

**RATIONAL STRUCTURES OF POLITICS IN
MONTESQUIEU'S *THE SPIRIT OF THE LAWS*.
PART I: THE KEY ELEMENTS
LEGITIMATING THE POWER AND ITS SOURCES**

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Abstract: In *The Spirit of the Laws*, Montesquieu tried not to discuss about laws, but in fact, about the type of power hiding behind them. Inspired by Plato and Aristotle, he built his own vision on the palingenesis of the political forms and of the principles governing them. Baron de La Brède started from ideas, from spiritual structures, that have the role to create certain social behaviors, and identified three types of government forms, each characterized by its own nature and principle: monarchy, democracy, and despotism. The French philosopher tried to understand, besides the principles ensuring the nature of each government, the key elements legitimating the power and also its sources. The monarchy is seen by Montesquieu as the most suitable regime, for his time, to rule free societies. The aristocracy helps to the maintenance of freedom in royalty by resisting to any attempt of the crown to exceed its constitutional prerogatives. The transition from one form of government to another is done because of the alteration of principles. Democracy is maybe the most exposed to alteration as its excess of freedom leads to the affirmation of the spirit of endless equality that makes everybody wanting to be the equals to the rulers. Montesquieu sees no other solution to replace the degraded forms of political organization than *the confederative republic*. Such a political organization would answer the need for permanent political flexibility.

Keywords: government forms, degradation of democracy, confederative republic, political phenomenon

In the 18th century, the new tendencies of the modernity reach a peak. At the time of the French Enlightenment, the scientific and philosophic revolution of the preceding century matures and the new idea of the infinite progress of knowledge and of a continuous progress towards a

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better and more moral world imposes itself. The universalist foundations of moral and justice are being concretely developed and applied to the political and social life.

The instrumental use of reason, with the purpose of ruling the world for the individual and collective good, imposes itself as one of the characteristics of modernity. René Descartes discovered the reason and applied it to the Metaphysics, thus founding a rational theology, then he extended the reason to science and thus revolutionized Ptolemy's Mechanics; using reason, he transformed Physics into Mathematical Physics, united Algebra and Geometry in order to create Analytical Geometry, and laid the foundation of rational Psychology. His ambition was the creation of a moral, a *more geometrico* ethics, but fearing it would contradict the Church, as he had already set out the concept of *mathesis universalis* for which he had been criticized, he gave up the idea. Spinoza will be the one to succeed in building a rational ethics representing the premises of the interhuman relationships rationalization and thus of the political field, although people are unpredictable. His attempt was fascinating and his project is found in *Tractatus Theologico-Politicus* (*Theologico-Political Treatise*), where the state is ruled by the Church and the monarch, and in *Tractatus Politicus* (*Political Treatise*), where the state is ruled by laws, Parliament and constitution. Spinoza's ideas influenced John Locke, who, in *The Second Treatise of Government*, rationalized the political field and discovered that the key to all rational government mechanisms is the separation of powers in a state: legislative power, executive power and the judiciary power. Montesquieu is one of the most important representatives of the French Enlightenment, known as the one who has reconfigured the political thinking of the first half of the 18th century, resuming, in his work, all the previous and contemporary political theories. In *The Spirit of Laws*, Montesquieu took over John Locke's ideas and processed the three concepts that the British philosopher had already foreseen half a century earlier, defined them and stated that the separation of powers must accompany the balance among them.

We must remind the fact that by the end of the 17th century, the tradition of political ideas opposed two opposite tendencies: a historical one, limiting the state by the state's custom and institutions, as well as the rights of certain social categories, and an absolutist one, based on the interest in Machiavelli's political theory, on force, in Hobbes' case, on divine will for Bossuet, but in all three cases the

individuals were supposed to obey to authority. Whatever the divergence among these three philosophers, they set as principle the usefulness of the state crowned in its sovereign, which is a rational principle, implying the subordination of the individuals. On the other hand, there are other philosophers such as Grotius, Spinoza, Puffendorf, Locke and Fénelon, who conceived a natural right of the individual that has been previous to the state and that the state should respect it.

In the 18th century the problem of establishing a way of thinking was not an issue any longer, as it already existed. The challenge was the building of a philosophy, and finally, of a procedure to practically apply it. In opposition with the historical and absolutist doctrines, a new conception appeared, that we could call humanist, and which considered the individual in himself, in his human, eternal, condition, independent of any historical transformation, of any state form. In Montesquieu's political theories there is a mixture of historical and humanist conceptions, the French philosopher being the one who has granted the biggest importance to the human dignity that must be preserved in all the state institutions. He considers, at the same time, that man cannot be separated from his geographical and historical environment. In an impeccable manner, Montesquieu proved through his ideas that the politics in modern societies cannot be done against the citizen, but together with them.

