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Law and Art vs. Law and Technique: A Multidimensional Analysis of Montesquieu's Legislative Thought

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Abstract

Montesquieu's The Spirit of the Laws centers on the "spirit of the law," breaking through the traditional natural law school's singular political perspective. It systematically expounds on the complex interrelations between law and political structures, social customs, natural environment, and religious beliefs. This paper explores the dialectical logic and practical orientation of Montesquieu's legislative thought from four dimensions: (1) Legislative Agency: Lawmakers should exercise initiative while adhering to natural law and the nature of society, balancing national spirit with institutional innovation; (2) Adaptation to Political Regimes: Laws must align with the nature of the political system, safeguarding political freedom through the separation of powers and moderate legislation; (3) Influence of Natural Conditions: Climate, soil, and other environmental factors act as implicit drivers of legislation, necessitating legal adjustments to harmonize environmental constraints with human needs; (4) Legislative Technique: Effective legislation demands precision, stability, and consistency with the essence of the matters it regulates, aiming to achieve the rule of good law. The study further contrasts Montesquieu's views with those of Savigny's historical school of jurisprudence, revealing the tension between grounding law in historical tradition and responding to dynamic social evolution. Montesquieu's legislative thought offers a theoretical framework that balances local particularities with universal principles, providing valuable insights for constructing legal systems that adapt to complex social conditions.

Keywords: The Spirit of the Laws, legislative agency, regime adaptation, climate and law, rule of good law.

Introduction

Montesquieu's The Spirit of the Laws holds significant value for legislative studies. His legal theory offers a unique perspective, distinct from traditional natural law scholars who focused primarily on the relationship between politics and government affairs. Instead, Montesquieu delves into the micro-level of law, freeing himself from the constraints of a purely political viewpoint. He examines the intrinsic connections between law and various factors, ranging from political structures to social customs, and from the natural environment to religious beliefs, seeking the underlying driving force—the spirit of the law.

Metaphorically speaking, if law is regarded as the cornerstone of the edifice of social order, then elements such as cultural traditions, historical trajectories, and geographical characteristics form its structural framework. These elements intertwine and interact, nurturing fundamental principles with universality and regularity—this, perhaps, is what Montesquieu sought as the spirit of the law.

Montesquieu believed that only by profoundly grasping the spirit of the law could legislators formulate high-quality legal norms with strong adaptability and effectiveness, tailored to the specific characteristics of regions, historical contexts, and populations. The concept of the spirit of the law runs throughout The Spirit of the Laws, serving as the central axis that unifies the book's ideological framework.

This gives rise to a fundamental question: What constitutes good law? How can legislators create legal norms that reflect the will of the people and suit local realities in complex circumstances? These are the core issues Montesquieu strives to address in his work, making The Spirit of the Laws highly valuable for legislators and legal scholars alike. For professionals involved in legislative practices, an in-depth study of The Spirit of the Laws is an indispensable and profoundly meaningful academic endeavor.

I.Montesquieu's Concept of Legislative Agency: The Idea of Reforming the Old and Creating the New

Montesquieu believed that laws could be actively created by legislators. However, he argued that legislation must conform to the natural order of things and the nature of society.

On the one hand, although positive law is determined by natural law and the essence of society rather than by the mere will of citizens, legislators still have the capacity to promote the formulation and improvement of laws. Since humans possess reason and the ability to acquire knowledge, positive law is an expression of this reason, and its validity derives from natural law. Therefore, under the guidance of reason and natural law, legislators can refine outdated laws and create new ones that align with the natural order. Montesquieu granted considerable agency to

legislators. For example, through legislation, equality and frugality could be promoted in democracies, and power could be restrained to safeguard freedom. Skilled legislators could also use legal norms to curb human indolence and excessive desires, foster positive social customs, and prevent the undue expansion of religious influence. In my view, Montesquieu emphasized that laws should serve a social function—otherwise, they risk becoming lifeless and ineffective.

On the other hand, Montesquieu did not believe that laws could be arbitrarily invented. Laws, in his view, arise from social life, historical traditions, and the nature of things, and must adhere to the conditions that give rise to them. Within specific temporal and spatial contexts, only certain legal systems may be appropriate. Blindly transplanting foreign laws without proper adaptation and revision could lead to legal and social conflicts.

