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MONTESQUIEU AND THE SPIRIT OF LAWS THE IDEA THAT FRAMED THE U.S. CONSTITUTION

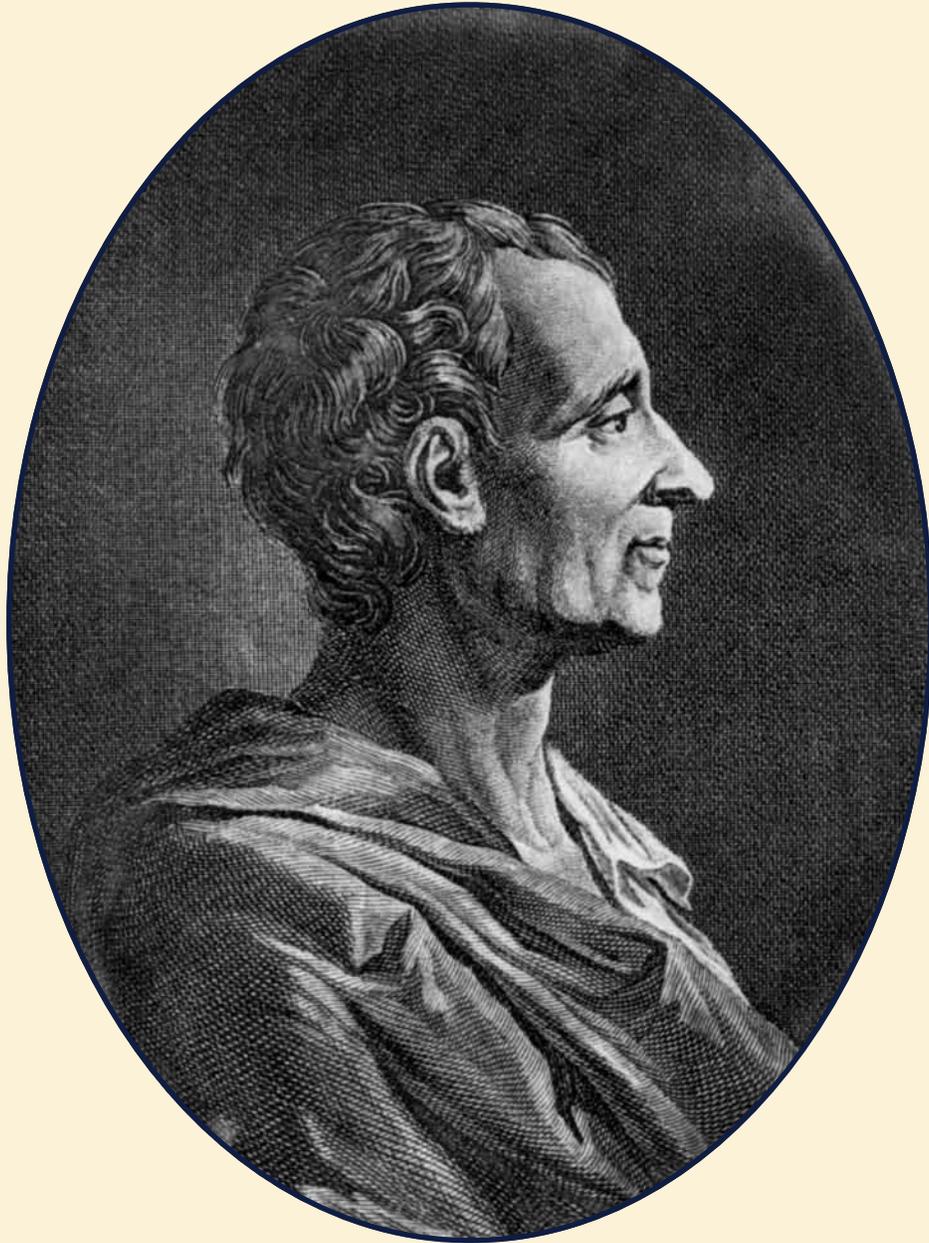
by Carole G. Adams

It is impossible to take a Providential view of history and not be astounded by the Hand of God. Its perfect timing, its cliff-hanging dramatic effects, and even its comic relief form a grand tapestry of humbling realities. Circumstances that often to human reason are wasteful or convoluted, when held to the light of His Story, give evidence of divine providence. Events that to the casual eye appear random or insignificant, when placed on the Chain of Christianity, teach God's faithfulness, purpose, goodness, and love. History when truly embraced as His Story cannot fail to build our faith.

