

Rethinking the Separation of Three Powers under American Elasticity

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Abstract: *When it comes to American politics, we cannot do without the Supreme Court of the United States, the unconstitutional review system, and the conflicts and differences between the United States Congress and the President in the process of legislative bills, which is the most compelling political point of view in the United States, as well as the participation of multiple interest groups in the political struggle of the United States, and finally with the help of the Supreme Court to examine whether it is unconstitutional and make decisions in support of one party. Since the interpretation of the U. S. Constitution has a certain flexible mechanism, it also makes the U. S. constitutional practice achieve the integration of the public opinion of the U. S. in repeated principles and compromises, which also explains why the U. S. can be accommodated by the U. S. constitutional government under the system of decentralization for more than 200 years, among the three powers, and between the federal and state under the premise of little change.*

Keywords: *separation of powers; legal issues; dialectical analysis*

1. Introduction

1.1 Overview of separation of powers

The idea of separation of powers originated in ancient Greece, and the idea of separation of powers and checks and balances had emerged. Plato said, ' A country should have three different classes: governing, protecting and producing. Everyone in the country should do what he should do so that society can better exist and develop. Aristotle proposed for the first time three functional divisions to realize state power by distinguishing the three elements of overall deliberation, administration and trial, which can be regarded as a budding decentralization theory. Polibia believes that Rome 's rulers, the Senate and all citizens each have important but not all the powers of the State, and that the three powers coexist and restrict each other.^[1]in order to ensure that public power can serve the interests of the whole country, no power can excessively pursue the interests of the class. They have a clear understanding of the concept of mixed regime, by reflecting the interests of the community 's socio-economic class requirements, so as to build a balance of interests. After the development of the Middle Ages, the theory of decentralization and balance in ancient Greece has become a mature theory of decentralization. Since modern times, Locke first put forward the theory of separation of powers in the modern sense, and put forward the idea that power should be separated in the next chapter of ' government theory. ' ^[1]He found the original rights of legislative power and executive power from all kinds of rights owned by people. In order to prevent the same group of people from enjoying the power of formulating laws and enjoying the power of implementing laws, legislative power and executive power should be exercised by different people. While advocating that power should be separated, more emphasis should be placed on balancing power. Montesquieu on the basis of Locke's political theory, through a large number of literature reading and Practical investigation clearly puts forward the theory of decentralization. In the "spirit of law " again confirmed the importance of judicial independence, and put forward the theory of separation of powers on the basis of Locke's research. The legislative power, administrative power and judicial power are separated, and the three powers are independent of each other and contain each other, forming an effective supervision system mode. Only countries that do not abuse power can have freedom, but an eternal experience is that the rulers are easy to abuse power. In order to effectively prevent the abuse of power, the best way is to restrict power by power, protect people 's freedom, and establish a political system that can restrict power by power.

1.2. Overview of constitutional review

Unconstitutional review, also known as constitutional supervision, refers to a system in which specific organs review and deal with the constitutionality of normative documents such as laws, regulations and administrative orders and specific subject acts according to certain procedures and methods. The organs exercising the power of constitutional review in various countries generally have three systems. The first is the system adopted by China when the legislature or the highest state authority exercises the power of constitutional review ; the second is the exercise of constitutional review by ordinary judicial organs, the typical country is the United States ; the third is the exercise of constitutional review by ad hoc bodies, such as Germany. The scope of powers of constitutional organs in various countries is different. The primary task is to review whether the legal documents violate the constitution. Some countries can review all laws, administrative regulations and decrees, and some countries can review administrative regulations and local regulations. In the way of review is also different from countries, there are three main, the first kind of review in advance, namely before the promulgation and implementation of normative legal documents, first by the constitutional supervision organs review ; second, ex post facto review, i.e. review by specialized agencies after the enactment of normative legal documents. The third is the combination of beforehand and afterwards.

