

**RATIONAL STRUCTURES OF THE POLITICS
IN MONTESQUIEU'S *THE SPIRIT OF THE LAWS*
PART II: THE SEPARATION OF THE THREE
STATE POWERS –
THE ESSENCE OF CITIZENS' LIBERTY**

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Abstract: One of Montesquieu's major theories established in *The Spirit of the Laws* is the separations of powers, according to which there are three kinds of powers in a state: legislative, executive and judiciary which must be separated, but, at the same time, kept in balance in order to guarantee the freedom of the individual. In support of the deist theory, Montesquieu considered that the separation of the powers would be the magical condition that would make society to function on itself, as an autonomous mechanism, fixing itself, without the need of external intervention, being inspired by an invisible power. Montesquieu, like Voltaire, was the pioneer of introducing the deism in France as a consequence of the fact that he had entered in contact with the English space. His major work, *The Spirit of the Laws*, influenced the elaboration of constitutions in numerous countries and was chosen as a starting point in drafting the *Constitution of the United States of America* by which the leaders of the American Revolution wanted a free, republican and confederate country.

Keywords: separation of state powers, deism, political liberty, social equilibrium, spirit of the laws

Montesquieu considers that the states resist as long as they accomplish certain functions. The function creates the organ, as Aristotle said, and this is a perfectly valid principle in the field of politics, where the purpose is in fact the invisible force that bonds people in the invisible thread of everyday interests. One of the important subjects treated by Montesquieu in *The Spirit of the Laws* is that of the reason to belong to a state, or, better yet, the

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purpose justifying its creation. By analyzing and comparing numerous governments from the past or contemporaries to him, the French thinker identifies the common goal of all states. He recognizes their tendency for „preservation”, but, on the other hand, he notices that they have an amazing variety of „particular” objects: „expansion of its borders was the object of Rome; war, that of Lacedemonia; religion, that of the Jewish laws; commerce, that of Marseille; public tranquility, that of the laws of China: navigation , that of the laws of Rhodes; natural liberty is the object of the policy of the Savages; as a rule, the pleasures of the prince represent the object of the despotic states; the glory of the prince and of the state, that of the monarchies; the independence of any individual is the goal of the laws of Poland”.¹ Baron de la Brède et de Montesquieu admires unconditionally the English nation and the philosopher treats it separately, especially because the „direct object of the state organization” is „political liberty”², the central idea of his discourse. Moreover, there are other goals, imposed by the strict geographical position and by the weather conditioning the flora and fauna of some areas. Thus, certain states have the goal of protecting some fertile fields, opened to the sea, as in China’s case; others protect the great commercial routes linking North to South and East to West following the beds of great rivers; other states survive as meeting place for great civilizations, buffer and commercial exchanges zones; and others are island opened to the entire world, but preserving their identity especially because of the fact that their territory is surrounded by waters.

The chapter „On the Government of England” presents one of Montesquieu's major theories established in *The Spirit of the Laws* that is the separations of powers, according to which there are three kinds of powers in a state: legislative, executive and judiciary, for whom the philosopher gives explicit definition: “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

¹ Montesquieu (1964). *The Spirit of the Laws*. Romanian translation: *Spiritul Legilor*, Vol. I, Bucharest: Scientific Publisher's House, pp.194-195

²*Ibidem*, p.195

against invasions. By the third, he punishes criminals, or determines the disputes that arise between individuals”.³

These three powers must be separated, but, at the same time, kept in balance in order to guarantee the freedom of the individual. In support of the deist theory, Montesquieu considered that the separation of the powers would be the magical condition that would make society to function on itself, as an autonomous mechanism, fixing itself, without the need of external intervention, being inspired by an invisible power. Montesquieu and Voltaire are actually the pioneers of introducing the deism in France as a consequence of the fact that they had acquired in contact with the English space. Maybe not accidentally, from this point of view, both Montesquieu and Voltaire have been linked to the British freemasons.

