

Baron de Montesquieu (1689 - 1755)

In Context

Ideology

Separationism

FOCUS

Checks & Balances

Influenced by:

Thomas Hobbes, Rene' Descartes, Aristotle, Jean Bodin, Cicero etc

Influenced:

Alexis de Tocqueville, Rousseau, Voltaire etc.

Before Montesquieu:

Before him, significant events include the Renaissance, the Protestant Reformation, and the English civil war shaped the political & social landscape in Europe.

After Montesquieu:

After him, the American Revolution (1775-1783), the French Revolution (1789-1799), and the Napoleonic era were happened. These events were influenced by Montesquieu's enlightenment ideas, including principles of separation of Power.

Major Works: The Persian Letter (1721), The Spirit of Law (1748), Reflections and the causes of the Greatness and Decline of the Romans (1734).

1. Introduction:

Charles de Secondat, Baron de Montesquieu, was a member of the generation of liberal philosophers that defined the revolutionary era. His pen changed the way society and the common people understood politics, which manifested in a handful of revolutions, freeing people from the shackles of oppressive monarchies. In the formulation of young new governments, great care had to have been taken to ensure the precarious balance of power to ensure corruption would be avoided.

2. The Ideology of Montesquieu:

The central theme of Montesquieu is liberty. To achieve liberty, he categorized the description of the separation of powers within government. Most importantly, he noted the division of power between the sovereign and his administration.

3. Montesquieu: Doctrine of Separation of Powers

Montesquieu expounds his theory of separation of powers to set

forth the governmental organization in order to safeguard the political liberty. He is famous in the history of political thought for his notable formulation of separation of powers as the most important precondition of political liberty and this idea he stated in his famous book "The Spirit of Laws."

a. Montesquieu's Separation of Powers: Tripartite Division of Government's Function

By 1748, Montesquieu had formulated the tripartite division of government functions;

i. Legislative Power: Shaping laws through the Mechanism of Governance

The legislature should make laws, but not administer or enforce them. The legislative branch of government is the body responsible for proposing and enacting changes to law and society. In Pakistan, this would be the Majlis-e-Shoora. Its fundamental function is to make, amend, and repeal laws.

- ii. **Executive Powers: Managing domestic Policies, Foreign Policies and enforcing law and order to ensure Public security and Administering Justice**

The executive branch of the government is the body that upholds the practice of law. In many ways, the executive branch of government is the "face" of the government. The executive maintains law and order, and public security, also punish the criminals and settles the disagreements. In Pakistan, this branch consists of the Cabinet and is led by the Prime minister.

- iii. **Judicial Power: Interpreting laws and advocating for separation of powers to safeguard Political Liberty**

The Judicial branch of government is the body that interprets the law and passes judgment regarding crimes committed and rules broken within a society. In the case of Pakistan, this would be the supreme court.

b. The Purpose of Montesquieu's doctrine of the separation of Powers:

Montesquieu was weary of the role of Lord Chancellor who performed many roles: as head of judiciary, member of the cabinet, and as a presiding officer of the House of Lords. He was of the views that Power in the hands of one person or body corrupts and leads to tyranny.

As Lord Acton has said, "power corrupts and absolute power corrupt absolutely."

He asserts that;

i. Combining Legislative and executive functions:

When these united in the same person, there can be no liberty.

ii. Combining Judiciary and Legislative functions:

There is no liberty if the judicial power is not separated from the legislative & executive.

iii. Integrating Executive and Judiciary functions:

If the judiciary is joined to the executive power, the judge might behave with violence and oppression.

iv Integrating the three functions in One

Person: If these three functions combine in one person, there would be an end to everything were the same man or the same body, whether of the nobles or of the people.

Therefore Montesquieu asserts that to promote man's liberty effectively, these three organs must function independently of each other.

C. Montesquieu's Vision: Checks and Balances- Positive Controls for Legislative and Executive Harmony Montesquieu's theory of separation of power further developed the concept of checks and balances b/w legislative and executive.