The history most interesting to any people is its own. For Americans, the miracle of the founding of our liberty holds infinite fascination. In the founding era, 1760 to 1805, the history of ideas is particularly interesting. Our independence and establishment as a free nation were the outcome of certain glorious ideas—internal causes of external effects. Among the ideas that gave the U.S. Constitution its genius, there appeared just at the moment of need a work that supplied our founders with the very architecture of government necessary to protect the individual liberty they held sacred. This was the work of a Frenchman born in 1689.

Charles de Secondat, Baron de Montesquieu, is just the unlikely carrier that God often uses to transport a great revelation across centuries. He was an aristocrat, a man of prejudice by today's liberal standards, an imaginative writer of color and vision, and not at all the dogmatist one comes to associate with advocates of absolutes. A lover of liberty, a student of truth, and a scholar with a mind able to trace the spirit of an idea to its source, Montesquieu became the spiritual architect of a grand edifice.¹

The very title of his master work, *L'Esprit Des Lois*, (*The Spirit of Laws*), evokes a deeper, warmer look into a stone-cold subject. Law with a spirit? It reads like the slogan I once discovered on the cover of a seventh-grade girl's notebook, "chick with an attitude." The latter title at once opened a vista across the heart of a child straining to be accepted, cool, and interesting. Montesquieu's title opens a vista also, but one that puts life and breath into a subject that to many is dead—law. His work caught the attention of the founding generation evidenced by the fact that he was quoted more frequently in their writings than any other writer.²



MONTESQUIEU



It is not the purpose of this article to enter the stream of controversies so dear to scholars surrounding the influences of the founding era, nor to argue the place of Montesquieu, the origin of his ideas, or the soundness of his theories generally. The purpose is rather to celebrate the Providence of God in placing Montesquieu directly in the milieu of founding era thought to deliver to the Founders the idea needed to frame our liberty. The story of Montesquieu is one of those fascinating works of God's Hand.

MONUMENTAL CONTRIBUTION

My first glance at the *L'Esprit des Lois* was in my college French class where I found myself plowing through the translation of a volume of eighteenth century French readings. This sweaty journey, a semester long, brought me through Rivarol, Buffon, and the salons, to a shore that felt much more solid under my feet—*Les Lettres Persannes*, Montesquieu's satire on contemporary customs and government. In this work he expressed in delightful language the thoughts of many who were neither able nor daring enough to attack the powers of the day. The work established his reputation.

His next effort, *Considérations sur les Causes de la Grandeur des Romains et de leur Décadence* (*Causes of the Greatness and Decline of the Romans*), presented a philosophy of history that believes rules and principles must be studied and found before we can know the nature and reason of things. This work demonstrated that Montesquieu was no believer in chance and that he reasoned from cause to effect.

But it was my shaky efforts to translate his master work, *L'Esprit des Lois*, that produced a transcending moment never expected in French 301. As I read, translated, and wrote the words, I recognized a holy ground that gave me goose bumps:

Tout serait perdu, si le même homme, ou le même corps des principaux, ou des nobles, ou du peuple, exerçait ces trois pouvoirs: celui de faire des lois, celui d'exécuter les résolutions publiques, et celui de juger les crimes ou les différends des particuliers . . . il n'y a point encore de liberté . . . (xi,vi)³

(All would be lost, if the same man, or the same body of leaders, nobles or people, exercised these three powers: the one of making laws, the one of executing the public resolutions, and the one of judging crimes or particular disputes . . . there would no longer be liberty . . .)

Able even to pierce the clouded superficiality of that college intellect, his resounding words alerted something within me, created an awareness that remained, and lit a small spark of understanding that would later flame into passionate realization.

Such was the impact of Charles le Secondat de Montesquieu upon the minds of the Founders. His presence in their writings is prominent and illustrates his influence. The primary idea, the separation of powers, won universal regard. Others of his ideas provoked debate and argument, particularly in the arguments for and against federalism. The obvious contribution he made to the very framework of the U.S. Constitution is monumental.⁴



LITERARY LUMINARY

In addition to clarity and inspiration, the study of Montesquieu is rewarded by the discovery of his artistry. He is a painter of ideas, giving them color and life. Often this gift is targeted at requiring the reader to think, not just read. His chapter on the “Idea of Despotism” contains exactly three lines:

CHAPTER XIII. (BOOK V.)
IDEA OF DESPOTISM.

