Chapter 15

In Search of the Newton of the Moral World: The Intelligibility of Society and the Naturalist Model of Law from the End of the Seventeenth Century to the Middle of the Eighteenth Century

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Montesquieu appears to have moved away from the normative field of natural law to turn instead to a positive description of facts and to search for their empirical regularity, thus making him the founder of sociology. This well-established idea[2] owes much to the interpretation put forward by Auguste Comte in his *Cours de philosophie positive* and developed by Emile Durkheim in his Latin thesis.[3] According to them, Montesquieu perceived political phenomena as 'inevitably subjected to invariable natural laws just as much as any other phenomena'.[4] This is a typical example of the positivist history of the sciences and its teleological views. Comte and Durkheim transplanted back to the eighteenth century a positivist concept of physical law that was not elaborated until the nineteenth century, while the idea of Montesquieu as a sociologist was based on a view of science that did not exist at the time he wrote *L'Esprit des lois.*

However, the idea brought to light by Montesquieu of the existence of a regularity in the political world of men, similar to the one discovered by physicians in the universe, did not wait until the nineteenth century to be formulated.[5] As soon as *L'Esprit des lois* was published in 1748, the naturalist Charles Bonnet praised its author in the following terms: 'Newton discovered the laws of the material world, you, Sir, have discovered the laws of the intellectual world.'[6] Such comparisons were not reserved for Montesquieu alone. After reading *Emile*, Kant identified Rousseau

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1 Translated from French by Nieves Claxton.

2 See Althusser 1964: 5–21; Binoche 1998: 31–71.

3 Entitled *Quid Secundatus politicae scientiae instituendae contulerit* (1892). See Larrère 1989 and Larrère 2002.

4 Comte 1969: 193.

5 See Larrère 1999.

6 Bonnet, letter to Montesquieu, 14 November 1753, in Montesquieu 1950–55, vol. III, p. 1478.

as 'the Newton of the moral world', and in this regard he drew the same parallel as Bonnet between the notions of 'order and regularity', as demonstrated by Newton, and 'the secret law' of human nature as discovered by Rousseau.[7]

The list of candidates for the honour of being 'the Newton of the moral world' did not stop there. Hume and Smith certainly laid claims to this title but it was finally Smith who won it, if one agrees with the opinion expressed by Hegel in his *Principles of the Philosophy of Right*.[8] The Scottish historian David Millar had preceded him by attributing to Montesquieu and Smith their respective merits: 'The great Montesquieu pointed out the road. He was the Lord Bacon on this branch of Philosophy. Dr. Smith is the Newton.'[9]

All this clearly demonstrates the deep significance given in the second half of the eighteenth century (and subsequently) to the analogy between the physical and moral worlds, and the idea that the regularity discovered in the former is a model of intelligibility for the latter. For this reason, the expression 'the Newton of the moral world' is appropriate to describe the reactions to the major political and social works written by the leading thinkers of the Age of Enlightenment. But does this imply that the analogy is based on an explicit reference to the laws of motion, to the new scientific concept of natural law? This is how it is understood implicitly nowadays when referring to the expression 'the Newton of the moral world', and this is also what gives a certain consistency to positivist interpretation. Everything appears to have been centred on the notion of law, on a new idea of natural law, which was no longer borrowed from theological or juridical traditions but from physics. And after having searched for models, physics in turn became a reference.

But, to go back to the period when the ambition was taking shape to apply the models of intelligibility elaborated by natural philosophy to human matters, it is clear that this approach was not necessarily a search for laws. The idea that the new science should not be confined to physical phenomena only, but should also encompass morals, was an objective as old as the intention of Descartes to include moral philosophy in the tree of knowledge. During more or less the same period, Hobbes was determined to construct his political philosophy on the foundation of the principles of motion. These ideas made progress and it can be asserted that, by the end of the seventeenth century, the notion of the new science as a model of intelligibility for all phenomena was deeply rooted, thus making it possible to lay down a solid foundation for a veritable moral science.

Abbé de Saint Pierre was a worthy representative of this project, which he described with great clarity and sought to implement throughout his long life. He is therefore the starting point for our investigation. By looking beyond the broad idea of the regularity of the moral world, along the lines of the model for the physical world, and focusing more precisely on what it led to, it turns out that a project on the intelligibility of the social world did indeed exist. However, it was not inspired by a model of law but borrowed more from arithmetic than from mechanics or physics.

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7 Kant, in Cassirer 1987: 52.

8 Hegel 1975: 220.

9 Millar 1812: 429–430, n.

To understand how natural law, in the sense of the law of physics, became a positive reference, it is necessary to explore another direction. In his *Traité de la nature et de la grâce* (1680), Malebranche expounded a philosophy of law that placed natural law, or the law of nature, as Descartes described the name and concept, at the heart of his philosophical and theological thinking. It was, in fact, the laws of motion regulating the course of nature that enabled Malebranche to characterize divine action, even in the area of grace (this will be the second phase of our investigation). In consequence, an inversion can be observed in the directions of the transfers, from one area to the other. The way of naming empirically-noted regularities while observing physical phenomena remained in abeyance for a long time. Furthermore, in order to acquire a dominant position in the field of science, natural law was forced to borrow its matrix from other disciplines – older and more prestigious, and mainly from theology [ARMOGATHE, ROUX]. Despite these two factors, there appears to have been a reversal of the movement at the end of the seventeenth century, with the scientific view of law serving as a model for theological and philosophical reflection. In reality, this process turned it into a model for political action and not for the intelligibility of social facts.

