

Montesquieu on the Effect of Laws on Population

Author(s): [Charles de Secondat, Baron de la Brede et de Montesquieu]

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## Montesquieu on the Effect of Laws on Population

*Among the eighteenth-century precursors of modern social science, the French political and legal theorist and man of letters Charles de Secondat, Baron de la Brède et de Montesquieu (1689–1755) has an especially distinguished standing. His massive chef-d'oeuvre, De l'esprit des lois, published in 1748, was a somewhat confusingly organized but insightful and instantly influential treatise on the relationships between types of legislation, social organization, and human behavior throughout history. Montesquieu interpreted differences between systems of law and political institutions as reflections of the spirit of society—a spirit he saw as determined by physical causes (such as climate, quality of land, and density of population) and moral causes (religion, customs, modes of thinking). Wise legislation, Montesquieu argued, could influence some of these factors, hence contribute to social improvement. He saw the effect of laws on population as an important case in point. Book 23 of The Spirit of Laws, entitled "Of laws in the relation they bear to the number of inhabitants," examines that effect. It is divided into 29 "chapters," some consisting of a single paragraph, others offering lengthy discourses on history. Excerpts from Book 23 are reproduced below; the retained chapter titles provide a quick catalogue of the wide range of population issues Montesquieu considered relevant to his topic. The text, although almost entirely devoid of numbers (despite the claim of the title), reflects a strongly held quantitative misconception. Montesquieu believed that modern Europe's population was both declining and smaller than it was in ancient times. He was, therefore, concerned with the ways these trends could be reversed—an interest that provides the main focus of his examination of the causes of demographic behavior and of the ways laws affect population growth.*

*A full translation, by Thomas Nugent, of Montesquieu's great work appeared in 1750, barely two years after the original edition. The selections below (from which footnotes have been omitted) are from this translation. A modern translation of The Spirit of Laws was published in 1989 by Cambridge University Press.*

### Of men and animals with respect to the multiplication of their species

The females of brutes have an almost constant fecundity. But in the human species, the manner of thinking, the character, the passions, the humor, the caprice, the idea of preserving beauty, the pain of child-bearing, and the fatigue of a too numerous family, obstruct propagation in a thousand different ways.

### Of marriage

The natural obligation of the father to provide for his children has established marriage, which makes known the person who ought to fulfil this obligation. The people mentioned by Pomponius Mela had no other way of discovering him but by resemblance.

Among civilized nations, the father is that person on whom the laws, by the ceremony of marriage, have fixed this duty, because they find in him the man they want.

Among brutes this is an obligation which the mother can generally perform; but it is much more extensive among men. Their children indeed have reason; but this comes only by low degrees. It is not sufficient to nourish them; we must also direct them: they can already live; but they cannot govern themselves.

Illicit conjunctions contribute but little to the propagation of the species. The father, who is under a natural obligation to nourish and educate his children, is not then fixed; and the mother, with whom the obligation remains, finds a thousand obstacles from shame, remorse, and constraint of her sex and the rigor of laws; and besides, she generally wants the means.

Women who have submitted to public prostitution cannot have the convenience of educating their children: the trouble of education is incompatible with their station; and they are so corrupt that they can have no protection from the law.

It follows from all this that public continence is naturally connected with the propagation of the species.

### Of the condition of children

It is a dictate of reason that when there is a marriage, children should follow the station or condition of the father; and that when there is not, they can belong to the mother only.

### Of families

It is almost everywhere a custom for the wife to pass into the family of the husband. The contrary is without any inconvenience established at Formosa, where the husband enters into the family of the wife.

This law, which fixes the family in a succession of persons of the same sex, greatly contributes, independently of the first motives, to the propagation of the human species. The family is a kind of property: a man who has children of a sex which does not perpetuate it is never satisfied if he has not those who can render it perpetual.

Names, whereby men acquire an idea of a thing which one would imagine ought not to perish, are extremely proper to inspire every family with a desire of extending its duration. There are people among whom names distinguish families: there are others where they only distinguish persons: the latter have not the same advantage as the former.

