen Montesquieu because his archaism forces us to take the road not travelled, and to consider what has sunk from view. This means that I will be speaking of, at best, a still or partial birth. Although his genius was widely recognized, he did not really have any disciples.

The tendency in sociology is to explain the discipline's origins in terms of modernity, either the modernity of the thinker, or of what he was thinking about. The first version speaks of certain intellectual revolutions, attached to representative names—Descartes, Newton and Locke being the most obvious—whose *bona fides* relative to modernity are incontestable. The emergence of a social science is then explained by the application of Cartesian doubt, Newtonian science or Lockeian empiricism to a new subject matter. This is an argument often applied to Montesquieu; it is not my reading. He probably read all three authors—and many others besides; but to claim that he simply applied their methods is to miss what is most specific to Montesquieu, and most decisive for the discovery of the social—and which belongs, to repeat, to what I consider the less modern elements of his thought. Montesquieu is often accused of an aristocratic bias as regards his politics; what is far more interesting, from my perspective, is his aristocratic bias regarding epistemological matters. For his thinking, it will be seen, is rooted in a hierarchical world and world view.

The second version of sociology's origin is less concerned with epistemological matters because it contains, often implicitly, a reflection theory

of knowledge. The study of society arises, it states, because of a change in society, from a traditional to a modern society. This change was so dramatic in its extent and so disorienting in its effects, that it necessarily gave rise to a new discipline. Sociology arose, to continue the quote from Anthony Giddens cited earlier, as 'the study of social institutions brought into being by the industrial transformations of the past two or three centuries.'[13] Alternatively, though more rarely, one speaks not just of the industrial, but the democratic, revolution. But Montesquieu lived prior to both, and was largely insensitive to the signs that portended them. Sometimes, he completely misses what we would consider the primary indices of modernization. For example, like many in his time, he believed Europe was suffering a demographic decline (attributed to the effects of absolutist rule); consequently, he says nothing about increased urbanization. And though he speaks of the growing importance of economic commerce and its civilizing effects, in contrast to the Encyclopédistes, he shows little interest in technological developments. Moreover, he views the rise of commerce as a relatively local phenomenon, and not, as was arguably the case for much of the Scottish Enlightenment, as a key to the establishment of a universal history. Again, he speaks with unparalleled perspicacity about developments in England after the Glorious Revolution of 1688. But in contrast to a widely held view, I will argue that he views these developments as peculiar to the English, and not as harbingers of a more general modernity or a model for the rest of the world to follow. The larger point is that Montesquieu was not a theorist of modernization; thus his theories cannot be explained in terms of modernization. No doubt, the years 1730–48, when *De l'Esprit des lois* was being composed, were not years of rapid, relentless change; but even if they were, one suspects that Montesquieu's differentiated sense of historical causality would have resisted thematization under a single, totalizing rubric like that implied by modernization. Because the discovery of the social here appears only obliquely related to the vast transformations associated with modernity, the discovery has to be investigated largely from within the text, in terms of its underlying epistemological moves.

Montesquieu is generally considered a figure of the Enlightenment, a liberal and a modern. He is all of these, but he is also none of these. Montesquieu belonged to, and identified with, a hierarchical world. To be sure, he was not your usual hierarchical thinker—otherwise he could not also be considered an enlightened, liberal thinker. The hierarchical world of his time was under considerable strain, and he pushes hierarchical thinking almost to the point of implosion. Still, such thinking was his starting point, and it distinguishes him from most liberal Enlightenment thinkers who began with a more egalitarian viewpoint, often rooted in modern

[13] Giddens, *Sociology*, 9.

natural law.[14] To the degree Montesquieu can be considered a liberal thinker, he presents the curious spectacle of arriving at liberal conclusions without employing liberal premises. But the question here is not so much how, beginning with a hierarchical starting point, he arrives at liberal conclusions, as how, beginning with this same starting point, he arrived at the discovery of the social. Again, the implication is that were he either an egalitarian or conventional hierarchical thinker, he would not have arrived at this discovery.

