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Montesquieu's Spirit of the Laws: A Contextual Moderation Framework for Modern Legal Reform

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Abstract

More than two and a half centuries after its publication, Montesquieu's *De l'esprit des lois* (1748) remains foundational to constitutional theory, yet its contemporary use is often reduced to a rigid tripartite separation of powers. This article reconstructs a broader Montesquieuan framework for legal reform by integrating mutual institutional constraint, contextual comparison, and political moderation. Methodologically, it combines close textual and doctrinal analysis of *The Spirit of the Laws* with a structured review of classic and recent constitutional scholarship and two purposively selected illustrations of judicial reform in Poland and Hungary. Four claims are advanced. First, separation of powers is best understood as a dynamic arrangement in which institutions retain the practical capacity to check one another in the service of liberty. Second, Montesquieu's contextual method cautions against copying legal models without the social, political, and

institutional conditions that sustain them. Third, the Polish and Hungarian illustrations show how formally lawful and facially familiar reforms can weaken judicial independence through their cumulative effects on appointment, tenure, discipline, administration, and review. Fourth, the article translates moderation into a six-part evaluative test addressing reciprocal constraint, dispersed control over appointments and removal, procedural safeguards, contextual fit, cumulative effects, and reversibility. The resulting framework does not offer a universal institutional blueprint. It supplies a disciplined method for determining whether a reform preserves effective checks or merely retains their formal appearance.

Keywords: Montesquieu; separation of powers; political moderation; comparative constitutional law; judicial independence; democratic backsliding; legal transplantation; constitutional borrowing; legal reform

1. INTRODUCTION

Charles-Louis de Secondat, Baron de Montesquieu, published *De l'esprit des lois* in 1748 after nearly two decades of composition, and the work rapidly became one of the most influential texts of Enlightenment political and legal thought [1]. Its impact on eighteenth-century constitutional imagination, particularly on debates surrounding the United States Constitution and the French Revolution, has been documented extensively [2, 3]. Yet contemporary invocations of Montesquieu frequently reduce his contribution to a schematic division of legislative, executive, and judicial functions. That reduction overlooks both the relational character of his account of power and the contextual method through which he evaluates laws and institutions [3, 4].

Reconsidering this broader architecture is especially relevant to present-day legal reform. Recent scholarship describes democratic backsliding not primarily as a sudden coup against constitutional order, but as an incremental process in which elected governments use legislation, appointments, constitutional amendments, administrative powers, and formally available procedures to weaken horizontal constraints [5–7]. Haggard and Tiede's comparative analysis of judicial backsliding further shows that diminished horizontal constraints are closely associated with the onset of attacks on judicial independence [8]. These developments pose a problem that a purely formal account of separation cannot resolve: institutions may continue to exist while losing the practical capacity to restrain one another.

A second contemporary difficulty concerns the movement of constitutional ideas across jurisdictions. Comparative law has long recognized that legal rules operate within institutional and social environments. More recent work on abusive constitutional borrowing shows that liberal-democratic designs may be copied selectively, stripped of surrounding safeguards, or redirected toward anti-democratic purposes [9]. Montesquieu's insistence that laws be understood through their relations to a society's history, economy, religion, manners, and political constitution offers an early theoretical vocabulary for diagnosing this problem.

The article addresses three research questions. First, how should Montesquieu's separation of powers be reconstructed when its purpose is liberty rather than mechanical institutional isolation? Second, how can his contextual method discipline the borrowing and adaptation of contemporary legal models? Third, can the ideal of moderation be translated into sufficiently concrete criteria to evaluate reforms affecting courts and other checking institutions?

The article's principal contribution is therefore not the already established proposition that Montesquieu rejected a perfectly sealed division of governmental functions. It is the integration of three strands that are too often treated separately: mutual institutional constraint, contextual legal comparison, and moderation as an evaluative standard. Building on that integration, the article develops a six-part *Montesquieuan moderation test* and demonstrates its use through focused illustrations from Poland and Hungary. The cases are not offered as a comprehensive empirical comparison or as equivalent national experiences. They are used to show how formally legal reforms can alter the practical relations among institutions and how cumulative institutional effects may differ from the appearance of any single legal measure.