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### What it is that determines marriage

Wherever a place is found in which two persons can live commodiously, there they enter into marriage. Nature has a sufficient propensity to it, when unrestrained by the difficulty of subsistence.

A rising people increase and multiply extremely. This is because with them it would be a great inconvenience to live in celibacy; and none to have many children. The contrary of which is the case when a nation is formed.

### Of the severity of government

Men who have absolutely nothing, such as beggars, have many children. This proceeds from their being in the case of a rising people: it costs the father nothing to give his heart to his offspring, who even in their infancy are the instruments of this art. These people multiply in a rich or superstitious country, because they do not support the burden of society, but are themselves the burden. But men who are poor, only because they live under a severe government; who regard their fields less as the source of their subsistence than as a cause of vexation; these men, I say, have few children: they have not even subsistence for themselves. How then can they think of dividing it? They are unable to take care of their own persons when they are sick. How then can they attend to the wants of creatures whose infancy is a continual sickness?

It is pretended by some who are apt to talk of things which they have never examined that the greater the poverty of the subjects, the more numerous their families: that the more they are loaded with taxes, the more industriously they endeavor to put themselves in a station in which they will be able to pay them: two sophisms, which have always destroyed and will forever be the destruction of monarchies.

The severity of government may be carried to such an extreme as to make the natural sentiments destructive of the natural sentiments themselves.

Would the women of America have refused to bear children had their masters been less cruel?

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**Of the productions of the earth which require a greater or less number of men**

Pasture-lands are but little peopled, because they find employment only for a few. Corn-lands employ a great many men, and vineyards infinitely more.

It has been a frequent complaint in England, that the increase of pasture-land diminished the inhabitants; and it has been observed in France that the prodigious number of vineyards is one of the great causes of the multitude of people.

Those countries where coal-pits furnish a proper substance for fuel have this advantage over others, that not having the same occasion for forests, the lands may be cultivated.

In countries productive of rice, they are at vast pains in watering the land: a great number of men must therefore be employed. Besides, there is less land required to furnish subsistence for a family than in those which produce other kinds of grain. In fine, the land which is elsewhere employed in raising cattle serves immediately for the subsistence of man; and the labor which in other places is performed by cattle is there performed by men; so that the culture of the soil becomes to man an immense manufacture.

**Of the number of inhabitants with relation to the arts**

When there is an agrarian law, and the lands are equally divided, the country may be extremely well peopled, though there are but few arts; because every citizen receives from the cultivation of his land whatever is necessary for his subsistence, and all the citizens together consume all the fruits of the earth. Thus it was in some republics.

In our present situation, in which lands are unequally distributed, they produce much more than those who cultivate them are able to consume; if the arts, therefore, should be neglected, and nothing minded but agriculture, the country could not be peopled. Those who cultivate, or employ others to cultivate, having corn to spare, nothing would engage them to work the following year; the fruits of the earth would not be consumed by the indolent; for these would have nothing with which they could purchase them. It is necessary, then, that the arts should be established, in order that the produce of the land may be consumed by the laborer and the artificer. In a word, it is now proper that many should cultivate much more than is necessary for their own use. For this purpose they must have a desire of enjoying superfluities; and these they can receive only from the artificer.

The machines designed to abridge art are not always useful. If a piece of workmanship is of a moderate price, such as is equally agreeable to the maker and the buyer, those machines which would render the manufacture more simple, or, in other words, diminish the number of workmen, would be pernicious. And if water-mills were not everywhere established, I should not have believed them so useful as is pretended, because they have deprived an infinite multitude of their employment, a vast number of persons of the use of water, and great part of the land of its fertility.

#### The concern of the legislator in the propagation of the species

Regulations on the number of citizens depend greatly on circumstances. There are countries in which nature does all; the legislator then has nothing to do. What need is there of inducing men by laws to propagation when a fruitful climate yields a sufficient number of inhabitants? Sometimes the climate is more favorable than the soil; the people multiply, and are destroyed by famine: this is the case of China. Hence a father sells his daughters and exposes his children.

