



## LIBERTY MATTERS

### MONTESQUIEU ON LIBERTY AND SUMPTUARY LAW

*The **Baron de Montesquieu** (1689-1755) was one of the most widely read authors before the [American Revolution](#) and had a profound impact on the formation of the American Republic. In this discussion of his economic thought, in particular his ideas about the need for sumptuary laws in republics, Henry Clark of Dartmouth College investigates this little appreciated aspect of Montesquieu's thinking and concludes that, before the theory of natural rights became better established, "Sumptuary law is scarcely more than a blip on our historical radar screens, but it manages to remind us of what a mottled, murky landscape the history of liberty really is". Henry Clark is joined in the discussion by David Carrithers at the University of Tennessee, Chattanooga, Paul A. Rabe at Hillsdale College, Michigan, and Stuart D. Warner of Roosevelt University, Chicago.*

### MONTESQUIEU ON LIBERTY AND SUMPTUARY LAW

by Henry C. Clark

"They told us not to wear colourful clothes."  
 --*He Named Me Malala* (Fox Searchlight Pictures, 2015)<sup>[1]</sup>

When Bologna promulgated a set of sumptuary laws in 1453 restricting female clothing options, it was hardly earthshaking news. Such laws had been a staple throughout Europe for generations and would continue to be for centuries more. The difference this time was Nicolosa Sanuti. Wife of a local count and lover to the chief magistrate of Bologna, Sanuti did something that to my knowledge had not been done before. Where most complainants about such laws in Bologna and elsewhere (and there were many) preferred to file individual petitions for personal exemptions, Sanuti drafted a veritable short treatise, which she sent to the papal legate responsible for the new law and which attacked the legislation and the whole rationale behind it root and branch.

She did not, of course, frame her essay in the modern language of "liberty" or of "rights." Her main arguments were moral rather than political and were cast mostly in

the Renaissance language of the virtues. The sartorial "ornaments" that had been outlawed, and that Sanuti wanted restored, were "testimonies to virtue and heralds of a well-instructed mind." They amplified the "honor" and the "personal dignity" of the wearer, which she pitted against the "avarice" of those men she presumed responsible for the obnoxious new law. They fostered humanity and "liberality" in their wearers, polar opposites of pinching greed. They respectfully followed long-established custom, whereas the new law was a brutal rupture. And they properly highlighted social distinctions, enabling some to display their excellence more than others.

Beneath the standard Humanistic language of all these arguments, however, the outlines of a liberty claim are not hard to see. "Let not the rights of the humbler sex be snatched away by the injustice of the more powerful," she intoned. Echoing an episode from Roman history as recounted by [Livy](#),<sup>[2]</sup> she concluded that though state offices and public honors are the fit preserve of men, "ornaments and decoration, the tokens of our virtue" are the rightful possessions of women, which "we shall not allow to be stolen from us."<sup>[3]</sup>



*Titus Livius*

As we have seen, at least one of these articles of indictment--the claim about novelty--was not really accurate. During the ancient, medieval, and early modern periods, men and women alike throughout Europe (and beyond) were frequently told not only what they could wear, but how they could furnish their homes, embellish their weddings and funerals, or generally appear in public. Pleasing God, controlling elites, keeping down the plebs, reining in women, protecting local interests, and enriching the state were among the multifarious rationales that were offered up by regimes at one time or another and that are embraced by the protean term "sumptuary law." When we liberals nowadays deign to take notice of this stubbornly durable phenomenon, we often respond with a kind of bemusement at the sheer triviality of the whole subject.

Contemporaries did not necessarily find it so trivial. Sanuti herself threatened suicide at one point in her (unsuccessful) appeal. The sheer scale of the circumventions and the resistance mounted against it, as well as the enforcement mechanisms brought to bear on its behalf--which included excommunication, confiscation, burning of contraband, rewards for denunciation, and threats to livelihood--shine a useful spotlight on premodern relations between ruler and ruled, and on the broad enterprise of modern liberty that changed them. And at a moment when sartorial propriety is being treated with murderous gravity in multiple

venues around the world, it may not be altogether frivolous to say a few words about it here.

It seems the sumptuary laws mostly disappeared from Europe in the 18th century. (It was a bit earlier in England, though even there, nostalgia for their return scarcely abated throughout the period.) But the manner of their disappearance was not as straightforward as we might imagine. To illustrate, I propose to discuss one of the undoubted architects of a system of liberty in that period, namely the Baron of La Brède and of Montesquieu (1689-1755). Since the Frenchman was central to the great debates over the general definition of liberty on both sides of the Atlantic in the second half of the 18th century--one study finds him cited much more often by the American framers than any other modern authority<sup>[4]</sup>--if we are to find a satisfactory answer to Sanuti's challenge, we should expect to find it there.

Another reason for focusing on Montesquieu is that he actually discussed the subject in detail, something that not all of his Enlightenment contemporaries did. I have found no evidence, for example, that either Hobbes or Locke ever mentioned sumptuary law in their writings, nor did Hume (though he treated at length the allied topic of luxury). Most authors of the period touched upon it briefly and in passing. Montesquieu himself only discussed it in one place, but in that place--book seven of *The Spirit of the Laws* (1748)--he gave it a coverage that is worth trying to unravel.

First, he fits sumptuary law firmly into his broader constitutional framework, thus presenting a scheme that was destined to seem more relativistic than normative to many readers. According to that framework, most regimes fall into one of three categories: a republic, a monarchy, or a despotism. Each form has its constitutional features, of course, but Montesquieu also saw each as based on a moral-psychological principle. Thus, the "principle" of a republic was virtue, that of a monarchy was honor, and of a despotism fear. Earlier in the work, he had already defined republican virtue as "love of the republic" and explained that in a democratic republic, such love included a love of equality and of the shared frugality necessary to preserve it.<sup>[5]</sup>

This shared frugality--along with its corollary, the prevention or banishment of luxury--are feasible republican goals on Montesquieu's account. This is worth underscoring, because in the half-century before his treatise appeared, authors such as Nicholas Barbon, Bernard Mandeville, and even his own friend Jean-François Melon had begun to throw cold water on the classic narrative of frugal republican virtue.<sup>[6]</sup> But Montesquieu maintained that in republics founded on equality, where each person is limited to a subsistence standard of living, any natural desire for distinction, or "glory," is adequately satisfied by the opportunity to sacrifice everything, including life itself, for one's *patria*.<sup>[7]</sup> Wherever that equality is lost, "glory" tends to be replaced by "vanity," which brings large and corrupt cities in its train and results in the "general distress"<sup>[8]</sup> of a society where values and prices, needs, and means fall lamentably out of kilter. Thus, "the less luxury there is in a republic, the more perfect it is."<sup>[9]</sup>

The case of monarchy is different. We are told that "luxury is singularly appropriate in monarchies and [thus] ... they do not have to have sumptuary laws."<sup>[10]</sup> Let's flesh out the reasoning: the moral principle of monarchy is "honor," but honor implies love of inequality, just as republican virtue had involved love of equality. In a monarchy, inequality is a functional principle of just, generalized reciprocal action, just as virtue had been in a republic: think of Aristotle on distributive justice.<sup>[11]</sup> Honor is a self-regarding "prejudice" (Montesquieu's term) rather than a self-denying virtue, and it leads each individual to cling to his place in a manifestly hierarchical order, or even to move up in it through ambition. The latter passion, though illegitimate and lethally dangerous in republics since it tends to breed faction and civil war, is legitimate in a monarchy<sup>[12]</sup>



*Aristotle*

A couple chapters later, Montesquieu steps out of his constitutional framework and offers instead a demographic-economic perspective on the subject. It seems that a country that does not produce enough food for itself, whatever constitutional type it may represent, is well-advised to encourage everyone to work in food production and avoid luxuries, with the help of "strict" sumptuary laws. Overpopulated China, the largest monarchy in the world at that time, is his example. But countries that produce agricultural surpluses have nothing to worry about from either the production or consumption of luxuries. The two examples he cites here, interestingly enough, are England and France--further evidence of his indulgence toward luxury in modern European states.

Montesquieu envisions two exceptions to the counsel against sumptuary law in monarchies. The first, which he calls "absolute frugality," is republican in spirit, and he cites 13th-century Aragon as a (somewhat obscure) argument for the legitimacy of such laws in monarchies. The second, "relative frugality," is a ban on any foreign imports that might, in the eyes of the royal government itself, upset the overall balance of trade. 18th-century Sweden is his example, but some readers might have seen in it a loophole capacious enough for many contemporary regimes--perhaps even including France and England--to cruise through in pursuing their consumer prohibitions.<sup>[13]</sup> So his claim that monarchies "do not

have to have sumptuary laws” turns out to be quite short of categorical.

On the other hand, if Montesquieu’s treatment of monarchy is not as “liberal” as it seems at first sight, his treatment of republics is also not as austere. For between the two seemingly stark alternatives of luxury-steeped monarchy and frugal democratic republic, there is a third category that is discussed not in book seven but in book five--the one dedicated to constitutions and their moral principles. After reminding his readers of the reciprocal dependence of equality and frugality, he then inserts a discussion of a quite different regime, namely a commercial democratic republic. Whereas Rome (and Sparta) had exemplified his ideal frugal egalitarian republic, Athens is his explicit model for a commercial one.

In commercial republics, it seems, the rigid correlations he had established for frugal egalitarian republics dissolve. Inequality arises fairly quickly in such regimes, and yet “it may very well happen ... that the mores are not corrupted.”<sup>[14]</sup> This is because the “spirit of commerce” usually brings an array of what we might call bourgeois virtues--Montesquieu called them the “spirit of frugality, economy, moderation, work, prudence, tranquility, order, and rule”--which are capable of maintaining frugality in check.<sup>[15]</sup> Participation in trade by the elites and equal inheritance portions are also practices known to help keep this spirit of commerce within the boundaries set by the requisite “spirit of frugality.”

This picture of vast differences in wealth that nonetheless do not have fatally corrupting effects would seem to point to and illuminate an important aspect of the world we live in. If the gargantuan inequalities of wealth and income that we see every day--inequalities that would surely have struck terror into the hearts of republican moralists from antiquity up to Montesquieu’s own time--generate disproportionately mild levels of discontent in our own day, this is due in no small measure to the principle grasped by the Baron of La Brède. We celebrate or at least tolerate our wealthy if, and insofar as, we regard their riches as the earned reward of the productive virtues--along with talent, creativity, and innovation,

which were less prominent in the Frenchman’s scheme--that we have come to associate with commercial life.

But is this insight enough to help explain the demise of sumptuary law? Is a new appreciation of the bourgeois virtues and their pacifying effects on gross inequalities adequate to account for the disappearance of the sumptuary impulse? To see the conceptual problems Montesquieu’s treatment posed, let us return to our friend Nicolosa Sanuti. Her rationale for opposing sumptuary law, it will be recalled, had had relatively little to do with the bourgeois virtues. What is more redolent of her argument is Montesquieu’s moral profile of monarchy, for that system of government is founded on inequality from the outset, which it accommodates and validates by spurring a highly self-regarding ambition, very much as Sanuti had put on display.



*Charles Louis de Secondat, Baron de Montesquieu*

One point worth making here is that in the decades to come, republicanism, not monarchy, would come increasingly to be associated in some people’s minds with liberty. Alongside his close association of republicanism with egalitarian frugality, Montesquieu’s schema makes it a bit harder for a republican sympathizer to mount a liberty argument against sumptuary law. Sanuti lived in a sort of republic (in principle, at least), and although she did not link republicanism with her brief against those laws, others who came after her did.<sup>[16]</sup>

It is true, as we have seen, that in book five of *The Spirit of the Laws*, Montesquieu had carved out the intermediate category of commercial democratic republics. But it is also true that in book seven, where he focused on sumptuary law, he slid over the commercial republic with barely a mention, focusing most of his attention on the frugal egalitarian republic instead. It was thus possible, in his own time and since, to imagine Montesquieu as a forerunner in his sympathies to a kind of Rousseauian republicanism, with its robust endorsement of sumptuary law.<sup>[17]</sup>

More generally, whether taking a constitutional or a moral-psychological or a demographic or an economic perspective, Montesquieu consistently assumed that sumptuary law was, in principle at least, a legitimate arrow for any government to keep in its quiver.



**Adam Smith**

For a challenge to this general assumption, the Sanutis of the world would have to look elsewhere, such as to Adam Smith. A quarter-century after Montesquieu, the Scotsman wrote: “It is the highest impertinence and presumption ... in kings and ministers, to pretend to watch over the œconomy of private people, and to restrain their expence either by sumptuary laws, or by prohibiting the importation of foreign luxuries. They are themselves always, and without exception, the greatest

spendthrifts in the society. Let them look well after their own expence, and they may safely trust private people with theirs. If their own extravagance does not ruin the state, that of their subjects never will.”<sup>[18]</sup> But even Smith was referring here more to the specific history of English government than to the general principles of all government. Nor did he state his position in the form of “rights” or “liberty,” but only of moral counsel, however acerbically categorical. And in any case, Smith was one of those who treated sumptuary law in a passing sentence or two rather than as a worthy subject in its own right, as Montesquieu had done.

So the full story of the disappearance of sumptuary law would embrace more than the leading current of ideas. It might include changing property rights, especially in those countries such as England where sumptuary law languished earliest.<sup>[19]</sup> It might take account of how global trade spurred unique patterns of consumption in Northwestern Europe that ended up overwhelming by attrition an increasingly half-hearted enforcement.<sup>[20]</sup> It might touch on how the European Marriage Pattern or similar factors primed the West to produce more than its fair share of Sanutis, independent of mind and assertive of their claims as individuals in ways unknown elsewhere in the world.<sup>[21]</sup> And perhaps all of these things would have been unavailing absent the technological breakthroughs that made attractive and colorful clothing widely available, and the attempts to ban it increasingly futile.<sup>[22]</sup> Sumptuary law is scarcely more than a blip on our historical radar screens, but it manages to remind us of what a mottled, murky landscape the history of liberty really is.

### Endnotes

<sup>[1.]</sup> See also Kritika Bhardwaj and Ashok K. Sharma, *Malala: The Crusader of Fearless Freedom* (New Delhi: Diamond Pocket Books, 2015), Episode #3: Monday, 5 January 2009.

<sup>[2.]</sup> See Livy, *History of Rome*, 34.7; see also Emanuela Zanda, *Fighting Hydra-Like Luxury: Sumptuary Regulation in the Roman Republic* (London: Bristol Classical Press, 2011), 95-96.