Both egalitarian and hierarchical thinkers begin with the political question: how are relations of rule to be made, and made to appear as properly constituted? Hierarchical thinkers seek to validate hierarchical relations of rule in terms of hierarchical principles, notably by claiming that those above, with power, render a higher law present to those below, without which they would live disorderly and senseless lives. Egalitarian thinkers must validate relations of rule according to egalitarian principles, which is more difficult, as relations of command and obedience do not, almost by definition, appear equal. Egalitarians, in effect, have to justify (mitigated) hierarchical relation in non-hierarchical terms, notably those of consent and association, which would generalize law and power throughout the citizen body. Thus, where hierarchical principles present human law and power as proceeding from a transcendent source that can then be represented down the chain of authority, egalitarian principles, even if they situate the source of law and power in God's will, must represent that source as present in all men, in their nature or reason. Consequently, hierarchical thinking tends to have the divisions between the supra- and sub-human worlds traverse the divisions of the human world, linking the latter to a cosmic 'chain of beings'. Egalitarian thinking, by contrast, tends to separate the human from the supra- and sub-human worlds, tying the principle of rule in a single, strictly human substance. Montesquieu, we will see, begins with a chain of beings, but with a very different end in view. He could never have discovered the social had his primary concern been to demonstrate a given form of rule to be necessary, and just because of its origin in a higher principle. He uses the differentiation of worlds to change directions and ask: what sustains the different forms of rule, even when they are patently unjust or futile? Such a move is fundamental; it allows him to speak from outside the positions of law or power, which claim to be at the basis of the collective's order and sense. Had he not made this move, he would have remained within a strictly juridico- (or theologico-) political discourse, and within the terms of the symbolic order that it sought to articulate. It is unlikely that he could have made such

[14] The distinction between liberal and hierarchical worldviews is drawn from the work of Louis Dumont. See *Homo aequalis: Genèse et épanouissement de l'idéologie économique* (Paris: Gallimard, 1977).

a move from a more egalitarian, republican perspective, because the latter, at the time, was necessarily more interested in establishing an alternative symbolic reordering of the polity. Montesquieu does not begin with *homo aequalis*: he does not claim that all men are equal by nature, or ought to be according to principles of justice[15]; nor does he separate the human from the natural or supernatural worlds. The problem, then, is to understand how he is able, from within the terms of the ancien regime, to make the move to the social. To help guide the reader through what is, ultimately, a complex argument, let me begin to outline some of the more important points.

Montesquieu claims that once humans enter society, inequalities and, therefore, conflicts arise. The response, if not the solution, to the threat of conflict is, precisely, the imposition of relations of rule. Several responses are possible, resulting in different political regimes. One response is despotic rule, which extends these inequalities by force, thereby suppressing conflict, if only momentarily. The democratic republic presents a second response: it would suppress the inequalities at the root of conflict through the generalization of power, and the internalization of a general law. Montesquieu's portrait bears little resemblance to liberal democracy as we know it; he understands it in terms of not a minimal law to maximize individual liberty but of a maximal law to ensure maximum dedication to the *patrie*. Montesquieu's preference lies with the monarchic response, which sublimates inequalities through the principle of honour, while preserving a moderate liberty through a modicum of law. This political preference is not unrelated to his epistemological propensities, as indicated by the aforementioned chain of beings. But in contrast to the more conventional chain, the links are not held in place by a single power at the summit, whose law establishes an order of differences within which each being finds its place. The law that holds the chain together is broken, such that each link becomes the bearer of its own law, resulting in a plurality of laws corresponding to the different beings. As human beings lie at the crossroads of multiple worlds, they find themselves subject to all the different laws: those of the divinity (faith), of 'intelligences superior to man' (reason), the beasts (passion), and, because of their corporeality, material laws. The sum of so many laws does not produce an orderly, coherent or meaningful world. The introduction of different levels of being does not serve to comfort the construction of a symbolic order by, for example, situating a strictly socio-political hierarchy within a cosmological one. On the contrary, their introduction points to a fundamentally contingent world that leaves human existence undetermined because, paradoxically, it suffers from a surfeit of determinations. In the face of such indetermination, humans must construct a human law; that is, a positive, juridical law, as well as the power to enforce it. This strictly human

[15] Nor does he justify inequality on the basis of nature or justice.

law, however, remains dependent on, and is conditioned by, all these other different laws.