I also noticed that Montesquieu's concept of the "general spirit of a nation" bears some resemblance to the "Volksgeist" of the historical school of jurisprudence. However, their conclusions differ. Montesquieu regarded undermining the "general spirit" as dangerous, believing that legislation should respect it. Yet, he did not argue for legislative passivity. Instead, he suggested that only by respecting the general spirit could legislators create good laws. This stands in contrast to Friedrich Carl von Savigny's view. Savigny believed that positive law emerges organically from the common consciousness of the people, much like language, and that legislators could only discover existing law rather than create it. In my opinion, Savigny's emphasis on historical continuity as the sole source of law overlooks the agency of individuals. In reality, people can improve and innovate legal systems based on current realities and future visions. Savigny's theory, influenced by a form of historical determinism, appears somewhat passive and conservative. Although both Montesquieu and Savigny emphasized the influence of national spirit on law—and some even regard Montesquieu's theory as a precursor to the historical school—their views are fundamentally different. This divergence may stem from the differing historical contexts in which they lived.

When exploring the perspectives of Montesquieu and Savigny, it is necessary to present the complexity of Savigny's historical school of jurisprudence more comprehensively. Savigny emphasized that law is the product of the national spirit and that legislators should respect the historical evolution of legal norms. This perspective indeed reflects certain regularities in legal development and possesses profound theoretical value. However, Montesquieu's viewpoint also has its unique features. While he emphasized the influence of the national spirit, he simultaneously preserved a certain degree of legislative agency. For instance, Montesquieu believed that legislators, while adhering to natural law and the essence of society, could improve outdated laws to meet the evolving needs of society. The difference between their views does not represent an absolute opposition but rather reflects their differing emphases on the nature of law and the role of legislators. In different historical periods and social contexts, both perspectives may hold a certain degree of validity. Therefore, academic discussions on their relationship should be grounded in more profound historical and theoretical analyses, avoiding simplistic or

one-sided interpretations of Savigny's view.

The classical natural law school of the 18th century, in my opinion, resembled a theory of legislative creation. During the Enlightenment, natural law scholars sought to break free from the constraints of theology and feudal absolutism, aiming to establish a new world of freedom through law. They regarded legislation as a means of institutional innovation, advocating for the active reform of outdated laws and the creation of new ones—an approach filled with idealism. Montesquieu shared this aspiration. He once remarked that forming a moderate regime requires the combination and regulation of various powers so that they can counterbalance one another. He viewed this as a legislative masterpiece, something unlikely to emerge by mere chance or through cautious deliberation alone.

Montesquieu's legislative philosophy reveals a dialectical mindset. He believed that while legislators play a crucial role in framing and formalizing laws, the law itself cannot be arbitrarily constructed. It must conform to the nature of society. As Émile Durkheim noted, in Montesquieu's works, the legislator is depicted as an indispensable creator of legal norms, but Montesquieu did not believe that laws could be fabricated at will.

Ⅱ. The Interaction Between Legislative Power, Political Regimes, and Legislators

(Ⅰ) The Central Role of Legislative Power and the Qualities Required of Legislators

Montesquieu envisioned a political ideal—the realization of political liberty. He believed this could only be achieved by restraining power through power. The best way to accomplish this was through the separation and balance of powers, which needed to be formalized and institutionalized through legislation to safeguard political freedom. In his theory, legislative, executive, and judicial powers are presented as parallel, yet legislative power appears to hold greater importance, occupying a central position within the state's power structure. However, it also maintains a relationship of mutual restraint and interdependence with the other two powers. When discussing these three powers, Montesquieu appears to place legislative power at the core, using it as the main thread to explore its interaction with the other two.

Regarding legislators, Montesquieu believed they should possess a spirit of "moderation and leniency." He seemed particularly fond of the concept of "moderation." He once remarked that even the most noble intellect, when taken to excess, may cease to be virtuous, and moderation may be more fitting for humankind. The ideal state in his view was one where people enjoyed political liberty, and the laws could maintain social order—a form of benevolent and moderate

government. This required a sound legal system, which depended on wise and virtuous legislators. If the legislators were incompetent, the people might suffer under unjust laws. Montesquieu explicitly stated that he wrote his book to advocate for the spirit of moderation and leniency as the essence of legislative virtue. This "moderation and leniency" essentially meant avoiding extremes and striking a balance between two opposing poles. Moreover, he believed that legislators should be elites—not just anyone could engage in legislation. Only individuals with exceptional talent were fit to craft laws for the nation.