- [3.] Sanuti's discourse has been translated into English by Catherine Kovesi Killerby, *Sumptuary Law in Italy, 1200-1500* (Oxford: Oxford University Press, 2002), 272-82; see also Kovesi Killerby's discussion at 124-31.
- [4.] Donald S. Lutz, "The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought," *The American Political Science Review*, 78, no. 1 (Mar., 1984):189-97.
- [5.] See Montesquieu, *The Spirit of the Laws*, trans. Anne Cohler, Basia Miller, and Harold Stone (Cambridge: Cambridge University Press, 1989), 5.2-3.
- [6.] See Nicholas Barbon, "A Discourse of Trade" (1690), most conveniently found in Henry C. Clark, *Commerce, Culture, and Liberty: Readings on Capitalism Before Adam Smith* (Indianapolis: Liberty Fund, 2003), 70-74; Bernard Mandeville, *The Fable of the Bees: or, Private Vices, Publick Benefits*, (1723) 2 vols., ed. F.B. Kaye (Oxford: Clarendon Press, 1924; repr. Indianapolis: Liberty Classics, 1988), 1:231-32 (Rem. T) and 251 (Rem. Y); and [Jean-François Melon], *L'Essai politique sur le commerce* (N.p., 1734), 139-42. In 1738, David Bindon offered an English translation titled *A Political Essay upon Commerce*, and the relevant chapter is reproduced in Clark, *Commerce, Culture, and Liberty*, 254-64, esp 258-59.
- [7.] "For people who have to have nothing but the necessities, there is left to desire only the glory of the homeland and one's own glory," as he puts it. Montesquieu, *The Spirit of the Laws*, 7.2, p. 98.
- [8.] Montesquieu, *The Spirit of the Laws*, 7.1, p. 97. The word the Cambridge editors translate as "distress" is "incommodité." It is usually better translated as "inconvenience," but "distress" is a distinct possibility, maybe even a probability in this context.
- [9.] Montesquieu, *The Spirit of the Laws*, 7.2, p. 98.
- [10.] Montesquieu, *The Spirit of the Laws*, 7.4, p. 99.
- [11.] Aristotle, *Nicomachean Ethics*, bk. 5.
- [12.] See Céline Spector, "Vices privés, vertus publiques: de la *Fable des abeilles* à *De l'esprit des lois*," in *Montesquieu and the Spirit of Modernity*, ed. David W. Carrithers and Patrick Coleman (Oxford: Voltaire Foundation, 2002), 140-48,
- and Michael A. Mosher, "Monarchy's Paradox: Honor in the Face of Sovereign Power," in *Montesquieu's Science of Politics: Essays on The Spirit of Laws*, ed. David W. Carrithers, Michael A. Mosher, and Paul A. Rahe (Lanham: Rowman and Littlefield, 2001), 159-230, for discussions.
- [13.] Montesquieu, *The Spirit of the Laws*, 7.5.
- [14.] Montesquieu, *The Spirit of the Laws*, 5.6, pp. 47-48.
- [15.] Montesquieu, *The Spirit of the Laws*, 5.6, p. 48; I change the Cambridge editors' "wisdom" to "prudence" in this translation of "sagesse." See also Deirdre McCloskey, *The Bourgeois Virtues: Ethics in an Age of Commerce* (Chicago: University of Chicago Press, 2006), and *Bourgeois Dignity: Why Economics Can't Explain the Modern World* (Chicago: University of Chicago Press, 2011).
- [16.] See Daniela De Bellis, "Attacking Sumptuary Laws in Seicento Venice: Arcangela Tarabotti," in *Women in Italian Renaissance Culture and Society*, ed. Letizia Panizza (London: Legenda, 2000), 227-42, esp. 233.
- [17.] For one orientation, see Mark Hulliung, *Montesquieu and the old regime* (Berkeley: University of California Press, 1976).
- [18.] Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, ed. R. H. Campbell and A. S. Skinner (Oxford: Oxford University Press, 1976; repr. Indianapolis: Liberty Fund, 1979), II.iii.36, p. 346.
- [19.] Douglass C. North, *Institutions, Institutional Change, and Economic Performance* (Cambridge: Cambridge University Press, 1990) is an influential example.
- [20.] See John Brewer and Roy Porter, eds., *Consumption and the World of Goods* (London: Routledge, 1993); Maxine Berg, *Luxury and Pleasure in Eighteenth-Century Britain* (Oxford: Oxford University Press, 2007); Jan de Vries, *The Industrious Revolution: Consumer Behavior and the Household Economy in Europe, 1650 to the Present* (New York: Cambridge University Press, 2008).
- [21.] See John Hajnal's seminal article "European Marriage Patterns in Perspective," in D.V. Glass and D.E.C. Eversley, eds., *Population in History: Essays in*

*Historical Demography* (Chicago: Aldine, 1965), 101-43, and the argument based on it in Mary S. Hartman, *The Household and the Making of History: A Subversive View* (Cambridge: Cambridge University Press, 2004).

[22.] For technology as a driver of modernity, see Joel Mokyr, *The Lever of Riches: Technological Creativity and Economic Progress* (Oxford: Oxford University Press, 1990), and *The Enlightened Economy: An Economic History of Britain, 1700-1850* (New Haven: Yale University Press, 2009).

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## MONTESQUIEU, MODERN REPUBLICANISM, AND SUMPTUARY LAWS

by Paul A. Rahe

The Greek statesmen & political writers [*politiques*] who lived under popular government knew of no force able to sustain them other than virtue. Those of today speak only of manufactures, of commerce, of finance, of wealth, & of luxury itself.

—Charles-Louis de Secondat, baron de La Brède et de Montesquieu (1.3.3).<sup>[23]</sup>

In his engaging sketch of the history of sumptuary laws, Henry C. Clark rightly draws attention to the seminal analysis of this subject found in [the seventh book](#) of Montesquieu's *Spirit of Laws*. In the seventh, as in the fifth, book of that work, the French *philosophe* treats the relations that exist between legislation and the various forms of government that he makes the focus of attention in the eight books constituting the first part of his great tome – to wit, republicanism, monarchy, and despotism. It is his contention that each of these forms of government is distinguished not only by its structure but also by its “principle” – which is to say, by the “human passions that set it in motion” and sustain it.

If, according to Montesquieu, republics – especially, democratic republics – require sumptuary laws (1.7.1-2), it is because the passion that set in motion polities such

as classical Sparta and early Republican Rome was a species of virtue grounded in a “love of the laws & the fatherland,” which demanded “a continual preference for the public interest over one’s own.” This in turn required an emphasis on equality, which Montesquieu describes as “the soul” of the democratic state. “In a democracy,” he explains, “the love of equality restricts ambition to a single desire, to the sole happiness of rendering to the fatherland greater services than the other citizens.” To produce this love, to so restrict the scope of ambition, and to inspire in the citizens of a republic the requisite spirit of self-renunciation, one must deploy “the complete power of education” and instill in the citizens a “love of frugality that restricts the desire to possess” to what a family actually needs (1.4.5, 5.3-7). Sumptuary laws are needed to reinforce this propensity, for “to people who are allowed nothing but what is necessary, there is nothing left to desire but the glory of the fatherland and the glory that is their own” (1.7.2).

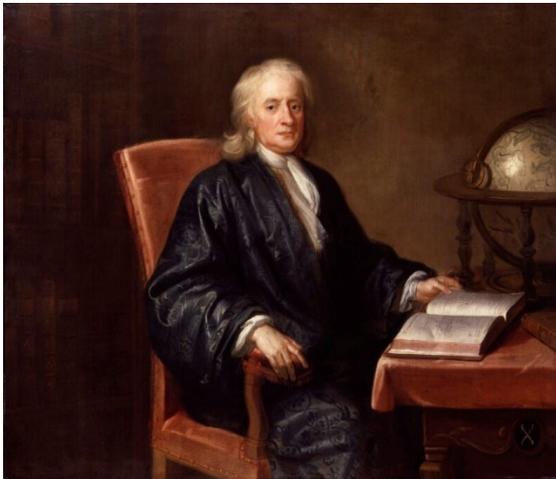
If, on the other hand, in Montesquieu’s estimation, sumptuary laws have no proper place within a monarchy (1.7.4), it is because there

policy makes great things happen with as little of virtue as it can, just as in the most beautiful machines, art also employs as little of movement, of forces, of wheels as is possible. The state subsists independently of love of the fatherland, of desire for true glory, of self-renunciation, of the sacrifice of one’s dearest interests, & of all those heroic virtues which we find in the ancients & know only from hearing them spoken of.

If virtue can be discarded, it is because in a monarchy “the laws take the place of all these virtues, for which there is no need; the state confers on you a dispensation from them” (1.3.5). If monarchy can nonetheless produce good government, it is because in it honor “takes the place of the political virtue” found in republics (1.3.6).

The honor that Montesquieu has in mind is an artifact: it is a “false honor,” more consonant with “vanity” than with “pride.” It is grounded neither in merit nor in public-spiritedness, but in “the prejudice of each person &

condition,” and it demands artificial “preferences & distinctions” of the sort luxurious display makes visible and palpable (1.3.6–7, 5.19, 2.19.9, 5.24.6). The consequences of this all-pervasive “prejudice” are paradoxical but undeniable. “In well-regulated monarchies,” Montesquieu contends, “everyone will be something like a good citizen while one will rarely find someone who is a good man” (1.3.6). Monarchy he compares to Newton’s “system of the universe, where there is a force which ceaselessly repels all bodies from the center & a force of gravity which draws them to it. Honor makes all the parts of the body politic move; it binds them by its own actions; & it happens that each pursues the common good while believing that he is pursuing his own particular interests” (1.3.7). In Montesquieu’s opinion, monarchies are ruled by something like what Adam Smith would later call the “invisible hand.”



*Sir Isaac Newton*

There is, as Professor Clark points out, a second species of republic – in which there is no need for sumptuary laws. “It is true,” Montesquieu concedes in a brief digression, “that when democracy is based on commerce, it can very easily happen that particular individuals have great wealth & that the mores there are not corrupted.” This odd and unforeseen result comes about, he explains, because “[the spirit of commerce](#)” quite often “carries with it a spirit of frugality, economy, moderation, industry, wisdom, tranquillity, orderliness, & regularity [*règle*]. In this fashion, as long as this spirit subsists, the wealth that

it produces has no bad effect. The evil arrives when an excess of wealth destroys this spirit of commerce; suddenly one sees born the disorders of inequality, which had not yet made themselves felt” (1.5.6).

Montesquieu suggests that within such a republic one can best sustain “the spirit of commerce” if one makes arrangements to insure that “the principal citizens engage in commerce themselves,” and he tellingly indicates that this works best where “this spirit reigns alone & is crossed by no other,” where “the laws favor it,” where “the same laws, by their dispositions, divide fortunes in proportion to their increase through commerce & thereby place each poor citizen in a condition of ease sufficient that he can work as others do & each rich citizen in a condition of mediocrity sufficient [*dans une telle médiocrité*] that he has need of work if he is to preserve what he has or acquire more.” In “a commercial republic,” Montesquieu concludes, the statute which “gives to all children an equal proportion in succession to their fathers” is “a very good law.” Where partitive inheritance is the norm, it makes no difference “what fortune the father has made,” since “his children, always less rich than he was” at the time of his death, “will be induced to flee luxury & to work as he did” (1.5.6).

Montesquieu does not dwell on this option in the first part of *The Spirit of Laws*, and in the pertinent passage he mentions no example apart from Athens. Later, however, in the 20th book within the fourth part of that work, he once again mentions the “republic based on commerce,” and he lists as examples Tyre, Carthage, Corinth, Marseilles, Rhodes, Florence, Venice, and Holland but not Athens (4.20.4-6, 17). Moreover, in the 21st book, although he describes Athens as a “commercial nation,” he quickly concedes that the Athenians succumbed to the spirit of war and aggrandizement: as he puts it, they were “more attentive to extending their maritime empire than to using it.” Athens was, in fact, so “full of projects for glory” that she never “achieved the great commerce promised by the working of her mines, the multitude of her slaves, the number of her sailors, her authority over the Greek towns, & more than all this, the fine

institutions of Solon.” In effect, she sacrificed economic to political and imperial concerns (4.21.7).

The polity that fulfills Athens’s potential is England (4.21.7), which Montesquieu describes as “a republic concealed under the form of a monarchy” (1.5.19). Of the English he wrote, “This is the people in the world, who have known best how to take advantage of these three great things at the same time: religion, commerce, & liberty” (4.20.7). And, though he discusses at great length the English form of government and the mores, manners, and practices to which it gives rise (2.11.6, 3.19.27), nowhere does he attribute to the English sumptuary laws.

The English example should give us pause – for if England is the very model of a modern democracy based on commerce, that which Montesquieu has to say concerning the English, and democracies based on commerce more generally, might well be pertinent to every modern commercial republic – none of which have sumptuary laws. It is good to remember that Montesquieu concludes his initial digression on the subject with the following warning: “The evil arrives when an excess of wealth destroys this spirit of commerce; suddenly one sees born the disorders of inequality, which had not yet made themselves felt” (1.5.6). We in the western democracies live in a time of unprecedented wealth and prosperity, but I do not think that it can be said that, in the last half-century, we have habitually exhibited “a spirit of frugality, economy, moderation, industry, wisdom, tranquillity, orderliness, & regularity.” If anything, ours is a time of unprecedented extravagance, self-indulgence, and decay in which public-spiritedness, sobriety, and the qualities of character that brought us unprecedented wealth are on the wane. What happens when commercial society and the operations of the market have been so successful in promoting prosperity that they are no longer efficacious in producing the bourgeois virtues?

### Endnotes

[23.] All of the interlinear notes refer to Charles-Louis de Secondat, baron de La Brède et de Montesquieu, *De l’Esprit des lois*, in *Œuvres complètes de Montesquieu*, ed. Roger

Caillois (Paris: Bibliothèque de la Pléiade, 1949–51), which I cite by part, book, and chapter. All translations are my own. Online at <[/titles/montesquieu-complete-works-4-vols-1777](#)>. The 7th Book: BOOK VII.: CONSEQUENCES OF THE DIFFERENT PRINCIPLES OF THE THREE GOVERNMENTS, WITH RESPECT TO SUMPTUARY LAWS, LUXURY, AND THE CONDITION OF WOMEN. <[/titles/837#lf0171-01\\_label\\_613](#)>.