First of all laws must be impersonal; nothing should allow the interference of an arbitrary will in the foundation of the laws ensuring the good functioning of the society. The laws must be the product of a Parliament, established as rational instance creating laws without having the power to apply them. According to the deist spirit, the Creator of the mechanism, in this case, the laws, once he sees his work completed, „he can go to bed”. The executive is the power that applies the laws, strictly supervising the functioning of the society, without pondering if they were good or bad. The judiciary power simply punishes when the laws are broken. Wishing for his readers to understand his message, Montesquieu often uses eloquent examples. In order to argument the need for a separation of the three powers for the proper functioning of the state and to the citizen to be free, the philosopher appeals to almost mathematical demonstrations: "There is no... liberty, if the judiciary power is not separated from the legislative and the executive powers. If it (judiciary power) would be combined with the legislative power, the power over the citizens' life and freedom would be arbitrary, as the judge would also be a legislator. If it (judiciary power) would be combined with the executive power, the judge would have the force of an oppressor. All would be lost if the same man, or the same group of leaders, aristocrats or people, would exercise those three

³ *Ibidem*

powers: the one to make laws, the one to put them to practice and the one to judge crimes or litigations between individuals".⁴

Montesquieu tries to offer solutions for a better functioning of the state. He asserts that the Parliament should always be capable of offering new laws. It would be a disaster if there would be a perfect Parliament that would create an eternal set of laws, given once and for all, for then that institution should close its gates forever, and at one moment the executive and juridical powers could lose the contact with the reality born out of the everyday life, which only a mobile legislative frame, always oriented towards concrete situations can have in view, establishing a despotism of the tradition that can finally ruin the state.

The French thinker thought Persia to be the mother of all monarchies. Greek antiquity did not know anything similar and even made desperate efforts not to fall under the incidence of such a government. In Europe, the real change that led to the premises of the apparition of monarchies produced itself with the Roman Empire. At the end, Rome became a monarchy of hereditary right and, in this respect, Montesquieu reminds us of Tarquinius, a monarch who became a despot and no longer needed the Senate and the people to rule, but simply "took the crown as a hereditary right; exterminated most of the senators; no longer consulted the remaining ones and didn't even call them to judge together.... He would have embodied all three powers"⁵, but the people sanctioned him by removing him.

Anticipating in an exemplary manner Hegel's philosophy of history, Montesquieu treats the problem of freedom in *The Spirit of the Laws*. In fact, monarchy was analyzed from the point of view of a government structure that made freedom to be inhibited, senseless, giving way to honour and duty - supreme values that subordinated all other human aspirations.

The text of *The Spirit of the Laws* must be placed in the context of the time when the treatise was written. It was the Age of Enlightenment, the Age of Reason, reflecting moral and economical transformations. Philosophers asked themselves: which type of government - the republic, the monarchy or the despotism - was the proper one to express all the changes,

⁴ *Ibidem*, p.196

⁵ *Ibidem*, p.213

including those at individual level, who wanted now to be a free man. But, *What is liberty?* Montesquieu asks himself. The answer was already prepared: "Political liberty does not consist in an unlimited freedom"⁶ and he recognizes that there are two entities: "political liberty in its relationship with the constitution"⁷ and "political liberty in its relationship with the citizens"⁸.

In order to analyze the substance of the political liberty in its rapport with the government, he defines it first: "Liberty is a right of doing whatever the laws permit".⁹ As such, a constitution must be elaborated so that "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".¹⁰ In its relationship with the constitution, political liberty is given by "a certain distribution of the three powers".¹¹ Montesquieu contrasts two important monarchies in Europe: the English one, whose object is liberty, and the French one, that seeks glory, but the French thinker underlines the fact that from this glory can be born a spirit of liberty that could contribute to the citizens' happiness, as much as British freedom.¹² Montesquieu's point of view is that political liberty can be achieved by establishing competing power centres, so that no individual or group of individuals could be able to exercise the dominant power. "In order not to have the possibility of abusing power, the power must be defeated by power, by established law".¹³ He talks about the division or the separation of powers as an essential guarantee of liberty. Montesquieu does not firmly associate political liberty with one type of government, but concludes that it can be achieved by a variety of forms of government, as long as they are moderate governments. He asserts that governments can be republics, monarchies or mixed forms, but they must be characterized by the existence of a balance, of harmony among the three powers.