(Ⅱ) Political Regimes: The Fundamental Background and Adaptation Demands of Legislation

Montesquieu believed that political regimes exerted a particularly significant and direct influence on the law, serving as the political backdrop and the key factor shaping legal norms. His theory of political regimes plays a vital role in his work, running parallel to the concept of the "spirit of the laws" as a recurring theme. According to Montesquieu, the nature of a regime determines the fundamental nature of a country's basic laws. Thus, legislation must align with the principles of the regime, while legislation itself also possesses a degree of agency, capable of influencing the regime. The relationship between law and political regimes is arguably the most fundamental and crucial relationship in The Spirit of the Laws.

The nature of the political regime determines the fundamental laws of the state. Montesquieu classified regimes into three types: republican, monarchical, and despotic. For instance, in a republican regime, the people create the laws, and representative government serves as the basic political structure. Therefore, laws regulating voting rights, voting procedures, and electoral methods become the country's fundamental laws. Montesquieu also specifically emphasized the concept of legislation aligning with the principles of the regime. He likened the relationship between laws and regime principles to that of water and its source—the laws must flow from the principles of the regime. The legislation crafted by lawmakers must correspond to the principles of the regime, allowing the laws to serve the political system and, in turn, enabling the regime to be reinforced by the law. Without the support of legislation, the regime might not be sustainable. Thus, legislation not only needs to preserve the nature of the regime but also must correct any potential flaws or excesses the regime may produce.

(III) Military Power: An Important Weight on the Legislative Scale

The relationship between legislation and military power has two aspects: one is the relationship between law and defensive power, and the other is the relationship between law and offensive power.

First, let's look at the relationship between law and defensive power. Montesquieu mainly discussed how different types of states ensure their security, with the relationship to law being

particularly close in republics. Generally speaking, a country needs a strong defensive power, and its territory size should be moderate. If a republic is too small, it might be wiped out by foreign forces; if it's too large, internal problems could arise. Small countries ensure their security by uniting together to form a federal republic system. This requires the establishment of basic legal systems, such as laws prohibiting member states from casually forming alliances with other countries, and regulations on voting rights and the selection of officials. These are fundamental laws.

Next, let's consider the relationship between law and offensive power, which mainly involves international law — how to legislate in accordance with the principles of just and rational international law. A country is only justified in waging war for its survival and out of justice; otherwise, it's considered aggression. Based on the right to war, there is also the right to conquest. The legislation of the conquering nation towards the conquered nation must be rational. Montesquieu believed that the rights of the conquering nation over the conquered nation should be determined by four types of law. The conquering nation cannot arbitrarily kill or enslave the people; it must strive to preserve the civil laws, customs, and habits of the conquered nation, and implement moderate laws to minimize the disparity in treatment between the two nations.

III. The Legislative Embedding of Cultural Traditions and Social Structures

(Ⅰ) National Spirit and Customs: The Deep Soil and Potential Constraints of Legislation

The concept of "general spirit" is quite important in Montesquieu's thought, as mentioned in both his early essays and later works, with more detailed discussion in The Spirit of the Laws. He argued that human beings are influenced by various factors such as climate, religion, and laws, which collectively shape a general spirit. In every country, if one factor is dominant, the influence of others will be weaker. This general spirit forms the national character and cultural traditions, which can affect the effectiveness of legal implementation. If the laws created by legislators are too different from the national general spirit, they might not work well, and the people might resist, which is harmful to legislation. Montesquieu advocated that legislators should, as much as possible, follow the national spirit without violating the principles of the political system, as aligning with the nation's nature may lead to better management. Wise legislators should avoid altering the national general spirit.

Customs and habits are important carriers of the national general spirit. Laws are systems created by legislators, and both influence people's lives. The formation of laws and customs differs, and so do their consequences when changed. Laws are enacted, while customs are discovered by

people. Overturning the "general spirit" and altering "special systems" can be dangerous. Using laws to force a change in customs might be inappropriate and could resemble harsh governance, as people have deep attachments to their customs. Rulers should guide people to change customs through exemplary behavior rather than by force of law. Moreover, not all customs need to be codified into law. A wise legislator should be able to recognize, adapt, and adopt beneficial customs, using laws to help form the national customs and character. When a nation has good customs, laws can be simpler, and legislation becomes easier.

（II）Marriage Population: Micro Concerns of Legislation and Macro Regulation

Montesquieu placed great importance on the role of legislation in regulating marriage and population.

First, let's discuss the relationship between marriage and legislation. The marriage system is a product of law and has a significant impact on society. From the marriage system, one can discern the social structure of a country. Therefore, the legal provisions on marriage and family systems are crucial. Issues such as monogamy or polygamy, divorce, the status and rights of family members, inheritance, and so on, are related to social stability, population reproduction, wealth distribution, and value orientation. Legislators must conduct thorough research and also pay attention to social customs.

