

The Differences between John Locke and Montesquieu's "The Doctrine of the Separation of Powers"

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Abstract: In modern times, with the further development of the ancient European the doctrine of separation of powers, the British Locke first proposed the doctrine of separation of the three powers between the legislative, the executive and the federative power. Subsequently, on the basis of inheritance, Montesquieu of France proposed the doctrine of separation of legislative, the executive and judicial power. Although there is a theoretical relationship between the Locke and Montesquieu, there are still great differences. This paper aims to explore these differences from the background of the theory, the power contained, the focus of power, the starting point and the foothold of the theory, the principle of separation of powers and the influence.

Keywords: The doctrine of separation of powers; Locke; Montesquieu; Differences

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1. Introduction

As an important part of the European bourgeois political doctrine, "the doctrine of the separation of powers" can be traced back to the golden democracy of the ancient Greeks of Pericle^[1]. After the development of Aristotle, Boribia and Cicero, the ancient European "the doctrine of the separation of powers" continued to mature. In modern times (mainly about the 17th and 18th centuries), the bourgeoisie grew stronger as an emerging political force. In order to adapt to the need to oppose the feudal autocratic system, the enlightenment thinkers of the bourgeoisie developed "the doctrine of the separation of powers" into a more complete doctrine. Among them, "the doctrine of the separation of powers" put forward by John Locke of England and Montesquieu of France are typical representatives. However, there are some differences about their "the doctrine of the separation of powers".

John Locke separates powers in three parts, which are: the legislative, the executive and the federative powers^[2]. Montesquieu has a similar division of power, which is SOP (the separation of the executive, legislative and judicial powers.)^{[3][4]} A simple observation reveals that they all divide power into three parts. However, the basis for their respective division and the deep-seated implications are quite different.

2. Literature Review

(1) Domestic research

Domestic researches on Locke and Montesquieu's the doctrine of the separation of powers are mainly focus on the point comparative study. Such as Ming Yu thinks, Locke's idea of the doctrine of the separation of powers is based on his understanding of the state of nature. But Montesquieu's idea is based on his understanding of law. In addition, Locke only emphasizes the principle of separation of powers, while Montesquieu emphasizes the principle of checks and balances^[5]. Su Kai thinks Locke and Montesquieu's doctrine have different historical roots. Locke's

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doctrine of separation of powers is based on the long British political tradition, while Montesquieu's is based on the inheritance of Locke's theory and the relevant situation in France^[6]. Wang Yufeng thinks Locke's doctrine is not thorough. For example, he emphasizes the combination of executive power and federative power. On the contrary, Montesquieu emphasizes that legislative power, judicial power and executive power must be separated^[7]. Zhao Fei thinks although Locke and Montesquieu have the same relationship in theory, they have different ideological tendencies in their doctrine. The former focuses on public welfare with property rights as its focus, while the latter focuses on political freedom with aristocratic privileges as its premise^[8]. Domestic scholars mainly focus on one point for comparative analysis. The comparative analysis of the history and national conditions of the theory is insufficient.

(2) Research in abroad

The research of foreign scholars mainly focuses on the historical development of the doctrine of the separation of powers and its influence, and the independent research of Locke and Montesquieu's doctrine. Such as Dr John Alvey, who mainly talks about the main writers of the doctrine of the separation of powers and the state of Queensland where the executive infringes on the functions of the legislature and the judiciary. He draw a conclusion that the doctrine of separation of powers is part of a simultaneously robust and delicate constant interplay between the arms of government (legislative, executive and judicial)^[9]²⁻¹⁷. Suri Ratnapala mainly focus on Locke's doctrine of the separation of powers, he thinks Locke proposed the old division of legislative and executive powers with a further elucidation of the federative power which nonetheless is an aspect of executive power. The separation of powers was only a matter of convenience and not something vitally important. And Locke regards the non-differentiation of legislative, judicial and executive functions as the great deficiency of the state of nature^[10]²⁰⁰⁻²¹³. M.J.C. Vile mainly talks about Montesquieu's the separation of powers, he thinks Montesquieu does not accord the judicial branch an exactly equal status with the legislative and executive branches, although he clearly intends the judiciary to be independent of the other two^[11]. Besides, Paul T. Jaeger, Ajit Mishra, T.C.A. Anant and Yu Li, Yong Zhao mainly talk about the influence of the doctrine of the separation of powers. In short, domestic research and foreign research have shown a complementary state.

