Montesquieu`s Definition Of Law Essay, Research Paper

The following was completed for a Political Thought and Theory Class in my

Senior Year of Highschool..my grade was an 85 Montesquieu: Definition of Law

Into the first three chapters of Book 1, The Spirit of Laws, Montesquieu

condensed a lifetime of thinking, not so much on law as what law is, (after all,

the work by Montesquieu is entitled The Spirit of Laws, not The Laws of the

Spirit). The definition of law provided to us by Montesquieu can be most clearly

identified as a series of relationships which are derived from the nature of

things; relationships varying not only among human beings, but animals and

thought. Background: Montesquieu, Charles-Louis de Secondatbaron de la Br?de et

de Born January 18, 1689, Montesquieu (Caption 1-1) belonged to an old family of

modest wealth that had been ennobled in the 16th century for services to the

crown. Charles-Louis studied at the faculty of law at the University of

Bordeaux, was graduated, and ventured out for experience in law. He married

Jeanne de Lartique and through marriage he became socially and financially

secure. He wrote many works pertaining to the lawfield (Encarta).

Montesquieu?s Definitions of Law ?Laws, in their most general signification,

are the necessary relations arising from the nature of things.? (Spirit)

Montesquieu in the first book would seem to be collating all that has been said

on the law into some complex equation, eliminating the common and arriving at

some simple solution. Thus, laws in the most general sense are the relationships

between things (all things) as the nature of things shows: the nature of things

seen, heard, and read. God isn?t seen nor heard, or read; still, he must have

his place, but not first in the order of the nature of things (Catholic).

?There is, then, a prime reason; and laws are the relations subsisting between

it and different beings, and the relations of these to one another.? (Spirit)

But we have overlooked a key word kept by Montesquieu in his most concentrated

definition: laws are not only relationships, they are necessary relationships.

Here grows a somewhat ambiguous question. Why are they necessary? They are not

necessary due to a decree of some sort, but become natural; thus the term

?Prime Reason. (Loy 89)? ?God is related to the universe, as Creator and

Preserver; the laws by which He created all things are those by which He

preserves them. He acts according to these rules, because He knows them; He

knows them, because He made them; and He made them, because they are in relation

to His wisdom and power.? (Spirit) It is true that Montesquieu seems to waver

between ?natural law? and ?laws of nature? as expressions. It is also

true that he defines laws of nature as those that derive solely from our beings

(Loy 90). ?By the allurement of pleasure they preserve the individual, and by

the same allurement they preserve their species. They have natural laws, because

they are united by sensation; positive laws they have none, because they are not

connected by knowledge.? (Spirit) Animals however, are without knowledge but

have some natural laws. Although Montesquieu does spare us the

seventeenth-century discussion of pre-social man, he has not escaped certain

confusions in regards to human reason and Prime Reason (Chan). ?Before there

were intelligent beings, laws were possible; they had therefore possible

relations, and consequently possible laws. Before laws were made, there were

relations of possible justice. To say that there is nothing just or unjust but

what is commanded or forbidden by positive laws, is the same as saying that

before the describing of a circle all the radii were not equal.? (Spirit) It

is also in his discussion of natural law that Montesquieu comes to the

conclusion that after God comes first a state of peace. For Montesquieu, peace

is the first law of nature. Following natural laws are nourishment, sex, and

society (Chan). ?But the intelligent world is far from being so well governed

as the physical. For though the former has also its laws, which of their own

nature are invariable, it does not conform to them so exactly as the physical

world.? (Spirit) Once the natural law is done with (and Montesquieu started

there for many reasons), one is on relatively clearer, emperic grounds with the

positive laws. International law, political law, civil law: nothing in

Montesquieu?s estimation could be more easily grasped from looking at man?s

past. When Montesquieu makes his famous statement that law is human reason, one

takes note he is writing under the heading ?positive law. (Loy 91)? ?Law,

in general, is human reason insofar as it governs all the nations of earth.?

Conclusion: All of this, although not original, is Montesquieu?s obvious

contribution to his science of laws. His whole attraction to his subject

(whether conscious or not), his role in intellectual history, his genius, were

involved with seeing everything through both kinds of Nature (Loy 92). Through

metaphysics and science, through moral and physical causes, through Philosophy

and History, through absolute and relative, through what ought to be and what is

the spirit guiding human social life on this earth is, its existence and its

essence, his goal was simply his honesty and seen in historical perspective, his

great contribution to the Enlightenment and the Social Sciences. The Spirit of

Laws gives us the ability to share in Montesquieu?s most logical and awarded

analysis of what laws are; a series of relationships which are derived from the

nature of things; relationships varying not only among human beings, but animals

and thought. By understanding first what law is, we may better strive towards

improved legal systems and society?s perfection.

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