

The Spirit of the Laws

- Date** ■ 1748
- Place** ■ La Brede, France
- Type of Source** ■ Treatise on government (original in French)
- Author** ■ Charles de Secondat, Baron de Montesquieu
- Historical Context** ■ Montesquieu is one of the Enlightenment philosophers. He originally published *The Spirit of the Laws* anonymously, because he had been censored in the past. The treatise was controversial; it was banned by the Catholic Church. Yet it inspired portions of the U.S. Constitution.
- Internal Context** ■ *The Spirit of the Laws* is a lengthy document that touches on a wide range of topics. In it, Montesquieu advocates several ideas that were considered novel at the time—constitutions, separation of power, rule of law, checks and balances, civil liberties, abolition of slavery.

Book XI—Of the Laws Which Establish Political Liberty, with Regard to the Constitution

... 6. Of the **Constitution of England**. 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 matters 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 judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.

Constitution of England

The United Kingdom has no formal document called a constitution. Instead, its constitution is a collection of documents, including the Magna Carta of 1215, the Habeas Corpus Act of 1679, Bill of Rights of 1689, and more.

legislative

having power to make laws. In England, this power was held by the Parliament.

executive

having power to put laws into effect. In England, at the time this treatise was written, this power was held jointly by the king and prime minister.

civil law

written law

abrogates

abolishes

judiciary

relating to the court system

The Spirit of the Laws

There would be an end of everything, 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 of trying the causes 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 most dreadful 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.

In what a situation must the poor subject be in 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.

I allow indeed that the mere hereditary aristocracy of the Italian republics does not exactly answer to the despotic power of the Eastern princes. The number of magistrates sometimes moderates the power of the magistracy; the whole body of the nobles do not always concur in the same design; and different **tribunals** are erected, that temper each other. Thus at Venice the legislative power is in the **council**, the executive in the **pregadi**, and the judiciary in the **quarantia**. But the mischief is, that these different tribunals are composed of magistrates all belonging to the same body; which constitutes almost one and the same power.

The judiciary power ought not to be given to a standing senate; it should be exercised by persons taken from the **body of the people** at certain times of the year, and consistently with a form and manner prescribed by law, in order to erect a tribunal that should last only so long as necessity requires.

By this method the judicial power, so terrible to mankind, not being annexed to any particular state or profession, becomes, as it were, invisible. People have not then the judges continually present to their view; they fear the office, but not the magistrate.

Turkey

At the time this treatise was written, Turkey was in the Ottoman Empire and was ruled by Sultan Mahmud I. Like most of the sultans of the empire, Mahmud I was an absolute monarch. See Atlas of World History, pages 90–91.

state inquisitors

Venice had a tribunal of three judges appointed to deal with threats to state security. They set up a network of spies.

lion's mouth

In Venice, there were plaques on walls, each with the head of a lion or person. Citizens could deposit anonymous complaints about other citizens or government officials in a slot in the mouth of the lion.

pomp

elaborate display

despotic sway

tendency toward absolute rule

tribunals

courts

council

Venice's Great Council theoretically passed the laws. The Great Council also selected all other officials including the Pregadi and Quarantia. It was composed of around 1000 aristocrats.

pregadi

Venice's senate, the Pregadi, was concerned with foreign policy and commerce. At one time, the Pregadi had 300 members.

quarantia

Venice's supreme court

The Spirit of the Laws

In accusations of a deep and criminal nature, it is proper the person accused should have the privilege of choosing, in some measure, his judges, in concurrence with the law; or at least he should have a right to except against so great a number that the remaining part may be deemed his own choice.

The other two powers may be given rather to magistrates or permanent bodies, because they are not exercised on any private subject; one being no more than the general will of the state, and the other the execution of that general will.

But though the tribunals ought not to be fixed, the judgments ought; and to such a degree as to be ever conformable to the letter of the law. Were they to be the private opinion of the judge, people would then live in society, without exactly knowing the nature of their obligations.

The judges ought likewise to be of the same rank as the accused, or, in other words, his peers; to the end that he may not imagine he is fallen into the hands of persons inclined to treat him with **rigour**.

If the legislature leaves the executive power in possession of a right to imprison those subjects who can give **security** for their good behavior, there is an end of liberty; unless they are taken up, in order to answer without delay to a capital crime, in which case they are really free, being subject only to the power of the law.

But should the legislature think itself in danger by some secret conspiracy against the state, or by a correspondence with a foreign enemy, it might authorise the executive power, for a short and limited time, to imprison suspected persons, who in that case would lose their liberty only for a while, to preserve it for ever...

body of people

In ancient Athens, 6,000 randomly selected citizens served the courts. See Atlas of World History, page 33.

rigour

harshness, severity

security

bail money

Source: Charles de Secondat, Baron de Montesquieu, *The Spirit of Laws*, n.d., <http://www.constitution.org/cm/sol_11.htm#004> (5/19/11).