Montesquieu never speaks of the social. The term is only widely used, as noted, after the publication of Rousseau's *Social Contract*, and Rousseau fails to separate the social from the political. Ultimately, the term's contemporary usage would have to wait until after the French Revolution, and would become the marker of the triumph of democratic imaginary, but also of its disappointments. Montesquieu, if he could not speak of the social, refers to the 'spirit of the laws', which he distinguishes from positive, juridico-politico laws. Sometimes this spirit is understood as the sum of the effects of all the other, non-human laws; and sometimes it is understood as a 'condensate' of these effects (inclusive of all feedback effects consequent to socio-political developments). The concern is with the relation of the spirit of the laws to strictly human, positive laws. When the latter complement the spirit, the effectiveness of these laws and the vitality of the larger political regime, more broadly, are assured. When the spirit is contrary to the laws, they encounter resistance, and the principles of the regime are threatened with corruption. In the former case, that of complementarity, the spirit lies beneath or behind the positive laws, and is, therefore, largely invisible; for the influence of the spirit, in contrast to positive laws, need not be represented to be felt. In the latter case, that of contrariety, the spirit appears in front of the laws as 'the real'; that is, as an impediment to their effectiveness. Here the spirit is visible, but appears disruptive of the symbolic order presented by positive law and sanctioned by political power. In the distinction between the spirit of the laws and positive law, one sees, in germinal form, the distinction between the social and the political (positive law and political power). At the same time, one can see why the social is not easily discovered: when it supports the symbolic order presented by the political, it remains largely unseen; whereas when it opposes the latter, it is seen, but appears opposed to all order and sense (and cannot, therefore, be configured as spirit). The social lies at the limits of the political, underneath the political when not inimical to the latter's symbolic order, and beyond the political when it is. What Montesquieu does, at a first moment, is make the political aware of the limits on which it depends.

Once aware of its limits, the political can compose with what lies beneath or beyond these limits. In the case of contrariety, composition is only possible because what lies beyond the political is not simply an absence of, or resistance to, all order and sense; although this 'outside' troubles the political order, because tied to other, non-positive laws, it can, in principle, be rendered intelligible, and so be dealt with from the perspective of the political with a degree of intelligence. In the case of complementarity, where these other laws appear conducive to existing positive laws and to the symbolic order more generally, Montesquieu is able to demonstrate that the political does not stand alone, as if constituted solely from its own will

and according its own purposes. The political order is subject to all kinds of outside influences, and in all sorts of combinations; as such, its comprehension has to be dislodged from an exclusive focus on the political will, the imperatives it claims to transmit, the laws it seeks to make and the mechanisms it establishes for their execution. The ideals lodged in the political are no longer the arbiter of all truth claims. New attention can now be paid to the facts, since they no longer need be apprehended only in terms of their (non)compliance with political norms. As long as they can be shown to be subject to laws of whatever type, the facts acquire an epistemological value and can be investigated on their own account. In principle, all the facts—and thus all societies, past and present, in their seemingly limitless diversity—can become objects for analysis, and not simply for approval or condemnation. Once the enchantment of the political's symbolic order has been broken, a new horizon of objectivity emerges.

This, in a nutshell, is the argument of the first chapter of this work. It examines the discovery of the social as the discovery of a horizon at the limits of the political, which gestures beyond the symbolic to the real. After a critical look at Durkheim's canonical (if positivistic) account of Montesquieu's discovery, this chapter provides a close reading of the first book, entitled 'Laws in General', which can be considered the epistemological overture to the next 30 books that comprise *De l'Esprit des lois*. The next chapter reverses direction: instead of examining the emergence of the social from the perspective of the political, it looks at the political from the perspective of the social. More precisely, it considers the construction of the three regimes (monarchic, republican and despotic), which frames much of the work. Where the traditional distinction (between monarchy, aristocracy and democracy) was concerned with who rules (the one, the few or the many), Montesquieu's concern is with the 'how' of rule, understood in terms of the relation of power to positive law (whether power eliminates, coexists or fuses with the law). To speak of the 'how' of rule, Montesquieu must, arguably, acquire a distance from the political. Moreover, to speak of the relation of power to law, he has to first separate them. The implication is that once separated, power is revealed to be inherently despotic. Indeed, when without any relation to law, power reveals its inherently despotic character. With power thus disenchanted, the political loses one of its two symbolic props, and the central problem of political life becomes how to limit power—and not how to construct a 'good power'. If power is unlimited in despotism, the other two regimes limit power: the democratic republic by fusing power with law and generalizing both; monarchy by separating law from power via the establishment of relatively autonomous juridical institutions, and by disseminating both law and power through intermediary bodies. Two related topics inform the organization of this chapter. The first concerns the analysis, relative to the three regimes, of the language of power, given that power tends here to lose its relation to the symbolic. The second concerns

the analysis of the institution of law, and whether it alone must carry the burden of the symbolic, or whether this burden can be distributed, at least for certain regimes, more widely.

