

The Spirit of the Laws

Baron de Montesquieu

A towering monument of Enlightenment political thought, Montesquieu's Spirit of the Laws, published in 1748, would profoundly influence the American founding fathers with its ideal of the separation of powers and its claims about republican government.

PREFACE

I have first of all considered mankind, and the result of my thoughts has been that amidst such an infinite diversity of laws and manners, they were not solely conducted by the caprice of fancy.

I have laid down the first principles, and have found that the particular cases follow naturally from them; that the histories of all nations are only consequences of them; and that every particular law is connected with another law, or depends on some other of a more general extent....

I have not drawn my principles from my prejudices, but from the nature of things.

Here a great many truths will not appear till we have seen the chain which connects them with others. The more we enter into particulars, the more we shall perceive the certainty of the principles on which they are founded. I have not even given all these particulars, for who could mention them all without a most insupportable fatigue? ...

BOOK III: OF THE PRINCIPLES OF THE THREE KINDS OF GOVERNMENT

I. Having examined the laws in relation to the nature of each government, we must investigate those which relate to its principle.

There is this difference between the nature and principle of government, that the former is that by which it is constituted, the latter that by which it is made to act. One is its particular structure, and the other the human passions which set it in motion.

Now, laws ought no less to relate to the principle than to the nature of each government. We must, therefore, enquire into this principle, which shall be the subject of this third book.

II. I have already observed that it is the nature of a republican government, that either the collective body of the people, or particular families, should be possessed of the supreme power; of a monarchy, that the prince should have this power, but in the execution of it should be directed by established laws; of a despotic government, that a single person should rule according to his own will and caprice. This enables me to discover their three principles, which are thence naturally derived. I shall begin with a republican government, and in particular with that of democracy.

III. 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.

What I have here advanced is confirmed by the unanimous testimony of historians, and is extremely agreeable to the nature of things. For it is clear that in a monarchy, where he who commands the execution of the laws generally thinks himself above them, there is less need of virtue than in a popular government, where the person entrusted with the execution of the laws is sensible of his being subject to their direction.

Clear is it also that a monarch who, through bad advice or indolence, ceases to enforce the execution of the laws, may easily repair the evil; he has only to follow other advice, or to shake off his indolence. But when, in a popular government, there is a suspension of the laws, as this can proceed only from the corruption of the republic, the state is certainly undone.

A very droll spectacle it was in the last century to behold the impotent efforts of the English toward the establishment of democracy. As they who had a share in the direction of public affairs were void of virtue; as their ambition was inflamed by the success of the most daring of their members; as the prevailing parties were successively animated by the spirit of faction, the government was continually changing: the people, amazed at so many revolutions, in vain attempted to erect a commonwealth. At length, when the country had undergone the most violent shocks, they were obliged to have recourse to the very government which they had so wantonly proscribed....

The politic Greeks, who lived under a popular government, knew no other support than virtue. The modern inhabitants of that country are entirely taken up with manufacture, commerce, finances, opulence, and luxury.

When virtue is banished, ambition invades the minds of those who are disposed to receive it, and avarice possesses the whole community. The objects of their desires are changed; what they were fond of before has become indifferent; they were free while under the restraint of laws, but they would fain now be free

to act against law; and as each citizen is like a slave who has run away from his master, that which was a maxim of equity he calls rigor; that which was a rule of action he styles constraint; and to precaution he gives the name of fear. Frugality, and not the thirst of gain, now passes for avarice. Formerly the wealth of individuals constituted the public treasure; but now this has become the patrimony of private persons. 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....

IV. As virtue is necessary in a popular government, it is requisite also in an aristocracy. True it is that in the latter it is not so absolutely requisite.

The people, who in respect to the nobility are the same as the subjects with regard to a monarch, are restrained by their laws. They have, therefore, less occasion for virtue than the people in a democracy. But how are the nobility to be restrained? They who are to execute the laws against their colleagues will immediately perceive that they are acting against themselves. Virtue is therefore necessary in this body, from the very nature of the constitution.