The discussion proceeds as follows. Section 2 explains the methodological approach and the limits of the inquiry. Section 3 reconstructs the core elements of Montesquieu's theory. Section 4 develops his contextual and comparative method and connects it to legal transplantation and constitutional borrowing. Section 5 examines separation of powers as a system of mutual constraint. Section 6 applies the framework to selected judicial-reform episodes in Poland and Hungary. Section 7 formulates the moderation test and explains its practical use. Section 8 addresses historical, methodological, and normative limitations, and Section 9 concludes.

2. METHODOLOGICAL APPROACH AND CONTRIBUTION

This is a conceptual and doctrinal article rather than an empirical causal study. It uses four connected methods. First, it undertakes close textual analysis of *The Spirit of the Laws*, relying on the Cohler, Miller, and Stone translation and focusing principally on Books 1, 3, 11, and 14–19 [10]. Second, it reconstructs the major interpretive debates concerning liberty, moderation, the English constitution, judicial power, and the relational character of laws through established Montesquieu scholarship [11–14].

Third, the article places that reconstruction in dialogue with comparative constitutional scholarship on democratic backsliding, judicial independence, and constitutional borrowing. The contemporary literature was selected purposively rather than through a systematic-review protocol. Priority was given to works that illuminate legally mediated concentration of power, horizontal accountability, judicial reform, and the contextual migration of constitutional models. The source base includes peer-reviewed scholarship, scholarly monographs, judgments of European courts, and official rule-of-law materials. This selection permits a structured normative synthesis, but it does not support quantitative generalization about the prevalence or causes of backsliding.

Fourth, Poland and Hungary are used as focused illustrations. They were selected because the relevant reform processes have generated extensive legal and scholarly analysis and because both involve changes enacted substantially through formal legal mechanisms while producing sustained controversy over judicial independence and institutional checks [15–17]. The

analysis is limited to features directly relevant to the article's conceptual framework: appointment and tenure, disciplinary arrangements, judicial administration, constitutional adjudication, and the cumulative capacity of courts to constrain political power. It does not offer a complete political history of either jurisdiction, nor does it claim that their trajectories or current conditions are identical.

The evaluative framework developed below is a normative synthesis. It translates Montesquieu's concern with moderation into diagnostic questions that can be applied to proposed or enacted reforms. The test is not a mechanical scoring instrument and does not determine legal validity under any particular constitution. Its function is to make explicit the institutional relationships that reformers should examine before concluding that a change is compatible with the separation of powers.

3. THE CORE TENETS OF MONTESQUIEU'S THEORY

3.1. LAWS IN RELATION TO THEIR OBJECTS

Montesquieu's opening move is definitional and deliberately broad: laws, in their widest sense, are "the necessary relations arising from the nature of things" [10, bk. 1, ch. 1]. Positive laws must therefore be understood in relation to the many conditions that shape a political community. They should be relative to a country's physical character, climate and terrain, mode of subsistence, degree of liberty, religion, wealth, commerce, population, and manners [10, bk. 1, ch. 3]. The "spirit" of the laws is the ensemble of these relations.

This conception does not imply that every existing institution is justified by its local context. Rather, it rejects the assumption that legal evaluation can proceed by isolating a rule from the conditions under which it is expected to operate. Montesquieu's method is sociological and comparative as well as normative: the fitness of a law depends on its relation to the constitution, other laws, social practices, and the political end that the legal order seeks to secure [4, 11]. For modern reform, this means that a facially familiar institution may perform differently when transplanted into a system with different party structures, appointment practices, administrative traditions, or informal norms.

3.2. FORMS OF GOVERNMENT AND THEIR PRINCIPLES

A central analytic contribution of *The Spirit of the Laws* is the pairing of each form of government with an animating "principle," the human disposition that sustains it. Republics depend on virtue, monarchies on honor, and despotisms on fear [10, bk. 3]. The typology is not merely descriptive. It explains how a regime may decay even when its formal offices remain in place: corruption occurs when the disposition sustaining the constitutional form is displaced or turned against the regime's end [12].