⁶ *Ibidem*, p.193

⁷ *Ibidem*, p.192

⁸ *Ibidem*

⁹ *Ibidem*, p.193

¹⁰ *Ibidem*, p.194

¹¹ *Ibidem*, p.231

¹² *Ibidem*, p.207

¹³ *Ibidem*, p.194

"Of the laws that form political liberty, in relation to the subject" or "Political freedom in its relationship with the citizens" is the subject of Book XII of *The Spirit of the Laws* in which the philosopher operates with a distinction between philosophic and political liberty. "Philosophic liberty consists in the free exercise of the will; or at least .., in an opinion that we have the free exercise of our will... Political liberty consists in security, or, at least, in the opinion that we enjoy security".¹⁴ The citizen cannot be considered free if he doesn't feel safe, and this is what he claims from the laws and the state that have to guarantee his safety. "The political liberty of the subject is a tranquility of mind arising from the opinion each person 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".¹⁵ Thus civil freedom depends on the safety of the citizen.

For the citizens to be free, we must have what we now call the "rule of law", as the best rules to be followed in penal trials interest people more than anything in the worl¹⁶. In Montesquieu's point of view, civil freedom is achieved only if reason is put to work¹⁷ because it can provide protection to the individuals from the huge power of the state.

Among the numerous elements troubling the calm or the safety of the state, which, for the philosopher, represents the ideal social mechanism, whose aim is to fix itself, there are a few perturbation sources determining all others as primary causes. A first evil is born out of the belief that people have the power to avenge divinity. Or our mission is to worship divinity, not to avenge it; such an act would only demonstrate a huge vanity, causing perdition by the destruction of what can be called the *natural cohabitation with others*. Montesquieu offers us, in this respect, the monstrous example of some knights, who, by being barbarically overzealous, decided to climb the scaffold where the executioner was skinning alive a Jew, considered a heretic, to take over the "sacred" task of skinning by which they had the "noble" mission to avenge the honour of the Holy Virgin. Secondly, a perturbation of the social mechanism is born out of disobeying the

¹⁴ *Ibidem*, p.232

¹⁵ *Ibidem*, p.195

¹⁶ *Ibidem*, p.232

¹⁷ *Ibidem*, p.233

good morals or what can be called the *common sense of social life*. Thirdly we have the *crimes related to the citizen's peace*. And finally the grave perturbations caused by *abductions and rapes*.¹⁸

In the category of perturbations of the social balance we also have, at certain eras, the epidemic of imaginary crimes. In this context we can place the witchcraft, the evil eye, the magical practices or astrology, which can become overnight sources of repression for isolated individuals or entire communities. To these, we can add: crimes of heresy, sodomy, excess in interpreting *lese majesty* - as in China, senseless words, texts such as pamphlets, and all these can cost the life of the protagonists¹⁹.

Trying to understand the nature of the spirit of liberty, Montesquieu reaches a troubling conclusion: there are places where slavery can be considered natural. He offers several examples of people offering their services on a big market of slaves, freely accepting this humble condition that they prefer to freedom. "Mr. Perry says that the Muscovites sell themselves very easily. And I know very well why: their liberty is not worth keeping. At Achim everyone is trying to sell himself. Some of the most important aristocrats have not less than a thousand slaves, all principal merchants, who have a great number of slaves themselves, and these also are not without their slave; they are acquired by succession and are brought to the market".²⁰ This form of slavery is however a mild one, based on the fact that, most of the time, slaves chose their master, offering their services. The French philosopher notices that, where the government is a despotic one, liberty can become dangerous for its owner who risks either the exclusion of the community, or death in the worst case scenario.