An aristocratic government has an inherent vigor, unknown to democracy. The nobles form a body, who by their prerogative, and for their own particular interest, restrain the people; it is sufficient that there are laws in being to see them executed.

But easy as it may be for the body of the nobles to restrain the people, it is difficult to restrain themselves. Such is the nature of this constitution, that it seems to subject the very same persons to the power of the laws, and at the same time to exempt them.

Now, such a body as this can restrain itself only in two ways: either by a very eminent virtue, which puts the nobility in some measure on a level with the people, and may be the means of forming a great republic; or by an inferior virtue, which puts them at least upon a level with one another, and upon this their preservation depends.

Moderation is therefore the very soul of this government; a moderation, I mean, founded on virtue, not that which proceeds from indolence and pusillanimity.

V. In monarchies, policy effects great things with as little virtue as possible. Thus in the nicest machines, art has reduced the number of movements, springs, and wheels.

The state subsists independently of the love of our country, of the thirst of true glory, of self-denial, of the sacrifice of our dearest interests, and of all those heroic virtues which we admire in the ancients, and to us are known only by tradition.

The laws supply here the place of those virtues; they are by no means wanted, and the state dispenses with them: an action performed here in secret is in some measure of no consequence.

Though all crimes be in their own nature public, yet there is a distinction between crimes really public and those that are private, which are so called because they are more injurious to individuals than to the community.

Now, in republics private crimes are more public—that is, they attack the constitution more than they do individuals; and in monarchies, public crimes are more private—that is, they are more prejudicial to private people than to the constitution.

I beg that no one will be offended with what I have been saying; my observations are founded on the unanimous testimony of historians. I am not ignorant that virtuous princes are so very rare; but I venture to affirm, that in a monarchy it is extremely difficult for the people to be virtuous....

VI. But it is high time for me to have done with this subject, lest I should be suspected of writing a satire against monarchical government. Far be it from me; if monarchy wants one spring, it is provided with another. Honor—that is, the prejudice of every person and rank—supplies the place of the political virtue of which I have been speaking, and is everywhere her representative: here it is capable of inspiring the most glorious actions, and, joined with the force of laws, may lead us to the end of government as well as virtue itself.

Hence, in well-regulated monarchies, they are almost all good subjects, and very few good men; for to be a good man, a good intention is necessary, and we should love our country, not so much on our own account, as out of regard to the community.

VII. A monarchical government supposes, as we have already observed, preeminences and ranks, as likewise a noble descent. Now, since it is the nature of honor to aspire to preferments and titles, it is properly placed in this government.

Ambition is pernicious in a republic. But in a monarchy it has some good effects; it gives life to the government, and is attended with this advantage, that it is in no way dangerous, because it may be continually checked.

It is with this kind of government as with the system of the universe, in which there is a power that constantly repels all bodies from the center, and a power of gravitation that attracts them to it. Honor sets all the parts of the body politic in motion, and by its very action connects them; thus each individual advances the public good, while he only thinks of promoting his own interest....

VIII. Honor is far from being the principle of despotic government: mankind being here all upon a level, no one person can prefer himself to another; and as on the other hand they are all slaves, they can give themselves no sort of preference.

Besides, as honor has its laws and rules, as it knows not how to submit; as it depends in a great measure on a man's own caprice, and not on that of another person, it can be found only in countries in which the constitution is fixed, and where they are governed by settled laws.

How can despotism abide with honor? The one glories in the contempt of life, and the other is founded on the power of taking it away. How can honor, on the other hand, bear with despotism? The former has its fixed rules and peculiar caprices, but the latter is directed by no rule, and its own caprices are subversive of all others.

Honor, therefore, a thing unknown in arbitrary governments, some of which have not even a proper word to express it, is the prevailing principle in monarchies; here it gives life to the whole body politic, to the laws, and even to the virtues themselves.

IX. As virtue is necessary in a republic, and in a monarchy honor, so fear is necessary in a despotic government: with regard to virtue, there is no occasion for it, and honor would be extremely dangerous.