Charles-Louis de Secondat, Baron de La Brède et de Montesquieu (1689-1755) was born in a small aristocratic family, in France, during the reign of the Sun King, and maybe, as a sign of deep respect for their sovereign, his parents gave him the name of their king, Louis. Montesquieu was born in the year of the foundation of modern parliamentary English democracy enforced by the *Bill of Rights*. The most important aspects of this form of government will be described in *The Spirit of the Laws* as a freedom system anyone should aim at. 1689, the year of Montesquieu's birth, reminds us that he belongs to the generation of those young men who understood that England, seen from France, represented a country governed in a different manner than the rest of Europe.¹ Much later, in 1748, at the age of 59, Charles-Louis de Montesquieu became the defender of aristocracy as an instrument of freedom by his work *The Spirit of the Laws* (*Esprit des*

¹ C. P. Courtney (2001). *Montesquieu and English Liberty*, in: *Montesquieu's Science of Politics: Essays on The Spirit of Laws*, ed. by David W. Carrithers, Michael A. Mosher, and Paul A. Rahe, Lanham: Rowman & Littlefield Publishers, p. 273.

lois) . Until then, he was known as a praised novelist, being already the author of the famous *Lettres Persannes (The Persian Letters, 1721)*, a work that had initially shocked its readers through the critical analysis of the French society under the Regency, but also as a well documented historian, after he had published *Considerations on the Causes of the Grandeur and Decadence of the Romans (Considérations sur les causes de la grandeur et de la décadence des Romains)* in 1734. Montesquieu wanted to assert himself also as a political thinker and he worked for almost 20 years, as he stated in the *Preface* of the 1748 edition, to realize his brilliant treatise *The Spirit of the Laws*: „many times I have started and many times I have abandoned this work, many times I have thrown away the pages I had written; ... but when I discovered my principles, all that I was looking for presented itself to me; and for twenty years, I have seen my work starting, growing and ending”.² If the author considered that the beginning of his work must be researched 20 years earlier, we can easily guess that the debut year of this impressive treatise must be 1728. It is the year when, freshly appointed member of the French Academy, Montesquieu traveled through the Habsburg Empire (visiting Austria and Hungary), and then he reached Italy, visiting Venice and Rome, where he spent six months. He left Italy for Switzerland, and then up to Northern Germany and Holland. From 1729 to 1731, Montesquieu lived in England, the country of the *Magna Charta*, of the *Petition of Right* and of the *Bill of Rights*. In those three years of living in London, he made influent friends, who introduced him to the English Constitution and the political ideas of John Locke. During his habitation in London, he was elected Member of the *Royal Society* and became a freemason, having been initiated in 1730 in the „*Horn Tavern*” *Lodge of Westminster*.³

While travelling through Europe he realized all sorts of observations on the government forms of the peoples he had visited, making comparisons among them. He researched old documents and discovered the reality of times long gone. When Montesquieu came back in France, he was in fact a whole new person being endowed with a universalist vision and connected with the thinkers and scientists of

²Montesquieu, *The Spirit of the Laws*. Romanian translation (1964): *Despre spiritul legilor*, vol. I, Bucharest: Scientific Publisher's House, p. 7.

³ Luc Nefontaine (1993). *Francmasoneria*, Bucharest: Diogene Publisher's House, p. 29.

the entire continental Europe and England.⁴ He started to reflect at themes that would later take the shape of his two most important works: *Considerations on the Causes of the Grandeur and Decadence of the Romans* and *The Spirit of the Laws*.

