

Q. Discuss Montesquieu's Theory of Separation of Powers. Why is he considered Aristotle of the 18th century?

⇒ Introduction

Montesquieu was a famous 18th century philosopher and a judge. He presented a masterpiece theory known as "Theory of Separation of Powers." He presented this theory in his book "The Spirit of the Law." He defined the roles of different institutions of a state and established a trichotomy of power between them. With such modern emphasis on rule of law and development of political arena hence called the Aristotle of 18th century. The answer at hand will pertain to the discussion on role of each institution and how a separation of power will be maintained by the pursuit of rule of law.

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⇒ What is Montesquieu's Theory of Separation of Power?

The theory of separation of power defines the role of each institution. Montesquieu believes in trichotomy of power, establishing executive branch, legislative branch and judiciary branch. On top he defines a concept of check and balances which in order to maintain the power within a state.

⊕) Montesquieu's theory of separation defining the role of legislative branch.

Montesquieu argues the role of legislative branch as a law maker. The politicians through debates and bill procedure presenting a law for enactment. The purpose of a legislature is to represent the society while focusing on law making to prevent any harmful activity for the people. In order to bring justice, other institutes must be separated from each other. As mentioned

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in the book "Political Thought", Montesquieu defines the mixture of legislature with executive leading to tyranny. Therefore, he defines the concept of separation of power.

b) Theory of separation defining the role of Executive branch.

The theory of separation defines executive role as a law enforcer and administrator.

The head of the state, Prime Minister or the President, are all part of executive branch. If there is no liberty among the institutions then the executive would enforce those laws only made by themselves.

The role of executive without any liberty is seen in dictatorships, in this form of government, the administrator and the law maker are one supreme being resulting to no liberty and tyranny.

c) Theory of Separation of power defining role of Judiciary in a state.

As said by William Blackston "The role of the judiciary is to implement ^{and interpret} law and not make it". Montesquien defines the role of judiciary in his book Spirit of Laws stating the role of judiciary as a law interpreter and a justice giver. He argues the power of judiciary and defines the use of constitution of a state in order to protect the citizens of that state. He also defines the argument that if the judiciary controls the executive and the legislature, there would be no liberty and judicial oppression will take place.

d) The concept of Check and Balances between all three branches of state.

Montesquien lays the theory of separation of power and along with this he established

a concept of checks and balances of institutions on each other. He defines how without checks and balances either one of the institutions will become too powerful and will challenge the state. Therefore, a system of checks and balances is a must in order to bring justice. For example, United States of America strictly follows this concept. The President being the supreme authority in USA also faces checks and balances during the mid-term elections by in US House of Representatives. ^{Moreover} Therefore, US President can wage rights of war by the executive at any moment during warfare. Judiciary on the other hand also has a power, this is known as the judicial review or *suo Moto* action. If whenever, the judiciary seems to believe that either legislature or the executive are not fairly acting on their behalf, the judiciary can take legal action ~~either to annul~~ either to annul a law or to stay a decision of executive.

⇒ Criticism to Montesquieu's theory of separation of power.

Montesquieu's theory does focus on a check and balance, but this form will change the slope of tripartite of power. If either one of the branch interferes in one another's duty, this will eliminate the purpose of this theory. Sovereignty of each institute will be compromised.

⇒ Why is Montesquieu considered Aristotle of the 18th century?

a) The concept of Check and Balance.

He defined this concept in order to tackle the issue of institutional oppression and tyranny leading to overall dictatorship.

b) Montesquieu's explain on Rule of law

Both Montesquieu and Aristotle were

discussing rule of law. Rule of law being the key element in a state should be favoured, therefore this mutual ideology makes Montesquieu the Aristotle of 18th century.

⇒ Conclusion and analysis.

The theory of separation is a gift to society by the early western philosophers. This concept of trichotomy of power is now mostly followed by major western and eastern countries.

This ideology along with the concept of checks and balances has shown the path of justice for citizens of a state. Along with such similar approach of Montesquieu and Aristotle while discussing Rule of law and check and balances, proves Montesquieu as the Aristotle of the 18th century.