

Moral Reasoning 74:
The Theory and Practice
of Republican Government

Lecture 11:
Montesquieu and the English Constitution

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Announcements

- (1) Second Paper Topics posted; due Monday, March 19th.
- (2) Midterm Feedback: Need student volunteer to receive e-feedback about course. Send anonymous e-mail to her/him, they will send comments to me.

II. Convention
[continued from last time]

Uneasy status:

- (1) Parliament needed a king to call it into being
 - (2) But Convention was also supra-Parliament
- “Never, wrote the Reverend Edmund Hiceringill of Colchester, had any Englishmen a greater Trust put upon them, not a greater Power put into their hands ... You have virtually in you, the power of all the Laws, and all the Kings and Parliaments that ever were or ever shall be again in England, to the World’s End.” “The Convention had “the Golden Opportunity to being a Crown in one hand, with their Terms and Conditions on the other.”” [Morgan, 108]

Convention nullifies James II

“That King James the Second, having endeavoured to subvert the Constitution of the Kingdom, by breaking the original Contract between king and people, and, by the advice of Jesuits, and other wicked persons, having violated the fundamental Laws, and having withdrawn himself out of this Kingdom, has abdicated the Government, and that the Throne is thereby become vacant.” [reprinted in Morgan, p. 111]

III. Reassertion of the Constitution

Still a problem: How can a non-Parliament create rights and liberties, which require granting of king (see Petition of Right, 1628)?

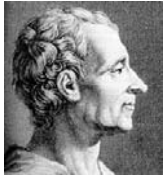
Declaration of Rights (1689). Presented not as new contract, not as condition for William’s accession, but as re-assertion of ancient English liberties (Magna Carta, Petition of Right, and some new ones).

IV. Fiscal Dependence of Crown

Morgan, p. 97: “A variety of circumstances saved England from going the way of France and insured the survival and eventual revival of popular sovereignty, however attenuated, as the nation’s guiding political fiction. One was the mendacity of Charles II – as much a liar as his father.... Another was the foolhardiness of his brother James, when he ascended to the throne in 1685, in ignoring or underestimating the hostility not only of the general public, but of the ruling elite, to Roman Catholicism. But probably the crucial difference that distinguished English politics from French was the fact that the Restoration had restored Parliament and it was Parliament that had restored the king and continued to sustain him.”

These events matter, but they also matter b/c the Protestant accession is stable.

Important Difference between
Montesquieu...



...and Monty Python (Monty Skew)



Scene from Monty Python's *The Holy Grail*. Are they having more fun than we are?

Montsequeiu: Themes

I. Notion of Freedom

II. Judicial Power

III. Legislative Power

Discuss first papers, hand them back.

I. Montesquieu on Liberty

“Political liberty in a citizen is that **tranquility of spirit** which comes from the **opinion** each one has of his **security**, and in order for him to have this liberty **the government must be such that one citizen cannot fear another citizen.**” [EL, 11, 6, p. 157]

Liberty desires Separation of Powers

“When legislative power is united with executive power in a single body of the magistracy, there is no liberty, because one can fear that the same monarch or senate that makes tyrannical laws will execute them tyrannically.
Nor is there liberty if the power of judging is not separate from legislative power and from executive power. If it were joined to legislative power, the power over the life and liberty of the citizens would be arbitrary, for the judge would be the legislator. If it were joined to executive power, the judge could have the force of an oppressor.
All would be lost if the same man or the same body of principal men, either of nobles, or of the people, exercised these three powers: that of making the laws, that of executing public resolutions, and that of judging the crimes or the disputes of individuals.”

Absence of Separation undermines Liberty

“In the Italian republics, where the three powers are united, there is less liberty than in our republics ...
Observe the possible situation of a citizen in these republics. The body of the magistracy, as executor of laws, retains all the power it has given itself as legislator. It can plunder the state by using its general wills; and, as it has also the power of judging, it can destroy each citizen by using its particular wills.
There, all power is one, and, although there is none of the external pomp that reveals a despotic prince, it is felt at every moment.”

II. Judicial Institutions

[158]: “The power of judging should not be given to a permanent senate but should be exercised by persons drawn from the body of the people at certain times of the year in the manner prescribed by law to form a tribunal which lasts only as long as necessity requires.

In this fashion the power of judging, so terrible among men, being attached neither to certain state nor to a certain profession, becomes, so to speak, invisible and null. Judges are not continually in view; one fears the magistracy, not the magistrates.”

“Further, the judges must be of the same condition as the accused, or his peers, so that he does not suppose he has fallen into the hands of people inclined to do him violence.”

III. Legislative Institutions

“As, in a free state, every man, considered to have a free soul, should be governed by himself, the people as a body should have legislative power; but, as this is impossible in large states and is subject to many drawbacks in small ones, the people must have their representatives do all that they themselves cannot do.

One knows the needs of one’s town better than those of other towns, and one judges the ability of ones neighbors better than that of other compatriots. Therefore, members of the legislative body must not be drawn from the body of the nation at large; it is proper for the inhabitants of each principal town to choose a representative from it.”

“The great advantage of representatives is that they are able to discuss public business. The people are not at all appropriate for such discussions; this forms one of the great drawbacks of democracy.”

Institutional Elitism

Against voting rights for unpropertied: “In choosing a representative, all citizens in the various districts should have the right to vote except those whose estate is so humble that they are deemed to have no will of their own.”

Against the plebiscite: “A great vice in most ancient republics was that the people had the right to make resolutions for action, resolutions which required some execution, which altogether exceeds the people’s capacity. The people should not enter the government except to choose their representatives; this is quite within their reach. For if there are few people who know the precise degree of a man’s ability, yet everyone is able to know, in general, if the one he chooses sees more clearly than most of the others.” [EL, 160]

Bicameral Legislature

[160]: “In a state there are always some people who are distinguished by birth, wealth, or honors; but if they were mixed among the people and if they had only one voice like the others, the common liberty would be their enslavement and they would have no interest in defending it, because most of the resolutions would be against them. Therefore, the part they have in legislation should be in proportion to the other advantages they have in the state, which will happen if they form a body that has the right to check the enterprises of the people, as the people have the right to check theirs.”

Bicameral Legislature

[160]: “Thus the legislative power will be entrusted both to the body of the nobles and to the body that will be chosen to represent the people, each of which will have assemblies and deliberations apart and have separate views and interests.”

IV. Executive Power

“The executive power should be in the hands of a monarch, because the part of the government that almost always needs immediate action is **better administered by one than by many**, whereas what depends on legislative power is often better ordered by many than by one.” [162]

“If there were no monarch and the executive power were entrusted to a certain number of persons drawn from the legislative body, **there would no longer be liberty**, because the two powers would be united, the same persons sometimes belonging and always able to belong to both.”

Same principle leads to proposal for continuous legislative sessions.

Importance of Veto Power

“If the executive power does not have the right to check the enterprises of the legislative body, the latter will be despotic, for it will wipe out all the other powers, since it will be able to give to itself all the power it can imagine.” [162]

“But the legislative power must not have the reciprocal faculty of checking the executive power. For, as execution has the limits of its own nature, it is useless to restrict it; besides, executive power is always exercised on immediate things. And the power of the tribunes in Rome was faulty in that it checked not only legislation but even execution; this caused great ills.