1.3. The relationship between the separation of powers and constitutional review

The core of the separation of the three powers lies in the separation of powers to achieve the purpose of restricting power by power. The function of the constitutional review power is to examine whether laws, regulations and administrative acts are unconstitutional or not, which is in a neutral position. It not only plays the role of supervision of the implementation of the Constitution and discretion of other power acts, so as to achieve the rebalancing of power. The construction of the system of the separation of powers provides a platform for the supervision of the power of unconstitutional review in judicial power. The idea of the separation of powers is to transfer the power of a country to different people for implementation, thus giving birth to the need for power supervision. The power of unconstitutional review naturally assumes this important responsibility and becomes the top pillar of strengthening judicial power in the corner of judicial power. 1The separation of powers in the United States is not only the separation of legislative power, executive power and judicial power, but also the separation of powers between the federal and state. At the vertical level of separation of powers between the federal and state, the United States Constitution clearly lists the scope of federal government power and stipulates that the powers not included are divided by the practices retained by the states. Due to the ambiguity and generality of the constitutional provisions, the power struggle between the federal and state is inevitable. The Supreme Court also maintains the balance of vertical decentralization according to the Constitution with the power of constitutional review. The vague boundary between federal and state power is also one of the incentives for unconstitutional censorship. The constitutional review system can strengthen the construction of the political system of the separation of powers and consolidate the balance of the separation of powers. When constitutional order is endangered by structural imbalances, the power of unconstitutional review can counter any power in the power structure. When the legislative power excessively expands, it may declare the law invalid; when abusive administrative organs enforce the law, it may declare administrative acts unconstitutional; when a judge is not properly adjudicated, it may also be revoked in the name of unconstitutionality. For example, from the founding of the United States to the late 19th century, the power of the United States Congress was generally superior to the power of the President, but to the period of monopoly capitalism, the power of the President was expanding. In the typical historical stages of social, political and economic development in the United States, the Federal Supreme Court, through a series of cases on the interpretation of the Constitution on the distribution of administrative and legislative power, to some extent prevented the loss of control of power concentration and played a role as a balancer. In the middle of the 20th century, the Supreme Court successfully acted as an arbitrator in calming the conflict between legislative power and administrative power, preventing the danger of power concentration and abuse. In the 'Watergate Incident', the Democratic-dominated Congress asked President Nixon to hand over the White House tape for investigation. Nixon refused to provide it on the grounds that it was related to national security and the President enjoyed administrative privileges, so the dispute between Congress and the President was brought to court. The Supreme Court ruled that under any circumstances, the President does not enjoy absolute, unrestricted administrative privileges, ruling that the President hand over the tape. The court 's interpretation of the Presidential Privileges in the Constitution eased the trend of ' strong President ' to some extent, ended the power struggle between the President and Congress, and established the judicial authority of the

court. In general, the advantages of the constitutional review system in the system of separation of powers are as follows. First, the constitutionality disputes of laws and other normative documents are often manifested in dealing with specific cases, and the implementation of constitutional review by ordinary courts makes the implementation of the Constitution under the regular and effective supervision of the courts. Second, the court's litigation activities have a set of strict rules of procedure, by the ordinary court review unconstitutional, so that the settlement of constitutional disputes with the protection of effective judicial procedures; third, as an incidental review, it takes litigation as the premise, ordinary citizens can become the subject of constitutional litigation, more conducive to the protection of citizens' constitutional rights; fourthly, it has the nature of "constitutional judicialization," and directly incorporates the Constitution into the scope of judicial application, so that the application of the Constitution and the application of ordinary laws are combined, which is conducive to strengthening the concept that the Constitution is supreme and the Constitution is also law.

