

Analysis on Locke's Thought of Rule of Law*

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Abstract—John Locke is an important philosopher who built the modern Western philosophical system and the founder of Western modern liberalism. His theory of political philosophy has not only played a pivotal role in the history of Western political thought, but also has profound impact on the current political civilization and political practice. In order to oppose the theory of monarchical authority, Locke proposed his social contract theory. In this theory, Locke believes that before entering the political society, human beings are in a natural state of equality and freedom for all, and enjoy three natural rights: the right to life, liberty and property. Along with inequality and the emergence of money, human society has two levels of differentiation, conflicts and contradictions have intensified. It is necessary to establish national government to protect people's natural rights and maintain social harmony and tranquility. In order to prevent people's property rights from being infringed by the autocratic monarchy, Locke advocates the establishment of a constitutional government under the "the law of King" and the separation of powers, and advocates that people have the right to resist the revolution of tyranny.

Keywords—*citizen; rule of law; power*

I. INTRODUCTION

Locke's rule of law is an argument for "Glorious Revolution" in Britain in the year of 1688 and represents the fundamental interests of the emerging bourgeoisie. The glorious revolution in 1688 not only established the restrictions of the parliament on the kingship, but also established the dominance of the productive class in the political economy and other aspects. Locke's doctrine has made comprehensive ideological argument for the regime of new bourgeois state from the above two aspects. Aristotle's thought of the rule of law is the theoretical origin of Locke's rule of law. Aristotle advocates the rule of law. He believes that law should be the main ruling element of all polities. Even the monarchy must have the highest principle and authority. "A city-state must have an adaptive legal system, and no one can obtain the special power by his property or friends. This is hidden worry of the state." [1] Aristotle believes that only the law can be independent from the

individual benefits and emotions. The rulers should be objective, rational and impartial. The law can limit power. And it is the most effective mean of preventing the abuse of power. Under the guidance of such concept, Aristotle emphasizes that the law should be supreme. The king should accept the law. That is to say, the king should be under the law. Aristotle emphasizes that no individual will can override the law. Only in this way can we effectively prevent the abuse of power and political corruption. Therefore, he points out that "the law should have supreme authority", "the movement of political mechanism is based on law as the best principle and is restricted by law." [2]

Locke's idea of check and balance also stems from Aristotle's ideas. In order to reform the city-state system of ancient Greece, Aristotle proposed the theory of three essential elements of regime. He believes that any regime should have three essential elements: deliberative function, administrative function, and judicial function. It is equivalent to the three governmental functions of legislation, justice, and administration that we are talking about today. The deliberative department of government is the highest authority of the city state. It is responsible for making laws and major political decisions. It is equivalent to today's parliament. Administrative functions are related to the daily political affairs and operations of city-states. Judicial institutions refer to city-state courts, which are responsible for hearing city-state cases and reviewing administrative affairs. Aristotle undoubtedly considers the concentration of power. Especially, the power is concentrated in the executive heads, leading to the corruption. These thoughts have had profound impact on Locke's subsequent decentralization and checks and balances.

II. MAIN CONTENT OF LOCKE'S RULE OF LAW

A. *The Rule of Law and Natural Rights*

Locke believes that no one in the natural state has the right to be in a condescending position. Everyone has equal status and should receive sufficient attention and equal treatment. People in the natural state have absolute autonomy. This means "not being bound or violent by others". [3] After entering the political society, freedom has also changed. It is no longer absolute freedom. To some extent, the natural rights have been restricted by laws, morals, customs, etc. From the starting point, it is still protection of individual core rights. "In addition to being limited by law, individuals have complete freedom to deal with individual behavior and property. Under this premise, the individuals are not subject

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to the will of any person, but live in full accordance with the will of the individual. [4] With this important part of the law, human natural rights can be realized in the political society.

In Locke's theory, property rights are the most important rights. In his view, everything human beings get from nature is God's gift. "A human being has the right to life since he was born. He can enjoy meat and drink and other items that are naturally supplied to sustain their existence. God gives the earth to the people." [5] People use nature to serve God better, and when people apply their labor to natural things, labor makes people have reason for natural possession. In Locke's view, the realization of political power is first the formulation of laws that regulate and protect property. As the spokesperson of the emerging bourgeoisie, Locke's ultimate goal is to demonstrate an infinite right to pursue unlimited property. In Locke's view, the creation of money broke through the restrictions on people's possession of property in the early stages of nature. For example, the currency will not rot, and people can buy a large amount of land and accelerate the privatization of land. In this way, the original limited property rights are transformed into unlimited rights to occupy unlimited property.