By going back along the trail in search of 'the Newton of the moral world', one therefore comes across two different methods of elaboration. The first is a project for the intelligibility of society, with references to scientific knowledge but no model of law. The second is a political model of law, constructed on the basis of the laws of motion, but which does not lead to an understanding of social phenomena. By making a clear distinction between the two, it is easier to understand why Montesquieu did not fit into the framework outlined for him. This will be the third phase of our investigation.

Abbé de Saint-Pierre: Political Arithmetic and Government by Law

In one of his *Pensées*, Montesquieu, after noting that the great success of the 'physical sciences' in his time appeared to have discredited 'the admiration for political and moral knowledge' elevated by the Greeks and Romans into a kind of cult, nevertheless found a soul mate among his contemporaries in the person of Abbé de Saint-Pierre. 'Since I was not born in the right century, I have decided to become a disciple of the excellent man, Abbé de Saint-Pierre, who has written so much on Politics these days.'[10]

Abbé de Saint-de Pierre appears to have conceived this project at a very early stage, around 1681–83, after he left college and had followed a few lessons in Physics. On reading Pascal, he decided to concentrate on moral studies, then on politics, but without losing the benefits of the scientific education he had already received.[11] Abbé de Saint-Pierre was guided along this path by his concern for usefulness. He abandoned the physical domain for the moral and then the political domain because, as he himself explained: 'I understood that the progress I could make through it

[10] Montesquieu 1991: no. 1940, p. 590.
[11] Saint-Pierre 1912: 32.

would be more useful in increasing my own happiness and the happiness of my fellow citizens than what I could achieve through physics.'[12] He discarded the sciences he considered as merely 'speculative' or 'curious' ('astronomy, chemistry, mechanics, anatomy, geometry and botany'[13]). This is because he had transferred to moral and political research the practical concern expressed by Descartes to place the new science at the service of the good and well-being of humanity. It is not surprising, therefore, that, in addition to moral philosophy, jurisprudence and politics or the science of government, Abbé de Saint-Pierre included medicine, navigation, trade and military skills among 'the most useful spheres of knowledge to diminish the evil and increase the good'[14] in human life or, as he stated on so many occasions, 'to contribute to the greatest usefulness for the largest number of families'.[15] Thus, the conflict is not between knowledge of the physical and moral sciences, but between the spheres of knowledge based on speculation or curiosity and those – medicine as well as moral philosophy – that are directed 'towards a perfection of the arts and towards the greatest usefulness'.[16]

Having adopted the final goal of the Cartesian project to develop knowledge, Abbé de Saint-Pierre also took over its methods. He resorted principally to a method based on clear and distinct ideas because he admired their formative qualities.[17] He focused in particular on mathematical evidence: 'The geometric method is certainly the only appropriate one to form solid and unshakeable demonstrations in political and moral philosophy.'[18] This is what induced him to give preference to arithmetical proof over rhetoric as a foundation for his political thinking.

This opposition is typical of all those who sided with the Moderns during that period. Fontenelle, for instance, made negative comparisons between the rather narrow rhetoric rules of the Ancients (eloquence and poetry) and the progress of science that 'depends on the accuracy of reasoning'. This remark provoked the criticism of Gottsched, the German translator of *Digression sur les Anciens et les Modernes*, who sided with the followers of the Ancients. He expressed doubts as to whether there was anything comparable to set against the rhetoric of the Ancients.[19] Extricating political theory from the rhetoric of the Ancients was therefore tantamount to applying to it the principles of the new philosophy as defined by Descartes. The author of the Preface to Dudley North's *Discourses Upon Trade* (1691) explained that the subject was handled philosophically, according to a method described as

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[12] Saint-Pierre 1733–41: vol. 13, p. 3.

[13] Saint-Pierre 1912: 252 (year 1714).

[14] Ibid.: 252.

[15] Ibid.: 256 (year 1715).

[16] Ibid.: 179.

[17] Saint-Pierre 1733–41: 3: 'The habit I had adopted to base my reasoning on clear and distinct ideas did not permit me to reason at length on theology, but I abandoned physics to apply myself to morals …'

[18] Saint-Pierre in Perrot 1992: 42; and Saint-Pierre 1733–41: vol. 6, Comment XX, p. 82.

[19] Lecoq 2001: 301–302 (Fontenelle), 324–325 (Gottsched).