Here the immense power of the prince devolves entirely upon those whom he is pleased to entrust with the administration. Persons capable of setting a value upon themselves would be likely to create disturbances. Fear must therefore depress their spirits, and extinguish even the least sense of ambition....

X. In despotic states, the nature of government requires the most passive obedience; and when once the prince's will is made known, it ought infallibly to produce its effect.

Here they have no limitations or restrictions, no mediums, terms, equivalents, or remonstrances; no change to propose: man is a creature that blindly submits to the absolute will of the sovereign.

In a country like this they are no more allowed to represent their apprehensions of a future danger than to impute their miscarriage to the capriciousness of fortune. Man's portion here, like that of beasts, is instinct, compliance, and punishment.

Little does it then avail to plead the sentiments of Nature, filial respect, conjugal or parental tenderness, the laws of honor, or want of health; the order is given, and that is sufficient....

BOOK IV: OF EDUCATION IN A REPUBLICAN GOVERNMENT

V. It is in a republican government that the whole power of education is required. The fear of despotic governments naturally arises of itself amidst threats and punishments; the honor of monarchies is favored by the passions, and favors them in its turn; but virtue is a self-renunciation, which is ever 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; for they are nothing more than this very preference itself.

This love is peculiar to democracies. In these alone the government is entrusted to private citizens. Now, a government is like every thing else: to preserve it we must love it.

Has it ever been known that kings were not fond of monarchy, or that despotic princes hated arbitrary power?

Every thing, therefore, depends on establishing this love in a republic; and to inspire it ought to be the principal business of education: but the surest way of instilling it into children is for parents to set them an example.

People have it generally in their power to communicate their ideas to their children; but they are still better able to transfuse their passions....

BOOK VIII: OF THE CORRUPTION OF THE THREE GOVERNMENTS

XVI. It is natural for a republic to have only a small territory; otherwise it cannot long subsist. In an extensive republic there are men of large fortunes, and consequently of less moderation; there are trusts too considerable to be placed in 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.

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; abuses have less extent, and, of course, are less protected.

The long duration of the republic of Sparta was owing to her having continued in the same extent of territory after all her wars. The sole aim of Sparta was liberty; and the sole advantage of her liberty, glory.

It was the spirit of the Greek republics to be as contented with their territories as with their laws. Athens was first fired with ambition and gave it to Lacedæmon; but it was an ambition rather of commanding a free people than of governing slaves; rather of directing than of breaking the union. All was lost upon the starting up of monarchy—a government whose spirit is more turned to increase of dominion....

BOOK XI: OF THE LAWS WHICH ESTABLISH POLITICAL LIBERTY WITH REGARD TO THE CONSTITUTION

II. There is no word that admits of more various significations, and has made more varied impressions on the human mind, than that of “liberty.” Some have taken it as a means of deposing a person on whom they had conferred a tyrannical authority; others for the power of choosing a superior whom they are obliged to obey; others for the right of bearing arms, and of being thereby enabled to use violence; others, in fine, for the privilege of being governed by a native of their own country, or by their own laws. A certain nation for a long time thought liberty consisted in the privilege of wearing a long beard. Some have annexed this name to one form of government exclusive of others: those who had a republican taste applied it to this species of polity; those who liked a monarchical state gave it to monarchy. Thus they have all applied the name of liberty to the government most suitable to their own customs and inclinations: and as in republics the people have not so constant and so present a view of the causes of their misery, and as the magistrates seem to act only in conformity to the laws, hence liberty is generally said to reside in republics, and to be banished from monarchies. In fine, as in democracies the people seem to act almost as they please, this sort of government has been deemed the most free, and the power of the people has been confounded with their liberty.

III. It is true that in democracies the people seem to act as they please; but political liberty does not consist in an unlimited freedom. In governments, that is, in societies directed by laws, liberty can consist only in the power of doing what we ought to will, and in not being constrained to do what we ought not to will.

We must continually present to our minds the difference between independence and liberty. Liberty is a right of doing whatever the laws permit, and if a citizen could do what they forbid, he would be no longer possessed of liberty, because all his fellow citizens would have the same power.

IV. 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?

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....