2. Focus on American Constitutional Practice

2.1. Impact of Multiple Interest Groups on the United States

As the book 'Principles and Compromise' says, 'Negotiation and compromise are the content of the American Constitutional Center, and it is difficult to promote progressive reforms. The inertia of the American constitutional mechanism, only when it does not reform their own interests can not continue to maintain, these interest groups will give way. [2] This shows that the existence of multiple interest groups not only hinders the development of American constitutionalism, but also affects the operation of the mechanism of separation of powers. At the same time, the mechanism of constitutional review is also deeply trapped in the struggle of multiple interests. Multi-interest groups represent, for some time or to some extent, the will of the State, rather than the so-called Conservatives or Progressives in the Supreme Law, which, through unconstitutional review mechanisms, can solve major problems of the State on the basis of the principle of judicial independence. The most prominent impact of multi-interest groups on the United States is reflected in the presidential election system in the United States. 2 The presidential election in the United States is criticized by the world. Because the election needs to spend a lot of money, and in recent decades, the amount of money spent in the election has been repeatedly high, and it has become a money politics, bribery politics, and easy to be mastered by capitalists who master capital. The cost of American presidential election comes from voter donations and political donations from some interest groups. The political opinions advocated by the presidential candidate during the election are whether voters support him and the source of political donation. The donations invested by those interest groups need to be paid back, which is not difficult to understand the bias of many policy lawmakers after the transfer of presidential power. [3] It is very common to veto the administrative act of the last president. The U. S. election is a kind of adjustment mechanism of the political system. By manipulating the presidential election, multiple interest groups affect the executive order of the president in the exercise of executive power, which will affect whether the legislative bills with Congress are vetoed, and also affect the judgment of the U. S. Supreme Court. [4] However, the above through the election and the impact of the United States constitutional system is not the most important, but in a certain period of time, different interest groups put forward inclusive political demands, expanding their own political resources, from a single interest group into multiple interest groups, so that a social contradiction intensified to the United States government must make concessions and compromises, and in order to better ensure the development of constitutionalism, safeguard the interests of the American people. [5] While giving the reform power the opportunity, it also gives the same opportunity to block the reform. When a social contradiction is sufficiently intensified, it has to be changed. In order to achieve balance, the constitutional review system is also affected by the separation of powers. After all, national interests are the biggest driving force for constitutional reform.

2.2. Federated States and States

The history of the founding of the United States was first transformed from a loose federal state to a stable federal government. Decentralization, as one of the greatest characteristics of the American government, has the separation of powers between the federal state and the state in addition to the separation of powers. The U. S. Constitution stipulates the scope of authority of the federal government by explicitly listing, and the powers not included in the provisions are reserved by states. [6] Because the

constitution has a strong generality and fuzziness, and gives the constitution to retain a larger interpretation space, this flexibility by a between legislation and law enforcement agencies to rule, through the Supreme Court's constitutional review power to achieve the balance of vertical decentralization. At an early stage, the United States was characterized by "strong states and weak federations."^[7] Because the United States was first state-owned and then state-owned, people generally had a higher sense of identity than trust in the Federation. People are generally concerned that the remote central government will violate people's rights, which is based on the lessons of colonial oppression. The people believe that state officials are more easily controlled in the immediate vicinity and therefore remain vigilant about federal power, giving it only the right to decide on limited issues such as defense security and the coordinated settlement of interstate trade disputes. At this time, the Supreme Court's decision tends to maintain state power and restrict federal power. With the establishment of the federal government and the influence of federalists such as Hamilton's belief in the principle of supremacy of federal power, the federal power was expanded by the promotion of the Civil War and the break of state boundaries to better safeguard the interests of the American people.^[8] The Supreme Court began to tend to the federal, especially in the field of economic management, the constitutional federal power provisions take a leniency interpretation position. Also in a certain historical period, there was a duality of federal and state power, when the court ruled that ' the federal and state have their own jurisdiction in different areas, and the federal government cannot violate the state. ' It is manifested in the recognition of the state's co-management of intercontinental trade in the economic field. The decentralization of federal and state power is balanced in constant conflict and adjustment, which shows that state power is relatively strong and federal power is relatively weak for a period of time. ^[9]In a certain historical period, the federal power was expanded, and the state power was correspondingly limited. Whether federal and state power is restricted depends on whether it is better to safeguard the interests of the American people and maintain the purpose of constitutionalism.