'Cartesian' or 'mechanical', in other words, 'built upon clear and evident truths', which was introduced by the New Philosophy.[20]

However, this reference applies more specifically to William Petty, given the way he described the method followed in his *Political Arithmetick*:

> The method I take to do this, is not very usual; for instead of using only comparative or superlative words, and intellectual arguments, I have taken the course (as a specimen of a Political Arithmetick I have long aimed at) to express myself in terms of number, weight, or measure;[21] to use only arguments of sense, and to consider only such causes, as have visible foundations in nature; leaving those that depend upon the mutable minds, opinions, appetites and passions of particular men to the consideration of others.[22]

Abbé de Saint-Pierre was very familiar with the works of William Petty and referred to them on several occasions.[23] Like Petty, he was persuaded of the usefulness of 'counting' or of quantitative surveys 'on anything pertaining to the science of government',[24] for instance, demographic estimates (calculation of population based on the number of births and deaths, comparative studies of the populations of major cities such as London and Paris)[25] or economic and financial surveys, such as those undertaken by Vauban in *Dîme royale* (1698).

Political estimates do not record empirical data only but can also incorporate forecasts. Thus, on the basis of a monetary estimate, and by evaluating what one is willing to pay to avoid pain or to obtain pleasure, it is possible to compare the usefulness of various projects. Abbé de Saint-Pierre outlined a project to calculate pleasure and pain in order to evaluate the cost or benefits of social reforms, what he called a 'règlement' – in other words, a calculation based on the possibility of comparing pleasure and pain by attributing a price to them, as a common measurement:

> We already know the price in money for certain daily pleasures and the exemption of certain pains and we know of it through our daily and annual expenditures. Since we are able to compare one pleasure with another, one pain with another, and one expenditure with another, we can consequently estimate in terms of annual income the enjoyment of new annual pleasures and exemption from new annual pains that an effective adjustment would procure because we can easily have points for comparison that are themselves already well calculated by an estimate of annual income in money.[26]

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[20] Dudley North (1691), *Discourses Upon Trade*; quoted by Berry 1994: 102.

[21] See Descartes, *Le Monde*, AT, XI, p. 476: 'God has taught us that he has arranged everything in number, weight and measure '; and, for the biblical reference, ARMOGATHE.

[22] Petty, 1899: vol. 1, p. 244.

[23] See, for example, Saint-Pierre 1733–41 vol. 5, p. 224; vol. 10, p. 278.

[24] 'De l'utilité des dénombrements', Saint-Pierre 1733–41: vol. 4, p. 263.

[25] Questions debated at the Academy of Science. See 'Memoires of the Academy of Science' in Rozier 1775.

[26] 'Projet pour perfectionner le gouvernement', Saint-Pierre 1733–41: vol. 3, pp. 97–98.

'Everything can be reduced to calculation and extended even to matters that are purely moral,' wrote Melon in his *Essai politique sur le commerce* in 1734.[27] He clearly expressed the key idea of Abbé de Saint-Pierre to develop the science of government. Everything can be measured, and Abbé de Saint-Pierre summarized his plan to select the best governors and administrators through a kind of hierarchical co-optation among candidates to these functions (what he called a 'scrutin'), claiming that it would serve as an excellent 'anthropometer'.[28]

However, elaborate and coherent though this project may have been, it did not include a search for laws. This can be seen, for example, in the 'Plan to improve medicine' (vol. 5 of *Ouvrajes de politique*), in which it was a question of interconnecting the various Medical Academies to broaden the collection of information and multiply exchanges and comparisons between the collected data. The aim was to set up quantitative archives, not to search for laws on the basis of experience. The only feasible certainty produced by this kind of investigation is arithmetical evidence. It is only possible to obtain 'reliable demonstrations by reducing all proof to simple arithmetic based on counting'.[29] The truth of knowledge therefore relies on the accuracy of calculation: 'when the counting is accurate, proof can be submitted to arithmetical demonstration for confirmation'.[30]

The target was well and truly political arithmetic and not social physics. The intention was not to discover laws. It is not that all references to law were excluded from the reflections of Abbé de Saint-Pierre. However, it is necessary to look for them elsewhere, not in the sphere of the knowledge required by the science of government but in the introduction of laws necessary for its functioning.

The calculation of pleasures and pains, which in the opinion of Abbé de Saint-Pierre lay at the heart of the science of government, presupposed that only individual interest motivates behaviour. As he said on several occasions, it is 'the fear of being worse and the hope of being better'[31] that drives human beings. It is unwise to count on virtue or on dedication to the public good because it is intrinsically human nature 'to seek to increase their property by reducing public property, even considerably'.[32]

Interest alone motivates humankind, but this interest is not directed spontaneously at the public good, on the contrary it tends to run counter to it. This is why consent needs to be built up. Abbé de Saint-Pierre believed this was the role of laws: 'the political corps is formed, and it preserves and strengthens itself only through laws, which are rules governing the behaviour of members of this corps'.[33] The high importance attached to laws is what makes the thinking of Abbé de Saint-Pierre so original. Those who since the time of Machiavelli and Guichardin have stressed the importance of self-interest (nothing durable can be accomplished without it) and

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27 Melon 1847: 809.

28 *Sic*: 'Projet pour perfectionner le gouvernement', p. 33.

29 'De l'utilité des dénombrements', Saint-Pierre 1733–41: vol. 4, p. 265.