3. Main Differences

(1) Different backgrounds

The presentation of the doctrine of the separation of powers by Locke and Montesquieu has different backgrounds. Locke's *Two Treatises of Government* was published in 1690, when the Glorious Revolution in Britain had just ended and the constitutional monarchy was established in the United Kingdom. Locke's theory actually defends the new polity of the bourgeoisie. Locke said in the preface of this book "These which remain I hope are sufficient to establish the throne of our great restorer, our present king William"^[21]. The theory of Locke was based entirely on the establishment of a real system, and his theory served the system that was established in Britain at the time. However, the background of Montesquieu's theory is very different from Locke's. His *The Spirits of Laws* was published in 1748. At that time France was under the rule of the feudal monarchy, and the power of the bourgeoisie was very weak. France has not carried out a bourgeois revolution, nor has it established a mature bourgeois system. Montesquieu's book is an investigation of the environmental and social relationships that lie behind the laws of civilized society. In other words, Montesquieu's theory was not proposed for the social system at the time, but a blueprint for future capitalism, serving the future capitalist system. Therefore, Locke's doctrine is in the context of British modern bourgeois democracy, but Montesquieu's is in the context of the French monarchy.

(2) Different powers

John Locke separates powers in three parts, which are: the legislative, the executive and the federative powers.

Montesquieu has a similar division of power, which is SOP (the separation of the executive, legislative and judicial powers.). As can be seen from the content, the difference in Locke's doctrine is the federative power, and in Montesquieu is the judicial power because of different national situation. At that time, Britain was in the rising period of capitalism, and foreign exchange played an important role. Locke thinks "This, therefore, contains the power of war and peace, leagues and alliances, and all the transactions with all persons and communities without the commonwealth, and may be called federative if any one pleases"^{[2]237}. Leagues and alliances are very important for Britain at the moment. However, at that time France was in the Age of the Enlightenment, and rationality occupied the dominant position of people's thoughts, and the law was regarded as a manifestation of reason. Enlightenment thinkers attach great importance to the role of law, focusing on legal powers, including Montesquieu mainly focus on the legislative and judicial powers.

(3) Different focus

Different focus means in Locke and Montesquieu's the doctrine of separation of powers, they choose different powers as the center. Locke thinks the legislative is center, the executive and federative powers are subordinate to the legislative power. And say "In all cases whilst the government subsists, the legislative is the supreme power. For what can give laws to another must needs be superior to him, and since the legislative is no otherwise legislative of the society but by the right it has to make laws for all the parts, and every member of the society prescribing rules to their actions, they are transgressed, the legislative must needs be the supreme, and all other powers in any members or parts of the society derived from and subordinate to it"^{[2]240}. And Montesquieu is to put the legislative and executive powers at the center and marginalize the judicial power. He says : "As in a country of liberty, every man who is supposed a free agent ought to be his own governor; the legislative power should reside in the whole body of the people". "Though, in general, the judiciary power ought not to be united with any part of the legislative, yet this is liable to three exceptions, founded on the particular interest of the party accused"^{[12]142-144}. In Montesquieu's view, judicial power can be combined with legislative power in some cases, but executive power must be separated from legislative power. Therefore, in his "*The Spirit of Law*", Montesquieu spent a lot of space on the legislative and executive powers, and the discussion on judicial power was less than the first two.

(4) Different principles of separation of powers

Although Locke and Montesquieu divide powers into three parts, they keep different principles about the relationships of the three powers. Locke's doctrine of the separation of powers simply divides power into three parts and achieves the purpose of separation of powers, but does not make substantial efforts in power constraints. He thinks " But because the laws that are at once, and in a short time made, have a constant and lasting force, and need a perpetual execution, or an attendance thereunto, therefore it is necessary there should be a power always in being which should see to the execution of the laws that are made, and remain in force. And thus the legislative and executive power comes often to be separated"^{[2]236}. Sometimes, he also thinks the principle of the combination of powers. He says "the executive and federative power of every community be really distinct in themselves, yet they are hardly to be separated and placed at the same time in the hands of distinct persons"^{[2]238}. The greatest contribution of Montesquieu to Locke is his principle of checks and balances. The mutual supervision of the legislative, executive and judicial powers restricts each other, effectively restricts public power, prevents abuse of power, and protects the public interest. The focus of Montesquieu's separation of powers is to establish a system of power restriction, rather than a rough form of state agency to apply the theory of separation of powers. The essence of his thought lies in the state's division of power into three parts, not even the efficient operation of a power, the harmonious governance of society, and the strong protection of people's freedom and rights.