2.3. The thinking mind of America

As a branch of the separation of the three powers, the judicial power can be separated from the power considerations of voters ' interests and political factions ' behaviors, based on the constitution, deduced according to law, and ruled without political implications. There is a logical affirmation and promotion of social progress in a controversial jurisprudence on major social issues. What is the vitality of the U. S. Supreme Court? It goes without saying that the federal justice is the vitality of the U. S. Supreme Court. He is a symbol of a thinker in a country ruled by law. ^[10]He is the mind of a country with a large body. ^[11]Although the Supreme Court has only nine justices and no law enforcement power, it has played a role in assisting the Supreme Court to establish a special judicial status that restricts the president and Congress in the process of American constitutionalism, and has also laid a foundation for the deep-rooted culture of constitutional rule of law in the United States. It is a particularly wise decision to open the judge's ruling on the record. The judge's positive and negative opinions together, is a super brain speculative process. This setting can be seen in the operation of logic when the country reviews history. Even if you go wrong, you can see how to think before historical deviation, legal text and way of thinking and what kind of trap. For example, in the well-known ' Plesi case ' on apartheid in 1986, the Supreme Court majority accepted the unequal substance of ' separation and equality ' that masked apartheid. It supports the methods of racial segregation in southern states. But there is still Justice Harland wrote a long piece of opposition alone, foreseeing the consequences of apartheid. And like a seed, it gradually took root and sprouted, and finally became a powerful endorsement in the ruling in the Brown case that broke apartheid in 1954. ^[12]The Supreme Court's ruling does not mean right and wrong, he just cut into the point of view, trade-offs focus on different. Looking back at the debate on the positive and negative opinions of all decisions, the historical trajectory of a country is clearly revealed, showing the evolution of ideas in all aspects of a country. Such as how racial issues from slavery, apartheid, the movement of equal rights, the diversification of the relationship between the bill of equal rights how to cause controversy and the reasons for controversy. Promote social maturity in every pair of wrong historical nodes. Although the life-long system of the magistrate is controversial, there is no room for reform, because of his obvious advantages. Magistrates do not need to fight for voters, nor do they need to be identified by officials, so they only listen to the spirit of the law he understands, theory, legal practice accumulated experience and logic, only care about the imprint left in history.

3. Progressive maturity of the separation of powers

3.1. Unconstitutional review injects vitality

The application of the separation of powers in the United States is not only due to the relatively relaxed and free political environment, as well as the urgent needs of the American people for the protection of property, and even the strong advocate and promotion of the separation of powers of the founding fathers of the United States, the above is to lay the basic framework of the organization and operation of the American political system. However, what we should deal with next is more difficult how to apply the institutional framework to the constitutional practice of the United States and make it better to protect the rights of citizens from government infringement. It can also be that the power is properly supervised and restricted, so that the power can be balanced. Among the three powers of legislative power, judicial power and judicial power, judicial power is in a relatively weak position. Especially in the period of theoretical conception and system establishment, it always stays at the ideological level, but there is no experience to follow in how to make judicial power balance legislative power and administrative power. ^[13]The legislative power involves the vital interests of the population, and the law is publicly binding, but it is difficult to change it through legislators or other authorities. Administrative power is also closely related to people's basic life, the most prone to damage citizens. The administrative power has a wide range of functions and powers, which can reach all aspects of people's life. Due to the needs of administrative management purposes, it does not need to go through strict procedures like the legislative power. In a changing society, there is a situation where the interests of citizens are constantly damaged at different levels. However, the judicial power is relatively mild and cannot actively intervene in the public and society. Only when certain conditions are met, the judicial power will enter into social life. Therefore, the separation of powers in the unequal power distribution system, power imbalance is inevitable. In this case, the emergence of constitutional review system is not accidental, so that the imbalance can be regulated. It has to be said that the constitutional review system has injected vitality into the separation of three powers, making the original blunt theoretical ideas and institutional framework operable. ^[14]When legislators use the legislative power to formulate unfair laws, the court can use the power of unconstitutional review to examine whether it is unconstitutional and damages human rights and the interests of the people, and declare that it is unconstitutional and invalid. The improper intervention of administrative power to the people's lives, the right to unconstitutional review for the people to provide relief opportunities, better safeguard the interests of the people. Similarly, when the court applies legal errors and fact-finding errors for its own reasons, it can also be revoked by means of constitutional review. By using the power of unconstitutional review in the imbalance of the three powers, there can be evidence to follow, so that the constitution can be applied, while strengthening the authority of the constitution with the highest effectiveness of the constitution to achieve the balance of the separation of the three powers. And in the constitutional practice, we can properly adjust the imbalance between the conflict and intensification of the three powers, so that one of the three powers may have its own scope of power, constitutional review can be a good response.