The distinction between form and animating principle is especially important for contemporary constitutional analysis. A court may continue to be called independent while appointment, discipline, budget, case assignment, or tenure arrangements make independent judgment increasingly costly or ineffective. A legislature may retain formal law-making authority while procedures and party discipline deprive it of meaningful scrutiny. Montesquieu's account directs attention to the practices and relations that animate institutions, not merely to their names or textual existence. This insight parallels modern analyses in which formal constitutional structures can survive while the norms and checking capacities that support them are progressively weakened [5, 6].

3.3. LIBERTY, MODERATION, AND THE CONSTRAINT OF POWER

For Montesquieu, political liberty is not the freedom to do whatever one wishes but the security that permits a person to do what the laws allow without fearing arbitrary power [10, bk. 11, ch. 3–6]. Liberty is possible only in moderate government, and moderation requires an institutional arrangement in which power encounters power. His maxim that "power must check power" is therefore not an aesthetic preference for organizational symmetry; it expresses a theory of institutional security [10, bk. 11, ch. 4].

Moderation is the master value connecting the work's constitutional and comparative dimensions. It opposes concentrated, arbitrary, and unanswerable authority, but it does not dictate one universally correct institutional design [11, 13]. The appropriate arrangement depends on the legal and social context, while the evaluative end remains stable: no actor should be able to convert a temporary legal mandate into practically unchecked control. Separation of powers is thus a means of preserving liberty through structured dependence and resistance, not an end independent of political conditions.

4. MONTESQUIEU'S CONTEXTUAL AND COMPARATIVE METHOD

4.1. A HISTORY OF GOVERNMENT AND A SCIENCE OF LEGISLATION

Although *The Spirit of the Laws* is often remembered for a single doctrine, its method may be the more durable contribution. Montesquieu approaches law through systematic comparison, assembling institutions and practices from

different societies and asking which relations explain their variation. Several commentators therefore regard the work as an early foundation for comparative law and modern legal science [4, 18].

The method differs from the construction of an ideal code deduced from abstract premises. It asks how institutions interact with political economy, social structure, historical experience, and other laws. The resulting comparison is functional and relational: the same label may conceal different institutional effects, and different arrangements may serve similar constitutional purposes. For reformers, this approach encourages comparison of institutional ecosystems rather than isolated provisions.

4.2. CLIMATE, GEOGRAPHY, AND THE LIMITS OF CONTEXTUAL EXPLANATION

The most criticized element of Montesquieu's method is his climate theory, particularly the claim that physical environment influences temperament and therefore the laws appropriate to a people [10, bk. 14–18]. Modern readers rightly reject the deterministic and prejudicial features of these passages, including their generalizations about Europe and Asia [11, 18]. Contextualism must not become a defense of inherited hierarchy, cultural essentialism, or the proposition that universal commitments to liberty and equal dignity are geographically optional.

The defensible methodological core is narrower. Law operates within conditions that affect incentives, institutional capacity, and social meaning. Reformers should therefore investigate whether the political, administrative, and cultural assumptions of a borrowed institution are present, can be developed, or require substitute safeguards. Context is not destiny; it is a set of relevant conditions that legal design must confront.

4.3. THE ENGLISH CONSTITUTION AS AN IDEALIZED MODEL

Montesquieu's celebrated account of the English constitution in Book 11, Chapter 6 illustrates both the strength and danger of comparative modeling. Scholars have long observed that his England is partly an analytical construction rather than a complete description of eighteenth-century British government [3]. He did not invent separated powers, but he reorganized earlier ideas, gave judicial power a distinctive place, and used England to demonstrate how institutional interaction might preserve liberty [3, 14].

Recognizing the constructed character of this example is important for modern reform. Montesquieu supplies an ideal-type that isolates a constitutional logic; he does not provide a blueprint whose words can be copied independently of political structure. The model's value lies in the relations it reveals—mutual dependence, veto, participation, and restraint—rather than in exact replication of eighteenth-century offices.