(5) Different starting point and the foothold

Locke is the first person in the modern natural law school to explicitly put forward the doctrine of separation of

powers. On the basis of Locke's doctrine of the separation of powers, Montesquieu further perfected the separation of legislation, administration, and judicial power and mutual checks and balances. Although their doctrines have the relationship, their ideological tendencies in their respective decentralization doctrines are different. The former focuses on public welfare with a focus on property rights, while the latter focuses on political liberty premised on aristocratic privileges. Locke thinks "the power of the society or legislative constituted by them can never be supposed to extend farther than the common good, but is obliged to secure every one's property by providing against those three defects above mentioned that made the state of Nature so unsafe and uneasy, and all this to be directed to no other end but the peace, safety, and public good of the people"^{[2]222-232}. Locke puts people's property security at the forefront, and even the central legislative power must serve the protection of people's property security. For the life and property of the people, the legislative power cannot be absolutely arbitrary. Without the consent of the person, the supreme power cannot deprive any part of the property of any one person. Therefore, the starting point and the foothold of Locke's doctrine of separation of powers is the safety of people's lives and property. However, the starting point and the foothold of Montesquieu's theory is the premise of political freedom to safeguard the interests of the bourgeois aristocracy. He pays special attention to liberty in the spirit of the law. He thinks "Liberty is a right of doing whatever the laws permit, and if a citizen could do what they forbid he would be no longer possessed of liberty, because all his fellow-citizens would have the same power"^{[12]138}. Montesquieu directly links liberty to the law. On the basis of the construction of the principle of freedom, Montesquieu further proposed that the aristocratic groups and the elected civilian groups should have legislative power. In addition, since the dignitaries are vulnerable to people's embarrassment, the nobility should not be tried in the national ordinary courts and should be tried by the aristocratic legislature. It can be seen that Montesquieu has given special maintenance to the power of the nobility.

(6) Different influence

1) Locke's is greater than Montesquieu's

The traditional view is that Montesquieu further perfected Locke's doctrine of the separation of powers, which has a greater impact on western capitalist countries. In fact, from the transitional point of view of the doctrine, Locke's influence is far greater than Montesquieu. From the perspective of thinking logic, Locke's theory of power separation is an important turning point in the thought of natural law. Classical natural law should be divided into two periods: in the first period, natural law mainly focused on the natural rights of human beings, starting from Grotius to Hobbes. In the second period, the main concern of natural law was the realization of human natural rights. Locke was the beginning of the transition in this period. The emergence of Locke's theory of decentralization opened the transition of classical natural law from the first period to the second period, from the attention to the content of rights to the protection of rights, from what rights are changed to how to realize rights. So, Locke's theory of decentralization is one of the most important turning points in the history of natural law and even in the history of human law. It has a profound influence on the historical evolution of natural law.

2) The depths of different influence

Different influencing form means Locke and Montesquieu's doctrine of the separation of powers has different levels of influence on Western politics. Locke's doctrine primarily influences deep political thought, while Montesquieu's affects the political structure of the surface. We take the United States as an example for analysis. The American polity is considered to be the perfect embodiment of Montesquieu's doctrine of the separation of powers. Judging from the superficial structure of the political system, the legislative power of the United States is under the control of the Congress, the executive power is controlled by the president, the judicial power is controlled by the Supreme Court, and the three powers are separated from each other and checked and balanced. This is in full compliance with Montesquieu's doctrine of decentralization. However, from the perspective of deep political thoughts, the American polity fully reflects Locke's idea of decentralization. Russell said "that the country with the

most adequate application of Locke's theory is the United States. In the US polity, at a deeper level, the authority of the Supreme Court is only the authority to interpret in name"^[13]. In addition, respect for property and the promotion of human rights in American political thought are all influenced by Locke's doctrine.

4. Conclusion

On the basis of different comparisons, the author believes that Locke and Montesquieu's the doctrine of separation of powers shows many differences on the basis of inheritance. In terms of background, Locke's theory originated in the United Kingdom after the establishment of modern bourgeois democracy, while Montesquieu originated in France under the feudal autocracy. In terms of power, Locke is divided into legislative power, executive power and federative power, while Montesquieu is divided into legislative, executive and judicial powers. In terms of power, Locke focuses on legislative power, while Montesquieu ignores jurisdiction. In terms of the principle of separation of powers, Locke only emphasizes the separation of powers, while Montesquieu emphasizes the principle of separation of powers and checks and balances. At the starting point and the foothold, Locke emphasizes that the people's life and property are greater than everything, while Montesquieu focuses on the interests of the aristocratic class. Finally, in terms of impact, Locke's influence is far greater than Montesquieu's. As the two outstanding representatives of the Western decentralization doctrine, the study of the decentralization doctrines of Locke and Montesquieu will be deeper.

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