**Montesquieu, Kant, Hegel**

**Charles Montesquieu (1689 - 1755)**

Charles-Louis de Secondat, Baron de La Brede et de Montesquieu

- 1721 – Persian Letters – criticizes the French society, the absolute monarchy

- 1734 – “considerations on the causes of the greatness of the Romans and their decline”

- 1748 – the spirit of the laws (de l’esprit des lois)

- applies **ideas of enlightenment** on society and its basis – the law

- English example, influence of Locke

- comparison of **natural conditions** of societies and their law

- from **nature of things** follows the spirit of the laws

- different natural factors determine people, a **general spirit** is formed out of them

- **territory** – big territories have tendency to monarchy, small to republic

- **climate** – greater stability in warmer regions

- other societal and historical factors like **religion, economy, morals, history**, maxims of government

- **3 forms of government:**

 - **Despotism** – governed by the principle of fear

 - **Monarchy** – honor

 - **Republic** – a democracy or aristocracy – virtue

- a government is good when it is decent; only then it **guarantees liberty**

- **Separation of powers** serves liberty:

 - **Legislative** – controls executive and consists of two chambers

 - **Executive** – veto against decisions of legislative

 - **Judicial** – strict separation from executive

- influence on European politicians, like enlightened monarchs (Joseph II.)

**Immanuel Kant (1724 - 1804)**

- 1781 – Critique of Pure Reason (2nd ed. 1787) – epistemological part of his philosophy

- 1784 – What is Enlightenment?

- 1788 – Critique of practical Reason

- 1795 – Perpetual Peace

- “Two things fill the mind with ever new and increasing admiration (wonder) and awe, the more often and steadily we reflect upon them: The starry heavens above me and the moral law within me.” (From Critique of Practical Reason)

- “All interest of my reason combines in the following three questions:

**1. What can I know?** (Critique of pure Reason)

**2. What shall I do?** (Legal and Political Philosophy)

**3. What may I hope for?** (History and Religion)”

**Law as means to the end of freedom**

 - necessity of law – society = conflicts (like Hobbes)

- but – man as free but infinite intelligent being articulates will by defining ends for his acting and using blablabla

- men mutually interfere with each other’s interests or even threaten (up to destroy means of existence)

- to overcome this situation, men have to mutually limit their arbitrary freedom and order their actions

Blaablaablaa

- leading normative principle for human acts is freedom

- every man is a priori entitled to it (i.e. unconditional and indispensable)

- freedom (unlike Hobbes) is not individual discretion, but autonomy (ability to set rules for one’s acts in a self – responsible way)

- self determination and independence (from other’s arbitrariness) as negative and positive elements of freedom

- perspective of law – from this principle of freedom follows the claim for institutional provisions on the ground of general rules blablabla

- external limits for human acts by law, but also guarantees recognition of each individual as similarly free individual

- to ensure legal relationship of equal individuals, coercion is necessary (contrary to freedom but legitimated by double negation)

- for coercion to fulfill this function (to prevent freedom from interference by extensive use of freedom) a power to protect the law is necessary – state

- people have to leave the state of nature, submit to public, legal, external force – constitutional republic governed by the rule of law, separation of powers, general will

Morality and Legality

- modern development of law characterized by tendency to draw a sharper line between law and moral (independence of pos. law)

- Kant’s contribution – distinction of morality and legality