

# Modern History Sourcebook:

## Montesquieu:

### The Spirit of the Laws, 1748

*Charles de Secondat, Baron de Montesquieu (1689-1755), was a nobleman, a judge in a French court, and one of the most influential political thinkers. Based on his research he developed a number of political theories presented in The Spirit of the Laws (1748).*

*This treatise presented numerous theories - among the most important was respect for the role of history and climate in shaping a nation's political structure.*

*It was for his views on the English Constitution, which he saw in an overly idealized way, that he is perhaps most renowned.*

In every government there are three sorts of power; the legislative; the executive, in respect to things dependent on the law of nations; and the executive, in regard to things that depend on the civil law.

By virtue of the first, the prince or magistrate enacts temporary or perpetual laws, and amends or abrogates those that have been already enacted. By the second, he makes peace or war, sends or receives embassies; establishes the public security, and provides against invasions. By the third, he punishes criminals, or determines the disputes that arise between individuals. The latter we shall call the judiciary power, and the other simply the executive power of the state.

The political liberty of the subject is a tranquillity of mind, arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted as one man need not be afraid of another.

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Again, there is no liberty, if the power of judging be not separated from the legislative and executive powers. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with all the violence of an oppressor.

There would be an end of every thing were the same man, or the same body, whether of the nobles or of the people to exercise those three powers that of enacting laws, that of executing the public resolutions, and that of judging the crimes or differences of individuals.

Most kingdoms in Europe enjoy a moderate government, because the prince, who is invested with the two first powers, leaves the third to his subjects. In Turkey, where these three powers are united in the sultan's person the subjects groan under the weight of a

most frightful oppression.

In the republics of Italy, where these three powers are united, there is less liberty than in our monarchies. Hence their government is obliged to have recourse to as violent methods for its support, as even that of the Turks witness the state inquisitors, and the lion's mouth into which every informer may at all hours throw his written accusations.

What a situation must the poor subject be in, under those republics! The same body of magistrates are possessed, as executors of the laws, of the whole power they have given themselves in quality of legislators. They may plunder the state by their general determinations; and as they have likewise the judiciary power in their hands, every private citizen may be ruined by their particular decisions.

The whole power is here united in one body; and though there is no external pomp that indicates a despotic sway, yet the people feel the effects of it every moment.

Hence it is that many of the princes of Europe, whose aim has been levelled at arbitrary power, have constantly set out with uniting in their own persons, all the branches of magistracy, and all the great offices of state.

The executive power ought to be in the hands of a monarch; because this branch of government, which has always need of expedition, is better administered by one than by many: Whereas, whatever depends on the legislative power, is oftentimes better regulated by many than by a single person.

But if there was no monarch, and the executive power was committed to a certain number of persons selected from the legislative body, there would be an end then of liberty; by reason the two powers would be united, as the same persons would actually sometimes have, and would moreover be always able to have, a share in both.

Were the legislative body to be a considerable time without meeting, this would likewise put an end to liberty. For one of these two things would naturally follow; either that there would be no longer any legislative resolutions, and then the state would fall into anarchy; or that these resolutions would be taken by the executive power, which would render it absolute.

It would be needless for the legislative body to continue always assembled. This would be troublesome to the representatives, and moreover would cut out too much work for the executive power, so as to take off its attention from executing, and oblige it to think only of defending its own prerogatives, and the right it has to execute.

Again, were the legislative body to be always assembled, it might happen to be kept up only by filling the places of the deceased members with new representatives; and in that case, if the legislative body was once corrupted, the evil would be past all remedy. When different legislative bodies succeed one another, the people who have a bad opinion of that which is actually sitting, may reasonably entertain some hopes of the next: But were it to be always the same body, the people, upon seeing it once corrupted, would no longer expect any good from its laws; and of course they would either become desperate, or fall into a state of indolence.

