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The Spirit of Laws

by Baron de Montesquieu

Baron de Montesquieu (1689–1755) was a French political philosopher whose ideas of separation of powers have influenced modern concepts of government, especially that of the United States. Montesquieu is best known for his book The Spirits of Laws, which he anonymously published in 1748 because of French censorship laws at that time. Montesquieu argues for a constitutional government in which powers are divided among three branches: executive to administer the laws, legislative to create the laws, and judicial to determine the fairness of the laws.

Primary Source:

In every government there are three sorts of power: the legislative; the executive, in respect to things dependent on the law of nations; and the executive, in regard to matters that depend on the civil law.

By virtue of the first, the prince or **magistrate** enacts temporary or **perpetual** laws, and amends or **abrogates** those that have been already enacted. By the second, he makes peace or war, sends or receives embassies, establishes the public security, and provides against invasions. By the third, he punishes criminals, or determines the disputes that arise between individuals. The latter we shall call the judiciary power, and the other simply the executive power of the state.

The political liberty of the subject is a tranquility of mind arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted as one man need not be afraid of another.

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.

Glossary:

magistrate: a civil officer; a judge

perpetual: never ending

abrogates: repeals or does away with

Citation: Baron de Montesquieu, *The Spirit of Laws*, 2 Volumes, trans. Thomas Nugent (New York: The Press, 1899), 151–162.