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ПРИБЛИЖАЯСЬ К МИРОВОМУ ВЗАИМОПОНИМАНИЮ – ПУТЬ АРИСТОТЕЛЯ И МОНТЕСКЬЕ В ОБЛАСТИ СПРАВЕДЛИВОСТИ

Аннотация. Аристотель проповедовал Филию, дружбу добродетельных. Наказание там не нужно. Монтескье также говорил, что, когда люди добродетельны, наказание должно быть легким. Суд, блюститель закона, определяет это наказание. Монтескье был судьей до 37 лет. Исходя из этого опыта, он отстаивает идеал суда. Его тезис состоит в том, что «Суд есть ничто». Это утверждение имеет три значения, которые раскрываются в данной статье.

Ключевые слова: Аристотель, Монтескье, Указ о милосердии ко всем живым существам, Закон о безопасности, Томас Мор, Независимость суда, Принцип небытия и любви, Биокосмологическая ассоциация

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APPROACHING WORLD MUTUAL UNDERSTANDING - THE ROUTE OF ARISTOTLE AND MONTESQUIEU IN THE FIELD OF JUSTICE

Abstract. Aristotle preached Philia, the friendship of the virtuous. Punishment is not necessary there. Montesquieu also said that when the people are virtuous, the punishment should be slight. It is the court, the keeper of the law, who determines this punishment. Montesquieu was a judge until he was 37 years old. From that experience, he advocates the ideal of the court. His thesis is that "The Court is Nothingness". This has three meanings. I will explore these three meanings.

Keywords: Aristotle, Montesquieu, Decree of Mercy for All Living Creatures, Security Law, Thomas More, Independence of the Court, Principle of Nothingness and Love, Biocosmological Association

1 Virtuous Persons and Punishment

Montesquieu, who preaches virtue, gives useful suggestions about punishment from his

experience as a former judge. One of them is that when the people are virtuous, very little punishment is necessary. It is written in Book VI, Chapter 11 in "The Spirit of Laws"[1]. The Roman people had integrity. This integrity was so powerful that in order to make the people obey the good, the legislator only had to show the good. Instead of a command, it was enough to give advice.

The penalties of the laws of the king and the laws of the Twelve Tables were largely abolished in the Republic by the laws of Valerius and Porcia. However, it was not recognized that this led to a deterioration of discipline and security in the republican government. These laws, passed between 509 BC and 184 BC, exempted the Roman citizens from punishment of flogging, crucifixion and other which degraded and humiliated them. This meant that public safety was protected.

This statement is a lesson that is still relevant today. By showing the opposite of this, strict laws are meaningless; they make the people suffer. It is the Decree of Mercy for All Living Creatures of Tsunayoshi Tokugawa (1646-1709) in Japan's Edo period (1603-1867). During the reign of Tsunayoshi, because of the number of abandoned children and sick people left unattended, he issued a decree to value life. As his successor, Tokumatsu Tokugawa (1679 - 1683), died at the age of five, the law forbade the killing of animals in addition to valuing the lives of living creatures. Tsunayoshi was born in the year of the dog, so the law took special care of dogs. However, he cherished them so much that dogs overflowed the streets of Edo. In fact, anyone who shot a bird with a gun or caught a duck in a net was condemned to death. In some cases, one would be banished or imprisoned. It is said to be the worst law in the history of Japan. Excessively strict laws undermine human life. It is easy to imagine how the people suffered during this period. You cannot kick a dog that bites a child. The child is left to be bitten. The practice was banned by the 8th shogun, Yoshimune Tokugawa (1684-1751). Regardless of whether the people of the time were virtuous or not, strictness is not always a good thing.

In these instances, from Montesquieu's point of view, Japanese politics is tyranny. Chapter 13, The Impotence of Japanese Laws, clearly shows Japan during the Edo period. The report was based on the materials from a missionary.

"Excessive punishments may even corrupt a despotic government; of this we have an instance in Japan.

Here almost all crimes are punished with death, because disobedience to so great an emperor as that of Japan is reckoned an enormous crime. The question is not so much to correct the delinquent as to vindicate the authority of the prince.

Even things which have not the appearance of a crime are severely punished; for instance, a man that ventures his money at play is put to death.

True it is that the character of this people, so amazingly obstinate, capricious, and resolute as to defy all dangers and calamities, seems to absolve their legislators from the imputation of cruelty, notwithstanding the severity of their laws. But are men who have a natural contempt for death, and who rip open their bellies for the least fancy – are such men, I say, mended or deterred, or rather are they not hardened, by the continual prospect of punishments? "[2]

Here, he writes about the temperament and tendencies of the Japanese people. Since this is a bibliography, it is questionable whether it conveys the reality of the situation. Seppuku is mentioned

and described as if seppuku was an everyday occurrence. It must have been conveyed that way to Montesquieu.

