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Montesquieu and the theory of the separation of powers

Early life and career

Charles-Louis de Secondat, Baron de La Brède et de Montesquieu, was born on January 19th, 1689 at La Brède, near Bordeaux, to a noble and prosperous family. He was educated at the Oratorian Collège de Juilly, received a law degree from the University of Bordeaux in 1708, and went to Paris to continue his legal studies. In 1716 he inherited from his uncle the title Baron de La Brède et de Montesquieu and the office of Président à Mortier in the Parlement of Bordeaux, which was at the time chiefly a judicial and administrative body. For the next eleven years he presided over the Tournelle, the Parlement's criminal division, in which capacity he heard legal proceedings, supervised prisons, and administered various punishments including torture. During this time he was also active in the Academy of Bordeaux, where he kept abreast of scientific developments, and gave papers on topics ranging from the causes of echoes to the motives that should lead us to pursue the sciences.

In 1721 Montesquieu published the *Persian Letters*, which was an instant success and made Montesquieu a literary celebrity. (He published the *Persian Letters* anonymously, but his authorship was an open secret.) He began to spend more time in Paris, where he frequented salons and acted on behalf of the Parlement and the Academy of Bordeaux. In 1725 he sold his life interest in his office and resigned from the Parlement. In 1728 he was elected to the Académie Française, despite some religious opposition, and shortly thereafter left France to travel abroad. After visiting Italy, Germany, Austria, and other countries, he went to England, where he lived for two years. He was greatly impressed with the English political system, and drew on his observations of it in his later work.

On his return to France in 1731, troubled by failing eyesight, Montesquieu returned to La Brède and began work on his masterpiece, *The Spirit of the Laws*. During this time he also wrote *Considerations on the Causes of the Greatness of the Romans and of their Decline*, which he published anonymously in 1734. In this book he tried to work out the application of his views to the particular case of Rome, and in so doing to discourage the use of Rome as a model for contemporary governments. Parts of *Considerations* were incorporated into *The Spirit of the Laws*, which he published in 1748. Like the *Persian Letters*, *The Spirit of the Laws* was both controversial and immensely successful. Two years later he published a *Defense of the Spirit of the*

Laws to answer his various critics. Despite this effort, the Roman Catholic Church placed *The Spirit of the Laws* on the Index of Forbidden Books in 1751. In 1755, Montesquieu died of a fever in Paris, leaving behind an unfinished essay on taste for the *Encyclopédie* of Diderot and D'Alembert.

The Spirit of the Laws

Montesquieu's aim in *The Spirit of the Laws* is to explain human laws and social institutions. This might seem like an impossible project: unlike physical laws, which are, according to Montesquieu, instituted and sustained by God, positive laws and social institutions are created by fallible human beings who are "subject ... to ignorance and error, [and] hurried away by a thousand impetuous passions" (SL 1.1). One might therefore expect our laws and institutions to be no more comprehensible than any other catalog of human follies, an expectation which the extraordinary diversity of laws adopted by different societies would seem to confirm.

On his view, the key to understanding different laws and social systems is to recognize that they should be adapted to a variety of different factors, and cannot be properly understood unless one considers them in this light. Specifically, laws should be adapted "to the people for whom they are framed..., to the nature and principle of each government, ... to the climate of each country, to the quality of its soil, to its situation and extent, to the principal occupation of the natives, whether husbandmen, huntsmen or shepherds: they should have relation to the degree of liberty which the constitution will bear; to the religion of the inhabitants, to their inclinations, riches, numbers, commerce, manners, and customs. In fine, they have relations to each other, as also to their origin, to the intent of the legislator, and to the order of things on which they are established; in all of which different lights they ought to be considered".

Forms of Government

Montesquieu holds that there are three types of governments: republican governments, which can take either democratic or aristocratic forms; monarchies; and despotisms. Unlike, for instance, Aristotle, Montesquieu does not distinguish forms of government on the basis of the virtue of the sovereign. The distinction between monarchy and despotism, for instance, depends not on the virtue of the monarch, but on whether or not he governs "by fixed and established laws" (SL 2.1). Each form of government has a principle, a set of "human passions which set it in motion" (SL 3.1); and each can be corrupted if its principle is undermined or destroyed.

A democracy must educate its citizens to identify their interests with the interests of their country, and should have censors to preserve its mores. It should seek to establish frugality by law, so as to prevent its citizens from being tempted to advance their own private interests at the expense of the public good; for the same reason, the laws by which property is transferred should aim to preserve an equal distribution of property among citizens. Its territory should be small, so that it is easy

for citizens to identify with it, and more difficult for extensive private interests to emerge.

Democracies can be corrupted in two ways: by what Montesquieu calls "the spirit of inequality" and "the spirit of extreme equality". The spirit of inequality arises when citizens no longer identify their interests with the interests of their country, and therefore seek both to advance their own private interests at the expense of their fellow citizens, and to acquire political power over them. The spirit of extreme equality arises when the people are no longer content to be equal as citizens, but want to be equal in every respect. In a functioning democracy, the people choose magistrates to exercise executive power, and they respect and obey the magistrates they have chosen. If those magistrates forfeit their respect, they replace them. When the spirit of extreme equality takes root, however, the citizens neither respect nor obey any magistrate. Eventually the government will cease to function, the last remnants of virtue will disappear, and democracy will be replaced by despotism.