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## A NOTE ON THE LUXURY OF READING MONTESQUIEU

by Stuart D. Warner

People are so complicated. It’s like every new person is a completely new roll of the dice, right?  
--Marilynne Robinson

Our thanks are due to Professor Hank Clark for bringing his esteemed erudition to bear on issues related to the history of liberty, and for pursuing his task by being particularly attentive to Montesquieu’s contribution to them. What follows is a somewhat roundabout way of approaching that contribution.



***Michel de Montaigne***

We could at least not be accused of being far from the mark if we fixed upon [Montaigne](#) as first among moderns in articulating in granular detail the vagaries and variability of human individuality. His 107 essays—each one a single paragraph, yet collectively extending over 800 pages, and many of them with façade titles—provide a compass to explore the diverse ways in which human beings render themselves manifest in the world. It is by navigating these many trials that Montaigne affords his readers the opportunity to experience and understand what it means for human beings to be free and equal. Yet regardless of how far one travels in Montaigne’s *Essays*[\[24\]](#) one will soon encounter a reflection on the power exerted on us by custom and convention. To inquire into the human being means, in no small measure, to inquire into how, and the extent to which, the customs and conventions of time and place shape us, while not determining us, and carve out paths for us to follow, without requiring that we take any one of them. For reasons that are not difficult to see, many question whether Montaigne is a relativist of sorts; and equally many question whether Montaigne is offering a descriptive account of the human endeavor, or a normative one, or both. One of his essays in which these

questions and Montaigne’s animating philosophical concerns ironically surface is “[Of Sumptuary Laws](#),” written some 175 years before Montesquieu, his fellow citizen from Bordeaux, presented his own reflections on that subject in *The Spirit of Laws* (1748).[\[25\]](#)

Like Montaigne, Montesquieu is awestruck by the diverse roads traversed by human beings over the course of human history, a diversity for which *The Spirit of Laws* seeks to account. But whereas Montaigne’s interests directed him to the individual and his idiosyncrasies, Montesquieu’s interests lie with the various forces, both human and of nature, that condition the laws and institutions that govern various peoples, as well as with those laws and institutions themselves. Thus, Montesquieu tells us early in his “Preface” that “I have at first examined men, and I have affirmed that, in this infinite diversity of laws and morals, they were not solely guided by their fantasies.” And he continues, “I have laid down the principles, and I have seen the particular cases submit to them[\[26\]](#) as if by themselves—the histories of all nations being but the results of them, and each particular law bound to another law or dependent on one more general.” Montesquieu’s analysis is, then, thoroughly relational from the ground up.

*The Spirit of Laws* bears the imprint of a singular design, and Montesquieu’s plan would lead him to insist that the 31 books of the work be divided into six parts.[\[27\]](#) The last seven of the eight books of Part I consist in an examination of various types of government and what he denotes as the nature and principle of each. By the nature of each type he means its structure, who rules and who is ruled, that is, “that which makes it be such and such”; by its principle, a matter he deems vastly more important and controlling, he means the “human passions” that set each type of government in motion.[\[28\]](#) At the beginning of his discussion of the former matter in Book 2, Montesquieu tells us that there are three types of government: republican, monarchical, and despotic. However, very shortly after doing so, he then divides republican government into two possibilities—democratic and aristocratic. The nature of republican government is that all of the people or some of the people

rule; of monarchical government, that one rules by law; and of despotic government, that one rules by caprice. In his discussion of the latter matter in Book 3, Montesquieu informs us that the principle of republican government is virtue; of monarchical government, honor; and of despotic government, fear.

It is readily understandable that Montesquieu characterizes fear as a passion; yet we must underscore that he characterizes virtue and honor as passions, too. By virtue he is not referring to any rational moral *principle*; rather, and curiously, he tells us that he is referring to political virtue, from which he excludes moral and Christian virtue, and by which he means the love of one's fatherland and the renunciation of self. Indeed, in the chapter titled "What virtue is in a political state,"<sup>[29]</sup> Montesquieu introduces monks—who love their order so much that they are willing to forgo their own individual inclinations—by way of vigorously exemplifying what political virtue is: dare we say that it is anything but the passion of self-love that animates republican political life on this view. Furthermore, he remarks that the honor that is the spring of monarchical government is "a false honor," albeit one that is useful in a monarchy, and thus it rests on a kind of ignorance of oneself.<sup>[30]</sup> There is, of course, nothing false about fear.

Yet no sooner has Montesquieu begun to spell out all of the above—utilizing ancient historical examples to illustrate republics and modern historical examples to illustrate monarchies and despotisms—than he introduces several further important distinctions. One of these is between moderate and despotic governments, a distinction the analysis of which is left mostly to the reader, as is understanding how it might map on to the earlier account. But he draws another distinction with respect to republics, between military republics and commercial republics,<sup>[31]</sup> which, given Montesquieu's understanding of the ascetic-like virtue propelling republics, is *prima facie* hard to fathom. Despite these additional complexities, which should lead us to realize that what we might have thought of as being a rather straightforward nomenclature is surely not that, Montesquieu devotes most of Books 4 through 8 of *The*

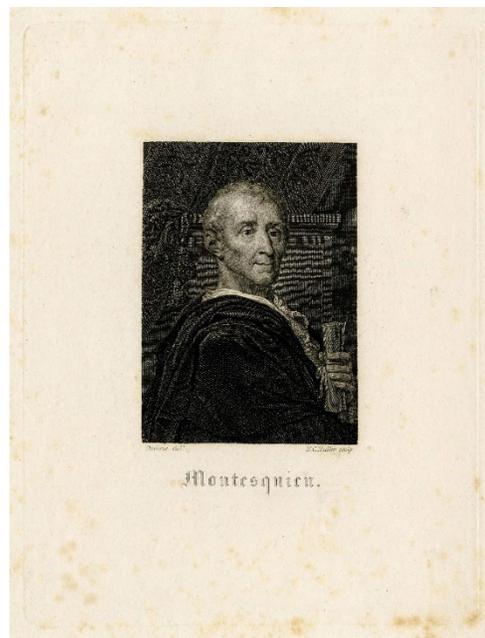
*Spirit of Laws* to a study of the relationship between the principles of the three (or four) types of government and what he terms the laws of education, legislative law, civil and criminal law, and luxury, sumptuary laws, and the condition of women, finally concluding Part I by examining the corruption of those very principles and what happens respectively to each type of governance when that occurs. Thus, for example, in Book 4, Montesquieu traces out for us how the requirements of education differ in republics, monarchies, and despotic government, as education works towards the success of those different types of government and works to reinforce the principles at work—that is, he examines the diverse kinds of education appropriate to these different types of government. Montesquieu applies the same logic of analysis in Book 7 to sumptuary laws. The analysis does not aim at judging the value or lack thereof of sumptuary laws from the perspective, say, of liberty; instead, he aims to reveal how sumptuary laws comport with the type of government in question and its respective principle. Nevertheless, it would be wise to notice that Montesquieu finds sumptuary laws to be less at home in monarchies than he finds elsewhere.

In the light of the foregoing it is not hard to see why, just as was the case with Montaigne, many question whether Montesquieu is a relativist, and also question whether he is offering a descriptive or normative analysis, or both. However we are to deal with these matters, and they necessitate an inquiry beyond the pale of this brief note, what is of the utmost importance is that in the first part of *The Spirit of Laws*, Montesquieu's focus does not come to rest on questions of liberty. He first turns in earnest to that subject in Part II of the work, especially Books 11 and 12, and the legendary chapter in the first of those books on "Of the constitution of England." But our interest here must lie with Book 11, chapter 4, which Montesquieu begins in this way: "Democracy and aristocracy are not free States by their *nature*. Political liberty is found only in moderate governments. But it is not always in moderate States; it is in them only when one does not abuse power, but it is an eternal experience that each man who has some power is inclined to abuse it; he goes on until he finds some limits. Who would think

it! *Virtue* itself needs limits” (my emphasis). Montesquieu is slyly intimating that neither the nature nor the principle of any type of government can provide us with an understanding of what liberty is and the institutions that sustain and further it. We can make sense of liberty only through an analysis of the constitution of a nation, through an analysis of the various powers to be found there—for example, executive, legislative, and judicial (in particular a jury system)—and their relation to each other. The classical political philosophical analysis in terms of a typology of different kinds of government or regimes, even explicated as Montesquieu does through the conceptual apparatus of nature and principle, cannot bring liberty into view. But Montesquieu, in effect, offers a critique of the account that emerges from his famous chapter, which is putatively about England, but which uses an abridged historical presentation of that country in order to adduce a model of political liberty.<sup>[32]</sup> For at the beginning of Book 12, he indicates that the rule-of-law analysis of liberty that he proffers in Book 11 is perfectly consistent with the misuse of political power and liberty thereby being severely circumscribed: a procedural device is insufficient to guarantee a regime of liberty, for the very same procedures can produce a regime of tyranny.<sup>[33]</sup> As Montesquieu puts it, “It can happen that the constitution will be free, and that the citizen will not.”<sup>[34]</sup> What also matters are substantive laws—more precisely, what matters are what the laws proscribe and what they allow. Thus, Montesquieu devotes Book 12 to crimes in particular having to do with religion, sexuality, treason, speech, and writing, all in the attempt to limit the range of laws in these areas, in order to expand the range of liberty.

Yet it should be noticed that by the time one has finished the two books on liberty, only some 200 pages of *The Spirit of Laws* have passed, and over some 500 pages remain, including two enormous books on commerce (20 and 21)—one on its nature and one on its revolutionary history—both of which are ultimately pivotal to understanding Montesquieu’s conception of liberty. In the context at hand, there is one element of Montesquieu’s presentation of the nature of commerce to which our attention must be drawn and that involves

a remark in the opening chapter of Book 20: “Commerce cures destructive prejudices. And it is almost a general rule that everywhere that there are gentle morals, there is commerce; and that everywhere that there is commerce, there are gentle morals.” Now the French word (*douces*) translated here as “gentle” also means “soft,” and it is a word that shows up at least 32 times in *The Spirit of Laws*. It is a word that Montesquieu not infrequently associates with women. In fact, we should remember that *Persian Letters*,<sup>[35]</sup> Montesquieu’s first book, where this same French word appears 30 times, explores what it means to be free and to be human through the prism of women; we should also remember that many of his further writings through the early 1740s were also centered on women. The significance of this, I do not believe, has adequately been recognized, for these writings are sometimes dispatched as being juvenile or overly romanticized silliness. But as commerce comes light, it does so, in a certain respect, feminized, standing starkly in opposition to political virtue as the principle of republics, along with fear as the principle of despotic government.



***Charles Louis de Secondat, Baron de Montesquieu***

I raise this matter in regards to Book 7, which Professor Clark has with some care brought before us. His attention is most directly fixed on Montesquieu’s

discussion of sumptuary laws, and secondarily on Montesquieu's discussion of luxury, which makes sense. Nonetheless, my attention is riveted on Montesquieu's discussion of women, which occupies the very center of Book VII, as well as its concluding chapter. Indeed, when I first began Professor Clark's essay, and his invocation of Nicolosa Sanuti's marvelous recitation, "Nicolosa Sanuti, Bolognese matron, to the most Reverend Father in Christ, the Bolognese papal legate, that ornaments be restored to women,"<sup>[36]</sup> I anticipated that he would present Montesquieu's offering on luxury and sumptuary laws as a vehicle for attending to the significance of the principles of the three types of governments in relation to women, and more generally the place of women in the three types of government that he adumbrates. Apparently, what I hoped was my own light blinded me.

### Endnotes

<sup>[24.]</sup> Still the best English translation is *The Complete Works of Montaigne*, translated by Donald Frame (Stanford: Stanford University Press, 1957).

<sup>[25.]</sup> On Montaigne's political thought generally, cf. David Lewis Schaefer, *The Political Philosophy of Montaigne* (Ithaca: Cornell University Press, 1990); and Biancamaria Fontana, *Montaigne's Politics: Authority and Governance in the Essais* (Princeton: Princeton University Press, 2008).

<sup>[26.]</sup> *s'y plier*—literally "to bend," a clear allusion to La Fontaine's fable, "The Oak and the Reed," the latter of which is, because of its pliability, more representative of the human, an allusion he will further advance later on in the "Preface" as well (par. 10).

<sup>[27.]</sup> Guided by the advice of his friend Jacob Vernet, Montesquieu did not divide the work into parts in the 1748 and 1749 editions, but did do so in the last edition of his lifetime, in 1750.

<sup>[28.]</sup> *The Spirit of Laws*, 3.1 (book 3, chapter 1). All translations are the author's.

<sup>[29.]</sup> *The Spirit of Laws*, 5.2.

<sup>[30.]</sup> *The Spirit of Laws*, 3.7.

<sup>[31.]</sup> Montesquieu appears to be the first European thinker to use this expression (rendered into English by Thomas Nugent in 1750 as "[trading republic](#)") outside of the Dutch, who make use of it as early as the middle of the 17th century.

<sup>[32.]</sup> Cf. *The Spirit of Laws*, 19.27.

<sup>[33.]</sup> Montesquieu's turn here is redolent of a critique of Hayek's analysis of the rule of law in *The Constitution of Liberty* set forth by Ronald Hamowy, "Hayek's Concept of Freedom: A Critique," *New Individualist Review* 1 (1961), 28-31.

<sup>[34.]</sup> *The Spirit of Laws*, 12.1.

<sup>[35.]</sup> A careful study of *Persian Letters* might begin with Diana Schaub, *Erotic Liberalism: Women and Revolution in Montesquieu's Persian Letters* (Lanham, MD: Rowman & Littlefield, 1995), and Jean Starobinski, "Exile, Satire, Tyranny: Montesquieu's *Persian Letters*," in *Blessings in Disguise; or, The Morality of Evil*, translated by Arthur Goldhammer (Cambridge: Harvard University Press, 1993).

<sup>[36.]</sup> A translation of this work, which Professor Clark's essay has surely introduced to me, can be found as an appendix to Catherine Kovesi Killerby, "'Heralds of a Well-instructed Mind': Nicolosa Sanuti's Defence of Women and Their Clothes," *Renaissance Studies* 13 (1999), 255-82.

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## THE RISE AND DECLINE OF SUMPTUARY LAWS

by David W. Carrithers

Hank Clark's essay has many merits and raises, for me, a significant overarching question. Given the power of age-old religious and moral strictures against conspicuous consumption, and given the prevalence throughout Europe of sumptuary laws in the Medieval and Renaissance periods, how did it transpire that spending on superfluities came eventually to be judged, not as an evil to be restrained, but as a good, so much so in fact

that President George W. Bush could advise Americans after 9/11 to get back to business and go to the mall? The transformation from governments constraining to governments encouraging spending on superfluous luxury goods was by no means preordained. Even as late as the 18th century in France, as Sarah Maza notes, “critics of luxury vastly outnumbered and decisively out-argued defenders of the concept.”<sup>[37]</sup> In France, these critics included such influential writers as Fénelon, Rousseau, Mably, the elder Mirabeau, Gabriel Sénac de Meilhan, Antoine-Prosper Lottin, and Abbé Pluquet.