The third chapter continues the analysis of the three regimes, but moves from an examination of what Montesquieu terms their 'natures' (the configurations of law and power) to their 'principles': fear in despotism, virtue in republics and honour in monarchies. These principles can be considered condensates of the spirits that animate the three regimes. As such, their examination demands that the social perspective of the previous chapter shift from an analysis of political institutions to an examination of the underlying social passions. Particular emphasis is placed on the case of monarchy; for the principle of honour bears a logic at variance from those of both law and power. In other words, in monarchies the difference between the social and political is not simply conceptual but substantive, as the social bears its own distinctive principle of order and sense. It is no surprise then that a number of authors have claimed that Montesquieu's analysis of honour anticipates the ideas of 'civil society' and the 'invisible hand'. I will argue that, although honour implies a separate sphere of action with its own symbolic order, Montesquieu seeks to closely tie honour to the more 'visible hands' of monarchic law and power, in the face of the dangers represented by the flattery of courtiers and the volatility of (what would soon be called) 'public opinion'. This chapter points to a fourth definition of the social (beyond the social as horizon, perspective and separate, substantive sphere). This definition speaks to a modification of the sense of honour, at least in France, even as it refers back to the social's original sense as companionship. I am speaking of the social as sociability, understood in terms of the rise of the social arts, the elaboration of the intricate codes of *politesse*, and developing concern with taste and fashion. A sociable humour implies a social bond engaged for its own sake, for the pleasure it procures, an essentially aesthetic pleasure derived from seeing and being seen, from the spectacle society makes of itself. The social here appears in itself, disengaged, at least in part, from the utilitarian ends of politics and economics; as such the social here appears both frivolous and, as the hallmark of '*société polie*', civilization's highest accomplishment.

The fourth chapter is built around Book XIX, the centrepiece of *De l'Esprit des lois*, which focuses on the 'general spirit' or moeurs and manners. Since Montesquieu, the discussion of moeurs and manners is often considered the defining mark of Enlightenment histories.[16] To be sure, he does not wait till Book XIX to discuss such matters: the principle of virtue can be said to define the moeurs of republics, and honour the

[16] See J. G. A. Pocock, *Barbarism and Religion, vol. 2: Narratives of Civil Government* (Cambridge, UK: Cambridge University Press, 1999), pp. 19–20.

manners of monarchies. What distinguishes Book XIX is that it considers the moeurs and manners of specific peoples, rather than in the more general terms framed by the three regimes. In effect, Montesquieu pushes against his own framework to develop the categories necessary to theorize the seemingly exceptional cases. In an attempt to situate the place of moeurs and manners, Book XIX presents a dizzying set of contrasts that are ultimately polarized between the least despotic of despotisms, China, and the least monarchic of monarchies (or the least republican of republics), England. In both regimes the relations between the social and political dimensions appear particularly disarticulated—implying greater autonomy for the (third definition of the) social—though the result in the one case is the most static of regimes, and in the other the most restless. The English case is of particular interest, as it has as its object liberty (at one point Montesquieu speaks of 'extreme liberty'). The secondary literature tends to concentrate on Book XI, Chapter 6, which discusses the system of checks and balances that constitutes the nature of the English regime. One cannot, however, understand this regime, if one does not consider its general spirit as discussed in the lengthy chapter that completes Book XIX. Once the English constitution is placed in relation to English moeurs, Montesquieu would seem to have a much more equivocal position on the English regime than is generally supposed, as the asocial social bond that he finds there invites comparison with the sociable social bond of the French.

This completes my inquiry into Montesquieu's masterwork, but does not complete my analysis. The purpose of embarking on this project was always to re-examine the present fate of the social, particularly now that its death has been proclaimed, by returning to its birth. This necessitates a long final chapter. But before outlining the latter, a few words should be said about my analysis of *De l'Esprit des lois*, and the pleasure that I have derived from it. The more I read the text, the more I was enticed into its many byways. *De l'Esprit des lois* is a sprawling, encyclopaedic work composed of 31 'books' and innumerable chapters.[17] Many who have encountered the work have been overwhelmed, seeing in the lack of a clearly organized, linear argument only confusion. Matters are not helped by the brevity of certain chapters and the pedantic luxuriance of others, or by the many digressions and repetitions, not to mention the use of ellipsis and absences. In his '*Pensées*' Montesquieu writes: 'in order to write well, one must jump over