Next, let's look at the relationship between population and legislation. Unlike marriage, the law concerning population must be adapted to the situation. Sometimes, nature takes care of things, and the legislator doesn't need to intervene. Other times, when there are too many people, becoming a burden on the country, legislation may find ways to reduce the number of children citizens have. At other times, when the country needs more population, legislation must encourage marriage and childbirth. Montesquieu specifically mentioned that Roman laws in this area were quite effective.

（III）Religion: The Spiritual Coordinates of Legislation and Checks and Balances

Montesquieu was not an atheist; he admired Christianity, but he was not a blind worshiper of deities. He had a more practical view of religion, believing that the religion that promotes secular welfare is the good one. In this way, religion and law are discussed on nearly equal terms, with divine law and human law separated.

First, both law and religion adjust social relations, but their objects, scope, and goals of adjustment are different. In terms of the object of adjustment, the law regulates external human behavior, while religion influences both thoughts and behavior. Montesquieu seemed to have said that sometimes legislators only advise, rather than legislate, fearing it would go against the spirit

of the law. As for the scope of adjustment, the law governs the most fundamental social relations and cannot regulate everything—it needs limits, or it will lead to problems. Regarding the goal of adjustment, the law sets out basic requirements, while religion pursues the ultimate good. If all religious rules were made law, it could be problematic, as many other laws would be needed to ensure compliance, making both society and law burdensome.

Second, law and religion have complementary functions in social norms and must coordinate with each other. On one hand, both aim to make people good citizens, and if one falls short, the other must work harder; when religious constraints lessen, legal constraints must increase. On the other hand, if religion and law contradict each other, it becomes dangerous. Montesquieu believed that the law could absorb the good elements of religion, and religion could provide resources for legislation, which, after selection, could become part of the legal system. He also mentioned that Christianity offered legal insights into civil law, political law, and laws of war, such as Christianity's prohibition of polygamy, its spirit of leniency suited to republican governance, and its respect for life, liberty, and property.

Third, the law guides and limits the negative impact of religion on society. Although the law cannot force a change in religion, it can limit its harmful effects, ensuring authority in secular life. Montesquieu gave examples, such as when religious rituals harm chastity, the law can allow the father to represent the wife and children; when religion's fatalism leads to self-destruction, the law must impose stricter punishments; when religion encourages laziness, the law must awaken people. Montesquieu also emphasized the law's restriction on the clergy and their property, believing that the clergy should not be too large, and their wealth must be limited. Limiting their wealth was an effective way to control the expansion of the clergy.

In discussing the relationship between religion and law, a deeper analysis of its complexity and diversity is needed. The relationship between religion and law takes different forms in various historical periods, cultural contexts, and political environments. Montesquieu's discussion of religion and law on an equal footing provides an important perspective for understanding their relationship, but in reality, their interaction is often constrained by many factors. For example, in some religiously dominant societies, religious doctrine may profoundly influence the creation and implementation of laws, and in some cases, even become a significant source of law. At the same time, legal restrictions on religion are not absolute. The freedom of religious belief, as a fundamental human right, is also protected in modern legal systems. Therefore, further research is needed to explore how to achieve a positive interaction between religion and law under different social conditions, safeguarding religious freedom while maintaining legal authority and social fairness and justice. This can be done through case studies of different countries and regions, analyzing the specific relationship between religion and law in practice, and providing more empirical evidence for building reasonable religious legal policies.

IV. The Influence and Refinement of Natural Elements on Legislation from Montesquieu's Perspective

In the third volume, Montesquieu introduced a rather unique theory of natural environmental legislation, which can be considered a novel concept, both in terms of legislative philosophy and empirical methodology. The basic idea is that many human characteristics, such as physiology, psychology, temperament, and customs, are closely related to the climate and geographical environment. Peoples in different environments exhibit distinct spiritual outlooks and temperaments, which in turn lead to variations in political systems. Therefore, legislators must thoroughly study these characteristics and formulate appropriate laws that amplify the positive effects of natural factors while suppressing or eliminating the negative ones.

(I) Climate: The Hidden Driving Force Behind Legislation

Montesquieu argued that there seems to be an inherent connection between a country's climate and its laws. Climate influences people's temperament and emotional characteristics, which in turn affects the formulation and implementation of laws. He believed that if climate significantly shapes temperament and emotions, then laws must reflect these differences to some extent. Montesquieu placed considerable emphasis on the influence of climate on law, elevating it to a high level in his writings, likely because he viewed it as a manifestation of natural forces and the rationality of natural law.