4.4. FROM LEGAL TRANSPLANTATION TO CONTEXTUAL ADAPTATION

Legal borrowing can take several forms. A jurisdiction may copy a rule directly, adapt an institution to local conditions, seek a functional equivalent, or import only one component of a larger constitutional package. The relevant question is not whether borrowing occurs—all legal systems learn from others—but whether the borrowed design retains the safeguards and institutional purpose that made it defensible in its source environment.

Dixon and Landau's account of abusive constitutional borrowing sharpens this concern by identifying situations in which liberal-democratic forms are used for anti-democratic ends. Borrowing may be selective, acontextual, or anti-purposive: a reform adopts the language or structure of an accepted model while excluding the conditions that prevent abuse [9]. A judicial appointment mechanism that functions tolerably where authority is dispersed among competitive institutions may facilitate capture where a single political coalition controls nomination, confirmation, discipline, and constitutional amendment.

A Montesquieuan approach therefore requires three stages. First, reformers must identify the constitutional purpose served by the foreign model. Second, they must examine the surrounding institutions, practices, and political conditions that support that purpose. Third, they must determine whether the receiving system supplies equivalent safeguards. This replaces simplistic imitation with contextual adaptation and provides a basis for distinguishing legitimate borrowing from the retention of democratic form without democratic substance.

5. SEPARATION OF POWERS AS MUTUAL CONSTRAINT

5.1. FROM PARTITION OF FUNCTIONS TO AN INSTITUTIONAL RELATIONSHIP

A persistent misreading treats Montesquieu's separation of powers as a demand for hermetically sealed branches, each confined to one governmental function. The interpretive literature has largely rejected this "pure" model [3]. Montesquieu instead distributes powers among distinct bodies and arranges them so that action frequently requires cooperation, consent, delay, or reciprocal control. Liberty arises from the friction and interdependence of institutions rather than their complete isolation [3, 13].

This relational interpretation changes the assessment of reform. A measure does not preserve separation merely because legislative, executive, and judicial institutions remain textually distinct. The relevant inquiry is whether each institution retains sufficient legal authority, independence, information, resources, and security of tenure to perform its checking function. A reform that transfers appointment power, weakens review, accelerates removal, or concentrates disciplinary control may alter the constitutional relation even if no branch is formally abolished.

5.2. THE JUDICIARY, RESTRAINT, AND INDEPENDENCE

Montesquieu famously described the judicial power as “in some fashion, null” and the judge as the mouth that pronounces the words of the law [10, bk. 11, ch. 6]. Read literally, this language appears remote from modern constitutional courts and judicial review. Carrese argues, however, that Montesquieu's presentation of judging as restrained and impersonal helped make independent judicial authority compatible with political liberty [14]. The apparent weakness of the judicial office conceals the importance of insulating adjudication from direct political command.

Modern constitutional systems require a more developed account of judicial independence than Montesquieu supplied. Independence includes not only freedom in deciding individual cases, but also rules concerning appointment, promotion, case allocation, remuneration, discipline, tenure, administration, and access to judicial review. These arrangements need not be identical across legal systems. They must nevertheless prevent political actors from converting ordinary managerial or disciplinary tools into mechanisms of retaliation or control.

5.3. FORMAL VALIDITY AND CUMULATIVE INSTITUTIONAL EFFECT

Backsliding scholarship emphasizes that institutional erosion frequently occurs through a sequence of individually legal measures rather than a single openly authoritarian act [6, 7]. A change to appointment rules may appear modest when considered alone; combined with early termination of existing terms, control of disciplinary bodies, expansion of court membership, altered case allocation, and restrictions on review, it may transform the institution's practical independence.

A Montesquieuan analysis must therefore be cumulative. It asks how a reform changes the total distribution of power and whether affected institutions can still resist, delay, expose, or correct misuse. Formal validity remains important, but legality in the narrow sense cannot substitute for an inquiry into the relationships that sustain liberty.