**Adam Smith**

Certainly Adam Smith’s theories of the “invisible hand,” suggesting that the self-interested pursuit of wealth benefits both rich and poor alike, and of free markets maximizing a state’s productivity and hence wealth are central to comprehending the change in thinking leading to the abandonment of state controls on consumption. But by what means, we need ask, did economic thinking evolve away from mercantilism, enabling Adam Smith to suggest the necessity of prioritizing liberty, free trade, and property rights over state-imposed equality, import restrictions, and sumptuary laws? To repeat Clark’s formulation of the

issue, how did we reach the point where we tolerate gross disparities in wealth to an extent that would have “struck terror into the hearts of republican moralists from antiquity up to Montesquieu’s own time?”

Clark highlights the importance of Montesquieu’s distinction between commercial and martial republics. Not all republics, Montesquieu asserted in Book V of *The Spirit of the Laws*, elevate conquest over commerce. Although Sparta and early republican Rome did so, Athens and Carthage presented a contrasting republican model where commercial enterprise was prioritized and did not undermine civic virtue because it embodied the “spirit of frugality, economy, moderation, work, prudence, tranquility, order, and rule.”<sup>[38]</sup> Thus “bourgeois virtues” may retard the corrosive effects of what we now call income inequality. “We celebrate,” Clark asserts, “or at least tolerate our wealthy if, and insofar as, we regard their riches as the earned reward of the productive virtues” whose effect on gross inequalities is “pacifying.” And he rightly asks: “is this insight enough to help explain the demise of sumptuary law?” Clearly it is not, and Clark himself points us to three theorists, Nicholas Barbon, Bernard Mandeville, and Jean-François Melon, whose writings suggest other explanations. At some point in the ensuing discussion, it will be important to explore the contributions of these writers. First, however, it seems appropriate to make some general comments on sumptuary laws and on possible reasons for their decline that are unrelated to fine points of economic theory.

Clark’s use of Nicolosa Sanuti’s protests against restrictions on her freedom of dress and ornamentation in Bologna serves as a useful starting point for discussion of the general subject of sumptuary laws. Such laws were introduced in Italy beginning in the early 13th century, and one scholar has noted that “[b]etween 1200 and 1500 governments in over forty Italian cities enacted more than 300 laws designed to restrict and regulate the consumption of luxury goods and related manifestations of excess,” particularly in marriages, funerals, and gift giving.<sup>[39]</sup>

Depending on time and place, sumptuary laws fulfilled quite different purposes. In England and in many of the Italian city-states, where a premium was placed on preserving class distinctions, sumptuary laws were designed to prevent those of lesser rank from mimicking those of higher rank. Preserving rank and distinction was also an important goal in France. We need only think of the dramatic and by then much-resented differences in dress at the opening of the Estates General in France in 1789, as each estate of the realm paraded to the opening session adorned in its state-sanctioned apparel. Sumptuary laws, however, were not always designed to ensure that the lowly did not masquerade as the equals of their superiors. In the aristocratic republic of Venice sumptuary laws were designed, in part, to mask rather than accentuate class differences. Nobles were prohibited from displaying their social superiority in dress and jewelry so as not to increase envy of the commoners within the state who were deprived of political influence.[\[40\]](#)

Sumptuary laws were often designed to bolster morality on the assumption that luxury leads to debauchery, as the Roman example seemed to prove.[\[41\]](#) Many of the Italian regulations were aimed at ensuring female modesty.[\[42\]](#) Religious writers were quick to assert that hedonistic devotion to excess in food, drink, and fashion improperly focuses attention on bodily rather than spiritual needs, and it follows that clerics were therefore often involved in the encouragement and enforcement of sumptuary laws. In Sanuti's Bologna, for example, and also in Pisa and Perugia, violating clothing restrictions could bring excommunication, as experienced by the wearers of elaborate dresses at the wedding of a member of the Sforza family in 1464.[\[43\]](#) Religious objections covered a gamut of concerns. Catholics linked the display of luxury to the sin of pride, whereas Protestants linked immersion in luxury to immorality, and Puritans regarded luxury as wasteful and as deflecting sums away from what could be spent on charitable works.[\[44\]](#)



*Queen Elizabeth I*

Some sumptuary legislation was expressly anti-crime, based on the assumption that those who engaged in excessive spending would resort to theft to keep up appearances after they had beggared themselves through that spending. Such fear of incipient criminality is transparent in a 1562 proclamation of Queen Elizabeth suggesting that excessive spending on clothing has “provided meny of them [the King’s Subjects] to robbe and to doo extorcion and other unlawfull Dedes to mayntayne therby ther costeley arraye.”[\[45\]](#) And some sumptuary laws were blatantly discriminatory. In a number of states, including Venice, Jews were required to dress in certain ways, in part to enforce the rule of the Fourth Lateran Council of 1215 prohibiting them (and Muslims) from having sexual relations with Christians.[\[46\]](#)

Reason of state motivated passage of numerous sumptuary laws. English rulers tried to prevent people from spending themselves into ruin, which would make them burdensome wards of the state. A 1574 proclamation of Queen Elizabeth lamented the “the wasting and undoing of a great number of young gentlemen, otherwise serviceable.”[\[47\]](#) State economic goals also motivated passage of sumptuary legislation. Money spent on luxuries could not be

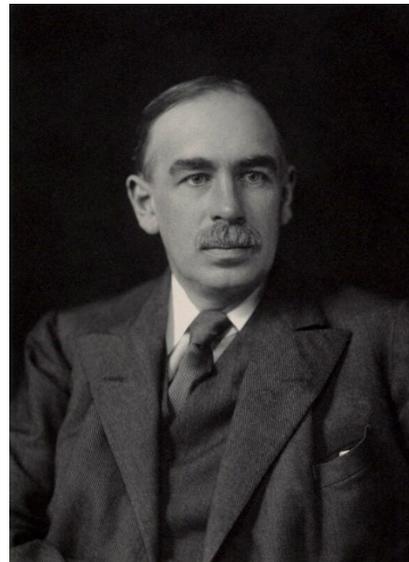
invested in manufacturing or trade or be used to pay taxes, and mercantilists believed the importation of foreign luxury goods crippled domestic industries and risked balance-of-payments ruin. Therefore much sumptuary legislation was protectionist. As early as 1510, for example, an English statute targeted the wearing of foreign wools and furs,[\[48\]](#) and in England wearing foreign items was eventually regarded as a lack of patriotism.[\[49\]](#)

Aside from advances in economic theory, which deserve treatment in subsequent posts, what general explanations can account for the decline of sumptuary legislation? For one thing, the record of enforcement of such laws was abysmal.[\[50\]](#) People were averse by nature to curbing their taste for luxury items that expressed their personalities and signified their rank and status. As Voltaire quipped in his entry on “[Luxury](#)” in his *Philosophical Dictionary*, “[For 2,000 years people have declaimed in verse and prose against luxury](#), and have always loved it.”[\[51\]](#) Evidence of lack of compliance with English sumptuary laws is reflected in the frequency with which such laws merely restated old restrictions that had been ignored. Queen Elizabeth’s proclamations, for example, often repeated regulations dating from the reigns of Henry VIII and Philip and Mary[\[52\]](#). The same pattern of repetition of previously ignored sumptuary laws marked the history of Venetian legislation on that subject.[\[53\]](#)

There are obvious psychological reasons why sumptuary law tended to be self-defeating. Michel Montaigne remarked that any attempt to regulate expenditures for luxuries was doomed to fail since rather than creating “[contempt of gold and silk-wearing as of vaine and unprofitable things](#),” sumptuary laws augmented the value of fineries by restricting them to the well born. “To let none but Princes eat dainties, or weare velvets,” Montaigne concluded, “makes the people want such things even more.”[\[54\]](#)

None of the above commentary is meant to suggest that the key reasons for the decline of sumptuary law lie outside the development of sophisticated economic theory contending that the production of luxury items

benefits not just wealthy consumers but also the producers of such goods who would otherwise be unemployed. A full-employment defense of luxury became an oft-repeated theme in the economic literature of the 17th and 18th centuries, and Montesquieu asserted in [Persian Letter 106](#) that “For one man to live elegantly, a hundred must labor ceaselessly. A woman gets it into her head that she should appear at a ball in a certain dress, and from that moment fifty artisans can sleep no more.” And in this same letter Montesquieu says that a country that would “banish everyone serving only luxury or fancy ... would be one of the most miserable on earth.” Incomes would drop, the circulation and increase of wealth would cease, and the state “would rapidly decay.”[\[55\]](#) Two things in particular are noteworthy here. First, Montesquieu was advancing an argument that his friend Jean-François Melon would later repeat, and second, his assertion anticipated some of the argument Adam Smith would set forth in his *The Wealth of Nations* (1776). It is not surprising, therefore, that John Maynard Keynes, in the Preface to the French edition of *The General Theory of Employment, Interest, and Money* (1942) referred to Montesquieu not only as the greatest French economist but also as “the real French equivalent of Adam Smith.”[\[56\]](#) Clearly, exploring both the Montesquieu–Keynes and Montesquieu–Smith connections would be very worthwhile endeavors.



*John Maynard Keynes*

## Endnotes

[37.] Sarah Maza, *The Myth of the French Bourgeoisie: An Essay on the Social Imaginary, 1750-1850* (Cambridge: MA: Harvard University Press, 2003), 55, cited by Jeremy Jennings, "The Debate about Luxury in Eighteenth- and Nineteenth-Century French Political Thought," *Journal of the History of Ideas*, Vol. 68, No. 1 (Jan., 2007), 79-105 (at 82).

[38.] *The Spirit of the Laws*, trans. Anne Cohler, Basia Miller, and Harold Stone (Cambridge: Cambridge University Press, 1989), 5.6, p. 48, as quoted by Clark with one word alteration.

[39.] Catherine Kovesi Killerby, "Practical Problems in the Enforcement of Italian Sumptuary Law, 1200-1500," in *Crime, Society and the Law in Renaissance Italy*, ed. Trevor Dean and K.J.P. Lowe (Cambridge: Cambridge University Press, 1994), 99, 102.

[40.] See David W. Carrithers, "Not so Virtuous Republics: Montesquieu, Venice, and the Theory of Aristocratic Republicanism," *Journal of the History of Ideas*, 52, no. 2 (April-June, 1991), 245-68 (at 259-60).

[41.] Killerby, "Italian Sumptuary Law" (115) asserts that in Italy "the overwhelming majority of sumptuary laws were directed at women's clothing and ornaments," and "a small proportion ... express misogyny."

[42.] Diane Owen Hughes, "Sumptuary Law and Social Relations in Renaissance Italy," in *Disputes and Settlements. Law and Human Relations in the West*, ed. John Bossy (Cambridge: Cambridge University Press, 1983), 82-83.

[43.] *Ibid.*, 103, 117. See also Hughes, "Sumptuary Law and Social Relations," 81.

[44.] Leah Kirtio, "'The Inordinate Excess in Apparel': Sumptuary Legislation in Tudor England," in *Constellation: History and Classics Faculty of Arts, University of Alberta*, 3, no. 1 (2011), 17-29 (at 22). Catherine Killerby has observed, however, that no Italian government in the period 1200-1500 "regarded luxury as evil in itself. It was the context of its use, by whom and for what purpose, that determined the approval or censure of luxury." Displays of luxury by nobles or by doctors and lawyers were seen

as properly marking their elevated status (Killerby, "Italian Sumptuary Law," 119).

[45.] Quoted in Kirtio, "Inordinate Excess," 23. For the anti-crime rationale, see also Henry Fielding, "An Enquiry into the Causes of the Late Increase in Robbers" (1751).

[46.] Joanne M. Ferraro, *Venice. History of the Floating City* (Cambridge: Cambridge University Press, 2012), 90, 123.

[47.] Quoted in Kirtio, "Inordinate Excess," 23.

[48.] *Ibid.*, 25, citing Wilfred Hooper, "The Tudor Sumptuary Laws," in *The English Historical Review*, 30, no. 119 (Jul., 1915), 433.

[49.] *Ibid.*, 24 citing Roze Hentschell, *The Culture of Cloth in Early Modern England: Textual Constructions of a National Identity* (Burlington, VT: Ashgate, 2008), 104.

[50.] It was not for lack of trying, however. For Italy, see Killerby, "Italian Sumptuary Law," 118-19. One difficulty was that once a particular fashion in clothing or jewelry was prohibited, another equally luxurious item of dress or ornament would be invented.

[51.] Voltaire, *Philosophical Dictionary*, ed. and trans. Theodore Besterman (London: Penguin Books, 1972), 290. Online version: "Luxury," in *The Works of Voltaire. A Contemporary Version. A Critique and Biography by John Morley, notes by Tobias Smollett, trans. William F. Fleming* (New York: E.R. DuMont, 1901). In 21 vols. Vol. VI. </titles/355#lf0060-06 head 047>.

[52.] See Kirtio, "Inordinate Excess," 19. In England enforcement was left to the justices of the peace, and they generally had more important business to conduct (*ibid.*, 20, citing Alan Hunt, *Governing Morals: A Social History of Moral Regulation* (Cambridge: Cambridge University Press, 1999), 331).

[53.] Ferraro, *Venice*, 120-21.

[54.] *The Essays of Michael Lord of Montaigne*, trans. John Florio, 2 vols. (Oxford: Oxford University Press, 1904; orig. ed., 1603), I, 348. Online version: "Of Sumptuary Laws" in *Essays of Montaigne, vol. 3, trans. Charles Cotton*,

revised by William Carew Hazlett (New York: Edwin C. Hill, 1910). <[/titles/1744#lf0963-03 head 008](#)>.