[17] The first edition was published in 1748; future editions involved minor variations, in part to respond to the criticisms of the theological establishment. I will generally refer to the Cambridge translation, *The Spirit of the Laws*, trans. and ed. Anne M. Cohler, Basia Carolyn Miller and Harold Samuel Stone (Cambridge: Cambridge University Press, 1989). At points, which will be indicated, I do, however, alter the translation.

the intermediary ideas, enough not to bore the reader, but not too much for fear of not being understood.'[18] It is not simply, however, a question of completing 'the intermediary ideas' within individual chapters. Elsewhere he writes (referring to Book XIX): 'What renders certain points of the book in question obscure and ambiguous is that they are often distant from other points that explain them, and that the different links in the chain [...] are often at a remove from each other.'[19] Not only must the reader fill in the gaps that the author has jumped over, he or she must jump between the different chapters and books to make the links that he has not. It is as if the work anticipated the hyperlinks associated with digital texts, but without actually indicating where these links are to be made. Lastly, in the very brief chapter that concludes Book XI, Montesquieu adds: 'one must not always so exhaust a subject that one leaves nothing for the reader to do. It is not a question of making him read but of making him think.' Sometimes, to interpret this text, one has to make an imaginative leap outside it. This text has been designed—consciously it would seem—to allow the reader to follow and, indeed, construct countless interpretive threads. Such a seemingly discontinuous work, at once exhaustive and laconic, thus presents singular challenges. For a long time, the reading of Montesquieu seemed restricted to certain select books or chapters, most famously the one on the English constitution. Recently, a number of important works have taken up the interpretive challenge more seriously, and plunged into a more detailed examination of *De l'Esprit des lois* as a whole, sometimes admitting that there can be no complete, definitive interpretation.[20] My own work owes much to these studies, though it seeks to pull much more emphatically on a single thread. Still, in pulling on this thread, the nature of Montesquieu's text obliges one to pull on many others. My work, then, is replete with what appear as multiple subsidiary digressions. I admit to taking delight in delving into a number of the text's many hermeneutic puzzles—a delight made

[18] 'Pensées' (no. 802), *Oeuvres complètes*, vol. 1 (Paris: Gallimard, Bibliothèque de la Pléiade, 1951), p. 1220.

[19] 'Réponse à des observations de Grosley sur *L'Esprit des lois*', *Oeuvres complètes*, 2, p. 1197.

[20] See Bertrand Binoche, *Introduction à De l'esprit des lois de Montesquieu*; Céline Spector, *Montesquieu: Pouvoirs, richesses et sociétés* (Paris: PUF, 2004); David W. Carrithers, Michael A. Mosher and Paul Rahe, eds., *Montesquieu's Science of Politics: Essays on the Spirit of Laws*; Rebecca E. Kingston, ed., *Montesquieu and His Legacy* (Albany: SUNY Press, 2009); and Guillaume Barrera, *Les lois du monde: Enquête sur le dessein politique de Montesquieu* (Paris: Gallimard, 2009). As I was completing this work, two more works appeared: Ursula Haskins Gonthier, *Montesquieu and England: Enlightened Exchanges, 1689–1755* (London: Pickering & Chatto, 2010) and Jean Goldzink, *La solitude de Montesquieu: Le chef-d'œuvre introuvable du libéralisme* (Paris: Fayard, 2011). These last two works necessarily receive less attention, though let me say, I found much to disagree with in the former, and much to comfort my own claims in the latter.

possible by its many surprises. Sometimes, the digressions appear within the individual chapters, as I seek to explore the multiple ramifications of my central problematic. But I have also added excursuses to three of the chapters: on the relation of the three regimes to history and historical time at the end of the second chapter; on the different ideas of liberty at the end of the third; and on the place of economic considerations at the end of the fourth. These excursuses do not directly address the question of the social; but they do resonate with that question and add pieces to the larger puzzle.