6. CONTEMPORARY ILLUSTRATIONS: POLAND AND HUNGARY

6.1. POLAND: APPOINTMENT, DISCIPLINE, AND JUDICIAL COUNCILS

The Polish reform cycle beginning in 2015 generated extensive controversy concerning the Constitutional Tribunal, the National Council of the Judiciary, the Supreme Court, ordinary courts, and judicial discipline. Sadurski's account emphasizes that these changes should be assessed together because they redistributed influence over judicial appointments, administration, tenure, and accountability [16]. The point for present purposes is not that every alteration to a judicial council or disciplinary system is impermissible. It is that the constitutional effect depends on who controls the revised mechanism, how existing terms are treated, and whether meaningful review remains available.

Two European judgments illustrate this relational concern. In *Commission v. Poland*, the Court of Justice of the European Union held that the disciplinary regime applicable to judges failed to provide the guarantees of independence required by European Union law [21]. In *Grzęda v. Poland*, the Grand Chamber of the European Court of Human Rights found a violation arising from the lack of judicial review of the premature termination of a judicial member's term on the National Council of the Judiciary and stressed the importance of protecting judicial councils from legislative and executive influence [22].

These decisions are relevant to Montesquieu's theory because they examine institutional relations rather than institutional labels. A council may formally continue to exist, and a disciplinary chamber may formally be a court, while the arrangement of appointment, tenure, and review undermines the capacity of the judiciary to act as an independent check. The Polish example also demonstrates why transitional provisions matter. Immediate alteration of existing terms can produce a different distribution of power from a prospective reform applied only to future vacancies.

The later process of addressing disputed reforms confirms another feature of moderation: institutional damage and institutional repair are both path dependent. The European Commission's annual rule-of-law reporting continues to assess reform, implementation, and the practical operation of checks rather than treating statutory amendment alone as conclusive [23]. A moderation analysis should likewise examine whether remedial measures restore effective independence in practice.

6.2. HUNGARY: FORMAL CONTINUITY AND CONCENTRATED CONTROL

Hungary presents a related but distinct illustration. Scholarship on autocratic legalism describes how constitutional transformation can proceed through formally enacted rules that cumulatively weaken checks while preserving the external

vocabulary of constitutional government [7, 15]. Research on the Hungarian judiciary further emphasizes the interaction of formal rules with informal control over managerial positions, case administration, promotion, and discipline [17].

The Constitutional Court illustrates the importance of cumulative effect. Szente's analysis argues that changes to the Court's composition and institutional environment altered not only who served on the Court but also its later jurisprudential posture [24]. The analytical issue is broader than the legitimacy of any single appointment. When one political majority can change the size, jurisdiction, appointment structure, and surrounding constitutional rules of a checking institution in a compressed period, the practical capacity of that institution to restrain the same majority may be diminished even though the Court continues to issue judgments.

The Hungarian example also shows why formal and informal institutions cannot be assessed separately. Rules governing court administration may appear neutral, but their operation depends on appointment networks, discretionary powers, professional incentives, and the availability of internal and external accountability. Montesquieu's contextual method is useful precisely because it directs analysis toward this institutional ecology rather than assuming that a familiar legal form carries the same effect everywhere.

6.3. COMPARATIVE LESSON AND LIMITS OF THE ILLUSTRATIONS

The Polish and Hungarian experiences are not identical, and the present article does not attempt to rank them or to provide a complete account of subsequent reform and resistance. Their shared analytical lesson is more limited: constitutional erosion may occur through lawful instruments that preserve the names and outward forms of institutions while altering their capacity for mutual constraint. The cases also demonstrate different pathways. Direct changes to tenure, discipline, and judicial councils may operate alongside more diffuse control over administration, appointments, and informal professional incentives.

For legal reformers, the lesson is to examine sequences and interactions. A proposed change should be evaluated together with existing appointment rules, party control, amendment procedures, disciplinary structures, budgetary authority, and avenues of review. What appears moderate in isolation may become immoderate when added to prior reforms or placed in a context of concentrated political control.