In Japan, tyranny strived but became even more cruel than despotism. This is the origin and the spirit of Japanese law. It succeeded in destroying Christianity with a disgusting slaughter. But it also exposed its weakness through the aforementioned "Decree of Mercy for All Living Creatures" by Tsunayoshi Tokugawa.

Another example I will give is that of the Security Law.

In Japan, during the Second World War, under the Security Law, police officers could easily arrest a person simply because they thought he or she looked suspicious. This seems to be the same in China and Russia today. After arrest, beating and kicking were commonplace at police stations. Takiji Kobayashi (1903-1933), a proletarian literary figure, disappeared after his arrest. His body was later sent home. His front was covered in bruises, blackened from internal bleeding. All ten fingers were broken off, there were nail marks on his thighs. Further his testicles had been crushed.

Kiyoshi Miki (1897-1945), a philosopher and critic of war, was arrested on suspicion of harboring Communist Party members. Imprisoned, he died of nephritis in the filthy prison. Japan eliminated a great heir to the philosophy of Nishida. The victims of the Security Law are said to number in the thousands. One of those who made the effort to write the prohibition of cruel punishment and torture into the Constitution was the philosopher of law Fusaaki Uzawa (1872-1955), who will be discussed later in this article. I have already introduced his philosophy of law in several articles, so I will omit it here. In the above, we have discussed the nature of law and punishment. Next, I will discuss Separation of Powers and the court.

2 Separation of Powers and Thesis of "The Court is Nothingness"

Prior to Montesquieu's analysis, we will briefly introduce the separation of powers of Aristotle. He divided the governing power into three elements: deliberative elements (legislative, declaratory, and diplomatic power, including treaties, laws, including death penalty and exile, etc.), administrative and judicial elements. In today's terms, they are parliamentary, executive and judicial. However, congress also performs diplomatic and judicial functions. There is no clear separation of the three powers, only a functional distinction.

Athens was a direct democracy in which a citizen could become a senator, administrator or judge. The decision to elect his administrators and judges varied from drawing lots from citizens to nomination. The separation of powers of Montesquieu was devised to distinguish the functional aspects of the three powers historically and according to the circumstances of the times.

This is also a characteristic of the separation of powers of Montesquieu.

Montesquieu advocates the famous separation of powers in Book 11, Chapter 6, "On the English State System".

"In every government there are three sorts of power: the legislative; the executive in respect to things dependent on the law of nations; and the executive in regard to matters that depend on the civil law.

By virtue of the first, the prince or magistrate enacts temporary or perpetual laws, and amends or abrogates those that have been already enacted. By the second, he makes peace or war, sends or

receives embassies, establishes the public security, and provides against invasions. By the third, he punishes criminals, or determines the disputes that arise between individuals. The latter we shall call the judiciary power, and the other simply the executive power of the state." [3]

As for the first legislative power, it is obvious. The second power is the universal law, or international law. That is the executive power to make peace, declare war, conduct diplomacy, ensure security and prevent aggression. The third power is civil law, that is, the power to adjudicate individual disputes within a state, the judicial power. It would be more concise if he had written legislative, executive and judicial power from the beginning. Having made this distinction clear, he issues a warning:

"When the legislative and executive power are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. " [4]

When legislative and executive power are combined, freedom does not exist. And when judicial power is combined with legislative and executive power, it means the power of the oppressor, the dictator and freedom does not exist. All is lost. For these three powers are combined in the single body of the emperor to form a formidable tyrannical rule.

Examples of this horrendous tyrannical rule include Sulla (Lucius Cornelius Sulla Felix, 138 BC - 78 BC) in the late Roman Republic and Henry VIII (1491 - 1547) of England. Sulla and Henry VIII are discussed elsewhere but not in this section. In particular, Sulla is discussed in the "Dialogue de Sylla et d'Eucrate (Dialogue of Sylla and Eucrate) ", written around 1724 [5]. This is a literature of dialogue between the fictional philosophers Eucrate and Sulla.

Sulla was a regent, general and dictator in the late Roman Republic. And he had a reputation as a brave military man and an excellent politician, he rebelled against Marius, who had brought him up. Then Sulla forced him to become a regent and dictator. He violently oppressed the Mariusians. He created a proscription (decree of condemnation to death, list of executioners) and made anyone who did not support Sulla write his name on this list as an enemy. It is said that about 9,000 people died in the purge. At this time, the Sulla was a dictator and had full grasp of all legislative, executive and judicial powers. Eventually, Sulla abandoned this post and enjoyed a peaceful, hedonistic life.

In response to this oppression, Montesquieu dialogues with Sulla by euclating the self. The most important question is: "Why did you oppress them so cruelly? What are your thoughts on that?" The first is. Sulla answers without any guilt. "My policy was for the peaceful rule of Rome. Because of it, we live in peace."

This purge of Sulla came as a shock to Montesquieu. He saw the maladministration of the three powers.