Inspired by Plato and Aristotle, Montesquieu built in *The Spirit of the Laws* his own vision on the palingenesis of the political forms and of the principles governing them. The French philosopher is a true prophet of the politics, basing his knowledge of the social phenomenon both on the idea and on concrete, sensible determinations such as weather. *The Spirit of the Laws* presents itself as a big fiction in which the most complex situations corresponding to different forms of government in the world are being imagined. The characteristics of this masterpiece work are the vast classical culture of Montesquieu, his visionary power that offered him the possibility of creation in an imaginary space that developed in extended spaces and centuries, and, at the same time, his literary talent. The aim of *The Spirit of Laws* was to show that positive laws were not arbitrary, but, on the contrary, that there was a certain logic behind them. Montesquieu investigated, as it stated in the subtitle of the treatise, „the relationships that laws should have with the constitution of each government, as well as with its ethics, weather, religion, trade and so on”. He rationalized the political field, but also the juridical one, proving it from the beginning of the treatise as he defined the law as: „human reason when it governs all peoples on earth, and the political and civil laws of each people should not be other than particular cases to which this human reason is applied”.⁵

The first part, consisting of eight books, of *The Spirit of Laws*, develops a typology of the political systems and presents their structural differences⁶. In a Platonic and Aristotelian inspired manner, the French thinker seeks for understanding the political phenomenon starting from ideas, from spiritual structures, that have the role to create certain social behaviors. He identifies three types of government forms, each characterized by its own nature and principle. By „nature” of the government he understood strictly the structure that „makes it

⁴ Melvyn Richter (1977). *The Political Theory of Montesquieu*, Cambridge: University Press, p. 15.

⁵ Montesquieu, *op. cit.*, p. 17.

⁶ Annelien de Dijn (2008). *French Political Thought from Montesquieu to Tocqueville: Liberty in a Levelled Society?*, Cambridge: University Press, p. 21.

what it is”⁷, that the environment in which the person or the group having the power must function; by „principle” he means „what makes it act”, „the human passions that move it”⁸, that should animate those involved in any type of form of government if this should operate at its maximum parameters. By their „nature”, governments group into three categories. A *republic* is the form in which the people, as a whole (democracy) or certain families (aristocracy) hold the reigning power. A *monarchy* is that in which a prince rules according to established laws that create intermediate groups communicating to the people the royal power. Examples of such intermediate groups are presented by Montesquieu as local law enforcement doing the administration, the Parliaments having political functions, a clergy having its recognized rights and the cities with historic privileges. The *despotism* is the unlimited reign of a single person, ruled only by his fancies and wills.

There are, on the other hand, three principles determining the political phenomenon: honor, virtue (*political virtue*, as the author underlines in his „Foreword”⁹, in order to distinguish it from moral or Christian virtue) and fear. Monarchy is the fruit of honor, aristocracy of virtue, and despotism of fear. In despotic government honor is dangerous and virtue - unnecessary.

The French philosopher tried to understand, besides the principles ensuring the nature of each government, the key elements legitimating the power and also its sources. The monarchy is seen by Montesquieu as the most suitable regime, for his time, to rule free societies. In royalty, the power is legitimate by divine will as it gives autonomy to the king who appoints state employees. Honor is the quality having to rule in the relationships between a king and his subjects. The king respects his subjects, and the subjects – as honorable persons – respect their state. Once the honor is lost, he/she can no longer function inside the system. Honor is based on *esprit de corps*, the sense of belonging to a special group asking and obtaining certain privileges. When such privileges are warranted by the monarch, the aristocracy of a monarchy is recognized as a semi-autonomous, intermediate group between the king and the people. The aristocracy, said Montesquieu - a nobleman himself-, helps to the maintenance of freedom by resisting to any attempt of the crown to exceed its

⁷ Montesquieu, *op. cit.*, p. 31.

⁸ *Ibidem*

⁹ *Ibidem*, p. 3.

constitutional prerogatives. The French philosopher summarized the fact that aristocracy is essential in a monarchy, as opposed to the despotism, by the phrase: „Without a monarch, there is no aristocracy: without aristocracy, there is no monarchy”.¹⁰

The republican oligarchy, emphasized Montesquieu, legitimates its power by free elections coming to test the aristocrats' will of power and virtue. Free elections are the favorite instrument of the oligarch in order to come to power. Firstly, the power acquires a large legitimacy from the people, who elect its representatives to rule their destinies, and, surely, the positions will only be occupied by the very rich men who have the power to buy and manipulate the votes. The quality dominating such a society is virtue, in the full meaning of the word, implying *vir*, signifying masculinity, force, courage, shown by those who, by means of elections, get to the power positions in a state.

Authentic democracy is extremely rare, apparently it has been known only to the Greek antiquity, especially the state-city of Athens. The principles defining a perfect democracy call for an absolute equality among the citizens and the mechanisms of acceding to power is to draw. In other words, democracy is largely hazard bound. Such a government is mostly characterized by the lack of coherence, corruption and annihilation of all value criteria. It was the era Socrates couldn't stand precisely because the experts, professionals, had been replaced by simple citizens, and the politics was reduced to the loud decision of the masses manipulated by unscrupulous demagogues. When for every decision in the state a sticks referendum is needed, the faith of that particular state can become pathetic.