30 Ibid.: p. 266.

31 For example, 'Observations qui regardent le ministère général', Saint-Pierre 1733–41: vol. 6, p. 4.

32 Saint-Pierre 1738: 60.

33 'Observations qui regardent le ministère général', Saint-Pierre 1733–41: vol. 6, p. 32.

its resistance to the public good (nothing durable can be accomplished against it), generally believe that consent should be the result of a skilful and prudent policy or a wise manipulation of specific interests: 'the strongest hold one can exert over men is to know their inclinations, movements, passions and habits, and to use these levers to lead them to wherever one wants,' affirmed Monchrestien.[34] For Abbé de Saint-Pierre, it was the legislative framework that fulfilled this role.

It was, in fact, a question of constructing a veritable edifice. Abbé de Saint-Pierre often added the word 'establishment' to law or regulations to demonstrate that it was not enough to write regulations but that it was also necessary to create institutions to apply them or, as he put it, 'some kind of permanent construction that works constantly at supporting and perfecting the various rules and establishments to achieve its objective'.[35] This prompted him to compare the political corps, formed by laws, to a machine. If the legal framework is well constructed, that is to say, if it succeeds in channelling individual interests towards the public good by finding a motivation that is likely to cause good,[36] then one will have more or less discovered perpetual motion: the machine functions on its own, it winds itself up on its own, 'as long as the members are sufficiently united by their specific interest to contribute to public interest'.[37]

'There is nothing worse than a divided authority',[38] according to Abbé de Saint Pierre who was an absolutist without qualms. This does not imply that he developed a rigidly voluntarist concept of power. On the contrary, he believed that 'the less that is left to be regulated by the whim of a single person'[39] the better. His apology for government by law is in fact an apology for government by reason, government by reasonable men, carefully selected for their intellectual qualities. Even though they only play an advisory role, they are nonetheless the ones who give a government its substance:

> One can therefore say that in general the best governed Kingdom is the one which is governed the most by law, where laws can only be changed by three quarters of the votes of those who, through various polls, have been selected and authorised by the State to serve as legislative counsellors.[40]

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[34] Montchrestien 1999: 192. On these forms of arranged consent over interests, see Hirschman 1980, and Lazzeri 1998.

[35] 'Observations qui regardent le ministère général', Saint-Pierre 1733–41: vol. 6, Comment XX, p. 82.

[36] Abbé de Saint-Pierre based this theory mainly on two reflections. On the one hand, the distribution of rewards for good projects (hence the importance of estimating the advantages in figures) and, on the other, the idea that our interests lie not only in material goods but in reputation and honour. A careful selection of elites should therefore lead to good administrators respected by everyone.

[37] 'Observations, qui regardent le ministère général', Saint-Pierre 1733–41: vol. 6, p. 33.

[38] Ibid.: vol. 6, p. 13.

[39] Ibid.: vol. 6, p. 41.

[40] Ibid.: vol. 6, p. 41.

Moreover, the law must be known and published, and its motives explained, and there can be no conflict between the laws thus drawn up because 'reason can never be opposed to reason'.[41] It can therefore be affirmed that Abbé de Saint-Pierre had a decidedly rationalist concept of law. He suggested a model based on 'the same laws for all the provinces ... by invariably choosing the simplest and clearest, the ones offering the most advantages to the largest number of subjects'.[42]

But, although there is an allusion to the advantage of the largest number, the utilitarian orientation of the political thinking of Abbé de Saint-Pierre – his model of uniformity, simplicity and clarity – has no direct relationship with his political arithmetic. Its introduction is to be found elsewhere.

Malebranche: Natural Law, Divine Action and Political Model

The positions of Malebranche in the area of theology were resolutely rationalist. He disagreed with the Cartesian concept of the creation of eternal truths,[43] and submitted that God can only act according to his reason, which even he cannot avoid; his wisdom prevails over his might, and it is far from being something that was created.[44] Malebranche considered the position of the voluntarists, who attributed greater importance to the almighty power of God than to his wisdom, as if it resulted from an 'anthropology' (in other words, an anthropomorphic distortion of things). Eternal Reason is imposed on God: it 'is still necessary and independent, and we perceive it in a more independent sense than God himself. For God can only act in accordance with this reason; in a way, he depends on it: he needs to consult it and follow it.'[45]

This prompted Malebranche to affirm the universality of law. Nothing can escape it, everybody 'must submit to divine law, to which even God submits himself, so to speak'[46]. As Malebranche repeated frequently, God 'never dispenses with the law'. And what is true for God is also true for all creatures and the created world. Since voluntarists look upon the law as a precept, they tend to restrict natural law to moral law only, and they distinguish between natural law (moral) and the law of nature (physical). Thus, according to Suárez, one only speaks metaphorically of the law by which God governs natural things deprived of reason.[47] Since law is reason, there is no justification for restricting its scope, according to Malebranche. Although he made a distinction between three types of law – between the laws of nature (communication of movements, union between the soul and body, and union between the soul and God) and the laws of grace (for angels and Jesus Christ)[48] – this does not preclude the law from being unequivocal [ARMOGATHE].

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41 Saint-Pierre 1733–41: vol. 6, p. 42.

42 'Raisons pour publier les motifs des lois', Saint-Pierre 1733–1741: vol. 10, p. 210.