Specifically, from an anatomical perspective, he noted that people living in cold climates tend to be robust, healthy, energetic, confident, and courageous, as well as straightforward and honest, although they are less sensitive and somewhat slow to react. In contrast, people in hot climates tend to be smaller and weaker, with lower vitality, displaying timidity, suspicion, and overthinking. However, they are also lively, sensitive, imaginative, and have a strong sense of creativity and enjoyment.

Thus, on one hand, when formulating and implementing laws, legislators must consider the practical needs brought by the country's climatic conditions and be mindful of the potential influence of climate on legislation and the judiciary. On the other hand, the effects of climate on temperament and emotions can be both beneficial and harmful. Legislators should codify the positive effects into legal systems, while using laws to regulate and mitigate the negative influences. For example, laws prohibiting alcohol consumption may be unsuitable in cold countries but could be strictly enforced in regions where alcohol consumption is harmful to health due to the climate. In countries where the hot climate induces laziness, laws should be enacted to encourage industriousness and productivity while restricting the expansion of monasticism.

Montesquieu emphasized that legislators who fail to combat the weaknesses imposed by climate

are not good legislators. The law must not be led by climate; rather, if the influence of climate conflicts with national welfare and legislative objectives, lawmakers must use the power of the law to eliminate such adverse factors.

(II) Soil and Livelihood: The Geopolitical Foundation and Survival Logic of Legislation

Differences in soil composition seem to indirectly lead to variations in political systems and legal forms. When the land is fertile, people tend to rely on it. Rural populations, preoccupied with farming, are less concerned with freedom and more focused on stability; for them, any form of government appears roughly the same, as long as it ensures peace. Moreover, fertile lands are often plains, which are difficult to defend against powerful enemies, forcing inhabitants to submit to stronger forces. Consequently, countries with fertile land are frequently governed by autocratic regimes with a single ruler.

Conversely, countries with less fertile land are often governed by "a rule of many," which can be seen as a form of political compensation. Barren lands are typically located in mountainous regions, making such countries easier to defend and harder to conquer, thus fostering a spirit of freedom. Additionally, since life in these areas is difficult, survival demands hard work and mutual cooperation, which makes moderate regimes and lenient legal systems more likely.

Differences in the soil also give rise to distinct modes of livelihood. Montesquieu noted that the relationship between legislation and the livelihood of different peoples is significant. Nations engaged in commerce and maritime trade require more extensive legal codes than agricultural societies. Farming societies, in turn, need more legal regulations than pastoral ones, while pastoral societies require more legal provisions than hunting societies.

Less civilized peoples, apart from suffering injustices due to violent conflicts, have little awareness of other forms of injustice. Thus, political agreements often suffice to resolve disputes. Nomadic societies that do not cultivate land are highly mobile, which frequently leads to conflicts over wastelands, livestock, and slaves. However, since they possess little land or property to divide, they tend to rely more on international law rather than civil regulations to settle conflicts.

Because nomadic peoples are not tied to the land, they enjoy greater personal freedom. This "individual freedom" eventually gives rise to "civil freedom." Furthermore, their limited property promotes greater equality, which leads to moderate powers for their leaders and, consequently, the development of lenient legal systems and political structures.

(III) The Historical Limitations of This Theory

Although Montesquieu's theory of the natural environment in legislation offers a novel perspective by emphasizing the influence of natural conditions on lawmaking, its limitations should also be recognized. The emergence and development of legal systems is a complex

process shaped by multiple factors. While the natural environment may indeed exert some influence on human societies, social, economic, and cultural factors are equally significant and cannot be overlooked.

For instance, in modern society, technological advancements and globalization have made social structures more diverse and complex. As a result, legal systems are increasingly influenced by political decisions, economic interests, and cultural values, rather than by natural conditions alone.

Therefore, when evaluating Montesquieu's theory, it is important to consider it within the historical context of his time. At the same time, it is necessary to reflect on its applicability in light of contemporary societal developments. Future research could explore how to integrate natural environmental factors with other variables to construct a more comprehensive legal theory. Such an approach would better explain and guide legal practice in the context of modern society.

V. The Essence of Montesquieu's Legislative Craftsmanship

In his legal philosophy, Montesquieu constructed a refined set of legislative techniques and principles, which continue to offer valuable guidance for contemporary lawmakers.