Locke proposed the concept of "public good" as an important starting point for the government to exercise all its power. This kind of "public good" is rooted in the natural rights of human beings. At the same time, it is based on the rational elements contained in natural law. We have one thing that needs special attention. This "public good" does not mean the sum of the welfare of each member of society. It is not only the manifestation of many individual interests, but also the transcendence and sublimation of individual interests. The introduction of major principles raises a sharp question. That is the reinforcement of government power. "The government contract concept is too favorable for the government. It will make the government be an independent party that is on an equal footing with the community. In Locke's view, the government exists in the community. Also, the government exists through the community. [6] In this regard, Locke's response is to decentralize the government power representing the people into different powers such as legislation, administration and diplomacy. And it would achieve mutual restraint and balance. This involves an important aspect of Locke's legal thinking, namely, decentralization and checks and balances. What needs to be pointed out here is the "majority" said by Locke. It refers to the majority of the producers, not the proletarians. In the second half of the 17th century, the proletarian is not regarded as the citizen with rights in British society. The political rights of citizens belong to the proletariat. Only taxpayers should have the right to vote and be elected. The taxpayers at that time were all producers. The proletarians are not qualified to participate in political life and exercise their political rights. According to Locke's theory, it is an identification of this reality.

B. The Checks and Balances of Power

Since the times of Aristotle, the issue on how government power is configured to better serve people's interests has been valued by every political scientist. The law

has always been considered to play a vital role in establishing the relationship between the government and the people. "Political power must exist as a carrier of law, and every member of the political community obeys the law." [7] Locke once states: "People have freedoms that are not bound. In the social state that the regulatory function of law applies, law is the most effective means by which freedom can be defended. Without law, freedom does not exist. For personal freedom, the law is a kind of protection, not a limitation. [9] Locke believes that government power should not forget the original intention. The power of the government is essentially the commission of all citizens, which means that all actions of the government should be responsible for and supervised by the entire people. As time goes by, the real state power in reality is held in the hands of a few people. The law would be trampled by the rulers. At this time, whether people's interests can be protected entirely depends on personal moral literacy and self-discipline of the authorities in power. The oppression and exploitation are inevitable. The power completely loses control and control is unexpectedly dislocated. The basic power of people will be violated frequently. The formulation and implementation of social rules no longer conforms to the provisions of natural law. It is determined by the gains and losses of individuals or a small group. The law also serves the rulers to achieve evil purposes as a tool. Locke believes that government power and the authority of the state should serve the entire people of society. The rulers may use it to oppress its subjects. This is the crime committed by the authoritarian society against its people during the long historical period. Locke precisely proposed the theory of limited government. It is to counter this morbid social form. The so-called limited government is the government of the rule of law. It has made the restrictions on the government.

C. Measures for Decentralization and Checks and Balances

Locke believes that legislative power is the most important power to guide the state to use power to protect the power of this society and its members. The executive power is the power to enforce the laws that have been enacted. External power is the power to decide all external affairs including war, alliance, diplomacy, etc. The legislative power is the highest power. This division of power has a profound abyss of history. In the Great Charter, the struggle between the parliament and the autocratic monarchy officially kicked off since the establishment of the British Parliament. The parliament has adopted a series of measures to restrict the kingship, including the resistance to the king's arbitrary taxation. Through the gradual establishment of the parliamentary system, the British full attention and protection of the interests of the proletariat has been institutionalized. It has also obtained real political discourse through the parliament. This trend was greatly strengthened during the reign of Queen Elizabeth, and this tradition of the United Kingdom is the basis for Locke's legislative power.