43 *Recherche de la Verité* (RV), *Eclaircissement*, VIII, in Malebranche 1958–84: vol. III, pp. 85–86.

44 RV, *Eclaircissement*, VIII, in ibid.: vol. III, p. 85.

45 RV, *Eclaircissement*, X, in ibid.: vol. III, p. 131.

46 Malebranche, *Traité de morale*, II, IX, § XIII, p. 226.

47 See Courtine, 1999: p. 107, and ARMOGATHE (Chapter 16 in this volume).

48 *Entretiens sur la métaphysique et la religion* (EMR), XIII.

The model is all the more uniform in that the reference can be found indisputably in the physical laws of motion or, as Malebranche put it, in 'the Cartesian laws of motion'.[49] Malebranche placed himself in the continuity of the Cartesian definition of the laws of nature[50] by putting nature in the same category as legality, as Descartes had already done:[51] 'Strictly speaking, what one calls Nature is no other than the general laws established by God to preserve his Work by very simple means, by an action that is always uniform, constant and perfectly worthy of an infinite wisdom and a universal cause.'[52]

Malebranche therefore concentrated on the scientific evidence of the laws of nature in his philosophical presentation. It is based on a universal law, without any exceptions and therefore quantifiable, unlike Aristotelian qualitative physics. It is also founded on a general law, not in the Aristotelian sense (of what occurs the most frequently) but because the general is opposed to the particular and the particular is subordinate to the general: specific phenomena are linked together by general and constant laws. This makes it possible to associate law with physical phenomena and think in terms of the laws of nature rather than one single law of nature, as in the case of the Stoics.[53] It is law that makes it possible to discover uniformity and constancy behind the diversity or irregularity of the world.

The scientific model of the law that emerged from the thinking of Malebranche on the Cartesian laws of motion is a model of universal and general laws that are immutable, uniform, simple and fertile. There was a consensus over this model. In a letter to Arnauld, Leibniz wrote of the 'constant laws that we observe in phenomena'.[54] The difference of opinion was not over the concept of law but on its way of functioning. Leibniz criticized the theory of occasional causes put forward by Malebranche, according to which what we perceive as real and mechanical causes (the impact of two bodies, or different movements of the soul apparently caused by physical sensations) are not causes but only occasions. The only active power is divine power; the impact of two bodies does not produce the communication of movement but is merely the occasion of the communication of a movement for which God alone is the cause.

Leibniz criticized this theory of causality, treating is as a voluntarist explanation. To affirm the legality of nature, as Malebranche did, is to affirm its rationality and to exclude (as far as this is possible) the miracle, this being a perfect example of the voluntarist action of God. But, as Leibniz objected, making God intervene on every occasion so that he can communicate his power over the course of nature is to turn

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[49] *Traité de la nature et de la grâce* (TNG), I, § XV.

[50] Descartes, Le Monde, AT XI, p. 37: 'The following rules which make these changes, I call the law of nature.'

[51] See Descartes, *Discours* V, AT VI, p. 42: Once the world is created, God only 'lends his ordinary assistance to nature and leaves it to act according to the laws he established'.

[52] TNG, *Eclaircissement*, I, § III.

[53] See the remark by Jane Ruby: 'When the Stoics broke with the Sophistic tradition, not only was their cosmological natural law at once physical and ethical, descriptive and prescriptive, but they almost never associated it with any physical phenomenon smaller than the cosmos itself' (Ruby 1986: 354).

[54] Leibniz, letter to Arnauld, 30 April 1687, in Robinet 1955: 293.

it into a permanent miracle. In reality, to exclude the miracle it is not sufficient to set the general (the law, which is natural) against the exceptional (the miracle, emerging from the ordinary course of things). It is still necessary to prove that regularity can be found in the very nature of things. Malebranche believed that, for an action to be natural, it is enough for it to be general, that is to say, in conformity with the intentions of God. This led him to adopt a conventionalist theory of law, according to Leibniz. The criticism of occasional causes made by Fontenelle supported the view of Leibniz. Like him, Fontanelle reproached Malebranche for considering that 'God laid down a decree whereby he himself is obliged to transport something of the movement of one body to another on the occasion of their impact'.[55] Thus, instead of searching for the law governing the nature of things, Malebranche turned it into an arbitrary will of God. He described it as arbitrary in the sense that it depends on him: an effect does not regularly follow upon another effect except by virtue of the general will of God.

These criticisms are not unjustified. Malebranche made a distinction between two hierarchical levels in divine legality. First of all, there are the immutable laws of order. These are not made, and God of necessity follows them and 'does not dispense with them'. Secondly, there are the laws of nature, or the created laws, which are 'arbitrary'. Malebranche stated this clearly in a letter written in April 1686 and published in *République des lettres* in April 1687: 'I must admit that it could be so, because it is arbitrary and depends on the Creator.' He drew the conclusion that 'it is experience that can show us how the Author of nature acts'.[56] From an epistemological point of view, the position of Malebranche is voluntarist: a frequency is observed, and it will not be established through reason (Roux).

