

# THE BALANCE OF POWER: MONTESQUIEU, *THE SPIRIT OF LAWS*

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## Part 1 – A life's work: *The Spirit of Laws*

AS: Hello Colas Duflo. When we think back on the legacy of the 18<sup>th</sup> century on public debates today, we often come to the famous separation of power which Montesquieu evoked in *The Spirit of Laws*. In your opinion, what was so important about this treatise in the critical state of mind of the Enlightenment?

CD: *The Spirit of Laws* really is a life's work. Montesquieu was born in 1689 at the Château de La Brède near Bordeaux. He studied law. He became a counsellor and then president of parliament in Bordeaux. He is, therefore, part of a family that is the Nobles of the Gown. In 1721, he published his *Persian Letters* and then he devoted his life to elaborating the treatise that is *The Spirit of Laws*, published in 1748, and then to defending his work until his death in 1755. So, what made this work so great? There are many possible answers as it is indeed a wide breadth of work. But one possible answer could be that the merit in Montesquieu's work is having suggested that the political sphere has a distinctive rationality.

AS: What does that mean?

CD: Montesquieu believed that human existence in society was intelligible and that it obeyed laws which can be decoded like physics or like astronomy managing to foretell the movement of the stars.

## Part 2 – Discovering society's laws

AS: And yet, the laws of nature and the laws of society are not the same thing.

CD: Yes, and one might also say that this assumption contrasts with the present experience that we have of politics, since the reality behind this point of view presents us with an absurd diversity of laws and customs. Here, humans are polygamous. Now, polygamy is illegal. Here, we disapprove of materialism. Now, we encourage it through commercial transactions. Here, we have slaves. Now, we think slavery is contrary to human rights, etc. The world is diverse, arbitrary, at odds with itself, changing, absurd and we struggle to understand it.

And this is Montesquieu making a fundamental, theoretical decision about the seeming diversity of laws, customs, etc. One can live in nature, and by following the example of scholars like Newton,

decode laws, state the meaning of things, in short, tell the “spirit of laws”. By doing this, one might say that Montesquieu was the true founder of political science or sociology, even if there is always something a bit arbitrary in a founding father's research.

AS: There have, however, ever since the Antiquity, been philosophers of law, and even at the time Montesquieu was writing, what were called theorists of natural law.

CD: Yes, but Montesquieu's aim was not, contrary to philosophical tradition which, incidentally, he did not disavow, to elaborate law as it should be but understand what it is. "There is reason, he says, in diversity and variety". If people are part of a republic here and a monarchy elsewhere, one must, before asking which is better, understand why there are these differences and then ask whether the system they're in suits them or not.

One must, therefore, say how positively-diverse laws are to be explained, how they relate to a whole multitude of interacting factors like the political form, which Montesquieu called "the nature and principles of government", but also customs, climate, history, religion, etc. Here, we're not talking about what laws are, that's the work of a jurist, but what the “spirit of laws” is.

## Part 3 – The separation of power

AS: But in all that, you still haven't said anything about the famous separation of power.

CD: Yes, because in reality, apart from this descriptive aim, there is a prescriptive aim in *The Spirit of Laws*. "Forms of government, it says, are divided into two big categories. On the one hand, there are moderate regimes, like the republic or the monarchy, and on the other, absolutism". Montesquieu's big question was about knowing how to avoid modern states falling into absolutism, the fatal descent into all power and, in the case of France, how to preserve the moderate monarchy from the temptation of absolutism which had been growing under Louis XIV. According to Montesquieu, this is the corrupt form of genuine monarchy. The shorter response to this question is that there must be counter powers, who share governance between themselves and compel them to communicate at all costs.

In this particular case, in the case of France, nobility, parliament, the obligation to submit to juridical forms, the privileges of each corps and even honour prohibit power from being practised in a direct and absolute manner and imposes limits which stop it from drifting towards absolutism. The concept of separating powers, which cannot be found as it is in *The Spirit of Laws*, implies that political freedom, characterising moderate states, involves powers limiting one another, and the English constitution, as described by Montesquieu, has merit since the same person or the same group of people cannot accumulate legislative, executive or judiciary powers, which, evidently, is a way of implicitly describing all that is wrong with the French absolute monarchy.

AS: Well, let's conclude on this vital legacy of the Enlightenment on our understanding of modern politics. Thank you, Colas, for this analysis.

CD: Thank you Alain.