(I) Dialectical Thinking in Legislative Methods and Strategies

Montesquieu, through a wealth of examples, revealed the complex relationship between legislative intent, legal texts, and the actual effectiveness of legislation. These three elements are not linked by a simple cause-and-effect relationship; instead, they influence each other and are subject to various contingencies in legal practice.

Legislators often aspire to embed their ideals into legal provisions to achieve intended outcomes. However, in reality, laws frequently deviate from their intended course. Similar legal texts may stem from different motives, and identical legal provisions may yield varying effects in different contexts.

Thus, Montesquieu urged lawmakers to adopt a comprehensive perspective when preparing legislation. They should consider multiple factors, such as the law's values, principles, and objectives, along with the contextual environment and its scope of application. When comparing different legal systems, legislators should grasp their internal logic and underlying spirit, exploring both the superficial and deeper principles behind the texts. This enhances the law's self-correcting capacity, enabling it to better respond to complex realities.

Moreover, Montesquieu addressed the issue of legal uniformity versus diversity. While uniform legal frameworks may be necessary in governance, trade, and religion, he believed such uniformity should not be absolute. The wisdom of legislators lies in discerning when to implement uniform laws to maintain order and when to allow legal diversity to accommodate

regional and cultural differences. Ultimately, the goal of law is to promote social harmony and the well-being of the people. As long as citizens abide by the law, its uniformity or diversity should not be the sole measure of its effectiveness.

(II) Detailed Guidelines for Legislative Techniques

Montesquieu emphasized the importance of the methods used in legal drafting and summarized several specific technical requirements and considerations.

The legislative techniques he proposed cover several key aspects, which can be summarized as follows:

1.Legal Form

Conciseness and Avoidance of Redundancy: Legal texts should be concise and precise. For example, the Twelve Tables were characterized by their brevity and rigor, whereas Justinian's Novellae required abridgment and revision due to their verbosity and disorganization. Legal provisions should be designed with simplicity, avoiding unnecessary exceptions, limitations, and restrictive clauses. Excessive details make legal texts cumbersome, increase the burden on citizens, create legal loopholes, and complicate interpretation, making the legal system harder to manage.

Plain and Understandable Language: Legal language should be plain, straightforward, and easy to understand. Overly complex or academic legal language increases the difficulty for the public to comprehend the law, undermining its authority and making it appear disconnected from reality. Laws should avoid excessive theorization and complexity, remaining practical and accessible. By providing clear guidelines for behavior and dispute resolution, legal texts should follow simple reasoning patterns, aligning with the public's everyday experiences and thought processes, making them easier to understand and follow.

2.Precision in Legal Language

Clear and Exact Wording: Legal terminology must be precise and explicit, avoiding vague or ambiguous phrasing. This is essential for ensuring the fair and just application of the law and preventing inconsistencies and unjust rulings caused by interpretative differences. Once concepts and behaviors are clearly defined by law, they should not be supplemented or revised with vague wording, as this undermines the law's coherence and logical consistency, potentially eroding public trust in its authority.

3.Reasonableness of Legal Provisions

Avoiding Instability of Monetary Measurements: Legal provisions should avoid using monetary values as the primary basis for measurement or penalties. Since currency values fluctuate due to various factors, such references can undermine the law's fairness and rationality, reducing its

effectiveness in practice.

Alignment with the Nature of Things: When drafting legal provisions, legislators should ensure they align with the inherent nature of things. Legal stipulations that contradict reality or developmental laws are difficult to implement, fail to achieve their legislative goals, and may even lead to negative social consequences.

4.Legal Stability and Authority

Ensuring Legal Stability: Legal stability is of paramount importance. Laws should not be easily amended without sufficient and legitimate justification. Frequent changes create confusion among the public, disrupt social order and predictability, and weaken citizens' trust in the legal system. Legal amendments should only be initiated cautiously in response to significant social changes, balancing the need for progress with stability.

Maintaining Legal Authority: Legislators must ensure that the rationale behind legal provisions aligns with the dignity of the law. If the reasoning is far-fetched or unreasonable—such as the Roman law stipulating that blind people could not litigate, based on flawed logic—it undermines the law's authority and fairness, triggering public skepticism and reducing credibility. The law should remain pure and noble, with clear value orientation and moral boundaries. Its purpose is to punish evil and injustice, uphold fairness and stability, and serve as a model of moral justice. Legal authority must remain untainted by improper interests or biases to earn public respect and trust, safeguarding social order and justice.