Montesquieu's anthropology takes place on two contradictory aspects: on the one hand there are the conditionings related to the spirit, to the inner world, like honor, virtue, fear, and on the other hand there are the external conditionings, such as geographical, demographic or weather related. For example, the peoples who do not cultivate land have a totally different juridical status than the sedentary ones.²¹ Montesquieu also presents different ways of

¹⁸ *Ibidem*, pp.234-235

¹⁹ *Ibidem*, pp.236-239

²⁰ *Ibidem*, p.305

²¹ *Ibidem*, p.352

establishing one man's coming of age related to the external factors such as carrying weapons: when weapons were light, the coming of age was established around the age of fifteen; when weapons became heavier, the coming of age was pushed up to the age of twenty-one.²² The maturity of the spirit is also relative and mostly related to external contexts. Alexander had been considered mature enough at the age of twenty-one to be assigned the project of conquering the world, whereas Cesar suffered in front of Hercules' statue of Gades at the age when Alexander had defeated the world, for he hadn't accomplished anything great yet.²³

The synthesis of these factors that *The Spirit of the Laws* analyzes in detail builds what can be called a general or universal spirit. In this respect, Montesquieu's words are very clear: "People are ruled by many things: weather, religion, laws, maxims of the government, examples of the past, morals, manners: as a result of all these a general spirit is born. The more one of this causes acts on a people, the less the influence of the others will be. Nature and weather dominate almost exclusively the savage; manners rule the Chinese, laws tyrannize the Japanese; once morals were the most important things in Lacedemonia, the maxims of the government and the old morals were preponderant in Rome".²⁴

Montesquieu realized through his treatise *The Spirit of the Laws*, before Hegel's work, a true phenomenology of the spirit, whose essence is, without any doubt, the liberty.

The Spirit of the Laws was a bestseller, as a contemporary publisher would say, all over Europe. Montesquieu's contemporaries brought him numerous positive reviews. The English thinker Edmund Burke refers to Montesquieu as "the great genius who enlightened this age"²⁵, and the Whig politician Horace Walpole (1717-1797), the fourth Earl of Orford, in a letter sent to the English diplomat Sir Horace Mann, on the 10th of January 1750, called Montesquieu's treatise "the best book – at least I never learned half so much from all I ever read. There is so

²² *Ibidem*, p.366

²³ Suetonius (1998). *The Lives of the Twelve Caesars*. Romanian translation: *Viețile celor doisprezece cezari*, Bucharest: RAO International Publishing Company, p.17

²⁴ Montesquieu, *op. cit.*, p.373

²⁵ Edmund Burke, *An Essay towards an Abridgment of the English History*, in T.O. McLoughlin and James T. Boulton (eds.) (1997). *The Writings and Speeches of Edmund Burke*. Volume I: *The Early Writings*, Oxford University Press, p.445

much wit as useful knowledge".²⁶ The French encyclopaedist and philosopher Jean-Baptiste le Rond D'Alambert (1717-1783) composes an eulogium to the author and to his works, *The Spirit of Laws* in particular, calling Montesquieu the "benefactor of mankind by means of his works"²⁷ and the "legislator of nations".²⁸ How right he was! *The Spirit of the Laws* influenced the elaboration of constitutions in numerous countries and was chosen as a starting point in drafting the *Constitution of the United States of America* by which the leaders of the American Revolution wanted a free, republican and confederate country. Montesquieu's political ideas influenced the Fathers of the American Constitution to such an extent that James Madison celebrated Montesquieu in his essay from 30th January 1788 and called him: „The oracle who is always consulted and cited” in matters of constitutional structure. Madison continues: “The British constitution was to Montesquieu, what Homer has been to the didactic writers on epic poetry”.²⁹ These words represented a modest recognition of Montesquieu's merits as he participates, even without knowing, to the constitution of a new nation as the American leaders built a new government on the foundation provided by political concepts as natural rights, equality, toleration, separation of powers, liberty.

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²⁶ Richard Bentley (ed.), Horace Walpole (1840). *The Letters of Horace Walpole, Earl of Orford: Including Numerous Letters Now First Published from the Original Manuscripts*, Vol. 2, London, p.310

²⁷ D'Alambert, *An Eulogium on President Montesquieu*, in D. Wilson and T. Durham (eds.) (1759). *Miscellaneous Pieces of M. De Secondat, Baron de Montesquieu*, London, p.2

²⁸ *Ibidem*, p.25

²⁹ James Madison, *Montesquieu's principle of separation of powers*, in Ralph Ketcham (ed.) (2006). *Selected Writings of James Madison*, Hackett Publishing Company, p.110

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