Next is Henry VIII. While he is admired as an able and distinguished monarch, he was married six times during his life. One of his most tragic marriages was to the young Anne Boleyn, whom he

fell in love with despite the fact that he had a wife, Catherine. The marriage was arranged. That meant a divorce from Catherine. However, those were Roman Catholic times. The Pope did not recognize divorce. So England broke away from Catholicism and became independent as the Church of England. This move was opposed by Thomas More (1478 - 1535), a historical humanist who was the Grand Chancellor at the time. Thomas More opposed king's marriage to Anne. Henry VIII, who was disturbed, executed Thomas More for treason. Thomas More left behind the words, "Even in my death". The Lord Chancellor is the current Chief Justice of the Supreme Court. Henry VIII executed the Chancellor for marrying a young girl. It was a historic suppression. He was canonized by the Catholic Church and the Anglican Church in 1935, 400 years after his death. So was Anne happy when she married Henry VIII? Ironically, three years later, Anne, who did not give birth to a boy, was executed for adultery. The movie "Anne of 1000 Days" is well known. Anne in the movie can only be described as pitiful. Henry VIII married and divorced more. In the end, he died of a maggot disease.

Montesquieu, who takes up the misfortune of rulers having jurisdiction as representative of these two bad examples, advocates the independence of the courts. However, unlike parliament, the courts are only weak institutions because they do not have a popular base. Symbolic of this is that the court is nothingness. Moreover, even if a court institution is created, there is no need for a permanent court because the rulers control the judges with their power. And so he notes the thesis of "The Court is Nothingness." Instead, he proposes a trial by jury of termed intellectuals and other jurors, referring to the jury system that existed in 18th century England. Since it is not a permanent institution, it has the effect of preventing interference by the ruler.

Nor should the court be an institution that strikes fear into the hearts of the people. When the people know who the judges are, they fear them. This represents a politics of fear. Both Sulla and Henry VIII were dictators and kings but they were also, in effect, judges. The people of the city would have been frightened and terrified of them. This is meant to deny that.

"The judiciary power ought not to be given to a standing senate; it should be exercised by persons taken from the body of the people at certain times of the year, and consistently with a form and manner prescribed by law, in order to erect a tribunal that should last only so long as necessity requires.

By this method the judicial power, so terrible to mankind, not being annexed to any particular state or profession, becomes, as it were, invisible. People have not then the judges continually present to their view; they fear the office, but not the magistrate."[6]

In French, the court is invisible, it is nothingness. This is an expression.

The court has no foundation. The following is a description of it:

"The legislative power is therefore committed to the body of the nobles, and to that which represents the people, each having their assemblies and deliberations apart, each their separate views and interests.

Of the three powers above mentioned, the judiciary is in some measure next to nothing: there remain, therefore, only two; and as these have need of a regulating power to moderate them, the part of the legislative body composed of the nobility is extremely proper for this purpose."[7]

3 Conclusion

The above has discussed law and courts in light of the philosophy of Aristotle. Strict laws serve as bad laws to the governed and vice versa. It is a failure. I can conclude the courts as follows.

The court is nothingness, which means, first, that the courts do not have a base like the parliament. In that sense, it has no power base. So it is nothingness.

Second, the court is nothingness, which means that permanent judges are unnecessary in the sense of eliminating fearful judges. It can be a one-year term position, a jury. No court commissioner. Instead, it would preach the need for a higher court to watch over and keep custody of the law. This is predicated on the French monarchy.

Third, the judges are made invisible, so that it is not known who the judges are. There is no fear of the judges. Sulla and Henry VIII would have had the people terrified because they were the judges. Henry VIII declared, "I will punish for high treason all those who announce the death of the king." [8] So the doctors did not mention that the king was in a critical condition in the last stages of his illness. The king died of a general, maggots illness. Meanwhile, Thomas More, who had opposed the marriage of Henry VIII and Anne Boleyn, was executed for treason. Thomas More was a Lord Chancellor, now Chief Justice of the Supreme Court. The chief justice of that court was executed and became nothingness. His life ended but his courageous claim lived forever. As mentioned above, 400 years later, he became a saint of the Catholic Church and the Anglican Communion. His achievement was his lofty aspiration to defend "Independence of Judges" and "Conscience of Judges," despite the king's repeated blackmail. The spirit of "Independence of the Judiciary" and "Conscience of Judges" has reached the Japanese judiciary today. It has had an eternal and infinite influence on Japan's judiciary. Montesquieu, a former judge who lived in England for two years and observed Parliament, would have been impressed by the spirit of Thomas More. The judge was reduced to nothingness. Over this, the thesis of "The Court is Nothingness" was described. From this philosophy Montesquieu established the separation of powers derived from Aristotle. Further I would superimpose and develop that idea into the principles of nothingness and love leading to eternity, infinity, transcendent-being and love. Such a development of philosophy is what Aristotle and Montesquieu would have wanted. They expected their readers to think, not just read.

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