7. A MONTESQUIEUAN MODERATION TEST FOR LEGAL REFORM

7.1. SIX DIAGNOSTIC DIMENSIONS

Montesquieu did not formulate a modern checklist for judicial reform, and any attempt to derive one must avoid presenting contemporary criteria as direct eighteenth-century prescriptions. Nevertheless, his relational conception of law, his concern with the abuse of power, and his ideal of moderation support six diagnostic dimensions. Table 1 summarizes the framework.

Table 1. *A Montesquieuan moderation test for legal reform*

Dimension	Diagnostic question	Warning sign
Reciprocal constraint	After the reform, can the affected institution still review, delay, expose, or resist misuse by another branch?	The institution remains formally present but loses effective checking authority or access to remedies.
Appointments and tenure	Is control over appointment, promotion, discipline, suspension, and removal sufficiently dispersed and protected?	One political actor controls several stages, existing terms are terminated, or discipline can be used against adjudicative choices.
Procedural safeguards	Was the reform adopted through transparent, deliberative, and reviewable procedures with meaningful transition rules?	Accelerated enactment, omnibus amendment, retroactivity, restricted participation, or insulation from review.
Contextual fit	Are the background institutions and informal norms that support the borrowed model present or replaced by equivalent safeguards?	Selective or acontextual borrowing imports power-enhancing features without counterweights.
Cumulative effect	How does the measure interact with earlier or simultaneous changes to jurisdiction, administration, budget, membership, or amendment power?	Several facially limited reforms collectively concentrate control or neutralize resistance.
Reversibility and accountability	Can errors or abuses be corrected through independent review, ordinary political change, or lawful institutional repair?	The reform entrenches control, blocks remedies, or makes restoration dependent on the same actor that benefits from the change.

The dimensions are interdependent. A transparent appointment procedure cannot compensate fully for a disciplinary regime that permits retaliation, and a formally independent court cannot check power if its jurisdiction is removed whenever politically important questions arise. The test therefore resists single-indicator analysis. Its object is the constitutional relation produced by the reform as a whole.

7.2. USING THE TEST IN REFORM DESIGN

The first stage of application is purposive: reformers should specify the legitimate problem the measure is intended to solve. Judicial councils may require greater accountability, courts may face delay, appointment processes may be opaque, and constitutional review may need procedural clarification. The existence of a genuine problem does not determine the legitimacy of the chosen remedy. It establishes the purpose against which necessity and proportionality can be assessed.

The second stage is relational. Reformers should map who gains and loses authority over nomination, confirmation, administration, discipline, tenure, jurisdiction, and review. This map should include both formal powers and predictable informal incentives. A measure that centralizes one function may remain moderate if other institutions retain robust review and if appointments are temporally dispersed. The same measure may be dangerous where one coalition controls all relevant institutions.

The third stage is contextual and comparative. A foreign model should be studied as part of a package. If a jurisdiction borrows legislative appointment of judges, for example, it should also examine supermajority requirements, opposition participation, staggered terms, professional criteria, public scrutiny, constitutional review, and conventions that constrain partisan use. Borrowing only the appointment power while omitting these safeguards is precisely the kind of acontextual or selective migration against which Montesquieu's method warns [9].

The fourth stage is cumulative and temporal. Reform analysis should include previous changes and realistic future uses. Temporary political advantage should be separated from durable constitutional principle by asking whether supporters would accept the same power in the hands of their opponents. Transitional rules deserve particular attention because immediate replacement, shortened terms, or rapid court expansion can change institutional control before the long-term merits of a new design are tested.

Finally, moderation requires the preservation of lawful correction. No institutional design is infallible. A moderate reform therefore leaves space for independent adjudication, legislative reconsideration, public scrutiny, and eventual alternation in office. A system that can be changed only with the consent of the actor benefiting from concentrated power is structurally resistant to self-correction.

8. CRITIQUES AND LIMITATIONS

Any contemporary appropriation of Montesquieu must confront serious historical and normative limits. His climate theory is empirically untenable in its deterministic form and ethically compromised by prejudicial generalizations characteristic of his period [11, 18]. His discussions of slavery, empire, gender, and non-European societies cannot be treated as acceptable foundations for modern constitutional judgment. Contextual analysis must be separated from cultural essentialism and must operate within contemporary commitments to equality, human rights, and democratic inclusion.