5.Presumption of Law and Fairness in Application

Prioritizing Legal Presumption: Legislators should prioritize legal presumptions when determining legal responsibilities and factual standards, minimizing the space for judicial discretion. Legal presumptions, based on legal provisions and social experience, are more objective and consistent, reducing the risk of inconsistent rulings for similar cases and ensuring uniform and fair application of the law. For instance, French law presumes certain pre-bankruptcy actions by merchants as fraudulent, while subjective inferences by judges regarding mental states are prone to individual interpretation, leading to inconsistent rulings and diminishing legal certainty and authority.

Montesquieu's legislative techniques offer valuable insights for legal practice. However, their practical application requires flexible adaptation to specific contexts. The significant differences in political systems and socio-cultural backgrounds across countries and regions impose varying demands on legislative techniques. For example, in countries where democratic institutions are still underdeveloped, implementing Montesquieu's principles of separation of powers and checks and balances may face considerable challenges, necessitating gradual progress through institutional development and political reform.

Furthermore, the rapid evolution of modern society requires the law to continuously adapt to new circumstances. The balance between legal stability and adaptability, as emphasized by Montesquieu, demands more refined handling. By conducting comparative studies of legislative practices in different countries, it is possible to analyze the effects of Montesquieu's legislative techniques in diverse environments, draw lessons from both successes and failures, and provide more practical guidance for contemporary legislators. This would enable them to draft laws that are better suited to their national conditions and the demands of the times, while building on Montesquieu's theoretical insights.

VI. Practice-Oriented Deepening

(I) Case Studies: Modern Validation of Montesquieu's Theories

1.The Balanced Logic of Legislation in Nordic Welfare States

The "high-tax, high-welfare" legislative model in Nordic countries profoundly reflects Montesquieu's dialectical unity of "regime adaptability" and "national spirit." Taking Sweden as an example, its social democratic regime is founded on egalitarian principles. Through progressive taxation and universal welfare systems, its legislation reinforces the egalitarian orientation of the regime while aligning with the region's long-standing collectivist cultural tradition. Montesquieu argued that "laws should harmonize the nature of the regime with the spirit of the people" (The Spirit of the Laws, Chapter 14). In practice, Swedish legislators, through systems such as the Social Welfare Act and the Labor Act, have not only safeguarded the stability of the democratic regime but also translated the Nordic people's demands for fairness into legal practice. This legislative approach avoids the fragmentation between institutions and culture, while solidifying social consensus through law, achieving a coordinated evolution between the "spirit of the law" and social dynamics.

2.Singapore's Harsh Laws: The Climate Hypothesis and Real-World Adaptation

Montesquieu once proposed the hypothesis that "hot climates lead to indolence," suggesting that legislators should use law to counteract the negative effects of climate. Singapore, despite being located in the tropical zone, has built an efficient governance system through strict legislation such as the Public Order Act and the Prevention of Corruption Act, seemingly contradicting climatic determinism. However, a deeper analysis reveals that its legislative strategy actually embodies Montesquieu's concept of "proactive legislation." On one hand, the law uses harsh penalties (such as corporal punishment) to compensate for any potential weakening of social discipline due to the climate. On the other hand, Singapore's lawmakers did not mechanically adhere to climatic determinism but instead adapted the law to the city's geographical characteristics and multicultural background. By blending Confucian principles of "order before freedom" with the British common law tradition, they forged a unique "rule-of-law

authoritarianism" model. This "local adaptation" of legislation validates Montesquieu's core assertion that "laws must reconcile natural constraints with human needs."

(II) New Challenges in Legislative Techniques and Theoretical Responses

1.Dynamic Legislation: The Tension Between Stability and Flexibility

Against the backdrop of accelerated technological revolutions and social transformations, "sunset clauses" have become a crucial tool for balancing legal stability and flexibility. For instance, Article 97 of the EU General Data Protection Regulation (GDPR) explicitly mandates a periodic review mechanism, requiring legislators to assess the regulation's applicability every four years. This design inherits Montesquieu's principle of "legal stability," preventing the erosion of authority caused by frequent amendments. At the same time, it introduces a built-in flexibility mechanism to address the rapid changes of the digital era, demonstrating the practical wisdom of "laws adapting to social evolution." However, dynamic legislation must guard against the risk of excessive instrumentalization—if review cycles are too short or standards too vague, it may undermine the certainty and predictability of the law, conflicting with Montesquieu's emphasis that "the authority of the law stems from reason and dignity."