The legislative body should not assemble of itself. For a body is supposed to have no will but when it is assembled; and besides, were it not to assemble unanimously, it would be impossible to determine which was really the legislative body, the part assembled, or the

other. And if it had a right to prorogue itself, it might happen never to be prorogued; which would be extremely dangerous, in case it should ever attempt to encroach on the executive power. Besides, there are seasons, some of which are more proper than others, for assembling the legislative body: It is fit therefore that the executive power should regulate the time of convening, as well as the duration of those assemblies, according to the circumstances and exigencies of state known to itself.

Were the executive power not to have a right of putting a stop to the encroachments of the legislative body, the latter would become despotic; for as it might arrogate to itself what authority it pleased, it would soon destroy all the other powers.

But it is not proper, on the other hand, that the legislative power should have a right to stop the executive. For as the execution has its natural limits, it is useless to confine it; besides, the executive power is generally employed in momentary operations. The power therefore of the Roman tribunes was faulty, as it put a stop not only to the legislation, but likewise to the execution itself; which was attended with infinite mischiefs.

But if the legislative power in a free government ought to have no right to stop the executive, it has a right, and ought to have the means of examining in what manner its laws have been executed; an advantage which this government has over that of Crete and Sparta, where the Cosmi and the Ephori gave no account of their administration.

But whatever may be the issue of that examination, the legislative body ought not to have a power of judging the person, nor of course the conduct of him who is intrusted with the executive power. His person should be sacred, because as it is necessary for the good of the state to prevent the legislative body from rendering themselves arbitrary, the moment he is accused or tried, there is an end of liberty.

To prevent the executive power from being able to oppress, it is requisite, that the armies, with which it is intrusted, should consist of the people, and have the same spirit as the people, as was the case at Rome, till the time of Marius. To obtain this end, there are only two ways, either that the persons employed in the army, should have sufficient property to answer for their conduct to their fellow subjects, and be enlisted only for a year, as customary at Rome: Or if there should be a standing army, composed chiefly of the most despicable part of the nation, the legislative power should have a right to disband them as soon as it pleased; the soldiers should live in common with the rest of the people; and no separate camp, barracks, or fortress, should be suffered.

When once an army is established, it ought not to depend immediately on the legislative, but on the executive power, and this from the very nature of the thing; its business consisting more in action than in deliberation.

From a manner of thinking that prevails amongst mankind, they set a higher value upon courage than timorousness, on activity than prudence, on strength than counsel. Hence, the army will ever despise a senate, and respect their own officers. They will naturally slight the orders sent them by a body of men, whom they look upon as cowards, and therefore unworthy to command them. So that as soon as the army depends on the legislative body, the government becomes a military one; and if the contrary has ever happened, it has been owing to some extraordinary circumstances. It is because the army was always kept divided; it is because it was composed of several bodies, that depended each on their particular province; it is because the capital towns were strong places,

defended by their natural situation, and not garrisoned with regular troops. Holland, for instance, is still safer than Venice; she might drown, or starve the revolted troops; for as they are not quartered in towns capable of furnishing them with necessary subsistence, this subsistence is of course precarious.

Whoever shall read the admirable treatise of Tacitus on the manners of the Germans, will find that it is from them the English have borrowed the idea of their political government. This beautiful system was invented first in the woods.

As all human things have an end, the state we are speaking of will lose its liberty, it will perish. Have not Rome, Sparta, and Carthage perished? It will perish when the legislative power shall be more corrupted than the executive.

It is not my business to examine whether the English actually enjoy this liberty, or not. It is sufficient for my purpose to observe, that it is established by their laws; and I inquire no further.

Neither do I pretend by this to undervalue other governments, not to say that this extreme political liberty ought to give uneasiness to those who have only a moderate share of it. How should I have any such design, I who think that even the excess of reason is not always desirable, and that mankind generally find their account better in mediums than in extremes?

From Montesquieu, *The Spirit of the Laws*, vol. 1, trans. Thomas Nugent (London: J. Nourse, 1777), pp. 221-237, passim.