[55.] Montesquieu, *The Persian Letters*, trans. George R. Healy (Indianapolis, IN: Bobbs-Merrill, 1964), 177-78. Montesquieu repeats this line of thought in *The Spirit of the Laws*, where he remarks, regarding monarchies, “If wealthy men do not spend much, the poor will die of hunger.” See 7.4, p. 99. Online version: “Persian Letter 106,” in Baron de Montesquieu, *The Complete Works of M. de Montesquieu* (London: T. Evans, 1777), 4 vols. Vol. 3. <[/titles/1338#lf0171-03 label 628](#)>

[56.] For details regarding Keynes’s interest in Montesquieu, see Nicos E. Devletoglou, “Montesquieu and the Wealth of Nations,” *Canadian Journal of Economics and Political Science*, 29, no. 1 (February, 1963), 1-28 reprinted in *Charles-Louis de Secondat, Baron de Montesquieu*, ed. David Carrithers, in the series International Library of Essays in the History of Social and Political Thought, ed. Tom Campbell (Burlington, VT: Ashgate Publishing Limited, 2009), 497-521 (at 497).

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## MONTESQUIEU ON LIBERTY AND SUMPTUARY LAW: A REJOINDER

by Henry C. Clark

Sincere thanks to my learned friends Paul A. Rahe, Stuart D. Warner, and David W. Carrithers--friends whose erudition has turned their “comments” on my original post into the start of veritable essays of their own.

Paul Rahe makes the astute suggestion that at a certain point in *The Spirit of the Laws*, England replaces Athens as a model for commercial republicanism in Montesquieu’s schema, and in a fashion relevant to our own era. Noting Montesquieu’s warning (5.6) that an “excess of wealth” can “destroy the spirit of commerce,” Professor Rahe poses a timely question: “What happens when commercial society and the operations of the market have been so successful in promoting prosperity that they are no longer efficacious in producing the bourgeois virtues?”

It is certainly true that there is plenty of evidence around today to support the case--chronicled, for example, in works like Nick Eberstadt’s *A Nation of Takers*[57] --that the bourgeois virtues aren’t what they used to be. On the other hand, if Montesquieu thought that modern commercial societies such as the English lacked the benefit of sumptuary laws, he also seems to have believed they possessed other resources unavailable to the ancients. When his British friend William Domville asked about the prospects of England following the ancients down the path of corruption and collapse, he was circumspect, but cautiously optimistic, as Paul Rahe well knows.[58] English wealth, Montesquieu wrote, was different in origin from Roman wealth, arising as it did from commerce and industry rather than from conquest and fiscality. Instead of the growing polarization between haves and have-nots that he saw in late Rome, [England had a robust middling class](#) that was less corrupt than the classes above and below them, and thus less likely to foretell such a Roman-style collapse.[59] Were he alive today, when the middling class is vastly larger than it was in his own time, it strikes me as not impossible that Montesquieu would find more confirmation than disconfirmation in his original diagnosis.

Moreover, there is good reason why we students of the past are not much sought after for our predictive prowess. In the 1970s, the sociologist Daniel Bell addressed his own concerns about the vitality of the bourgeois virtues by cataloguing in compelling fashion what he came to see as the *Cultural Contradictions of Capitalism*.[\[60\]](#) If the trajectory of the Western world since then has been more up-and-down in nature than the linear descent that his brilliant analysis might have foretold, perhaps this is at least partly because there are hidden resources of self-correction in an open capitalist democracy--redolent of [Montesquieu’s answer to Domville](#)--that we tend to overlook. I tentatively conclude that the case for pessimism is strong and plausible, but as yet inconclusive.

Stuart Warner takes us on a wonderfully “roundabout” circuit through the landscape of liberty in Montesquieu’s thought. In doing so, he reminds us that *The Spirit of the Laws* was very carefully assembled, and that liberty

became a central focus only in books 11 and 12. I welcome this reinforcement and elaboration of my theme, since my point of course had been to highlight how sumptuary law was not specifically analyzed for its liberty-friendliness in book seven. I also welcome Professor Warner's insightful remark that it is not constitutional arrangements alone but "substantive laws" that define the true scope of liberty in Montesquieu's theory, since I presented sumptuary legislation as precisely one of those "substantive laws" in which the stakes of liberty are decided.

But Professor Warner further takes us to the later books on commerce (books 20 and 21), an activity whose chief importance, he argues, is to bring with it manners that are "gentle" and even "feminized." Montesquieu's entire conception of liberty, he suggests, is crucially focused on the condition of women, which leads Professor Warner to regret (I think) that I had not spent more time in my discussion of sumptuary laws treating their relevance for the condition of women.

It is certainly true that Montesquieu uses the device of the harem to illustrate the relationship between liberty and despotism in the travels of Usbek and Rica in *The Persian Letters*, and that he returns to the trope of the domestic restraints on women as an illustration of the broader theme of despotism in later works and in his intellectual diary. Whether his evocation of "le doux commerce" in book 20 of *The Spirit of the Laws* means that commerce itself comes to us as a "feminized" activity is a separate (and quite intriguing) question. But in broad outline, I agree with Stuart Warner that a full essay on the place of women in Montesquieu's view of the relationship between the three constitutional types, on the one hand, and the themes of both luxury and sumptuary laws, on the other, would indeed be a worthwhile endeavor, even if I did not engage in it myself. My chief reason for focusing on sumptuary law (aside from space limitations) was that it seemed to provide a convenient and mostly neglected vehicle for understanding the changing relationship between ruler and ruled--not only in Montesquieu's thought but in Europe as a whole at the dawn of modernity.

And this brings me to Professor Carrithers. I had begun my post by noting that "[p]leasing God, controlling elites, keeping down the plebs, reining in women, protecting local interests, and enriching the state" were among the rationales used by governments for enacting sumptuary laws throughout Europe for many centuries. Drawing on his considerable fount of learning, David Carrithers mostly expands upon this observation by surveying some of the remarkably different agendas that European governments pursued when they called upon that old stand-by of social control, sumptuary law.

In that context, he takes up my puzzlement at their eventual disappearance. He correctly points out, citing Sarah Maza and Jeremy Jennings, that critics continued to outnumber defenders of luxury even by the late 18th century, often called the Age of Revolution. (It is less clear, of course, whether those critics "decisively out-argued" defenders, as Maza had suggested.) Professor Carrithers then proceeds to explore whether the key breakthrough occurred in the realm of economic theorizing or by some other route.

In particular, he notes two alternative, non-economic possibilities: first, he observes that the "record of enforcement was abysmal." This was indeed mostly true in most parts of Europe, though not necessarily equally for all. Travelers were sometimes impressed with the putative success of sumptuary laws in places like Basel or Geneva.<sup>[61]</sup> In an area where perception counted for as much as reality, this perception (or misperception) was no doubt itself a factor in their surprising durability. More importantly, abysmal enforcement had prevailed for centuries before Montesquieu--a fact that had been noted by governments and governed alike. In light of the attraction of "successful" models of sumptuary law in places like Switzerland, it might be thought that England, which had mostly repealed its own by the beginning of the Stuart monarchy, would provide an effective counter-model by the 18th century. It sounds plausible, but I know of no evidence that any continental Europeans wanted to repeal their own sumptuary laws because they saw how successfully the English had done so.

The second non-economic possibility David Carrithers mentions is psychological rather than political in nature. Not unlike censorship, sumptuary law calls attention to something that might otherwise escape notice, and thereby unwittingly adds a cachet that it would not otherwise have had. The example Professor Carrithers cites, also noted by Professor Warner, is Montaigne. The great essayist's ironic approach to sumptuary law, resting on the case of [the ingenious Locrian ruler Zaleucus](#) in the seventh century BC, was indeed cited several times in the following two centuries, but not nearly often enough or seriously enough, in my view, to account for the sea change that needs explaining.

I agree with David Carrithers that there is no obvious reason why the disappearance of sumptuary law should have been primarily economic in nature. Indeed, since no characteristically “economic” method of analysis emerged to prominence in Europe until about the middle of the 18th century, I think we could rather expect that such a change in mental orientation would have had roots that were as non-economic as they were economic in nature. But it also seems to me that the non-economic alternatives that he sensibly cites fall somewhat short of offering full explanations, and that a mystery of sorts therefore remains.

### Endnotes

[57.] Nick Eberstadt, *A Nation of Takers* (Templeton Press, 2012).

[58.] For his summary of the episode, see Paul A. Rahe, *Montesquieu and the Logic of Liberty* (New Haven: Yale University Press, 2009), 136-41.

[59.] See Montesquieu, *My Thoughts*, trans. and ed. Henry C. Clark (Indianapolis, IN: Liberty Fund, 2012), 1960, pp. 594-95. Online: </titles/2534#lf1609\_label\_2326>.

[60.] Daniel Bell, *The Cultural Contradictions of Capitalism* (New York: Basic Books, 1976).

[61.] For Basel, see Guillaume-Alexandre Méhégan, *Tableau de l'histoire moderne* (Paris: Saillant, 1766; trans. into English in 1779); William Coxe, *Sketches of the Natural, Civil, and Political State of Swisserland* (London:

Dodsley, 1779), 97-98, 504-5, and Abbé de Mably, *De l'étude de l'histoire, à Monsieur le Prince de Parme* (Parma: Royal Printer, 1775), 4-7. For Geneva, there is of course the “citizen of Geneva” himself, Jean-Jacques Rousseau; a typical example can be found in his *Politics and the Arts: Letter to d'Alembert on the Theatre*, trans. Allan Bloom (Ithaca: Cornell University Press, 1960), 93.

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## LIFE, LIBERTY, AND THE PURSUIT OF LUXURY

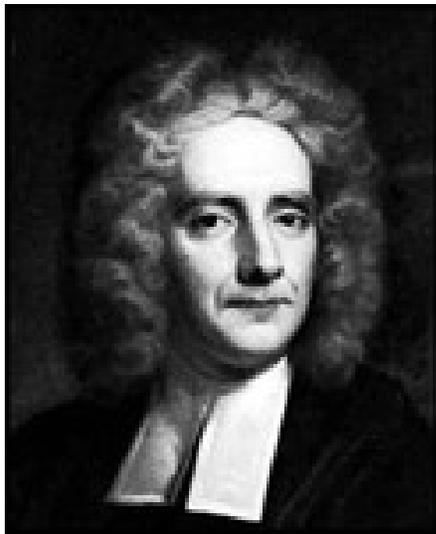
by David Carrithers

I thank Hank Clark for his insightful comments. I agree that there remains something of a mystery regarding the reasons for the curtailment of sumptuary laws and that non-economic reasons can offer only a partial explanation. Attention also needs to be paid to certain authors Professor Clark included in his *Commerce, Culture, and Liberty: Readings on Capitalism before Adam Smith*[62] and discussed in his *Compass of Society: Commerce and Absolutism in Old-Regime France*. [63]

Clark has helped us understand that [Nicholas Barbon's A Discourse of Trade](#)[64] marked a watershed moment in modern understandings of our insatiable appetites for luxury and the economic benefits that flow from satisfying those cravings. “[The Wants of the Body](#),” Barbon explained, have natural limits, but “the Wants of the Mind are infinite.”[65] It is only natural for us to desire what “can gratifie” our “Senses, “adorn our bodies, “and promote the Ease, Pleasure, and Pomp of Life.” And well before Montesquieu made the same point in *Persian Letter* 106, Barbon stressed the hordes of people employed in producing fashionable clothing. Even more laborers, he noted, are employed in the building trades and in the adornment of houses, and therefore it is an error to recommend “[parsimony, Frugality and Sumptuary Laws](#) as the means to make a Nation rich.”[66]

Of course it was not just emphasis on the positive effects of luxury on productivity and national wealth that helped to turn public opinion against sumptuary laws. Modern writers on economics stressed (pace classical writers

focusing on virtue and Christian writers focusing on salvation) the desirability of achieving the “happiness,” “refinement,” and “pleasure” accompanying the consumption of luxury goods. [Bernard Mandeville](#) strongly emphasized the “felicity” and “[all the most elegant Comforts of Life](#)” brought to us by luxury goods.<sup>[67]</sup> [David Hume](#), in his essays “[of Refinement in the Arts](#)” and “[Of Commerce](#),” spoke favorably of the goal of attaining “happiness,” “[great refinement in the gratification of the senses](#),” and “the [pleasures of luxury](#).”<sup>[68]</sup> And, not surprisingly, Hume denigrated Sparta for denying its citizens the means to achieve happiness.<sup>[69]</sup>



**Bernard Mandeville**

Jean-François Melon, in his influential *A Political Essay upon Commerce*, deplored the austerity of life resulting from sumptuary laws. Speaking of Geneva, he mocked a country where even the playing of a fiddle is considered dissolute. The inhabitants of such communities “resembleth,” he said, “rather a Community of Recluses, than a Society of Freemen.”<sup>[70]</sup> And Melon stressed the benefits of refinement. Do we really want, he asked, to live like the ancient Gauls who inhabited France during “the first Race of our Kings”? They experienced a “free, but savage Life” characterized by “Ferocity of Manners, little Commerce with civiliz’d Nations, [and] Ignorance of the Conveniences of Life”—a life, in short, no better than that of the Hurons and Iroquois of North America.<sup>[71]</sup> Concerning the prioritization of pleasure,

Montesquieu quoted Tacitus on the Roman desire for luxuries in the period of empire to replace “the harshness of the ancients” with “a more pleasant way of living.”<sup>[72]</sup>

Adam Smith focused most of his attention on the attainment of “natural liberty,” “freedom,” and “justice” in commercial societies possessing free markets, but he also praised such modern societies for producing “[universal opulence which extends itself to the lowest ranks of the people](#),”<sup>[73]</sup> giving even those at the bottom more luxury in their manner of living than is enjoyed by “[many an African king](#).”<sup>[74]</sup> “Opulence and Freedom,” Smith asserted, are “the two greatest blessings men can possess.”<sup>[75]</sup>

Most importantly, both Smith and Montesquieu understood that sumptuary laws constrain liberty. Thus, in his lead essay, Professor Clark quoted Smith’s pronouncement in *The Wealth of Nations* that “kings and ministers” should not “[watch over the oeconomy of private people](#), and ...restrain their expence either by sumptuary laws, or by prohibiting the importation of foreign luxuries.”<sup>[76]</sup> In Book VII, chapter 4 of *The Spirit of the Laws* Montesquieu explained that although sumptuary laws are suitable for certain very small and very frugal republican states where sustaining wealth equality is vital, they are abridgments of “the use of the liberty one possesses” in monarchical states where luxury naturally flows from the inequalities of wealth that characterize such states.”<sup>[77]</sup> Clearly, Professor Clark has done us a great service in reminding us that exploring the motivations behind sumptuary laws, and also the reasons for their gradual attenuation, can teach us much about the development of modern conceptions of liberty.

### Endnotes

<sup>[62.]</sup> Henry C. Clark, ed., *Commerce, Culture, and Liberty: Readings on Capitalism Before Adam Smith* (Indianapolis, IN: Liberty Fund, 2003).