The last chapter, I stated, begins to move beyond Montesquieu. Here I try to situate Montesquieu's discovery, if only schematically, relative to other, later and often more durable discoveries of the social. In the face of the present debasement of the term's meaning, the return to Montesquieu serves to recover a sense of what was at stake in the discovery, what it allowed to be seen or said that could not be seen or said before. In the course of my interpretation, four senses or usages of the social are uncovered, each of which forms a stratum on which the next one is able to build—and each of which serves, loosely speaking, to structure the development of the four interpretive chapters. Again, these four usages are: (1) the social as a horizon arising at the limit of the political; (2) the social as a perspective from which the political can be re-examined; (3) the social as a relative autonomous set of substantive relations, which appears only in certain regimes; and (4) the social as a social bond, divided between a sociable and an asocial social bond, and distinguishable from relations of rule (and, more arguably, relations of economic exchange). Elements of all four definitions are, to varying degrees, present in the later discoveries. These definitions thus retain their relevance, even if Montesquieu remains a man of the ancien regime. To be sure, these later discoveries no longer speak of spirit but adopt the vocabulary of the social (and I try to show why this vocabulary could not be fully adopted until after the ancien regime's overthrow). Moreover, these discoveries will further displace the political, while restricting the social to strictly intra-human relations. Nonetheless, if these definitions remain applicable to the later discoveries, it can only be because the epistemological moves of the first discovery are repeated, if often in bowdlerized form. These moves, as I have tried to unearth them, entail the acceptance of, and reconnaissance with, a number of divisions or fractures. First, there is the division of the political, the division between law and power, which enables the establishment of a site of enunciation, a topos of knowledge, at a distance from that of law and/or power. Then there is a division from the political, whereby the political acknowledges the significance of its 'outside'. With the (theologico-) political no longer able to contain the symbolic, the latter begins to fracture, giving rise to a new sense of reality, and suggesting a new articulation with 'the real'. Ultimately, the discovery of the social implies a division of the symbolic, and a different conformation of the symbolic with its outside.

These divisions, I would argue, have become central to our modernity; but this does not mean that they are as easily discerned as in Montesquieu, particularly as concerns the competing disciplines. The social first arises at the boundaries of the political; and those who still speak in the name of the political remain suspicious of the social, although the political's capacity to represent society and its symbolic order is now much diminished. But since the nineteenth century, the social has had to confront another, much more formidable competitor in the form of the economic. The latter too can claim to deliver the key to the order, coherence and rationality of collective existence—and in line with reality objectively considered, and in a way that limits the political (even as it maximizes individual liberty). The social, consequently, undergoes a second birth, this time at the limits of the economic, in the gap between economic reality and economic representations (particularly of the more apologetic, providentialist variety)—a gap exemplified by what came to be termed, precisely, the 'social question'. Again the (re)emergence of the social speaks to the fractures of a symbolic order (even if this symbolic order does not represent itself as such, claiming as it does to speak in the name of immanent laws rather than transcendent norms). The attempt to include all reality in a single, undivided symbolic order can take many forms; it can even be made by those—and perhaps especially by those—who draw on the vocabulary of the social. This attempt is most evident in those socio-centric perspectives that refuse to accept the liminal, even parasitic place of the social relative to the political and the economic, but would instead claim, as the 'queen of the sciences', to bring together within a single meaningful totality all aspects of collective life. The present vacuity of the social can be considered the reverse image resulting from its limitless symbolic extension.

The idea of the social, however commonsensical and widespread, has always been quite fragile, not least because it occupies a place at the limits, dependent on divisions that have rent the symbolic. But in the last few decades a number of authors have announced 'the end of the social', which forces us to consider whether the social, or any aspect of it, is worth resuscitating. As there was more than one birth (including partial and still births), there now appears to be more than one death. In the last part of the final chapter I try to demonstrate—and the demonstration is, admittedly, a little forced—that the different deaths can be made to correspond to the different definitions of the social uncovered in this study. When there is more than one definition, the end of any one sense need not be mortal for them all—unless the end concerns the sense of the term on which all the others depend. This ultimate sense is provided here by the first definition, the emergence of the social as a horizon beyond the limits of a given symbolic order and its seemingly self-evident reality. It is this sense of the social the postmodern critique would put into question. Now, a reader of an earlier draft of this work claimed I provide a postmodern reading of Montesquieu.