In an aristocracy, one part of the people governs the rest. The principle of an aristocratic government is moderation, the virtue which leads those who govern in an aristocracy to restrain themselves both from oppressing the people and from trying to acquire excessive power over one another. In an aristocracy, the laws should be designed to instill and protect this spirit of moderation. To do so, they must do three things. First, the laws must prevent the nobility from abusing the people. The power of the nobility makes such abuse a standing temptation in an aristocracy; to avoid it, the laws should deny the nobility some powers, like the power to tax. Second, the laws should disguise as much as possible the difference between the nobility and the people, so that the people feel their lack of power as little as possible. Thus the nobility should have modest and simple manners, since if they do not attempt to distinguish themselves from the people. Finally, the laws should try to ensure equality among the nobles themselves, and among noble families. When they fail to do so, the nobility will lose its spirit of moderation, and the government will be corrupted.

In a monarchy, one person governs "by fixed and established laws" (SL 2.1). According to Montesquieu, these laws "necessarily suppose the intermediate channels through which (the monarch's) power flows: for if there be only the momentary and capricious will of a single person to govern the state, nothing can be fixed, and, of course, there is no fundamental law". These 'intermediate channels' are such subordinate institutions as the nobility and an independent judiciary; and the laws of a monarchy should therefore be designed to preserve their power. The principle of monarchical government is honor. Unlike the virtue required by republican governments, the desire to win honor and distinction comes naturally to us. For this reason education has a less difficult task in a monarchy than in a republic: it need only heighten our ambitions and our sense of our own worth, provide us with an ideal of honor worth aspiring to, and cultivate in us the politeness needed to live with others whose sense of their worth matches our own. The chief task of the laws

in a monarchy is to protect the subordinate institutions that distinguish monarchy from despotism. To this end, they should make it easy to preserve large estates undivided, protect the rights and privileges of the nobility, and promote the rule of law. They should also encourage the proliferation of distinctions and of rewards for honorable conduct, including luxuries.

A monarchy is corrupted when the monarch either destroys the subordinate institutions that constrain his will, or decides to rule arbitrarily, without regard to the basic laws of his country, or debases the honors at which his citizens might aim, so that. A monarch who rules arbitrarily, or who rewards servility and ignoble conduct instead of genuine honor, severs this connection and corrupts his government.

In despotic states "a single person directs everything by his own will and caprice. Without laws to check him, and with no need to attend to anyone who does not agree with him, a despot can do whatever he likes, however ill-advised or reprehensible. His subjects are no better than slaves, and he can dispose of them as he sees fit. The principle of despotism is fear. This fear is easily maintained, since the situation of a despot's subjects is genuinely terrifying. Education is unnecessary in a despotism; if it exists at all, it should be designed to debase the mind and break the spirit.

Montesquieu writes that "the principle of despotic government is subject to a continual corruption, because it is even in its nature corrupt". This is true in several senses. First, despotic governments undermine themselves. Because property is not secure in a despotic state, commerce will not flourish, and the state will be poor. The people must be kept in a state of fear by the threat of punishment. Most importantly, however, the despot's character is likely to prevent him from ruling effectively.

A despotism requires no powers to be carefully balanced against one another, no institutions to be created and maintained in existence, no complicated motivations to be fostered, and no restraints on power to be kept in place. One need only terrify one's fellow citizens enough to allow one to impose one's will on them; and this. For these reasons despotism necessarily stands in a different relation to corruption than other forms of government: while they are liable to corruption, despotism is its embodiment.

Liberty

Montesquieu is among the greatest philosophers of liberalism, but his is what Shklar has called "a liberalism of fear". According to Montesquieu, political liberty is "a tranquillity of mind arising from the opinion each person has of his safety" . Liberty is not the freedom to do whatever we want: if we have the freedom to harm others, for instance, others will also have the freedom to harm us, and we will have no confidence in our own safety. Liberty involves living under laws that protect us from harm while leaving us free to do as much as possible, and that enable us to feel the greatest possible confidence that if we obey those laws, the power of the state will not be directed against us.

Climate and Geography

Montesquieu believes that climate and geography affect the temperaments and customs of a country's inhabitants. He is not a determinist, and does not believe that these influences are irresistible. Nonetheless, he believes that the laws should take these effects into account, accommodating them when necessary, and counteracting their worst effects.

Religion

Religion plays only a minor part in the *Spirit of the Laws*. God is described in Book 1 as creating nature and its laws; having done so, He vanishes, and plays no further explanatory role. In particular, Montesquieu does not explain the laws of any country by appeal to divine enlightenment, providence, or guidance. In the *Spirit of the Laws*, Montesquieu considers religions "in relation only to the good they produce in civil society" (SL 24.1), and not to their truth or falsity. He regards different religions as appropriate to different environments and forms of government. Protestantism is most suitable to republics, Catholicism to monarchies, and Islam to despotisms

Theory of the separation of powers: Montesquieu argues in *The Spirit of the Laws* (1748), that to guarantee liberty and prevent tyranny, government authority must be divided into three independent branches—legislative, executive, and judicial—that act as checks on each other.

Key Aspects of the Theory:

- **Three Branches:**
 - **Legislative:** Makes laws (parliament/congress).
 - **Executive:** Enforces laws (monarch/president).
 - **Judicial:** Interprets laws and administers justice (courts).
- **Purpose:** The primary goal is to prevent the concentration of power in one person or body, which would lead to the loss of political liberty and the rise of despotism.
- **Checks and Balances:** While separate, the branches should have the power to check one another, ensuring a balance of power.
- **Independence:** No individual or group should control more than one branch, and branches should not interfere with the core functions of the others.

Montesquieu's ideas significantly influenced the United States Constitution, the Declaration of the Rights of Man, and modern democratic systems worldwide.