Montesquieu's English constitution is also an idealized construction, and his account of judging predates the administrative state, modern judicial review, constitutional courts, supranational legal orders, mass political parties, and contemporary bureaucratic governance [3, 14]. The specific institutional arrangements of 1748 cannot therefore be transferred directly to the twenty-first century. The value of the theory lies in its relational method and its orienting concern with moderation, not in literal reproduction of historical offices.

The article itself has methodological limitations. Its literature selection is purposive rather than systematic, and its two country illustrations cannot support broad causal claims. Poland and Hungary are prominent cases in European scholarship, but they do not represent all pathways of institutional erosion or reform. The analysis gives greatest attention to courts and judicial institutions, although executive agencies, legislatures, electoral bodies, media regulators, audit institutions, and subnational authorities may also perform essential checking functions.

The moderation test is normative and qualitative. Reasonable observers may disagree about the weight assigned to its dimensions or about when a cumulative effect becomes constitutionally unacceptable. The framework also cannot replace jurisdiction-specific legal analysis under constitutional text, precedent, international obligations, or local democratic procedures. Its more modest purpose is to reveal questions that formal validity alone may obscure and to structure comparison without assuming that one institutional model fits every society.

Finally, moderation itself can be misunderstood. It should not become a demand for political passivity, preservation of unjust arrangements, or avoidance of transformative reform. Some legal systems require substantial change to correct exclusion, corruption, inefficiency, or inherited authoritarian structures. Montesquieuan moderation concerns the distribution and accountability of reforming power, not the smallness of reform. Ambitious change can remain moderate when it preserves contestation, independent review, temporal limits, and the possibility of correction.

9. CONCLUSION

Revisited with care, *The Spirit of the Laws* offers modern legal reform something more durable than a familiar slogan. Montesquieu's separation of powers is best understood as a dynamic system of mutual constraint whose end is liberty.

Institutions need not be isolated, but they must retain enough independence, authority, and security to prevent power from becoming arbitrary. This relational account explains why constitutional structures may be formally preserved while their checking substance is progressively weakened.

Montesquieu's contextual method provides a second contribution. Legal models cannot be evaluated apart from the institutional and social environments that make them operate. Comparative borrowing is therefore legitimate only when reformers identify the purpose of a foreign design, examine its surrounding safeguards, and provide functional equivalents in the receiving system. The modern problem of abusive constitutional borrowing confirms the continuing importance of this warning.

The Polish and Hungarian illustrations show how appointment, tenure, discipline, administration, jurisdiction, and informal control may interact. Neither case can be reduced to one statute or one institutional label. Their relevance to Montesquieu lies in the cumulative alteration of relations among institutions and in the possibility that lawful forms may be used to diminish practical restraint.

The six-part moderation test translates these insights into a usable framework. It asks whether reform preserves reciprocal constraint, disperses control over appointments and removal, follows adequate procedures, fits its institutional context, avoids harmful cumulative concentration, and remains open to independent correction. The test does not supply a universal constitution or decide every dispute. It disciplines reform analysis by directing attention to the practical capacity of power to check power.

Montesquieu's enduring value consequently lies less in the specific institutional prescriptions of 1748 than in a method of constitutional judgment: examine relations, compare contexts, distrust concentrated authority, and evaluate legal change by whether it sustains the conditions of liberty. Reform guided by that method can be ambitious without becoming arbitrary and comparative without becoming imitative.

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CONFLICT OF INTEREST

The authors declare no conflict of interest.

DATA AVAILABILITY

No original dataset was generated or analyzed for this conceptual and doctrinal study. The legal and scholarly sources used are identified in the references.

DECLARATION OF GENERATIVE AI AND AI-ASSISTED TECHNOLOGIES IN THE WRITING PROCESS

During the preparation and revision of this manuscript, the authors used ChatGPT to assist with language editing, structural organization, and the drafting of revisions. The authors reviewed and edited the resulting text, checked the cited legal and scholarly sources, and accept full responsibility for the accuracy, originality, interpretation, and integrity of the final manuscript.

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