<sup>[63.]</sup> Henry C. Clark, *Compass of Society: Commerce and Absolutism in Old-Regime France* (Lanham, MD: Lexington Books, 2006).

[64.] Nicholas Barbon, *A Discourse of Trade* (1690), in Clark, ed., *Commerce, Culture, and Liberty*, 67-99.

[65.] *Ibid.*, 73-74.

[66.] *Ibid.*, 70-71, 80.

[67.] Bernard Mandeville, *Fable of the Bees, or Private Vices, Publick Benefits*, 2 vols., ed. F. B. Kaye (Oxford: Clarendon Press, 1924); repr. Indianapolis, IN: Liberty Classics, 1988), I, 183, 197, cited in Christopher J. Berry, *The Idea of Luxury: A Conceptual and Historical Investigation* (Cambridge: Cambridge University Press, 1994), 127, 131. In Book VII, chapter 1 of *The Spirit of the Laws* Montesquieu repeated Mandeville's argument that the growth of population centers augments the demand for luxuries since people become very vain about impressing others. See Montesquieu, *The Spirit of the Laws*, trans. Anne Cohler, Basia Miller, and Harold Stone (Cambridge: Cambridge University Press, 1989), 7.1, p. 97.

[68.] David Hume, "Of the Refinement of the Arts" and "Of Commerce," in *Essays, Moral, Political and Literary*, ed. Eugene Miller (Indianapolis, IN: Liberty Classics, 1987), 268, 271, quoted by Berry, *Idea of Luxury*, 143-45.

[69.] Berry, *Idea of Luxury*, 143-44, 151.

[70.] Jean-François Melon, *A Political Essay upon Commerce* (1734), in Clark, ed., *Commerce, Culture, and Liberty*, 257.

[71.] *Ibid.*, 258.

[72.] Montesquieu, *The Spirit of the Laws*, 7. 4, p. 100 (italics in original).

[73.] Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, ed. R. H. Campbell and A.S. Skinner (Oxford: Oxford University Press, 1976; repr. Indianapolis, IN: Liberty Fund, 1979), 24, quoted by Berry, *Idea of Luxury*, 159.

[74.] *Ibid.*, 24, quoted by Berry, *Idea of Luxury*, 159.

[75.] Adam Smith, *Lectures on Jurisprudence*, eds. R. Meek, D. Raphael and P. Stein (Oxford: At the Clarendon Press, 1978; repr. Indianapolis, IN: Liberty Fund), 1982, 185, quoted by Berry, *Idea of Luxury*, p. 152.

[76.] Adam Smith, *Nature and Causes of the Wealth of Nations*, 346.

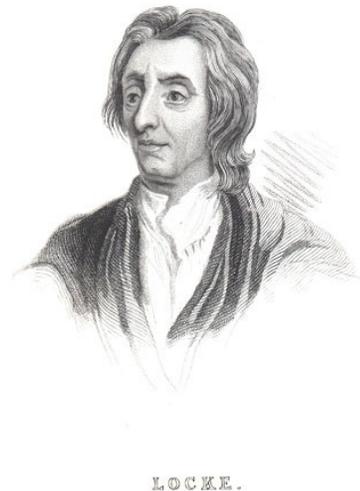
[77.] Montesquieu, *The Spirit of the Laws*, 7.4, pp. 99-100.

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## WHY DID SUMPTUARY LAWS DISAPPEAR?

by Paul A. Rahe

Perhaps another figure deserves mention in this discussion of the decline of sumptuary legislation. I have in mind a man famous in the 17th century and well-known in the 18th century, who has since been forgotten. Some of his essays were translated from French by John Locke, and we know that Montesquieu read him. I have in mind Pierre Nicole – who was a close friend and coconspirator of Blaise Pascal, coauthor of *The Port-Royal Logic* with Antoine Arnauld, and coeditor of [Pascal's \*Pensées\*](#) with his erstwhile coauthor.

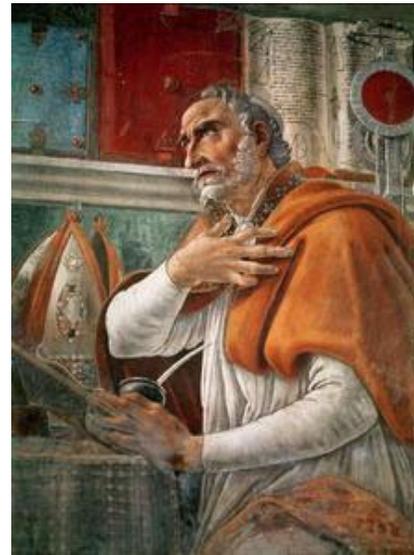


*John Locke*

I mention Nicole here because a year after the appearance of the *Pensées* he began publishing his own *Essais de morale*, and therein he rearticulated an aspect of the argument of the *Pensées* in a fashion, pertinent to our discussion here, that proved to be an inspiration to [Pierre Bayle](#) and [Bernard Mandeville](#).<sup>[78]</sup>

According to Pascal's account, the Fall transformed self-love into a new form, and what had once been subordinated to the love of God remained "alone" in what was a "great soul, capable of an infinite love"; and, in the absence of a proper object for human longing, by "extending itself & boiling over into the void that the love of God had left behind," this self-love metamorphosed into the species of vainglory that Pascal and the French moralists of the 17th century called "*l'amour propre*." This had, he contended, predictable consequences, for, in the process of becoming "infinite" in its scope, this self-love became both "criminal & immoderate" and gave rise to "[the desire to dominate](#)" others.<sup>[79]</sup> Then, after sketching what was a more or less conventional Christian account, Pascal went on – in a series of fragments omitted by Nicole and his colleagues from the Port Royal edition of the *Pensées* – to suggest a paradox: that men in their "grandeur" had somehow learned to "make use of the concupiscence" spawned by *amour propre*; and that, despite the fact that it dictates that "human beings hate one another," they had managed to deploy concupiscence in such a fashion as "to serve the public good." They had, in fact, "founded upon & drawn from concupiscence admirable rules of public administration [*police*], morality, & justice," and they had even succeeded in eliciting from "the villainous depths" of the human soul, which are "only covered over, not rooted up" by their efforts, a veritable "picture" and "false image of charity" itself.<sup>[80]</sup>

To this paradox, Nicole devoted a seminal essay suggesting that Christian charity is politically and socially superfluous – that, in its absence, thanks to the particular Providence of God, *l'amour propre* is perfectly capable of providing a foundation for the proper ordering of civil society, of the political order, and of human life in this world more generally.<sup>[81]</sup>



*Saint Augustine*

Nicole's inspiration, and no doubt that of Pascal as well, was a passage in which Saint Augustine dilated on the propensity for human pride [*superbia*] to imitate the works inspired by Christian charity [*caritas*]. It could, he claimed, cause men to nourish the poor, to fast, and even to suffer martyrdom.<sup>[82]</sup> At the beginning of his essay, Nicole specifies that, when he speaks of "*l'amour-propre*," he has in mind the fact "that man, once corrupted, not only loves himself, but that he loves himself without limit & without measure; that he loves himself alone; that he relates everything to himself"; in short, that "he makes himself the center of everything"; that "he wants to dominate over everything" and desires "that all creatures occupy themselves with satisfying, praising, & admiring him."

This "disposition," which Nicole attributes to all men, he calls "tyrannical." He acknowledges that it "renders human beings violent, unjust, cruel, ambitious, fawning, envious, insolent, & quarrelsome," and he readily concedes that, in the end, it gives rise to a war of all against all. He merely insists that, in the shocking manner so famously described by Thomas Hobbes, to whom he with approval alludes, instrumental reason, animated by *amour-propre* and by nothing else, can provide the polity with a firm foundation, and he contends that, by way of cupidity and vanity, *amour-propre*, with its "marvelous dexterity," can promote commerce, encourage civility,

and even elicit from men a simulacrum of virtue, as those who desire security and prosperity are forced by the fear of death and the lust for gain to embrace justice and “traffic in works, services, favors, civilities,” and as those who desperately crave admiration and love are driven to do admirable things. “In this way,” he writes, “by means of this commerce” among men, “all the needs of life can in a certain fashion be met without charity being mixed up in it at all.” Indeed, “in States into which charity has made no entry because the true Religion is banned, one can live with as much peace, security, & convenience as if one were in a Republic of Saints.” Nicole is even willing to assert “that to reform the world in its entirety – which is to say, to banish from it all the vices & every coarse disorder, & to render man happy in this life here below – it would only be necessary, in the absence of charity, to confer on all an *amour-propre* that is enlightened [*éclairé*], so that they might know how to discern their real interests.” If this were done, he concluded, “no matter how corrupt this society would be within, & in the eyes of God, there would be nothing in its outward demeanor that would be better regulated, more civil, more just, more pacific, more decent [*bonnête*], & more generous. And what is even more admirable: although this society would be animated & agitated by *l’amour-propre* alone, *l’amour propre* would not make a public appearance [*paraître*] there; &, although this society would be entirely devoid of charity, one would not see anything anywhere apart from the form & marks of charity.”<sup>[83]</sup>

The pertinence to our discussion of Nicole’s analysis of the capacity of *l’amour propre* to generate civil conduct should be obvious. For vanity is the passion that gives rise to the love of luxury. If one is convinced, as Pascal and Nicole were, that this vice can itself generate the bourgeois virtues and that they suffice for the support of civil society, then one is not apt to think the suppression of luxury politically necessary or even wise.

### Endnotes

<sup>[78.]</sup> For a discussion of this neglected figure, see Edward Donald James, *Pierre Nicole, Jansenist and Humanist: A Study of his Thought* (The Hague: Martinus Nijhoff, 1972), and Paul A. Rahe, “Blaise Pascal, Pierre Nicole, and the

Origins of Liberal Sociology,” in *Enlightenment and Secularism: Essays on the Mobilization of Reason*, ed. Christopher Nadon (Lanham, MD: Lexington Books, 2013), 129-40. [Editor: There are extracts from Pierre Nicole’s “Moral Essays” in Henry Clarke, *Commerce, Culture, and Liberty: Readings on Capitalism Before Adam Smith* (Indianapolis: Liberty Fund, 2003). Nicole in Chap. 4, pp. 54-65 [PDF only]. <[/titles/836](#)>.

<sup>[79.]</sup> See Blaise Pascal, *Pensées sur la religion et sur quelques autres sujets, qui ont été trouvées après sa mort parmi ses papiers*, third edition, ed. Étienne Périer (Paris: Guillaume Desprez, 1671), 294-95 (XXX.3, in the expanded edition published in 1678 and frequently republished thereafter). Note also the reference to *libido sentiendi*, *libido sciendi*, *libido dominandi* in *ibid.*, 254-55 (XXVIII.55, in the expanded edition published in 1678 and frequently republished thereafter). For a survey of the 17th-century literature discussing *amour propre*, see Nannerl O. Keohane, *Philosophy and the State in France: The Renaissance to the Enlightenment* (Princeton, NJ: Princeton University Press, 1980), 183-97, 262-82, 286-311.

<sup>[80.]</sup> See Blaise Pascal, *Pensées: Édition établie d’après la copie référence de Gilberte Pascal*, ed. Philippe Sellier (Paris: Classiques Garnier, 1999), nos. 150, 243-44. Online version: Blaise Pascal, *The Thoughts of Blaise Pascal, translated from the text of M. Auguste Molinier by C. Kegan Paul* (London: George Bell and Sons, 1901). <[/titles/2407](#)>.

<sup>[81.]</sup> In this connection, note James, *Pierre Nicole*, 148-61, and Nannerl O. Keohane, “Nonconformist Absolutism in Louis XIV’s France: Pierre Nicole and Denis Veiras,” *Journal of the History of Ideas* 35:4 (October-December 1974): 579-96, and see Hans-Jürgen Fuchs, *Entfremdung und Narzissmus: Semantische Untersuchungen zur Geschichte der ‘Selbstbezogenheit’ als Vorgeschichte von französisch ‘amour-propre’* (Stuttgart: J. B. Metzler, 1977), along with Dale Van Kley, “Pierre Nicole, Jansenism and the Morality of Enlightened Self-Interest,” in *Anticipations of the Enlightenment*, ed. Alan C. Kors and Paul Korshin (Philadelphia: University of Pennsylvania Press, 1987), 69-85; McKenna, *De Pascal à Voltaire*, I 225-27; and Johan Heilbron, “French Moralists and the

Anthropology of the Modern Era: On the Genesis of the Notions of ‘Interest’ and ‘Commercial Society,’” in *The Rise of the Social Sciences and the Formation of Modernity: Conceptual Change in Context, 1750-1850*, ed. Johan Heilbron, Lars Magnusson, and Björn Wittrock (Dordrecht: Kluwer Academic Publishers, 1998), 77-106.

[82.] See Augustine, *In epistolam Joannis ad Parthos tractatus decem* 8.9.

[83.] See Pierre Nicole, “De la charité et de l’amour-propre,” in Nicole, *Essais de morale*, ed. Laurent Thirounin (Paris: Presses Universitaires de France, 1999), 381-415 (esp. 406-7, where the passage from Augustine is cited and paraphrased). The same theme is developed in Nicole, “De la grandeur,” in *ibid.*, 197-243 (at 212-17). In this connection, see Keohane, *Philosophy and the State in France*, 293-303.

the 14th and 15th centuries owing in part to the Black Death of 1348 and other epidemics,[85] encouraging marriage to boost population became a high concern of state. The costs associated with marriage were pricing prospective couples out of the market. By custom, brides needed trousseaus, and a growing appetite for luxury items was making them prohibitively expensive, so much so that the citizens of Lucca in 1380 asked the city government to restrict the items that could be included since many could not afford the “inordinate multitude of furs, ornaments, pearls, garlands, belts, and other expenses” that had become the fashion of the day.[86] The more expensive the trousseau, the less actual cash was left in the dowry since the value of the trousseau was subtracted from the total value of a woman’s dowry.[87] One Ginevra Datini, for example, would have had a large dowry of 1,000 gold florins, “but her trousseau was so lavish that her husband was left with a mere 161 florins in cash.”[88]

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## WHY SUMPTUARY LAWS ENDURED

by David W. Carrithers

My previous posts mainly focused on why the impulse to pass sumptuary laws gradually weakened. Obviously, much more could be said on this topic, particularly regarding the influence of economic theory on Montesquieu and other leaders of European thought. Rather than continuing that line of investigation, however, I would like to reverse course and focus attention on why the urge to pass sumptuary laws lasted so long. And to assist with this analysis, I will draw upon the stellar work on Italian sumptuary legislation of Catherine Kovesi Killerby referenced by Hank Clark in his thought provoking initial essay.[84] Since space is limited, I will focus just on public-policy reasons for passing sumptuary laws regulating marriages and funerals, leaving aside the strong religious rationales operative in the minds of such papal legates as Cardinal Bessarion, whose sumptuary edict for Bologna in 1453 so infuriated Nicolosa Sanuti.