This epistemological voluntarism, however, is accompanied by a theological rationalism. Like voluntarism in general, the empiricism of the position adopted by Malebranche relies on an admission that there are limits to knowledge. We are only aware of the action of God by observing its effects. But these limits only concern part of what we are capable of knowing. This is demonstrated in the positions expressed by Malebranche in his reply to Fontenelle: 'I only see things; I perceive the necessary liaison only between divine will and its effects.'[57] It is because the wisdom of God is superior to his power that the latter, linking specific phenomena together, is less familiar to us than his wisdom. It is within our reach; we are not prohibited from trying to penetrate the intentions of God and to seek 'to discover some of his ways in the production of his Work'.[58]

Such statements provoked critical remarks from Arnauld, who took a voluntarist attitude by defending the idea of the mystery of divine ways, beyond the reach of human understanding. But they enabled Malebranche to extend the scientific model of law by drawing it from the model pertaining to nature, where the model of law was established, and transposing it to the supernatural realm of grace. On both sides

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[55] Fontenelle, *Doutes sur le système physique des causes occasionnelles* (1686), Chap. III.

[56] Malebranche, in Robinet 1955: 251.

[57] In Fontenelle 1990: 581.

[58] Malebranche, TNG, I, I, § VII, 24–25.

are realms in which a perfect legality reigns, all the effects occurring in the two being produced by the interplay between a series of laws triggered off by occasional causes. In the realm of grace, it is Christ who is the occasional cause, acting as an intermediary for the general will of God to save a particular creature. However, the relevant point of this extension is not the content of the law but its form. Laws are described as ways. The general nature of laws shapes the mode of divine intervention. God works through the simplest and most general ways. There is no doubt that the affirmation of legality holds the promise of an intelligibility of the real (when faced by an incomprehensible phenomenon, it should always be postulated that it derives from a law, even if it is unknown). However, Malebranche was not interested in developing an empirical investigation but to reflect on the way in which God acts. Generality defines this mode of action, carried out by a will that is simple, regular, constant, uniform and fertile, and not by a particular will. It is because the scientific model refers to God and qualifies his action that it can become a political model.

The argument put forward by Arnauld was based on this particular point. He did not question the definition of law, on the Cartesian model, as being general and constant. But for him, this definition did not exhaust that of divine will. God, who regulates nature by general laws, can act through a particular will with respect to the living beings he has created.[59] Arnauld's criticism was therefore not aimed at the concept of law but at its application in an area that has nothing to do with the relationship between things but with the relationship between one will and others. A criticism made by Fénelon, in line with the position adopted by Arnauld, specified the field of application. He reproached Malebranche for reducing providence to simple natural legality: 'this providence, which religion teaches us to resort to, cannot consist of the general laws of nature; for general laws are uniform and invariable; they are never in proportion to personal needs; on the contrary they always sacrifice personal interests to general uniformity'.[60]

From legality at work in nature, one has graduated to government by men. It is no longer a question of comparing nature and grace but divine government and human government. Can God reign through general laws that do not take into consideration the particular and are no respecters of people? This was the view submitted by Malebranche and rejected by Fénélon, who based himself on an ancient tradition. Plato criticized government by law 'because a law is never capable of encompassing precisely that which is the better and fairer for everyone at the same time, and to prescribe what is the best for everyone'.[61] Governing by law can only be the second-best solution. Aristotle also believed that law was too general to take into consideration the diversity of circumstances.[62] Since Malebranche searched for a model in physical law, discovering the mode of divine action in it, he felt that the generality of law was not a stopgap or a more convenient method but the right way

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59 Moreau 1999: 220–221.

60 Fénélon 1716: XVIII.

61 Plato, *Politics*, 294 a.

62 Aristotle, *Politics*, III, 1285 a, 10.

of governing, the one revealing divine wisdom. The general nature of law can even become a model for political government.[63]

This approach to the question transformed completely the distinction between will and reason, in the way it had been put by legal theologians with respect to law (as in the case of Suárez) or natural law (as in the case of Grotius and Pufendorf) [STOLLEIS]. At first glance, the opposition between wisdom and power seems to be simply another way of describing the opposition between reason and will, and the terms are interchangeable. But, in view of the fact that this opposition is defined in the area of nature and is ascribed to divine action, the opposition between wisdom and power transforms the one existing between reason and will, and also tends to cancel out the latter in order to make it complementary. Law is divine reason, and universal legality is a rationalist affirmation. However, since this rationality is defined by its form, there is no need to make reference to the nature of things. Since rational law depends on general will, there is no question of opposing will to reason at this level.

Power can be another name for will, but in the case of the latter, it does not qualify the source (law proceeds from will) but the taking of action, the accomplishment of law. Power has to do with efficiency, the implementation of ways. The generality of ways illustrates the wisdom of God, and his power rules the relationship with the particular. It is subordinated to wisdom and only serves to execute it. A model (technical) of the subordination of the executive to the legislative can be found in the relationship between wisdom and power.