VI. 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 tranquillity 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 these three powers: that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals....

As in a country of liberty, every man who is supposed a free agent ought to be his own governor; the legislative power should reside in the whole body of the people. But since this is impossible in large states, and in small ones is subject to many inconveniences, it is fit that the people should transact by their representatives what they cannot transact by themselves.

The inhabitants of a particular town are much better acquainted with its wants and interests than with those of other places; and are better judges of the capacity of their neighbors than of that of the rest of their countrymen. The members, therefore, of the legislature should not be chosen from the general body of the nation; but it is proper that in every considerable place a representative should be elected by the inhabitants.

The great advantage of representatives is their capacity of discussing public affairs. For this the people collectively are extremely unfit, which is one of the chief inconveniences of a democracy....

The executive power, pursuant of what has been already said, ought to have a share in the legislature by the power of rejecting, otherwise it would soon be

stripped of its prerogative. But should the legislative power usurp a share of the executive, the latter would be equally undone.

If the prince were to have a part in the legislature by the power of resolving, liberty would be lost. But as it is necessary he should have a share in the legislature for the support of his own prerogative, this share must consist in the power of rejecting.

The change of government at Rome was owing to this, that neither the Senate, who had one part of the executive power, nor the magistrates, who were entrusted with the other, had the right of rejecting, which was entirely lodged in the people.

Here, then, is the fundamental constitution of the government we are treating of. The legislative body being composed of two parts, they check one another by the mutual privilege of rejecting. They are both restrained by the executive power, as the executive is by the legislative.

These three powers should naturally form a state of repose or inaction. But as there is a necessity for movement in the course of human affairs, they are forced to move, but still in concert.

As the executive power has no other part in the legislative than the privilege of rejecting, it can have no share in the public debates. It is not even necessary that it should propose, because as it may always disapprove of the resolutions that shall be taken, it may likewise reject the decisions on those proposals which were made against its will ...

To prevent the executive power from being able to oppress, it is requisite that the armies with which it is entrusted should consist of the people, and have the same spirit as the people, as was the case at Rome till the time of Marius. To obtain this end, there are only two ways: either that the persons employed in the army should have sufficient property to answer for their conduct to their fellow subjects, and be enlisted only for a year, as was customary at Rome; or if there should be a standing army, composed chiefly of the most despicable part of the nation, the legislative power should have a right to disband them as soon as it pleased; the soldiers should live in common with the rest of the people; and no separate camp, barracks, or fortress should be suffered....

BOOK XIV: OF LAWS IN RELATION TO THE NATURE OF THE CLIMATE

I. If it be true that the temper of the mind and the passions of the heart are extremely different in different climates, the laws ought to be in relation both to the variety of these passions and to the variety of these tempers.

II. Cold air constringes the extremities of the external fibers of the body; this increases their elasticity, and favors the return of the blood from the extreme parts to the heart. It contracts those very fibers; consequently it increases also

their force. On the contrary, warm air relaxes and lengthens the extremes of the fibers; of course, it diminishes their force and elasticity.

People are therefore more vigorous in cold climates. Here the action of the heart and the reaction of the extremities of the fibers are better performed, the temperature of the humors is greater, the blood moves more freely toward the heart, and reciprocally the heart has more power. This superiority of strength must produce various effects: for instance, a greater boldness—that is, more courage; a greater sense of superiority—that is, less desire of revenge; a greater opinion of security—that is, more frankness, less suspicion, policy, and cunning. In short, this must be productive of very different tempers. Put a man into a close, warm place, and for reasons above given he will feel a great faintness. If under this circumstance you propose a bold enterprise to him, I believe you will find him very little disposed toward it; his present weakness will throw him into despondency; he will be afraid of everything, being in a state of total incapacity. The inhabitants of warm countries are, like old men, timorous; the people in cold countries are, like young men, brave. If we reflect on the late wars, which are more recent in our memory, and in which we can better distinguish some particular effects that escape us at a greater distance of time, we shall find that the northern people transplanted into southern regions did not perform such exploits as their countrymen, who, fighting in their own climate, possessed their full vigor and courage.