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#### Of Greece and the number of its inhabitants

That effect which in certain countries of the East springs from physical causes was produced in Greece by the nature of the government. The Greeks were a great nation, composed of cities, each of which had a distinct government and separate laws. They had no more the spirit of conquest and ambition than those of Switzerland, Holland, and Germany have at this day. In every republic the legislator had in view the happiness of the citizens at home, and their power abroad, lest it should prove inferior to that of the neighboring cities. Thus, with the enjoyment of a small territory and great happiness, it was easy for the number of the citizens to increase to such a degree as to become burdensome. This obliged them incessantly to send out colonies, and, as the Swiss do now, to let their men out to war. Nothing was neglected that could hinder the too great multiplication of children.

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The politics of the Greeks were particularly employed in regulating the number of citizens. Plato fixes them at five thousand and forty, and he would have them stop or encourage propagation, as was most convenient, by honors, shame, and the advice of the old men; he would even regulate the number of marriages in such a manner that the republic might be recruited without being overcharged.

If the laws of a country, says Aristotle, forbid the exposing of children, the number of those brought forth ought to be limited. If they have more than the number prescribed by law, he advises to make the women miscarry before the fetus be formed.

The same author mentions the infamous means made use of by the Cretans to prevent their having too great a number of children—a proceeding too indecent to repeat.

There are places, says Aristotle again, where the laws give the privilege of being citizens to strangers, or to bastards, or to those whose mothers only are citizens; but as soon as they have a sufficient number of people this privilege ceases. The savages of Canada burn their prisoners; but when they have empty cottages to give them, they receive them into their nation.

Sir William Petty, in his calculations, supposes that a man in England is worth what he would sell for at Algiers. This can be true only with respect to England. There are countries where a man is worth nothing; there are others where he is worth less than nothing.

#### Of the state and number of people before the Romans

Italy, Sicily, Asia Minor, Gaul, and Germany were nearly in the same state as Greece; full of small nations that abounded with inhabitants, they had no need of laws to increase their number.

#### Of the depopulation of the globe

All these little republics were swallowed up in a large one, and the globe insensibly became depopulated: in order to be convinced of this, we need only consider the state of Italy and Greece before and after the victories of the Romans.

“You will ask me,” says Livy, “where the Volsci could find soldiers to support the war, after having been so often defeated. There must have been formerly an infinite number of people in those countries, which at present would be little better than a desert, were it not for a few soldiers and Roman slaves.”

“The Oracles have ceased,” says Plutarch, “because the places where they spoke are destroyed. At present we can scarcely find in Greece three thousand men fit to bear arms.”

“I shall not describe,” says Strabo, “Epirus and the adjacent places, because these countries are entirely deserted. This depopulation, which began long ago, still continues; so that the Roman soldiers encamp in the houses they have abandoned.” We find the cause of this in Polybius, who says that Paulus Æmilius, after his victory, destroyed seventy cities of Epirus, and carried away a hundred and fifty thousand slaves.

**That the Romans were under the necessity of making laws to encourage the propagation of the species**

The Romans, by destroying others, were themselves destroyed: incessantly in action, in the heat of battle, and in the most violent attempts, they wore out like a weapon kept constantly in use.

I shall not here speak of the attention with which they applied themselves to procure citizens in the room of those they lost, of the associations they entered into, the privileges they bestowed, and of that immense nursery of citizens, their slaves. I shall mention what they did to recruit the number, not of their citizens, but of their men; and as these were the people in the world who knew best how to adapt their laws to their projects, an examination of their conduct in this respect cannot be a matter of indifference.

**Of the laws of the Romans relating to the propagation of the species**

The ancient laws of Rome endeavored greatly to incite the citizens to marriage. The Senate and the people made frequent regulations on this subject, as Augustus says in his speech related by Dio.

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Independently of the laws, the Censors had a particular eye upon marriages, and according to the exigencies of the republic engaged them to it by shame and by punishments.

The corruption of manners that began to take place contributed vastly to disgust the citizens with marriage, which was painful to those who had no taste for the pleasures of innocence.

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The corruption of manners destroyed the censorship, which was itself established to destroy the corruption of manners: for when this depravation became general, the Censor lost his power.