*When the savages of Louisiana want fruit, they cut the trees at the root and pluck the fruit.
This is despotic government.*⁵

This example is a good illustration of Montesquieu’s contribution to world literature of a style that is unsurpassed in epigrammatic excellence, a style unique in its ability “of squeezing the sap out of an idea and of crystallizing it into apt and pungent words.”⁶

The force of his ideas surpassed even the literary qualities of *L’Esprit des Lois*. He was compelled by an ambition to bring order and clarity to human thought:

*The foundation of the work was the attempt to find those common principles and emotions which, operating upon men of every climate and degree of civilization, produce certain results. He was satisfied that those principles existed, and if found, would afford a scientific explanation of what without their aid would seem to be chaotic and inexplicable. Or, to come nearer to his own language, he rejoiced to find in “the nature of things” the explanation of so many different laws and customs. He was often discouraged and dismayed at what he termed “the majesty of his subject.” Time and again, he flung away the unfinished page, and turned his back in despair upon his herculean task. But his courage and the philosophy of his temperament never yielded long to debilitating influences. He resumed his labors and continued them until he was able to say, like Correggio: “I, too, am a painter!”*⁷

Montesquieu thought highly of his masterpiece that exacted twenty long years of labor from his life and energies. “As he revised his last proofs, he said: “This work has well-nigh killed me: I am going to rest: I shall labor no more.” He did find rest, and eight years after completing *L’Esprit des Lois*, he found eternal rest.

AN OVERVIEW OF *L’ESPRIT DES LOIS* IN THE FORM OF AN ANALYSIS

The complete work of *L’Esprit des Lois* includes thirty-one “books” of varying lengths.⁸ In the 1900 edition, translated by Thomas Nugent and published by The Co-operative Publication Society, Colonial Press, there is an analysis of the work by Jean Le Rond D’Alembert. This set of volumes is among the select and rare books in the Christian history library of Verna Hall at the Foundation for American Christian Education headquarters in San Francisco. In Volume I, Verna Hall penciled those parts of



D'Alembert's analysis relevant to her research. Because the analysis is a thorough, fifteen-page endeavor to explain the plan, nature, and objects of *L'Esprit des Loix*, we give here the sections of the analysis selected by Verna Hall in hopes of providing a map for the prospective student of Montesquieu's mighty work.

EXCERPTS FROM THE "ANALYSIS OF 'THE SPIRIT OF LAWS'"

BY JEAN LE ROND D'ALEMBERT

Book I. – Men in the state of nature, abstracted from all religion, in those disputes which they may have, know no other law than that of all animals, the right of the strongest; the establishment of society ought to be regarded as a kind of treaty against this unjust title—a treaty destined to establish a sort of balance between the different divisions of the human race . . . Laws are the chains, more or less efficacious, which are destined to suspend or to restrain their blows. But the prodigious extent of the globe which we inhabit, the different nature of the regions of the earth, and of the people who are spread over it, not permitting that all mankind should live under one and the same government, the human race was obliged to divide itself into a certain number of states, distinguished by the difference of those laws to which they are subjected. Under one single government the human race would have been no more than one enfeebled and languishing body, extended without vigor over the surface of the earth. The different governments are so many robust and active bodies; by mutually assisting each other they form one whole, whose reciprocal action maintains and keeps up motion and life everywhere.

Book II. – We may distinguish three sorts of governments: the republican, the monarchical, the despotic. In the republican, the people in a body possess the sovereign power. In the monarchical, one single person governs by fundamental laws. In the despotic, no other law is known than the will of a master, or rather of a tyrant.

Book III. – As to the principle of the three governments, that of democracy is the love of the commonwealth, that is, of equality. In monarchies, where the single person is the dispenser of distinctions and rewards, and where they are accustomed to confound the state with this single man, the principle is honor, that is, ambition and the love of esteem. Lastly, under despotism, it is fear.

Book IV. – In every government the laws of education ought to be in relation to the principle of that government. We understand here by education that which is received in entering upon the world, and not that of parents and of schoolmasters, which is often contrary to it, especially in some states. In monarchies, education ought to have for its object politeness and reciprocal civilities; in despotic states, terror and the debasing of the spirits of men. In republics they have occasion for all the power of education; it ought to inspire a sentiment which is noble but hard to be attained, namely, that disregard of one's own interest whence arises the love of one's country.



