



Themed Collection: SEPARATION OF POWERS

Baron de Montesquieu: The Spirit of the Laws, 1748

The French aristocrat Baron de Montesquieu (1689–1755) wrote *The Spirit of the Laws*, in which he concluded that the separation of the executive, legislative, and judicial powers was in the best interests of the people. Both the French revolutionary thinkers and the Framers of the United States Constitution were influenced by Montesquieu's ideas.

The principle of democracy is corrupted not only when the spirit of equality is extinct, but likewise when they fall into a spirit of extreme equality, and when each citizen would fain be upon a level with those whom he has chosen to command him. Then the people, incapable of bearing the very power they have delegated, want to manage everything themselves, to debate for the senate, to execute for the magistrate, and to decide for the judges.

When this is the case, virtue can no longer subsist in the republic. The people are desirous of exercising the functions of the magistrates, who cease to be revered....

Democracy has, therefore, two excesses to avoid—the spirit of inequality, which leads to aristocracy or monarchy, and the spirit of extreme equality, which leads to despotic power, as the latter is completed by conquest....

In the state of nature, indeed, all men are born equal, but they cannot continue in this equality. Society makes them lose it, and they recover it only by the protection of the laws.

Such is the difference between a well-regulated democracy and one that is not so, that in the former men are equal only as citizens, but in the latter they are equal also as magistrates, as senators, as judges, as fathers, as husbands, or as masters.

The natural place of virtue is near to liberty; but it is not nearer to excessive liberty than to servitude....

Democratic and aristocratic states are not in their own nature free. Political liberty is to be found only in moderate governments; and even in these it is not always found. It is there only where there is no abuse of power....

To prevent this abuse, it is necessary, from the very nature of things, that power should be a check to power. A government may be so constituted, as no man shall be compelled to do things to which the law does not oblige him, nor forced to abstain from things which the law permits....

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.

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.

Questions for Discussion

1. What, according to Montesquieu, are two dangers to be avoided in a democracy?
2. Why does Montesquieu promote the separation of powers?