Civil discords, triumvirates, and proscriptions weakened Rome more than any war she had hitherto engaged in. They left but few citizens, and the greatest part of them unmarried. To remedy this last evil, Cæsar and Augustus re-established the censorship, and would even be censors themselves. Cæsar gave rewards to those who had many children. All women under forty-five years of age who had neither husband nor children were forbidden to wear jewels or to ride in litters; an excellent method thus to attack celibacy by the power of vanity. The laws of Augustus were more pressing: he imposed new penalties on such as were not married, and increased the rewards both of those who were married and of those who had



children. Tacitus calls these Julian laws; to all appearance they were founded on the ancient regulations made by the Senate, the people, and the Censors.

The law of Augustus met with innumerable obstacles, and thirty-four years after it had been made the Roman knights insisted on its being abolished. He placed on one side such as were married, and on the other side those who were not: these last appeared by far the greatest number; upon which the citizens were astonished and confounded. Augustus, with the gravity of the ancient censors, addressed them in this manner:

“While sickness and war snatch away so many citizens, what must become of this state if marriages are no longer contracted? The city does not consist of houses, of porticos, of public places, but of inhabitants. You do not see men like those mentioned in Fable starting out of the earth to take care of your affairs. Your celibacy is not owing to the desire of living alone; for none of you eats or sleeps by himself. You only seek to enjoy irregularities undisturbed. Do you cite the example of the Vestal Virgins? If you preserve not the laws of chastity, you ought to be punished like them. You are equally bad citizens, whether your example has an influence on the rest of the world, or whether it be disregarded. My only view is the perpetuity of the republic. I have increased the penalties of those who have disobeyed; and with respect to rewards, they are such as I do not know whether virtue has ever received greater. For less will a thousand men expose life itself; and yet will not these engage you to take a wife and provide for children?”

He made a law, which was called after his name, Julia and Papia Poppæa, from the names of the Consuls for part of that year. The greatness of the evil appeared even in their being elected: Dio tells us that they were not married, and that they had no children.

This decree of Augustus was properly a code of laws, and a systematic body of all the regulations that could be made on this subject. The Julian laws were incorporated in it, and received greater strength. It was so extensive in its use, and had an influence on so many things, that it formed the finest part of the civil law of the Romans.

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The Romans, who for the most part sprang from the cities of the Latins, which were Lacedæmonian colonies, and had received a part of their laws even from those cities, had, like the Lacedæmonians, such veneration for old age as to give it all honor and precedence. When the republic wanted citizens, she granted to marriage and to a number of children the privileges which had been given to age. She granted some to marriage alone, independently of the children which might spring from it: this was called the right of husbands. She gave others to those who had any children, and larger still to those who had three children. These three things must not be confounded. These last had those privileges which married men constantly en-

joyed; as, for example, a particular place in the theatre; they had those which could only be enjoyed by men who had children, and which none could deprive them of but such as had a greater number.

These privileges were very extensive. The married men who had the most children were always preferred, whether in the pursuit or in the exercise of honors. The Consul who had the most numerous offspring was the first who received the fasces; he had his choice of the provinces: the Senator who had most children had his name written first in the catalogue of Senators, and was the first in giving his opinion in the Senate. They might even stand sooner than ordinary for an office, because every child gave a dispensation of a year. If an inhabitant of Rome had three children, he was exempted from all troublesome offices. The free-born women who had three children, and the freed women who had four, passed out of that perpetual tutelage in which they had been held by the ancient laws of Rome.

As they had rewards, they had also penalties. Those who were not married could receive no advantage from the will of any person that was not a relative; and those who, being married, had no children, could receive only half. The Romans, says Plutarch, marry only to be heirs, and not to have them.

The advantages which a man and his wife might receive from each other by will were limited by law. If they had children of each other, they might receive the whole; if not, they could receive only a tenth part of the succession on the account of marriage; and if they had any children by a former venter, as many tenths as they had children.

If a husband absented himself from his wife on any other cause than the affairs of the republic, he could not inherit from her.

The law gave to a surviving husband or wife two years to marry again, and a year and a half in case of a divorce. The fathers who would not suffer their children to marry, or refused to give their daughters a portion, were obliged to do it by the magistrates.