Book V. – The laws which the legislator makes ought to be conformed to the principle of each government—in a republic, to maintain equality and frugality; in monarchy, to support the nobility without ruining the people; in a despotic government, to silence and to keep equally under subjection those of every condition.

Book VI and VII. – The difference of the principles of the three governments must produce many differences in the number and object of laws, in the form of judgments, and the nature of punishments.

Books VIII and IX. – M. de Montesquieu, having thus run over each government in particular, afterwards examines them in the relation which they may bear to each other, but only from the most general point of view, that is to say, from that which has reference only to their nature and their principle.

Book X. – States, like men, have a right to attack for their own preservation; from the right of war that of conquest is derived—a right necessary, lawful, calamitous, which always lays an immense debt upon us, if we would discharge what on that account becomes due from us to human nature, and the general law of which is to do as little harm as possible to the conquered.

Book XI. – That political liberty which every citizen ought to enjoy is the common law of all governments, at least moderate governments, and consequently just ones. This liberty is not an absurd license of doing everything we wish to do, but the power of doing everything that the laws permit. . . It is from the legitimate distribution and proper subdivision of these different powers that the greatest perfection of political liberty with relation to the constitution depends.

Book XII. – Political liberty, considered with relation to a citizen, consists in that security in which he lives under shelter of the laws, or at least in an opinion of this security which makes no one citizen entertain any fear of another.

Book XIII. – The amount of taxation ought to be in direct proportion to public liberty.

Book XIV. – Let us now come, with M. de Montesquieu, to those particular circumstances which are independent of the nature of government, and to which laws ought to be adapted. The circumstances which arise from the nature of the country are of two sorts: the one has relation to the climate, the other to the soil.

Book XV. – The practice of having slaves, established in the warm countries of Asia and America, and rejected in the temperate climates of Europe, affords our author an opportunity of treating of slavery in a state . . .

Book XVI. – Near to civil slavery may be placed domestic slavery, or that in which women are kept in certain countries . . .



Book XVII. – If the climate has so much influence on domestic and civil slavery, it has no less on political slavery; that is, upon what subjects one nation to another.

Book XVIII. – With respect to laws in relation to the nature of the soil, it is plain that democracy is better adapted than a monarchy to barren countries, where the earth has occasion for all the industry of men.

Book XIX. – Laws are a bad method of changing the manners and customs; it is by rewards and example that we ought to endeavor to bring that about.

Book XX. – After having in this manner deeply considered the Nature and Spirit of Laws with relation to different kinds of climates and peoples, our author returns again to consider states in that relation which they bear to each other.

Book XXI. – M. de Montesquieu takes occasion, when treating of those laws which commerce requires, to give us a history of its different revolutions;

Book XXII. – The use of money being one considerable part of the object of commerce, and its principal instrument, he was of opinion that he ought, in consequence of this, to treat of the different operations with respect to money.

Book XXIII. – Population and the number of inhabitants have an immediate connection with commerce; and marriages having population as their object, under this article M. de Montesquieu goes to the root of this important subject.

Book XXIV and XXV. – M. de Montesquieu has hitherto only spoken of human laws; he now proceeds to those of religion, which in almost all states compose so essential an object of government. Everywhere he breaks forth into praises of Christianity; he points out its advantages and its grandeur; he endeavors to make it beloved; he maintains that it is not impossible . . . that a society of perfect Christians should actually form a durable state.

Book XXVI. – Men are governed by different kinds of laws: by natural law, common to each individual; by the divine law, which is that of religion; by the ecclesiastical law, which is that of the policy of religion; by the civil law, which is that of the members of the same society; the political law, which is that of the government of that society; by the law of nations, which is that of societies with respect to each other. These laws have each their distinct objects, which are carefully to be discriminated. That which belongs to the one ought never to be regulated by the other, lest disorder and injustice should be introduced into the principles which govern men.

Books XXVI and XXIX. – In short, those principles which prescribe the nature of the laws, and which determine their objects, ought to prevail also in the manner of enacting them.



Books XXVII and XXVIII. – M. de Montesquieu, to point out by examples the application of his principles, has chosen two different people, the most celebrated in the world, and those whose history most interests us—the Romans and the French. He only dwells upon one point of jurisprudence of the former—that which regards succession. With regard to the French, he enters into a greater detail concerning the origin and revolutions of their civil laws, and the different usages abolished or still subsisting which have been the consequences of them.