Despotism legitimates the power by force. In despotism no law matters any longer, as it would limit the power of the ruler. The most absurd commands of the despot become laws. The irrational, the absurd, and the fear become the characteristics of such a society. As in the case of the two other types of government, despotism is ruled by one operative passion, in this case fear.

Summarizing, we might have four representative situations for the political organization, as in the table below:

¹⁰ Ibidem, p. 27.

Type of government	Ruler	Elements legitimating the power	Motivational principle	Sources of evil
A. Monarchy	The prince alongside the aristocracy	Authority given by the divinity occupied a position based on the heredity	Honor	The evil comes from God
B. Republic				
1. Oligarchy	The oligarch aristocratic group	Authority born out the human will of a privileged group (constituting itself in intermediate groups: parliament, local justice, clergy, cities with historical privileges)	Political virtues (in order to distinguish them from Christian or moral virtue) ¹¹	The evil comes from a few people who can be changed with the occasion of the coming elections
2. Democracy	The entire people	The will of the majority or, why not, in certain cases, of all people		The evil comes from everywhere and nowhere
C. Despot government	The despot	Authority is sustained by the will and fancies of a single man and by force	Fear	The evil becomes a natural omnipresent state

¹¹ Ibidem, p. 3.

In his famous treatise, Montesquieu tried not to discuss about laws, but „about the spirit of laws, and this spirit consists of the different rapports the laws can have with different things”.¹² For Montesquieu, the laws must adapt to the government, and their spirit is given by the nature of power. The Spirit of Laws is, in fact, the type of power hiding behind them.

In the spirit of *L'Académie française*, whose member he had been elected in 1728, Montesquieu considers that the most important laws are those concerning education, whose purpose is the integration of the young people into the big family that is civil society.¹³

In monarchy, education starts in the family and is related to its authority as long as the king wants to be seen as a father of the country, like Moses. The child learns about honor and respect. Honor imposes as a *Golden Law* to value more our position than our life. A second rule, we might say *the Silver Law*, demands that one should not do things incompatible with one's rank. And a third, let's say *the Steel Law*, is that honor is above the laws, those protecting life being included. This idea will be brilliantly found in the last phrase of the *Declaration of Independence of the United States of America*, where the agreement to respect the citizen rights is enhanced by the honor of the signatories, which implies something more than prosperity or even life, that being the supreme value justifying the gravity of the commitment. Reminding the divine providence, the signatories spoke about the meaning of the monarchy to which honor represented the sacred element of the politics.

In the despotic regime, the spirit of servility implies blind submission, and education has the purpose to plant the seeds of fear in ignorant hearts, who must only acquire some elementary principles of religion.

Montesquieu considered that his era was witnessing a paradox unknown to the ancient, namely that there was a contrast between religious and profane duties, and the consequence was the fact that education in families and school did not exist in everyday life.

In the republic, education can prove its full power through the cultivation of the love for the laws and the country in the young hearts and this can be done only by subordinating self interest to public

¹² Ibidem, p. 17.

¹³ Ibidem, p. 44.

interest.¹⁴ The French philosopher is enthusiastic faced with an education based on the elite's right to lead for the good of those who are led. He offers the example of the successes of the Jesuits in Paraguay, where they managed to inspire to the Indians a spirit where religion and humanity mixed together. For those trying to create similar institutions, Montesquieu recommends Plato's *Republic*, the reference text to what an enlightened leadership for the benefit of all means. They will suppress the money that only tends to increase the wealth of men above the limits fixed by nature, to teach people to unnecessarily keep all they needlessly gathered, to endlessly multiply their wishes and to add to nature, which has given us limited means, to awaken our passions and to corrupt each other".¹⁵ We see in this fragment of the chapter dedicated to education a tendency towards a totalitarian society in which the control and monitoring of the society has the purpose of achieving equality in poverty.