They were not allowed to betroth, when the marriage was to be deferred for more than two years: and as they could not marry a girl till she was twelve years old, they could not be betrothed to her till she was ten. The law would not suffer them to trifle to no purpose; and under a pretence of being betrothed, to enjoy the privileges of married men.

It was contrary to law for a man of sixty to marry a woman of fifty. As they had given great privileges to married men, the law would not suffer them to enter into useless marriages. For the same reason, the Calvinian *senatus-consultum* declared the marriage of a woman above fifty with a man less than sixty to be unequal: so that a woman of fifty years of age could not marry without incurring the penalties of these laws. Tiberius added to the rigor of the Papian law, and prohibited men of sixty from marrying women under fifty; so that a man of sixty could not marry in any case

whatsoever, without incurring the penalty. But Claudius abrogated this law made under Tiberius.

All these regulations were more conformable to the climate of Italy than to that of the North, where a man of sixty years of age has still a considerable degree of strength, and where women of fifty are not always past child-bearing.

That they might not be unnecessarily limited in the choice they were to make, Augustus permitted all the free-born citizens who were not senators to marry freed-women. The Papian law forbade the Senators marrying freed-women, or those who had been brought up to the stage; and from the time of Ulpian, free-born persons were forbidden to marry women who had led a disorderly life, who had played in the theatre, or who had been condemned by a public sentence. This must have been established by a decree of the Senate. During the time of the republic they had never made laws like these, because the Censors corrected this kind of disorders as soon as they arose, or else prevented their rising.

Constantine made a law in which he comprehended, in the prohibition of the Papian law, not only the Senators, but even such as had a considerable rank in the state, without mentioning persons in an inferior station: this constituted the law of those times. These marriages were therefore no longer forbidden, except to the free-born comprehended in the law of Constantine. Justinian, however, abrogated the law of Constantine, and permitted all sorts of persons to contract these marriages; and thus we have acquired so fatal a liberty.

It is evident that the penalties inflicted on such as married contrary to the prohibition of the law were the same as those inflicted on persons who did not marry. These marriages did not give them any civil advantage; for the dowry was confiscated after the death of the wife.

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### Of the exposing of children

The Roman policy was very good in respect to the exposing of children. Romulus, says Dionysius Halicarnassus, laid the citizens under an obligation to educate all their male children, and the eldest of their daughters. If the infants were deformed and monstrous, he permitted the exposing them, after having shown them to five of their nearest neighbors.

Romulus did not suffer them to kill any infants under three years old: by which means he reconciled the law that gave to fathers the right over their children of life and death with that which prohibited their being exposed.

We find also in Dionysius Halicarnassus that the law which obliged the citizens to marry, and to educate all their children, was in force in the

277th year of Rome; we see that custom had restrained the law of Romulus which permitted them to expose their younger daughters.

We have no knowledge of what the law of the Twelve Tables (made in the year of Rome 301) appointed with respect to the exposing of children, except from a passage of Cicero, who, speaking of the office of tribune of the people, says that soon after its birth, like the monstrous infant of the law of the Twelve Tables, it was stifled; the infant that was not monstrous was therefore preserved, and the law of the Twelve Tables made no alteration in the preceding institutions.

“The Germans,” says Tacitus, “never expose their children; among them the best manners have more force than in other places the best laws.” The Romans had therefore laws against this custom, and yet they did not follow them. We find no Roman law that permitted the exposing of children; this was, without doubt, an abuse introduced towards the decline of the republic, when luxury robbed them of their freedom, when wealth divided was called poverty, when the father believed that all was lost which he gave to his family, and when this family was distinct from his property.