2.Algorithmic Transparency: The Demand for Precise Language and Interpretability

The widespread adoption of AI decision-making systems presents new challenges to Montesquieu's principle of "precise legal language." The EU Artificial Intelligence Act, for example, mandates that algorithmic systems provide "technical interpretability", requiring the disclosure of decision-making logic to users in clear and concise language. This regulation directly echoes Montesquieu's legislative craftsmanship rule that "legal language should be simple and plain," aiming to counteract the risks of power centralization and rights violations caused by algorithmic "black boxes." However, the complexity of technology creates a dilemma for legal interpretation: excessive simplification may obscure algorithmic biases, while over-detailed explanations may violate the legislative principle of "avoiding verbosity." In response, Montesquieu's concept of "legal presumptions over subjective interpretation" offers a valuable reference. By embedding pre-established algorithmic ethics standards (such as fairness verification frameworks), technological rationality can be incorporated into the domain of legal formal rationality.

(III) Cross-Civilizational Comparisons and Ethical Reflections on Crisis Legislation

1.Interpretive Differences in the "Spirit of the Law" Between Islamic and Continental Legal Systems

Montesquieu viewed the "spirit of the law" as a synthesis of diverse factors, providing a

theoretical framework for cross-civilizational legislative comparisons. For example, the Islamic legal system, which regards the Qur'an as the supreme legal source, emphasizes the absoluteness of divine revelation and tradition, contrasting sharply with the rationalist codification path of the continental legal system. Although Saudi Arabia's Basic Law incorporates modern administrative law provisions, it still stipulates that "Sharia law takes precedence over all legislation", highlighting the central role of religion as the core element of the "spirit of the law." This contrast reveals that Montesquieu's theory requires recalibration in non-Western contexts—legislative "activism" is more profoundly constrained by civilizational traditions, and the mere transplantation of legal institutions may trigger cultural resistance.

2.The Ethics of Emergency Legislation During Public Health Crises

The emergency legislation practices adopted during the COVID-19 pandemic provide a representative case for examining Montesquieu's ideal of the "moderate and gentle" legislative spirit. Germany's amendment to the Infection Protection Act granted the government temporary lockdown powers but imposed strict time limits and review procedures. In contrast, Hungary's Authorization Act, which lacked sunset clauses and judicial oversight mechanisms, was criticized as an "abuse of legislative power." These disparities validate Montesquieu's warning: during emergencies, legislators must adhere even more strictly to the principle of "checks and balances" to prevent the erosion of fundamental freedoms under the guise of crisis management. Future research could further explore how to concretize the "moderate and gentle" spirit into procedural standards for emergency legislation (such as proportionality reviews), thereby establishing a dynamic balance between emergency efficiency and the protection of civil rights.

VII. Conclusion: The Modern Echoes of Montesquieu's Thought

Montesquieu once stated, "Liberty is the right to do whatever the law permits." This notion profoundly reveals the close relationship between law and freedom, while simultaneously serving as a cautionary reminder for legislators. Law should not become a shackle that binds freedom, but rather a robust shield that protects it. As Aristotle observed, "The rule of law should have a twofold meaning: the established laws must be universally obeyed, and the laws themselves must be properly formulated." This underscores that when enacting legislation, lawmakers must not only ensure the quality of the laws but also consider whether the laws can be effectively observed and respected by the people.

Legislation is a demanding and intricate task that requires legislators to strike a delicate balance among competing interests and values. It is not enough to focus solely on constructing grand legal frameworks while neglecting social diversity and the practical needs of the people. The

vitality of the law lies in its ability to take root in society and become an integral part of everyday life. As Jeremy Bentham once emphasized, "The object of legislation should be the greatest happiness of the greatest number." This further highlights the need for legislators to prioritize public welfare in the law-making process, ensuring that legislation becomes a powerful tool for promoting social harmony and safeguarding the well-being of the people. Only then can law fulfill its intended role in achieving justice, fairness, and enduring social stability.

The modern vitality of Montesquieu's thought is particularly evident in the power restructuring of the globalization era. For instance, the rise of "private power" held by internet platforms challenges the traditional framework of state sovereignty. The European Union's Digital Markets Act (DMA), which enforces "gatekeeper rules" to mandate platform interoperability, exemplifies the creative adaptation of "checks and balances" in the digital sphere. Moreover, the ecological crisis has spurred the Earth Jurisprudence movement, which advocates for the inclusion of nature's rights into legislative systems—a cross-temporal dialogue with Montesquieu's perspective on "natural conditions shaping legislation." Future research could further explore these emerging fields, reconstructing the contemporary meaning of the "spirit of the law" at the intersection of technology, ecology, and civilization.

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