Regarding the reason why the government wants to divide power, some scholars have said: "One of the oldest elements of the rule of law is to prevent corruption by establishing procedural precautions, and the final is

decentralization. If the rights of the state are dispersed rather than concentrated in the hands of an authority, the institutions that control power can also monitor and interfere with each other's behavior. Thus, it can reduce the risk of abusing power. [8] Looking back at Locke's theory of decentralization, it is not difficult to sum up such characteristics. First, the legislative power is in an absolute dominance, and the law designated by the legislative power is applicable to any member of the society. And all other powers in the society are derived from legislative power, external rights and judicial power. It is different from the view that the three powers are equal in the separation of the three powers of Montesquieu. In the thought of Locke, the status of the legislative power is detached and in a dominant position.

III. THE ENLIGHTENMENT OF LOCKE'S RULE OF LAW

Locke's rule of law emphasizes decentralization and checks and balances, and the key to decentralization and checks and balances is actually the checks and balances of legislative power on administrative power. Marx once pointed out: "This form of decentralization is the division of labor for daily affairs to simplify and supervise state institutions." [9] This does not deny the progressive nature of Locke's thought. And this has implications for socialist democracy and the rule of law today. The executive power is the most important state power that the constitution and law give the state administrative organs power to manage political, economic, and social affairs. It is both the power that is most closely related to the vital interests of citizens and the government power that is most vulnerable to abuse. Therefore, it is extremely important to strengthen the supervision and check and balance of administrative power. The current lack of supervision over administrative power is mainly manifested in such aspects. First, the actual status of the people's congress is not consistent with the status stipulated by the law. According to the jurisprudence, all state organs must obey the people's congresses. However, in the real political life, the people's congresses at all levels do not enjoy their due status and play their due role in supervising and restricting the administrative departments. Secondly, the Constitution does not explicitly stipulate the procedures for the exercise of supervisory power and the legal liability for illegal administrative acts. Therefore, the supervisory power of the National People's Congress lacks practicality. Third, at present, the operation of China's administrative power has not yet achieved true openness and transparency. The relevant government decision-making process has not been fully disclosed to the society and the people. This has also increased the difficulty for the people's congress to supervise and check the administrative power. Therefore, it is necessary to improve the above aspects and strengthen the legislative power to supervise and balance the administrative power.

IV. CONCLUSION

The exercise and operation of state administrative power must be carried out in accordance with the provisions of the law. For real political life, whether it is the central

administrative organ or the local administrative organ at all levels, we must implement the administration according to law. The government strictly follows the law and guarantees the normativeness and legitimacy of the state's administrative power. We effectively prevent corruption and abuse of power. In order to effectively improve this work, we must give priority to administrative legislation and improve administrative legal system. Second, administrative and legislative work must fully consider the interests and demands of the people, which require people participating in the legislative work. Third, we must continue to make decisions according to law. Administrative agencies at all levels should make political decisions in accordance with established legal procedures, and decision-making cannot be in conflict with legal principles. In addition, we must strengthen the rule of law education for administrative organs at all levels and their staff, cultivate their awareness of the rule of law and the sense of administration according to law, and enhance their consciousness of administration according to law.

REFERENCES

- [1] Aristotle. *Political Science*. Wu Shoupeng Translation [M]. Beijing: The Commercial Press, 1965: 268
- [2] Miao Litian. *Aristotle Complete Works (Vol. I)* [M]. Beijing: Renmin University of China Press, 1994: 130
- [3] Locke. *Two Treatises of Government*. Ye Qifang, Zhai Junong Translation [M]. Beijing: The Commercial Press, 2004: 36
- [4] Guizot. *History of the British Revolution in 1640*. Wu Guangjian Translation [M]. Beijing: The Commercial Press, 1986: 18
- [5] James Tally. *Locke in Context*. Mei Xue prologue, Shi Nan, Zhang Wei, et al. Translation [M]. Shanghai: East China Normal University Press, 2005: 4.
- [6] Milton. *On Freedom of the Press*. Wu Zhixuan Translation [M]. Beijing: The Commercial Press, 1996: 44
- [7] Locke. *Two Treatises of Government*. Ye Qifang, Zhai Junong Translation [M]. Beijing: The Commercial Press, 2004: 77
- [8] Joseph Chacin, et al. *Rule of Law*. Adenauer Foundation Translation [M]. Beijing: Law Press, 2005: 10
- [9] *The Complete Works of Marx and Engels (Vol. 5)* [M]. Beijing: People's Publishing House, 1985: 224