#### Of the state of the world after the destruction of the Romans

The regulations made by the Romans to increase the number of their citizens had their effect while the republic in the full vigor of her constitution had nothing to repair but the losses she sustained by her courage, by her intrepidity, by her firmness, her love of glory and of virtue. But soon the wisest laws could not re-establish what a dying republic, what a general anarchy, what a military government, what a rigid empire, what a proud despotic power, what a feeble monarchy, what a stupid, weak, and superstitious court had successively pulled down. It might, indeed, be said that they conquered the world only to weaken it, and to deliver it up defenceless to barbarians. The Gothic nations, the Getes, the Saracens and Tartars by turns harassed them; and soon the barbarians had none to destroy but barbarians. Thus, in fabulous times, after the inundations and the deluge, there arose out of the earth armed men, who exterminated one another.

#### The changes which happened in Europe with regard to the number of the inhabitants

In the state Europe was in one would not imagine it possible for it to be retrieved, especially when under Charlemagne it formed only one vast empire. But by the nature of government at that time it became divided into an infinite number of petty sovereignties, and as the lord or sovereign, who resided in his village or city, was neither great, rich, powerful, nor even safe but by the number of his subjects, everyone employed himself with a singular

attention to make his little country flourish. This succeeded in such a manner that notwithstanding the irregularities of government, the want of that knowledge which has since been acquired in commerce, and the numerous wars and disorders incessantly arising, most countries of Europe were better peopled in those days than they are even at present.

I have not time to treat fully of this subject, but I shall cite the prodigious armies engaged in the crusades, composed of men of all countries. Puffendorf says that in the reign of Charles IX there were in France twenty millions of men.

It is the perpetual reunion of many little states that has produced this diminution. Formerly, every village of France was a capital; there is at present only one large one. Every part of the state was a centre of power; at present all has a relation to one centre, and this centre is in some measure the state itself.

#### The same subject continued

Europe, it is true, has for these two ages past greatly increased its navigation; this has both procured and deprived it of inhabitants. Holland sends every year a great number of mariners to the Indies, of whom not above two-thirds return; the rest either perish or settle in the Indies. The same thing must happen to every other nation concerned in that trade.

We must not judge of Europe as of a particular state engaged alone in an extensive navigation. This state would increase in people, because all the neighboring nations would endeavor to have a share in this commerce, and mariners would arrive from all parts. Europe, separated from the rest of the world by religion, by vast seas and deserts, cannot be repaired in this manner.

#### Consequences

From all this we may conclude that Europe is at present in a condition to require laws to be made in favor of the propagation of the human species. The politics of the ancient Greeks incessantly complain of the inconveniences attending a republic, from the excessive number of citizens; but the politics of this age call upon us to take proper means to increase ours.

#### Of the law made in France to encourage the propagation of the species

Louis XIV appointed particular pensions to those who had ten children, and much larger to such as had twelve. But it is not sufficient to reward prodigies. In order to communicate a general spirit, which leads to the propagation of

the species, it is necessary for us to establish, like the Romans, general rewards, or general penalties.

#### By what means we may remedy a depopulation

When a state is depopulated by particular accidents, by wars, pestilence, or famine, there are still resources left. The men who remain may preserve the spirit of industry; they may seek to repair their misfortunes, and calamity itself may make them become more industrious. This evil is almost incurable when the depopulation is prepared beforehand by interior vice and a bad government. When this is the case, men perish with an insensible and habitual disease; born in misery and weakness, in violence or under the influence of a wicked administration, they see themselves destroyed, and frequently without perceiving the cause of their destruction. Of this we have a melancholy proof in the countries desolated by despotic power, or by the excessive advantages of the clergy over the laity.

In vain shall we wait for the succor of children yet unborn to re-establish a state thus depopulated. There is not time for this; men in their solitude are without courage or industry. With land sufficient to nourish a nation, they have scarcely enough to nourish a family. The common people have not even a property in the miseries of the country, that is, in the fallows with which it abounds. The clergy, the prince, the cities, the great men, and some of the principal citizens insensibly become proprietors of all the land which lies uncultivated; the families who are ruined have left their fields, and the laboring man is destitute.

In this situation they should take the same measures throughout the whole extent of the empire which the Romans took in a part of theirs; they should practise in their distress what these observed in the midst of plenty; that is, they should distribute land to all the families who are in want, and procure them materials for clearing and cultivating it. This distribution ought to be continued so long as there is a man to receive it, and in such a manner as not to lose a moment that can be industriously employed.