1. Legislative and Executive :

i. Power of the Executive over Legislative: Influencing and Shaping the legislative landscape The executive officer ought to have a share in the legislative power by a veto over legislation. The executive should have the power of calling and fixing the duration of the meeting of the legislative body.

ii. **Power of Impeachment with legislature in ensuring Accountability:** the legislature should not stay the executive but it should have the power to examine the manner in which its laws are executed. The power of impeachment must lie in the legislature, with the Lower House accusing and the Upper House judging.

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• By sending message to the Congress the President exercises legislative functions. President also exercises it by Veto. Senate exercises Executive powers by the ratification of Treaties, and making of certain appointment.

4. Montesquieu Nature and Principles of Government:

By nature of govt. he means the form of govt found in a civil society. By Principles, the underlying force by which that society is motivated.

a. Montesquieu's form of Government:

According to him there are three forms of government;

i. **Republic form of Government: Balancing Powers for Liberty and stability**

Montesquieu was of the view "A republican government is that in which the body or only a part of the people, is possessed of the supreme power." To him, when it is a republic, the body of the people is possessed the supreme power it is called democracy. In Republics, there can be no exercise of sovereignty but by the votes express their own will.

ii. **Monarchical form of Government: Balance of Powers for stability & Governance**

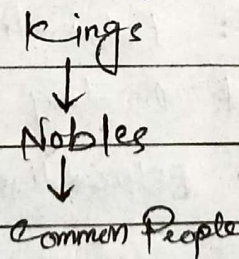
Montesquieu remarks that monarchical govt. is that in which a single person governs the state by fixed and established laws. He was of the view that the most intermediate power is that of nobility. This in some measure seems to be essential to a monarchy, whose fundamental maxim is no nobility no monarch, but there may be despotic process.

iii. **Montesquieu's Despotism: Singular Authority**
Directing all government functions

A despotic government is that in which a single person directs all functions of the government with his own capricious will, without any law and without any rules. His own words become laws of the land and complete subordination to these laws a expedient.

b. **Best form of Government According to Montesquieu:**

Montesquieu had described through his book, the Spirit of Law, his admiration for a "moderate government". His favourite form of government was "Elected Monarchy."



c. **Worst form of government According to Montesquieu:** To him, the worst form of government was "despotism", as it provided no guarantee to safeguard

individuals rights, because there were no established laws in this form of govt.

5. Laws and their Relations to Nature and Principle of Government:

Montesquieu's book, *The Spirit of Law*, contain laws & their relation with govt. According to him, laws if designed properly and implemented thoroughly then society can be saved otherwise it will collapse on itself.

i. Laws of Education:

a. **In Democracy:** To him, in a democracy education must teach patriotism, principles of self-restraint, and the manners through which they choose those who governed them.

b. **In Monarchy:** Education teach → self-interest, but self-interest leading towards general good.

c. **In Depotism:** Education thought servility → ^{lies}.

ii. Laws of Economics:

a. **Democracy:** It is impossible to distribute the wealth on equal basis, but there should be some well-defined limits for inequality.

imposed and maintained by law.

b. **Monarchy:** Taxation laws should not be ~~so much~~ ^{burdensome} on nobility, and duties should not be so much on nobility that they become incapable to perform those glorious action which constitute to the public good.

c. **Depotism:** It is necessary to have a large army for the maintenance of peace.

iii. Civil and Criminal Laws:

a. **Democracy:** In democracy, the vast and complicated structure of civil and criminal laws, rules and regulations bring about destruction for liberty.

b. **Monarchy:** Laws are required to maintain the day to day affair and to excel the state.

c. **Depotism:** There is a little requirement for criminal laws b/c it is the will of the govern and not of the government.

iv. Laws of Corruptions:

a. **Democracy:** Corruption must not be tolerated and checks must be implemented.

b. **Monarchy:** It is necessary that powers must be share among the nobility, Clergy, courts, and kings. Corruption occurs when

the king deprives all other groups of their traditional authorities.

c. **Depotism:** Corruption is impossible, or if it is already corrupt.

v. **Laws of Territory:**

a. **Democracy:** According to Montesquieu, democracy demands a small territory.

b. **Monarchy:** To him, monarchy requires a moderate territory. A too small monarchy will become a republic and a too large monarchy will not be controlled by the nobility.

c. **Depotism:** The citizens must be made to fear the central authority, so that they will not revolt against it.