I’ll begin with the perceived need to regulate marriage. Since Italy experienced sharp population losses during



*Young Bride*

Clearly there was an incentive for governments to intervene. Thus in Messina, as early as 1272, a sumptuary law sharply limited the amount of money that could be spent on dowries and trousseaus while also restricting the number of guests who could be invited and how much brides could spend on their wedding apparel.[89] Similar policies were adopted by many other governments. In Genoa, for example, beginning in 1449 the value of a bride’s trousseau could not exceed one-fifth the value of

the dowry.<sup>[90]</sup> The rising costs of trousseaus was only part of the marriage problem. Wedding ceremonies had become inordinately expensive, and lawmakers acted to limit those costs. Thus governments in Italy, whether republican, monarchical, or despotic, passed laws limiting the number of attendants brides and grooms could have at their wedding and specifying how expensive the gifts for those attendants could be, how many guests could be invited to weddings, what could be served at the wedding banquets, and how much could be spent on wedding presents for the bride and groom.<sup>[91]</sup> Some governments were so focused on increasing population through marriage that they restricted eligibility for public office to those who were married and spent public money on marriage brokers.<sup>[92]</sup>

A concern for political stability also drove passage of sumptuary laws regarding marriage. Currents of dissent and bitter factionalism swirled just beneath the surface of Italian governments, and many sumptuary laws were designed to curb what Killerby has termed “the display of family strength, both in terms of wealth and numbers.” The goal, she says, was to prevent “unfocused political disaffection” from becoming “focused upon a particular person, family, or faction.”<sup>[93]</sup> Weddings, she explains, presented a prime opportunity for families to come together and gain allies, and therefore “the majority of wedding laws devoted most of their rubrics to limiting the numbers that could attend each of the stages of a new marriage alliance and specifying who was allowed to be included amongst the guests.”<sup>[94]</sup>

Funerals could also have political ramifications since the deceased might be clearly identified with some political cause or grievance. Excessive attention to the passing of a revered and politically influential person might unleash destructive impulses and factional strife. Thus sumptuary laws banned “excessive wailing, weeping, tearing of hair, and beating of palms, particularly by women.”<sup>[95]</sup> A statute passed in early 14th-century Modena forbade “anyone to cry loudly outside the house of the deceased or to beat the hands or palms.”<sup>[96]</sup> Some laws excluded women altogether from funeral processions since they were most likely to publicly display grief, and other laws

allowed women to be part of the procession only if the deceased was a woman or a boy no older than 10 and thus not likely to become a rallying point for a faction.

Many governments imposed restrictions on who could wear mourning clothes and for how long, and laws were passed restricting the way corpses could be clothed (often just in plain wool lined with linen) not just to “prevent wasteful expenditure” but also because “to display wealth was also to incite ambition and display potential political power.”<sup>[97]</sup> Some sumptuary laws even banned all public officials from attending funerals in order “to prevent anyone with political power from identifying himself too closely with the interests of a specific individual or family.”<sup>[98]</sup> Other sumptuary laws, in Milan and Brescia for example, banned the display of any family banners that would augment the prestige of a particular family.<sup>[99]</sup>

Summing up the reason for passage of sumptuary laws regarding funerals, Killerby has said: “Presumably the reasoning here was that such open displays of grief would serve to arouse passions and unite mourners around a common cause, thereby serving the interest of the politically ambitious.”<sup>[100]</sup> So concerned were governments that funerals would ignite passions and form factions that the sumptuary laws governing them were exceptionally detailed. To take just one example, a Paduan law of 1398 stipulated that “no bells were to be rung without the permission of the *consiglio del Signore*; that only a single order of mendicants and the parishioners of the church in which the corpse was to be buried could follow the bier...; that no more than four torches were to be carried in the process, and each of these was not to weigh more than 4 lb; that only the inhabitants of the deceased’s house and his mother, sisters, and daughters could wear scarves (*fazzoletti*); and that no one was to dress in mourning except the wife and children of the deceased.”<sup>[101]</sup>

These very brief examples of perceived public needs can help us understand why the demise of sumptuary laws took place over the course of many centuries and was by no means preordained. It was clearly a combination of economic and noneconomic factors, along with changing conceptions of liberty (including liberty for females as per

Sanuti's protest) and the rise of free-market economic theory, that a full explanation must take into account. I once again thank Hank Clark for enabling us to embark on an intriguing discussion that, as he reminds us in the concluding sentence of his initial post, can serve to "remind us of what a mottled, murky landscape the history of liberty really is."

### Endnotes

[84.] Catherine Kovesi Killerby, *Sumptuary Law in Italy, 1200-1500* (Oxford: Clarendon Press, 2002).

[85.] *Ibid.*, 52-53.

[86.] *Ibid.*, 51, citing S. Bongi, ed., *Bandi lucchese del secolo decimoquarto: Trattati dai registri del R. Archivio di Stato in Lucca* (Bologna, 1863), 311.

[87.] *Ibid.*, 54-55.

[88.] *Ibid.*, 55, citing I. Origo, *The Merchant of Prato* (London, 1984), 189

[89.] *Ibid.*, 56-57.

[90.] *Ibid.*, 57, citing Pandiani, 193.

[91.] *Ibid.*, 58.

[92.] *Ibid.*, 58.

[93.] *Ibid.*, 66.

[94.] *Ibid.*, 69.

[95.] *Ibid.*, 72.

[96.] *Ibid.*, 73, citing C. Campori, "Del governo a comune in Modena secondo gli statuti ed altri documenti sincroni," in *Statuta civitatis mutine, (Monumenti di storia patria delle provincie modenesi), Serie degli statuti, I* (Parma, 1864), 474.

[97.] *Ibid.*, 75-76.

[98.] *Ibid.*, 76-77. Killerby also discusses restrictions on baptismal ceremonies similarly designed to lessen the likelihood of alliances between families being formed. (*Ibid.*, 77)

[99.] *Ibid.*, 77-78.

[100.] *Ibid.*, 72

[101.] Killerby, 71, citing Bonardi, 11.

## MONTAIGNE ON 'SUMPTUARY LAWS'

by Stuart D. Warner

*In most authors I see the man who writes; in Montaigne, the man who*  
*thinks.*

Montesquieu, *Mes Pensées*, #633

The importance of Montaigne's writings to European letters from the late 16th to the 19th century cannot be overrated. Works as diverse as Bacon's *Essays*, Shakespeare's *King Lear* and *The Tempest*, and Montesquieu's variegated writings, most notably *Persian Letters* and *The Spirit of Laws*, all testify to the profound influence they exercised. However, anyone who has spent any serious time with Montaigne's *Essays* realizes that they frequently traverse an ironic and suggestive path that is difficult to follow. One such essay, to which I alluded in my earlier entry on Montesquieu, is "[Of Sumptuary Laws](#)."<sup>[109]</sup> As is the case with several of Montaigne's essays, this one appears bearing a façade title.<sup>[110]</sup> Although it might appear as if the essay is about sumptuary laws, and indeed that is the matter with which the essay begins, it is only an artifice for transporting the reader to other lands.

"Of Sumptuary Laws" begins with a criticism of such laws. If we seek to regulate "foolish and vain expenditures" involving, say, clothes and food, we should realize, Montaigne tells us, that sumptuary laws are a feckless means to do so. Rather than directing people away from such outlays, rather than leading people to feel contempt toward them, these laws serve to incentivize people to pursue and embrace them. The laws in question, which have been established by Princes, prohibit almost all from acquiring certain goods, thereby allowing the Princes to be their sole possessors. However, the people would lose their interest in such goods and expenditures if the Princes themselves would "boldly set aside these marks of greatness." We could, Montaigne avers, find other ways, drawn from other nations, of "outwardly distinguishing

ourselves and our ranks,” and these could serve finely as substitutes.



*Michael de Montaigne*

Having concluded in this way, Montaigne moves on to show that the people and Princes could, with respect to clothing, act quite alike. For at least a year following the death of King Henry II in 1559, everyone at court, and practically everyone else, followed funerary custom and wore broadcloth; only but a very few dressed in what previously would have been high fashion, namely, silk, and those few (principally medical doctors and surgeons—men of the city rather than court) were held in low esteem because of it. It was, Montaigne indicates, a marvel how “custom in such indifferent things so easily and suddenly plants down the foot of her authority.” When Princes omit pursuing superfluities such as silk, most everyone follows suit. Nevertheless, he continues on, there are enough obvious distinctions that we could still draw among the various qualities of men.

Furthermore, Montaigne directs our attention to the ancient example of Zaleucus (seventh century B.C.E.) who, through a parallel device, was able to divert the Locrians from their “corrupted morals” by means of dictating that a free woman could not go outside the city at night, or wear embroidered dresses, or wear gold unless she were a public whore; and that a man could not wear gold rings or fancy robes made from the finest fabric

from Miletus unless he were a pimp:<sup>[111]</sup> “And thus by these shameful exceptions, [Zaleucus] ingeniously diverted his citizens from pernicious superfluities and delights.” In such a fashion, honor and ambition were able to attract men to obedience.

Up until shortly before the end of his essay, Montaigne stays on the same trajectory depicted above. And despite my initial statement that the essay “Of Sumptuary Laws” is only seemingly about that subject, it would not be difficult on the basis of the line we’ve traced out so far to conclude anything other than that the essay gives expression to its titular subject. Indeed, what else could the essay be about?

In trying to discover the essay’s proper subject, we should begin not with Montaigne’s explicit criticism of sumptuary laws, but rather with what should strike the reader as only tangentially connected to it. After pointing out why these laws would fail to achieve their desideratum, Montaigne takes note of the fact that if Princes were not distinguished by their clothing and food, there would be other outward signs they could make use of, perhaps emulated from other nations, by virtue of which Princes could be seen as great. Whatever these might be, what they would have in common with clothing and food is that they would merely be external signs of distinction. The reader might be led to wonder what the inward marks of distinction, ranks, or greatness might be, and what this might mean. But apart from this, regardless of whether both Princes and the people would be free to wear certain clothes or eat certain foods and would do so, *or* if neither the Prince nor the people would adopt them—in both cases, that is—they would be equal with respect to these conventional markers: each of these alternatives would serve to undercut a conventional inequality to which they had been accustomed, and lead to a certain kind of conventional equality.

This theme of conventional inequality and equality, and the movement from the former to the latter, are further in evidence in the other examples that Montaigne adduces, which we canvassed above—the instances involving King Henry II and Zaleucus being variations on a theme. Of course, there are some differences here.

In the former case, funerary custom was at work leading most away from what would have been considered a luxury; in the latter case, it was Zaleucus's dictates that, given the customary understanding of whores and pimps, made the acquisition of certain luxuries particularly shameful, while not prohibiting anyone from seeking them. But these differences notwithstanding, these two examples coupled with the first spotlight certain thematic considerations of the utmost importance, considerations connected to issues of conventional inequality and equality.

We can begin with the pliable character of custom, that there is nothing fixed about it. This concern, which runs deeply throughout Montaigne's essay, seems to be undercut, though, at the essay's end, where Montaigne elaborates a view he finds in [Book VII](#) of Plato's *Laws*,<sup>[112]</sup> to the effect that the young should not be let free to change their practices over time as regards clothes, gestures, and play, or otherwise they will be corrupted. But this will hold because there is a divine support and sanction for custom. However, in part, this is exactly what Montaigne himself is undercutting; so, by means of a view that is placed on exhibition in Plato's dialogue, Montaigne is able to exhibit a view contrary to his own, the very one he tries out in the essay at hand and elsewhere—that despite the authority custom wields, it can be transformed, perhaps for the better.

Yet, what has to be called out for attention here is that the customs saturating “Of Sumptuary Laws” pertain to differences between Princes and the people—that is, the relationships of conventional equality and inequality at issue in the essay have as their *relata* Princes and the people. Differences (and thus inequalities) between them can be transformed into similarities (and thus equalities) with a change in custom. Herein lies the importance of Montaigne's signaling that a change from inequality to equality still allows for other outward marks of distinction, ranks, and greatness. But the question must arise: can those too be subject to a movement from inequality to equality, all on the plane of conventionality?

This last question directs us to a final issue, one to which I have alluded in passing. Montaigne focuses on matters

of convention, but what about those of nature, those that I have termed inward marks of distinction (and greatness)? There surely are natural differences among human beings, and presumably natural differences among types of human beings. Are there natural differences between Princes and the people, differences that would bear on questions of political authority? If so, what? If not, what are the consequences for political life? And what might one say about the difference between Montaigne's life, a philosophical life, and a political one? Does this question bear on issues of natural equality and inequality? However one answers these questions, one would do well to notice that the essay preceding “Of Sumptuary Laws” in Montaigne's book is “[Of the Inequality Between Us.](#)” The theme of sumptuary laws seems the way to more exotic lands.

### Endnotes

[109.] As I mentioned in my earlier entry, the best translation of Montaigne remains that of Donald Frame, and the essay in question can be found on pages 196-98 of the previously cited edition; nonetheless, all translations in this entry are the author's own.

[110.] On Montaigne's use of such titles, see Patrick Henry, *Montaigne in Dialogue* (Saratoga, CA: Anma Libri, 1987), 3-35. Helpful on this issue will be Ralph Lerner's forthcoming book from the University of Chicago Press (2016), *Naïve Readings: Reveilles Political and Philosophic*.

[111.] Cf. Diodorus Siculus, *Library of History*, 12.21.

[112.] 797a-798e; esp. 797e. Online version: *The Dialogues of Plato translated into English with Analyses and Introductions by B. Jowett, M.A. in Five Volumes*. 3rd edition revised and corrected (Oxford University Press, 1892). <[/titles/769#lf0131-05 head 025](#)>.

## AMBIVALENT MONTESQUIEU

by Henry C. Clark

In his response post “Life, Liberty, and the Pursuit of Luxury,” David Carrithers usefully surveys some of the individual authors who did indeed express skepticism toward the traditional regime of sumptuary legislation embraced by European governments. Nicholas Barbon’s *A Discourse of Trade*, Bernard Mandeville’s *A Fable of the Bees*, Jean-François Melon’s *An Essay upon Commerce* and David Hume’s essay “Of Refinement in the Arts” (originally entitled “Of Luxury”) were among the smattering of works that poured cold water on the whole project. Montesquieu, too, in his usual nuanced way, thought such laws inappropriate in at least some circumstances.