There is another relationship between the general and the particular. God is not concerned with the particular, he is indifferent to the particular fate of human beings. This is one of the differences of opinion between Malebranche and Leibniz. According to the latter, divine intention, which is global, also takes into account the interest (and, therefore, usefulness or happiness in the meaning used by Abbé de Saint-Pierre) of each person. 'Just as in a republic, care is taken to ensure as much happiness as possible for each individual, likewise the universe would not be as perfect if the interest of every person were not taken into consideration, at least as far as universal harmony permits.'[64] This is why, even though Leibniz referred to political government,[65] it would appear that the universal harmony he presented is more a model of economic harmony. The objective is to maximize the happiness of each person by acknowledging the diversity of interests. The supposition of a pre-established harmony of interests makes it possible to set aside the legislative and political framework by which Abbé de Saint-Pierre sought to arrange individual

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[63] On the political secularization of the general will described by Malebranche, see Riley 1986. At that time, all notions of government by law were not necessarily applications of this model: see Larrère, 1997a.

[64] Leibniz, 'De la production des choses prise à sa racine', in Leibniz 1954, p. 91.

[65] See, for example, *Essaies de Théodicée*, I, § 79: 'The following rules which make these changes, I call the law of nature' ' the more a great and good prince takes care of his glory, the more he will think of making his subjects happy and will yet be the most absolute of monarchs.'

interests. And in the harmony of Leibniz, the reference to law disappears, only arithmetic counts.[66]

The reference to law is central to the thinking of Malebranche, whose view of theodicy shaped a political model.[67] Natural law serves as a political model but, since God is the author of law, the edifice thus built can be described as 'spiritual':

> The more machines are simple and their effects different, the more they are spiritual and worthy of being held in esteem. The large number of laws of a State often reveals little penetration and mental scope in those who have established them; it is more the experience of a need than wise foresight that has given them an order. God, whose wisdom has no limits, must therefore use very simple and fertile ways ... [68]

This is indeed the political model to which Abbé de Saint-Pierre referred, in other words, a 'political machine' composed of a small number of simple and uniform laws. This highly centralized model, with its absolutist resonance (that is, the lack of boundaries), is unquestionably French. This does not imply, however, that everyone in France accepted it.

Montesquieu: From Nature to History

> There are certain ideas of uniformity that sometimes seize great spirits (for they touched Charlemagne), but that infallibly strike small ones. They find in it a kind of perfection they recognise because it is impossible not to discover it: in the police the same weights, in the commerce the same measures, in the state the same laws and the same religion in every part of it. But is this always and without exception appropriate? (SL, XXIX, 18)

Montesquieu rejected the model based on the uniformity of laws and government, which had attracted Abbé de Saint-Pierre and Malebranche. He had no hesitation in affirming that the simplicity of laws is not an ideal; on the contrary, their complexity is desirable to such an extent that it can 'make an art of reasoning itself' (VI, 1). According to him, their application is never automatic, and the formalities of justice and complications of laws guarantee the freedom of people (VI, 2). This is precisely what Condorcet reproached him for:

> Since truth, reason, justice, human rights, the interest of property, liberty and safety are the same everywhere, it is difficult to see why all the provinces of a State, or even all States, should not have the same penal laws, the same civil laws, the same commercial laws, etc. A good legal system must be good for everyone, in the same way as a true proposition is true for everyone.[69]

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[66] On the theodicy of Leibniz as an economic model, see Elster 1975.

[67] Larrère, 1997b.

[68] Malebranche, TNG, I, XXXVIII.

[69] Condorcet, 'Observations sur le livre XXIX de *L'Esprit des lois*' in Destutt 1992, p. 458.

If it is accepted that natural law, understood as physical law, is a model of uniformity and universality, then it is Condorcet who applied this model to the political world and not Montesquieu.

There are no mechanical models in the theories of the latter. Or, if there is one, it is an anti-model, like that of the impact between bodies or billiard balls, which is the way he described despotic government: 'the prince's will, once known, should produce its effects as infallibly as does one ball thrown against another' (III, 10). Far from being a model of uniformity and constancy, in *L'Esprit des lois* nature appears to be more an indicator of diversity. The reason why it was so difficult to understand the theory of climates may be because it was understood as if it was based on a mechanistic and repetitive view of physical causes (the model of natural law having been so predominant). And yet it was the theory of climates that enabled Montesquieu to interrelate the changing variety of human customs with the graduated diversity of climatic regions.[70] It is noteworthy that, when discussing climate, Montesquieu did not make reference to contemporary scientific concepts that tried to introduce regularity in meteorological variations but instead stuck to an older current of thought that insisted on diversity [DASTON].

It is commonly believed that the distinction made by Montesquieu between the 'relation' law [la loi rapport], as he defined it at the beginning of *L'Esprit des lois*,[71] and the 'commandment' law (imposed by the political authority) implies that he abandoned the normative (political and legal) view of natural law in favour of adopting a descriptive, and therefore scientific,[72] model of a physical law applied to human phenomena. There are no reasonable grounds for making this supposition; the opposition is inside natural law. It is a rationalist and anti-voluntarist stance, as Montesquieu stated in his *Défense de L'Esprit des lois*. For him, it was a question of rejecting the position taken by Hobbes that demolished the very existence of moral values by making justice depend on the will of the one who establishes it. 'Relations', as Hume clearly observed, can also be understood as moral relations just as much as empirical regularities. By adopting the definition of the 'relation law', Montesquieu makes no distinction between 'is' and 'ought'.[73]

Montesquieu therefore stuck to the rationalist view of the univocity of law since the law does not have several interpretations [ARMOGATHE]. In his criticism of the 'relation law',[74] Destutt de Tracy condemned this univocity of law in his *Commentaire sur L'Esprit des lois de Montesquieu* (written in 1811). From a voluntarist viewpoint, he objected to the concept of the equivocality of law, which gives priority to law as a precept. 'In its specific and particular meaning,' he wrote, '[the law is] a rule prescribing our actions by an authority that we look upon as having the right to lay down this law.' The laws of nature can only be known as such by extension, and even metaphorically:

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[70] See Larrère 1992.