Montesquieu as Aristotle of 18th Century:

Montesquieu is called Aristotle of 18th century due to following reasons;

i. Montesquieu's inductive and historical methods in the style of Aristotle's Practical Political activities: Dunning says

Discuss this part by giving subheadings

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"The method applied by Montesquieu in the solution of the problem is that of Aristotle." Hence, he may be justly regarded as the Aristotle of the 18th century.

ii. Like Aristotle, Montesquieu too paid his attention to the impact of Physical environment on human life & social institutions:

iii. Montesquieu steps into the shoes of Aristotle by classifying governments on the basis of number and ruling structure:
Montesquieu → Monarchy, Republic & Despotism.

iv. Montesquieu follows Aristotle by asserting that laws and constitution mold society's character and bring changes to the state:
His observation about law and constitution is parallel to Aristotle's statement that the constitution of a state determines the very life and character of its people.

v. Montesquieu in agreement with Aristotle notes the fixed nature of fundamental political constitutions altered to some extent by local conditions: As Indian & Britain follow

Parliamentary systems but differ with one another.

The Legacy of Montesquieu / Application of Doctrine of Separation of Powers:

i. Influence of Montesquieu on the formation of young Liberal Democracies:

Those who established them, often victims of some form of persecution or oppressive authority, designed these young governments to be as incorruptible as possible.

ii. Montesquieu's Separation of Powers infused into early Republics for honest governance and prevention of centralized Authority:

When all three branches mesh into one political individual, we have absolutism.

iii. Montesquieu's theory of separation of Powers guided the Declaration of Rights post-French Revolution 1789: It clearly

stated that, "every society in which separation of powers is not determined has no constitution."

iv. The strong influence of the theory of Separation of Powers on the founding fathers of the USA Constitution: It gave the

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legislative powers to the US Congress, the executive powers to the US president and the judicial powers to the US supreme court.

- v. **Universal Declaration of Human Rights** adopted by the UN General Assembly accepted the principles of separation of powers:

In fact, all contemporary democratic constitutions do provide for a separation of powers in one way or the other.

Relate your heading to the qs statement

Critical Analysis of Montesquieu's Political Philosophy:

- i. Critics argue that the complete separation of powers poses challenges to downside government's progress: Thus, the Montesquieu's theory may be set aside to meet the requirements of a modern government.
- ii. Montesquieu's analysis of the English Constitution criticised for the absence of complete separation of powers among governmental agencies: The House of Lords is a legislative as well as a judicial body. The Lord Chancellor performs of all the three functions of government.

Work on the structure of the

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answer. Only add the aspects

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iii. ~~asked~~ Critique of Montesquieu: Separation of Powers leading to potential conflict among government organs due to self-interest: "the separation of powers will result in a clash b/w the three different organs of the government b/c each one will take interest only in its own powers."

iv. Misconception of Montesquieu's assumption that Democracy and Aristocracy are subtypes of the Republican forms:

v. Professor Lasci argues ~~that~~ against the primacy of the legislative branch in the separation of Powers theory: the theory presupposes that the branches of government are of the same importance, & say that legislative branch is of greater importance than the other two which is not correct.

vi. George H. Sabine criticizes Montesquieu for unifying his theory with a hasty and superficial analysis of Constitutional Principles of Liberty: H. Sabine stated that his love of Political liberty - the sole enthusiasm of an otherwise chilly temperament was in the best tradition of 18th century, but he unified his theory to a hasty & superficial analysis of constitutional principles of Liberty.

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Conclusion: