

Q: Examine Montesquieu's theory of separation of powers. Why he has been called "Aristotle" of 18th century.

Introduction

Montesquieu was a French social commentator and political thinker who is famous for his theory of separation of powers. He opposed the absolute monarchy of his home country and favored the English system as the best model of Government. His publication, "Spirit of the laws" is considered one of the great works in the history of political theory and Jurisprudence, and it inspired the declaration of the Rights of man and the Constitution of the United States.

Under his model, the political authority of the state is divided into legislative, Executive and Judicial powers. He asserted that, to most effectively promote liberty, these three powers, must be separate and acting independently.

2) Background of theory of separation of Powers

Montesque divided French society into three classes: the monarchy, the aristocracy, and the commons. Montesque saw two types of Governmental power existing: the sovereign and the administrative. The administering powers were the executive, the legislative, and the judicial. He said that these should be separate from and dependent upon each other so that the influence of any one power would not be able to exceed other. His work rose to a position of enormous influence and was later banned by Catholic Church by putting into index of prohibited books. However, it received the highest praise from rest of Europe, particularly Britain.

3) Theory of Separation of Power

“Power corrupts and Absolute Power tends to corrupt absolutely”

It is widely accepted that for a political system to be stable, the holders

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of powers need to be balanced off against each other. The principle of separation of power deals with the mutual relations among the three organs of government and tries to bring exclusiveness in functioning of three organs. The legislative branch is responsible for enacting the laws of the state and appropriating the money necessary to operate the Government. The executive branch is responsible for implementing and administering the public policy enacted and funded by legislative branch. The Judicial branch is responsible for interpreting and administering the laws and constitutions and applying their interpretation to controversies brought before it.

4) Doctrine of separation in words of Montesquieu

"When the legislative and executive powers are united in the same person, or in the same body or magistrates, there can be no liberty. Again there is no liberty if the judicial power is not separated from the legislative and executive powers. Where it is joined with the legislative power,

the life and liberty of the subject would be exposed to arbitrary control, for the Judge would then be legislator. Where it joined with executive power, the Judge might behave with violence and oppression. There would be an end of everything, were the same man or same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing public resolutions and of trying the cause of individuals.

The theory of separation of powers signifies three formulations of structural classification of Governmental powers.

The same person should not form part of more than one of the three organs of the Government. One organ of government should not interfere with any other organ of the government.

Attempt this part in detail by giving subheadings

5) Implementation of Doctrine of separation of power in American system

Forty state constitutions specify that government be divided into three branches: legislative, executive and judicial. California illustrates this approach; "The powers of state government are legislative, executive and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this constitution." Separation of powers is key to the working of American government, no democratic system exists with an absolute separation of powers. Throughout American history, there has been an ebb and flow of preeminence among the governmental branches. Such experiences suggest that where power resides is part of an evolutionary process.

6) Aristotle of Eighteen Century

Montesquieu has been called Aristotle of 18th century. Like Aristotle he was a realist and had practical approach to many problems. Montesquieu borrowed from Aristotle the idea that

laws were products of collective wisdom of society and that they should suit the circumstances. Credit goes to both of them for giving the idea that the political institutions once established on sound reasons and will of the people remain basically the same. Local conditions might bring about a change to some extent but the fundamental always remain unchanged. Both of them are not extremists but only moderates. In words of Laski, "His belief that the present is to be explained by its necessary will justifies us to say that at least in respect to method, he can be said as Aristotle of method."

Discuss this part in detail as well by giving subheadings

7) Criticism on theory of separation of powers

Many critiques rejected the theory of separation of power. According to them it is neither possible nor desirable. It lead to inefficiency in administration.

The theory is based on the supposition that all the three organs of the government are equally important, but in reality it is not so. Liberty of the people largely depends more on factors like political culture, consciousness and institutions than separation of powers. However, separation of power is useful if used judiciously to bring about a balance between the vigorous action of the welfare state and enjoyment of the liberty of people. Montesquieu has been charged with making hasty decisions. This did not justify a philosopher of his deep study and knowledge.

Conclusion

Montesquieu is remembered for his theory of separation of powers. His influence on the contemporary and subsequent political philosophy was immense. Fathers of the American Constitution liberally borrowed from his philosophy. His writings found a media in the ideas of reactionaries and liberals,

Improve the structure of the answer. Use subheadings

Sabine says, "His writings gave aid and comfort both to reactionaries who hoped for the restoration of parliaments, the estates, and the provincial assemblies and to liberals who looked to an imitation of the English government." While discussing the contribution of Montesquieu's political philosophy Dr J.E. Greene said, "At a time when thinkers were beginning to question the autocratic rule of the kings and church officials, Montesquieu raised a courageous lamp of inquiry and suggested changes with luminous logic."