Books XXX and XXXI. – He principally enlarges upon the feudal laws, that kind of government unknown to all antiquity, which will perhaps forever be so to future ages, and which has done so much good and so much ill. He especially considers these laws in their relation to the establishment and revolutions of the French monarchy.⁹

Thus M. D’Alembert provides us with an extended “table of contents,” a sort of annotated list of ideas, with which to overview the massive work of Montesquieu in *The Spirit of Laws*. D’Alembert ends his analysis with a succinct and straight forward conclusion: “Such is the general analysis, though a very imperfect one, of M. de Montesquieu’s work on ‘The Spirit of Laws’.”¹⁰ We can only agree with his conclusion. While appreciating the catalogue of Montesquieu’s ideas that D’Alembert provides, it is no substitute for the work itself, and is at best a skeletal diagram. The ideas listed here come to life only in the power and color of Montesquieu’s inimitable language.

In the founding era, as the ideas of liberty were being discussed, debated, studied, and propagated, a young man of twenty-eight wrote his views, just five years before the death of Montesquieu:

In the state of nature, every man has a right to think and act according to the dictates of his own mind, which, in that state, are subject to no other control and can be commanded by no other power than the laws and ordinances of the great Creator of all things. The perfection of liberty therefore, in a state of nature, is for every man to be free from any external force, and to perform such actions as in his own mind and conscience he judges to be rightest; which liberty no man can truly possess whose mind is enthralled by irregular and inordinate passions; since it is no great privilege to be free from external violence if the dictates of the mind are controlled by a force within, which exerts itself above reason.¹¹

Here Sam Adams reasons after the pattern of Montesquieu about the nature of liberty. Continuing, he brings his reasoning to the quality that protects that liberty: virtue.

He therefore is the truest friend to the liberty of his country who tries most to promote its virtue, and who, so far as his power and influence extend, will not suffer a man to be chosen into any office of power and trust who is not a wise and virtuous man. We must not conclude merely upon a man’s haranguing upon liberty, and using the charming sound, that he is fit to be trusted with the liberties of his country . . . The sum of all is, if we would most truly enjoy this gift of Heaven, let us become a virtuous people.¹²



This same founding father, when advising his generation about ‘renovating the age,’ urged “impressing the minds of men with the importance of educating their little boys and girls, of inculcating in the minds of youth the fear and love of the Deity and universal philanthropy, and, in subordination to these great principles, the love of their country; of instructing them in the art of self-government.”¹³ The ideas and characters prominently used by the Hand of God in securing our liberties do instruct us and our children in the art of self-government. Charles de Secondat, Baron de Montesquieu, along with Samuel Adams, is one of those illustrious characters worthy of our teaching and learning. His ideas sing still in our day the song of true Liberty.

¹ Hall, Verna. *The Christian History of the Constitution of the United States*, Vol. I: *Christian Self-Government*. San Francisco: Foundation for American Christian Education, 1960, pp. 131–138.

² Lutz, Donald S. “The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought.” *American Political Science Review*, Vol. 78, 1983.

³ Schinz, Albert. *Eighteenth Century French Readings*. New York: Holt, Rinehart and Winston, 1923, 1963, pp. 313–314.

⁴ Lutz. The work of Donald Lutz included codifying the references made by the founding fathers to various works including the Bible, classical references, and to individual writers. Their tallies show first that the Bible is the book most often referenced, however the individual writer most often referenced is Montesquieu. Mr. Lutz concludes that Montesquieu’s work deserves more attention from scholars.

⁵ Coudert, Hon. Frederic R., J.U.D., L.L.D., in the Introduction to *The Spirit of Laws* by Baron de Montesquieu, translated by Thomas Nugent. New York: The Co-operative Publication Society, Colonial Press, 1900, p. xii.

⁶ Coudert, p. x.

⁷ Coudert, p. xi.

⁸ Book eleven is the section of *L’Esprit des Lois* that covers Montesquieu’s presentation of the separation of powers.

⁹ D’Alembert, Jean Le Rond D’Alembert. “Analysis of ‘*The Spirit of Laws*’.” Found in the 1900 edition of *The Spirit of Laws*, cited above. This is the edition used by Verna Hall and included in the excerpts found in *The Christian History of the Constitution of the United States*, Vol. II: *Self-Government with Union*. Foundation for American Christian Education: San Francisco, 1962.

¹⁰ *Ibid.*

¹¹ *Christian History*, Vol. I, p. 364B.

¹² *Ibid.*

¹³ *Christian History*, Vol. I, p. xiv.