My work, however, does not follow in the footsteps of, for example, Michel Foucault, Zygmunt Bauman or Gilles Deleuze. My central theoretical markers tend to be drawn from the work of Claude Lefort, though I suspect he would not always have recognized himself in what I write.[21] Still, I take seriously, if not the claims postmodernism makes, then the issues it raises (even if we increasingly live today in a post-postmodern era where both the claims and issues can be easily ignored). What postmodernism claims is that the social cannot survive if there is no longer any symbolic, or any reality. My work concludes with a brief examination of two authors, Michel Freitag and Jean Baudrillard: the former affirms the end of the social to be a consequence of the end of the symbolic, and the latter a consequence of the end of reality. Both are speaking of a collapse—the one of the symbolic into reality, and the other of reality into the symbolic—which leaves both terms in their confusion without an outside. I argue that the end of the symbolic, or of reality, is unthinkable—except conceptually—though local signs of dissolution can be ascertained. Nonetheless, the death by postmodernism reminds us that, if we are to recover the social as a meaningful category, then we must accept its limits, even as it speaks to the limits of other domains and disciplines, and lives within the fissures that interrupt, but also serve to articulate, relations in an incomplete and fractured world.

While writing is a solitary process, it is, fortunately, never entirely solitary, and therefore a number of thanks are in order. What now seems like a generation of students in the Programmes of Sociology and Social and Political Thought has been subjected to reading sections of *De l'Esprit des lois* in my graduate seminar; they have helped me form my ideas, and often provoked me to push them further. A number of these students, and here I must mention Peter Mallory, Greg Bird, Mark Ayyash, Michael Follert and Craig MacFarlane, have read earlier drafts of at least one chapter, and provided valuable suggestions. I have had the opportunity to present sections of the work on a number of occasions, several times through the International Social Theory Consortium, most recently at UCC in Cork, Ireland. Rebecca Kingston must be thanked for organizing an important conference on Montesquieu through the Chancellor Jackman Program at the University of Toronto. Professors Neil Robertson and Simon Khoo generously offered me the opportunity to present my ideas in the context of the Early Modern Studies Program at the University of King's College in Halifax, Nova Scotia. Special thanks are owed to Lorna Weir, who always encouraged me, and

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[21] I have sought on two occasions to discuss the question of the social (and the political) in Claude Lefort. The first as 'Thinking the "Social" with Claude Lefort', *Thesis Eleven*, 87 (November 2006); and the second as 'Democracy Beyond the Political', in *Claude Lefort: Thinker of the Political*, ed. Martin Plot (Basingstoke, Hampshire: Palgrave, forthcoming).

encouraged me to persevere. And while things did not work out as planned, I would like to acknowledge the support of Dick Howard, which helped push me to the end of this project. Lastly, I would like to thank an anonymous reader at Palgrave Macmillan for his excellent report on an earlier draft, as well as the editors and others at this same company for their cordiality, professionalism and celerity. In so many ways, they rendered the last stages of this project the easiest.

1
The Question Concerning Laws

> When I recollect what the President Montesquieu has written, I am at a loss to tell why I should treat of human affairs . . . [1]

Durkheim on Montesquieu: social vs. political laws

Auguste Comte, Émile Durkheim, Raymond Aron and Louis Althusser, among others, all claimed Montesquieu to be the first to discover the social.[2] Such a claim, despite or because of the diversity of the claimants, is entirely conventional, at least among French authors. By revisiting this convention, I am defending the claim—although I admit to more than one discovery. Moreover, these authors all claim that social analysis arose in opposition to the formerly dominant political (and implicitly, metaphysical) schemas. But this latter claim begs a number of questions, and it is in the response to these questions that my analysis seeks to cut its own path. How is the separation of the social from the political made possible? What is this 'social' that by being separated appears for the first time? What kind of 'object' is it? What does its emergence mean for the comprehension of—and by implication, action on—collective life? And what are the implications of this separation as it rebounds onto the political? To highlight my difference from the more common responses, I want to begin with a brief examination of Émile Durkheim's writings on Montesquieu. I choose Durkheim's writings because they are far more extensive than those of Comte, more emphatic than those of Aron, and in crucial respects similar to those of Althusser.[3] Besides, Durkheim is a perennial favourite in classical sociology courses.

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[1] Adam Ferguson, *An Essay on the History of Civil Society* (London: Transaction Books [1767] 1980), p. 65.
[2] In truth, Althusser speaks of political science, not social science, with an emphasis on the term science.
[3] Auguste Comte, *Physique sociale. Cours de philosophie positive*: *Leçons 46 à 60* (Paris: Hermann, 1975 [1842]), 85; Émile Durkheim, *Montesquieu and Rousseau: Forerunners*