The 7th chapter of the *Book IV*, following these considerations on societies with firm commandments, treats about the situations of what kind of government might be good. The conclusion is that neither monarchies, nor despotic regimes need such egalitarian practices, but only small republics built on the principle of virtue. Large states cannot be controlled in a beneficial manner by these practices implying a large degree of rationality and control. The transition from one form of government to another is done because of the alteration of principles. When in a society the principles are affected, they attract a whole range of changes. Democracy is maybe the most exposed to alteration as its excess of freedom leads to the affirmation of the spirit of endless equality that makes everybody wanting to be the equals to the rulers. In the paroxistic form of this degradation the lowest condition in society is preferable to that of the leaders. Montesquieu reminds us about the speech of Charmides in Xenophon's *Banquet* that remains memorable as it praises the poor man status. He confesses that, when he was rich, he needed to flatter those who could do him harm, and, besides, he had to permanently participate with money for the sake of the republic and, what's worse, he had lost his freedom, not being able to leave anywhere. Poverty brought him power as no one is threatening him any longer; on the contrary, he gained the power to threaten others, he can leave or stay as he wants, without having to fear robbery. His last

¹⁴ Ibidem, p. 49.

¹⁵ Ibidem, p. 52.

words are memorable: “I am a king, I was a slave, I was paying a tribute to the republic, now the republic feeds me, I’m no longer afraid I might lose something, I hope to win”.¹⁶

Plato follows Xenophon in describing the degradation of democracy. In *Republic*, we can see a dark image of a world losing all contact with its founding principles. In such a democratic city, rulers could get punished if they stopped being excessively kind. Misunderstood freedom could sneak into people’s homes, teaching the father to be equal with his child and to fear his sons, like Strepsiades in Aristophanes’ *Clouds*, the stranger would be equal to the citizen, the teacher would fear his students, and students would despise their teachers and pedagogues. Moreover, young people would pretend to be old and compete with aged men, no contract would function in the relationships between spouses and dissipation would reign, and animals might get more rights than humans.¹⁷ This stage of the degradation of democracy is characterized by general corruption. For Montesquieu, an authentic democracy well anchored by its principles must keep watching for two main dangers: first, the spirit of inequity must be avoided, as it leads to aristocracy, but most of all, the spirit of extreme equality must be avoided, as it ends in demagogy.¹⁸

Aristocracy declines when the nobility becomes hereditary, as it loses its strength and gives way to corruption. Monarchy denaturalizes when the monarch, who should be a sort of referee supervising social life, exceeds his powers, wanting to rule by himself, without intermediaries. On the other hand, a monarchic state should have an average size. With the increase in size, it creates the necessary conditions for the apparition of despotic authorities, capable to rule not by discrete supervision, but by intervention and energetic presence of the centre to everywhere. Montesquieu reminds to his readers about the Chinese Empire as being the state that apparently had acquired an imperial and despotic vocation in an exemplary manner. The Jesuit sources of information come into play but tended to be biased to the Asian model of organization that already have had a tradition and age overwhelming those of young European empires. “Our missionaries tell us about the vast Empire of Chine as of a wonderful government, which combines in its principle: fear, honor and virtue. As such, the

¹⁶ Ibidem, p. 142.

¹⁷ Plato, *The Republic*, 562d-563d.

¹⁸ Montesquieu, *op. cit.*, pp. 143-144.

distinction drawn by me between the principles of the free forms of government would be unfounded".¹⁹ However, the great philosopher insists that, against all appearances and the real fascination of the Jesuits for the Chinese Empire, what really ruled China were fear, hunger, theft, violence and infanticide.

Montesquieu sees no other solution to replace these deteriorated forms of political organization than *the confederative republic*. Such a political organization would answer the need for permanent political flexibility. For the French thinker there is no absolute form of government, but a permanent adaptation from one form to another, depending on specific situations in which people inhabit. The advantage of a confederative republic is that internally it can be organized as a republic, and externally it can act as a monarchy, thus being flexible on the inside and extremely firm in the decisions concerning the outside. In antiquity, the model of a confederative republic was first given by Ancient Greece, followed, on the size of a universal empire, by Alexander's Empire, in which he kept the territorial, religious and political autonomy of the conquered spaces. The idea of a confederative republic was a success in the following centuries and was represented by The Holy Roman Empire (*Imperium Romanum Sacrum*) that existed from 962 to 1806 in Europe and the Arab Islamic Caliphates that comprised the Muslim community and the lands and peoples under its dominion including most of Southwest Asia, North Africa, and Spain, between 632 and 1258. Closer to us, the United States of America, considered to be founded on July 4, 1776, when the *Declaration of Independence* was signed, is the first state organized on such a federative structure, followed by the Union of Soviet Socialist Republics and the Federal Republic of Germany in the 20th century, but Alexander's project is actually brought back to life by the European Union of the 3rd millennium.

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¹⁹ Ibidem, p. 159.

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