

CONSTITUTION 101

Module 6: Separation of Powers and Federalism
6.5 Primary Source

MONTESQUIEU, THE SPIRIT OF THE LAWS (1748)

View the document on the National Constitution Center's Website [here](#).

Charles-Louis de Secondat, baron de la Brède et de Montesquieu (1689–1755), was the author of the *Persian Letters* (1721), *Considerations on the Causes of the Greatness of the Romans and of their Decline* (1733), and *The Spirit of the Laws* (1748). Described in *The Federalist* as "the celebrated Montesquieu," he was more often consulted and cited in the period stretching from 1760 to 1800 than any other secular author—especially with regard to the institutions most likely to sustain political liberty and to the evils of slavery. In particular, Montesquieu's discussion of separation of powers and checks and balances profoundly influenced the American founders and the design of the U.S. Constitution. It was not unusual for 18th-century Americans to speak of Montesquieu as an "oracle" of political wisdom whose work is "always consulted."

Excerpt:

Kings and princes can rely on force and the law; a republic requires virtue. There is no great share of probity necessary to support a monarchical or despotic government: the force of laws, in one, and the prince's arm, in the other, are sufficient to direct and maintain the whole: but, in a popular state, one spring more is necessary, namely, *virtue*.

...

When virtue is banished, ambition invades the minds of those who are disposed to receive it, and avarice possesses the whole community. . . . The members of the commonwealth riot on the public spoils, and its strength is only the power of a few, and the license of many.

4:5—Virtue means self restraint and valuing the public interest over one's own private self-interest. [V]irtue is a self-renunciation, which is very arduous and painful.

This virtue may be defined as the love of the laws and of our country. As such love requires a constant preference of public to private interest, it is the source of all private virtues.

8:16—Only small republics are likely to survive. It is natural for a republic to have a small territory; otherwise it cannot subsist. In an extensive republic there are men of large fortunes, and consequently of less moderation; there are trusts too considerable to be placed on any single subject; he has interests of his own; he soon begins to think that he may be happy and glorious, by oppressing his fellow-citizens; and that he may raise himself to grandeur on the ruins of his country.

CONSTITUTION 101

Module 6: Separation of Powers and Federalism

6.5 Primary Source

In an extensive republic, the public good is sacrificed to a thousand private views: it is subordinate to exceptions, and depends on accidents. In a small one, the interest of the public is more obvious, better understood, and more within the reach of every citizen.

9:1—Republics can't be too small or too large, a tricky balance. If a republic be small, it is destroyed by a foreign force; if it be large, it is ruined by an internal imperfection.

...

The evil is in the very thing itself, and no form can redress it.

It is, therefore, very probable that mankind would have been, at length, obliged to live constantly under the government of a single person, had they not contrived a kind of constitution that has all the internal advantages of a republican, together with the external force of a monarchical government. I mean a confederate republic.

11:4—Successful governments figure out ways of limiting abuses of power. 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 when there is no abuse of power. But constant experience shows us that every man invested with power is apt to abuse it, and to carry his authority as far as it will go. Is it not strange, though true, to say that virtue itself has need of limits?

Power must be used to check 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.

...

11.6.—Montesquieu divides power in three ways: the power to make laws, the power to engage with foreign nations, and the power to enforce (and interpret) the nation's laws. 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.

Montesquieu further divides the third power (over the application of a nation's laws) between the executive power (to enforce them) and the judiciary power (to interpret the laws when deciding cases between people). 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

CONSTITUTION 101

Module 6: Separation of Powers and Federalism

6.5 Primary Source

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.

Checks on abuses of power creates a moderate government that protects political liberty.

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.

Combining legislative and executive power is the road to tyranny. 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.

Combining the judiciary power with the legislative and executive powers is also the road to tyranny. 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.

***Bold sentences give the big idea of the excerpt and are not a part of the primary source.**