The problem, of course, is not only that these skeptics were in a distinct minority, but that the record of government activity itself was quite mixed in the 18th century--some countries scaled down their sumptuary efforts (France in particular) while others increased theirs (Sweden, for example). The incompleteness of the “skepticism” project was revealed during the French Revolution, when calls for the restoration of such laws became vocal once again.

As David Carrithers himself shrewdly notes, Montesquieu cited Tacitus as a source authority on the growing popularity of luxuries among the Romans during the Empire. Tacitus was of course widely read as an insightful observer on the loss of liberty and of virtue among the Roman people. And it is hard to escape the conclusion that this fact was itself one of the great impediments to the emergence of a genuinely “modern” view of luxury consumption: thinkers throughout the 17th and 18th centuries were deeply anxious about repeating what they saw as the catastrophic fate of the Roman project.

We may then read Montesquieu in this light as being himself ambivalent. On the one hand, he does suggest that under monarchies, sumptuary law is inappropriate,

and for more than one reason. On the other hand, he expressly rejects the idea, advanced by his friend Melon and a few others, that virtue-based republics of the ancient sort are fundamentally out of kilter with the broader conditions of modern life and are therefore simply not fit models for modern states to emulate. In addition, he described England as a “republic in the guise of a monarchy,” casting doubt on exactly which rubric he would attach to the *dramatis personae* in his national survey. This all being the case, it was and is not impossible to read him as using a kind of civic-republican language as a subtle and indirect way of criticizing the policies of modern monarchies such as France.

Paul Rahe is absolutely right in “Why Did Sumptuary Laws Disappear?” to call attention to Pierre Nicole, redoubtable ally of Pascal during the religious quarrels of the 17th century. For a long time now, it has been known how important Nicole was as a conduit of ideas for the 18th-century Enlightenment. The conduit is certainly a paradoxical one. Jansenism is mostly associated with the kind of austere Augustinian Christianity that we think of as an obstacle to modernization rather than as one of its sources. Those historians who take Weber as their lodestar would of course not be deterred by such a paradox. To them, Jansenism would look--as it did to Weber himself--like an analogue to Puritanism: a source of that “calling,” that “predestinarian” anxiety, that “inner-worldly asceticism” that Weber saw as essential to the massive accumulation of capital supposedly defining the rise of capitalism.<sup>[102]</sup>

But I agree with Paul Rahe that Nicole and the Jansenists are also of note for another and quite different reason: their naturalization of the passions, including passions like self-love that might lead in practice to consuming rather than saving activities. In particular, I would place emphasis on what we might think of as the “wonder” of the civilized order felt by Pascal, Nicole, and others like them. From Pascal’s marveling at the way concupiscence can breed such a refined system of social conduct, it is but a short step to Mandeville remarking on the multiplicity of hands that went into some ordinary [Yorkshire cloth](#),<sup>[103]</sup> ([repeated pretty closely](#) by

Adam Smith),<sup>[104]</sup> and on down to [Leonard E. Read's example](#) of the making of a pencil, which Milton Friedman later spotlighted on television.<sup>[105]</sup>



*Milton Friedman*

Of course, to my knowledge, Nicole never actually discusses sumptuary law in his published writings. Had he done so, furthermore, it strikes me as not a foregone conclusion that he would necessarily have supported their abolition. Even though it is true that thinkers from Mandeville on were able to use Nicole's clever reworking of the theory of self-love in what we might call "modernizing" ways as concerns the theory of consumer society, Nicole himself was not necessarily one of them. All of his (quite few) discussions of "luxury," for example, a term that was a favorite reference point for the whole debate over consumer society in 18th-century Europe, were of the traditional variety. For example, at one point he pairs "luxury" with blasphemy and debauchery as counting among the great number of "sources of disorder and of crime."<sup>[106]</sup> This was exactly the language of traditional moral control and marks a continuing gulf between his world and our own.

Speaking of tradition, David Carrithers, in "Why Sumptuary Laws Endured," takes us on a tour of one of the specific anxieties of premodern governments, namely wedding expenses. It is no doubt true that in a world much closer to the Malthusian trap than our own, dowry customs and wedding expenses could devour the savings

of private households in ways that might alarm the authorities. That example itself, of course, spotlights the gulf between their world and ours. For modern governments, private expenses are mostly private matters. Great fortunes can be and are being lost all the time without states feeling the kind of generalized anxiety for the very stability of the social order manifested by Professor Carrithers' Renaissance rulers.

As our original discussion of Montesquieu made clear, however, this modern posture of ours is fragile, hard-won, and provisional. One might point out, for example, that although our private fortunes are private matters, our private firms deemed "too big to fail" are another thing altogether, and perhaps a fit subject for a separate Liberty Matters forum.

Moreover, we can easily overlook how the scramble for status that drove so much of the wedding market in Renaissance Italy continues to be viewed in a variety of different ways in our own time. On the one hand, to be sure, status-seeking has been domesticated into the more innocent language of the "land of opportunity" or of "seeking the American dream." One reason why this domestication was successful is the interiorization of the ideal of the individual in modern life. Adam Smith called it the "[desire of bettering our condition](#)," and he saw it as a natural and universal desire. Nor was he far removed from Pierre Nicole in doing so.<sup>[107]</sup>

But on the other hand, there remains a whole strand of cultural criticism stretching from Veblen to Robert Frank that continues to fret about the messy spectacle of a consumer society, and that looks to government to correct it.<sup>[108]</sup> If such proposals seem to us considerably more quixotic, more intrusive, more marginal than they would have seemed to an 18th-century reader steeped in jeremiads on luxury and corruption, that is because we have inherited more of Adam Smith's view of personal consumption than of Montesquieu's. How and why that is the case, and how far it is the case, remain--or so it seems to me--one of the elusive cogs in the fragile machinery of modern liberty.

## Endnotes

[102.] See Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, ed. Richard Swedberg (New York: Norton, 2009), 113n14, 118-19n17 and n26, 122n57. For an alternative view, see Jacob Viner, *Religious Thought and Economic Society*, ed. Jacques Melitz and Donald Winch (Durham: Duke University Press, 1978), 23 and passim.

[103.] Bernard Mandeville, *The Fable of the Bees*, ed. F.B. Kaye (Oxford: Clarendon Press, 1924; repr. Indianapolis, IN: Liberty Classics, 1988), 1:169. See the quote by Mandeville "On the social cooperation which is required to produce a piece of scarlet cloth (1723)" </quotes/542> and on Yorkshire cloth </titles/846#Mandeville 0014-01 520>.

[104.] Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, ed. W.B. Todd (Oxford: Oxford University Press, 1976; repr. Indianapolis, IN: Liberty Fund, 1981), I.i.11. Online version Cannan edition: Smith on the making of a woolen coat I.i.11 - Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations by Adam Smith, edited with an Introduction, Notes, Marginal Summary and an Enlarged Index by Edwin Cannan* (London: Methuen, 1904). Vol. 1. </titles/237#Smith 0206-01 149>.

[105.] Leonard E. Read, "I, Pencil," Irvington-on-Hudson, NY: Foundation for Economic Education, 1958; Leonard E. Read, *I Pencil: My Family Tree as told to Leonard E. Reed* (Irvington-on-Hudson, New York: Foundation for Economic Education, Inc., 1999). </titles/112>. Friedman's television version; <https://www.youtube.com/watch?v=R5Gppi-O3a8>.

[106.] Pierre Nicole, "De la Grandeur," pt. 2, ch. 3 of *Essais de morale* (Paris: Desprez, 1701), 2:216.

[107.] Adam Smith, *Wealth of Nations*, II.iii.28, 341 for one example. Online version: Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations by Adam Smith, edited with an Introduction, Notes, Marginal Summary and an Enlarged Index by Edwin Cannan* (London: Methuen, 1904). Vol. 1. </titles/237#Smith 0206-01 917>.

[108.] Thorstein Veblen, *The Theory of the Leisure Class: A Study of Institutions* (New York: Macmillan, 1899) and Robert Frank, *Luxury Fever: Happiness in an Era of Excess* (New York: The Free Press, 1999).

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## THE SECRET PREHISTORY OF EQUALITY

by Henry C. Clark

The *Essays* of Michel de Montaigne are indeed among the formative cultural monuments of the Western world, as Stuart Warner reminds us. Nor is it at all impossible that they contain the artful juxtapositions, allusions, and hidden messages hinted at by Stuart's post. There was no subtler chronicler and practitioner of the arts of the genuinely free mind than he. That is one reason they were indeed read by just about everyone in the period we are discussing. And unlike some of the classics of that period, such as [Erasmus's \*In Praise of Folly\*](#) to take one example, which may have lost some of its lustrous topicality in the five centuries since its publication, the engaging genius and irrepressible individuality of Montaigne's voice resonates just as forcefully for us today as if we were sitting with him in his Bordeaux tower.



**Desiderius Erasmus**

But if the question before the house concerns the secret prehistory of equality, as Stuart's most intriguing remarks seem to suggest, then allow me to point toward another avenue into the subject, one that I hope to trace back to the beginning of our discussion. If Stuart Warner is right, as I believe he is, in his apparent suggestion that "equality" is a value that doesn't just "happen" of its own accord but that needs to be developed and articulated by our cultural and intellectual leaders, and if Montaigne was indeed one of those leading cultural innovators as Stuart and I both agree, it is also true that as I hinted at the end of my original post, things were happening at the level of practice that made the value of "equality" a more live possibility than might otherwise have been the case--especially "equality" between the sexes.

The Hollywood news media narrative of a world groaning under The Patriarchy until the Suffragettes or Betty Friedan and Gloria Steinem hoisted it on their heroic shoulders is about as far removed from reality as a myth is capable of straying. Bernard Lewis is much closer to the truth when he observes that 600 years ago already, "Western civilization was richer for women's presence; Muslim civilization, poorer by their absence."<sup>[113]</sup> Lewis himself was referring to the relative prevalence of monogamy in the West, by comparison with the polygamy and legalized concubinage so much in evidence elsewhere. But in recent decades, this picture of Western exceptionalism has been deepened and fleshed out considerably, both from within Europe and beyond, while the dynamics of its genesis and its unfolding remain frustratingly murky.

From within Europe, the European Marriage Pattern I mentioned the other day has been summarized as including the following key elements: delayed marriage and relatively similar average ages of marriage for the two sexes, high rates of voluntary celibacy and correspondingly low crude birth rates, more young women as well as men in the workforce accumulating property, with corresponding effects on the nature of the relationship between spouses after marriage, and between parents and children.<sup>[114]</sup> Outside of Europe, Western commentators are again relearning just how deeply the

differences between the West and the Rest in their respective treatments of women can go in explaining problems of economic and political development.<sup>[115]</sup> While no one would suggest that life for women (and men) hovering near the Malthusian Trap before the Industrial Revolution was anything other than very hard, and far from equal, there was nonetheless scope for a certain kind of personal initiative, even a certain kind individual liberty among them that many women elsewhere could only dream about. "Though wedlock I do not decry," wrote the Flemish poet Anna Bijns, Montaigne's near contemporary, "Unyoked is best! happy the woman without a man."<sup>[116]</sup>

Perhaps this deeper pattern of customs, traditions, and relationships helps explain another odd shard of sexual equality (or at least "equality") in the age of the Renaissance. If the ambiance of Plato's Academy and Aristotle's Lyceum was emphatically a man's world, the flavor of intellectual life by Montaigne's time was markedly different. In his delightfully conceived *Women in the Academy*,<sup>[117]</sup> C.D.C. Reeve imagines the conversations that might have occurred in Plato's grove when two women--Axiothea of Phlius (who dressed like a man) and Lasthenia of Mantinea--showed up to pursue philosophy. By Montaigne's time, of course, people no longer had to imagine, for Castiglione had made the image real.

As I'm sure Stuart Warner will agree, the 1524 work *The Book of the Courtier* had a trajectory in the cultural history of Europe that was nearly as remarkable as that of Montaigne himself. Its success must surely say something about the underlying attractiveness even at that early date of a group of cultured, elite men and women engaging in conversation about some of the big conceptual issues on their minds. Roughly speaking, this was the sort of world--a world not of equality in any democratic sense but of certain "equalities" nonetheless--that produced a Nicolosa Sanuti and emboldened her to speak up. As such, we can say that this world also helped make the breezy quotidian repressions embedded in the whole sumptuary law regime an item for legitimate discussion. I will only conclude with this irony: Montesquieu, who as

a denizen of the salons of Paris and especially of his friend the Marquise of Lambert was quite familiar with the ambiance captured in *Il Cortegiano*, offered a less robust solution to Sanuti's problem than did the socially awkward bachelor Adam Smith.

### Endnotes

[113.] Bernard Lewis, *Cultures in Conflict: Christians, Muslims, and Jews, in the Age of Discovery* (Oxford: Oxford University Press, 1995), p. 24.

[114.] See Jack Goody, *The development of the family and marriage in Europe* (Cambridge: Cambridge University Press, 1983), p. 8.

[115.] For recent examples, see Gary A. Haugen and Victor Boutros, *The Locust Effect: Why the End of Poverty Requires the End of Violence* (Oxford: Oxford University Press, 2014); Nicholas D. Kristof and Sheryl WuDunn, *Half the Sky: Turning Oppression into Opportunity for Women Worldwide* (New York: Vintage Books, 2009); Anke Hoeffler and James Fearon estimate (controversially) that violence in the home, largely against women, is a far more expensive and serious impediment to economic development than homicide, terrorism, or civil war. See their "Conflict and Violence" Assessment Paper for the Copenhagen Consensus Center, [http://www.copenhagenconsensus.com/sites/default/files/conflict\\_assessment\\_-\\_hoeffler\\_and\\_fearon\\_0.pdf](http://www.copenhagenconsensus.com/sites/default/files/conflict_assessment_-_hoeffler_and_fearon_0.pdf)

[116.] Cited in Tine de Moor and Jan Luiten van Zanden, "Girl Power: The European Marriage Pattern and Labour Markets in the North Sea Region in the Late Medieval and Early Modern Period," *Economic History Review* 63, no. 1 (2010): 1-33, quote at 1.

[117.] C.D.C. Reeve, *Women in the Academy* (Indianapolis: Hackett Publishing Co., 2001).

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