[71] *L'Esprit des lois*, I, 1: 'Laws taken in the broadest meaning are the necessary relations deriving from the nature of things.'

[72] Althusser 1964.

[73] Hume 1751, Section III, Part II, pp. 55–56 (note).

[74] Ibid.: 'A law is not a relation and a relation is not a law.'

> Then, when we note the reciprocal action of all human beings interacting with each other, when we observe the phenomena of nature and those of our intelligence, when we discover that they all function in a constant manner under the same circumstances, we say that they follow certain *laws*. By extension, we refer to the expression of the way in which these phenomena constantly operate as the laws of nature.[75]

Defining law in terms of relations in an unequivocal manner is not so much a matter of choosing the side of science and empirical description as of opting for a normative rationalism represented by both Malebranche and Leibniz. But the way in which Montesquieu interpreted the need for relations, as well as their derivation, led him to move away from the theological model, the one that Charles Bonnet, an admirer of Montesquieu but also a disciple of Leibniz, wanted to prevail. Why not replace 'relations' (a qualification apparently difficult to accept) with 'consequences', he asked?

> You, Sir, have defined them [the laws] as the necessary relations that derive from the nature of things. There is only a slight difference between these two definitions, but we felt that it was more accurate to say consequences than relations. The structure of a magnet is the foundation of its relation with iron; the attraction is an effect, a consequence of these relations; it is a law. Perhaps, Sir, you had the same idea in mind and that the speed of your style did not allow you to express it.[76]

By removing necessity and by replacing 'relations' with 'consequences', Bonnet retained the idea of Leibniz concerning the unity of the world as a chain of human beings and a pre-established harmony. Montesquieu countered this vision of unity with diversity: 'the laws of the universality of human beings are not the consequences of nothing but produce countless consequences'.[77] This is clearly an abrupt rejection of the notion, so dear to Bonnet, of a divine plan whereby everything is a consequence. Montesquieu did not find a model of rationality either in the uniformity of a nature reduced to mechanical relationships or in the unity of divine understanding.

He therefore modified the relationship between the general and the particular. In the way he presented it at the beginning of *L'Esprit des lois*, he seemed to be quite close to Malebranche, holding a view that can be described as 'top-down':

> The law, in general, is human reason in that it governs all the peoples of the earth; and the political and civil laws of each nation should only be particular cases to which this human reason is applied (I, 3).

Yet this implies a shift from divine reason to human reason. Even more than in the thinking of Malebranche, this definition is derived from the Stoic idea, adopted by modern natural law, that humanity participates in the same rational community, the diversity of laws and customs of the different countries being merely specific applications.

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75 Destutt de Tracy 1992: 1–2.

76 Bonnet, letter to Montesquieu, 1 April 1754; Montesquieu 1950–55: vol. III, p. 1500.

77 Letter of 6 May 1754, Montesquieu 1950–55: vol. III, p. 1500.

But, in reading further on in *L'Esprit des lois*, this relationship is reversed. In the definition provided by Montesquieu of the general spirit of Book XIX, there is a change from a 'top-down' movement to a 'bottom-up' movement. It is not the generality of reason that is imposed from above on the diversity of particular phenomena like a pre-established form, but it is from the latter that a delimited generality emerges:

> Several things govern mankind: climate, religions, laws, the maxims of government; examples of past things, customs, manners; and the result is the formation of a general spirit. (XIX, 4)

Thus, one leaves the sphere of nature to enter that of history. Well before Durkheim and without positivist presuppositions, the Scottish historians of the Enlightened Age learned from Montesquieu that law is a historical phenomenon.[78]

There is no doubt that the expression 'the Newton of the moral world' is pertinent. It reflects the prestige of natural philosophy in the seventeenth century and the importance of the analogy between the physical and moral worlds. But it also encourages a positivist interpretation, which concludes rather hastily on the predominance of the epistemological model of natural law from the eighteenth century onwards. Although the eighteenth century saw the triumph of law, it was in fact the triumph of a political model, of a way of undertaking things rather than understanding them. It is therefore possible to conclude that the adoption of a scientific concept of law, as a description of empirically observed regularities, does not all of a sudden cause the disappearance of the normative, theological or judicial model of natural law. During the eighteenth century, nature unquestionably had a normative dimension, and there is no reason to see only the survival of metaphysics in this.

[78] Haakonssen 1996, p. 249.

Natural Law and Laws of Nature in Early Modern Europe

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