3.2. Different National Conditions and Warren of Historical and Cultural Tradition

In fact, there will be a certain degree of decentralization in each country. Absolute centralization is not realistic, nor exists. In particular, the modern democratic political system, decentralization has become the proper meaning. The separation of the three powers in different countries will show different forms, mainly due to the different national conditions, national characteristics and historical and cultural traditions. This can be used to explain why some countries implement the separation of powers regime can achieve a good operation between the powers of a country, power has also been balanced, better promote the development of democratic system. And some countries to implement the separation of powers system, a simple transplant, but not a good combination of their national conditions and did not take into account the historical and cultural traditions, resulting in the separation of powers system in this country can not work, soil and water discontent has become a normal, and ultimately a country's regime compared to before is a backward. Therefore, many countries have changed from blindly imitating the system of separation of powers to alienated separation of powers after multiple considerations. It proves that the system of separation of powers has a deeper understanding in the practice of various countries, the degree of mastery of it, and under what conditions can better play the role of power restriction, so as to achieve mutual restraint and good operation of power. As described above, the separation of powers in the United States is the most obvious and the best representative of development. Any of the three powers in the United States can

restrict the other two powers, and checks and balances between power can achieve a benign balance, thus promoting the continuous development of American constitutionalism. In the decentralization system, the UK implements the parliamentary cabinet system with parliament as the power center. The administrative power system is controlled by the parliament. The administrative power and legislative power are integrated, and the government is responsible for the parliament. The upper house has jurisdiction, and the lower house has executive and legislative powers. France has a semi-presidential and semi-parliamentary system, which has the essence of the presidential system but retains the parliamentary system in form. 2 The separation of the three powers has essentially become the power around the President. The President is above the administrative, legislative and judicial powers. To sum up, the idea of decentralization is thoroughly implemented in the United States, which fully reflects the power operation rule of separation of powers.

3.3. The essence of separation of powers

The separation of three powers, in which decentralization is the manifestation, delegates power to different people for implementation ; restricting power by power to achieve the balance between powers, public power is placed within a limited range, and better protection of citizens ' power is the essential requirement of the separation of powers.^[15]The manifestation of decentralization is naturally simple. As long as the power is divided according to a certain standard, this task is completed. Even if it stagnates, its table cannot deny the existence of decentralization. However, in order to achieve the essence of the separation of the three powers and achieve the restriction of power by power, the dynamic balance between powers is to establish in the continuous pursuit of the protection of citizens ' power, and set the public power within a limited range, in order to minimize the damage of public power to citizens and avoid serious damage to public interests. Separation of powers.^[16]At the beginning of the thought has been aware of the country ' s public power will threaten the rights of the people, the absolute authority and serious centralization of the country is bound to damage the interests of citizens, because once the power is not bound, just like the wild horse everywhere collision, although in a certain period may not appear all sorts of drawbacks, after the expansion of vision, civil rights will be violated at any time is sooner or later, once it comes is a revolutionary struggle. The driving force to promote the separation of the three powers is spontaneous and is the essence of the cause. The exploration and pursuit of the separation of powers cannot stop.^[17]So in order to make constitutional practice promote the development of democratic system under the separation of powers in the United States, the unconstitutional review system was first created to stabilize the triangle mechanism, add substantive content, and flexibly deal with the contradiction between the three powers. Horizontal decentralization is not enough to support the political system of the United States, but also the specific decentralization of the federal and state powers. The division of this power is not limited to the division of power between the upper and lower authorities in the vertical direction, accompanied by a more complex process of overlapping and circulating power circuitous. All this is due to the essence of the separation of three powers.^[18]The value pursued also points to the realization of human dignity in the process of constitutional practice. In the pursuit of a more reasonable and fair country, human rights will no longer be threatened by the guardians of the will of the people. This is the internal driving force for the gradual maturity of the separation of powers.

4. Conclusion

As the most dazzling political system in the constitutional practice of the United States, the separation of powers has set a model of political system for the world. Although the separation of powers system of the United States cannot be directly applied to other countries, its inner spiritual essence deeply affects many countries in the world. Since its establishment, the United States has suffered from the crisis of national division, the crisis of the Great Depression, and the crisis of various domestic contradictions, which can be well resolved at critical moments. This depends not only on luck, but also on the balance of power under the system of separation of powers in the United States, which is extremely intense in the face of power imbalance and conflict between powers. The following is the conflict of social contradictions and public dissatisfaction with public power, which indirectly shows that the national public power has not played its due role. In the process of power crisis resolution and governance, it is to test a country's ability to integrate social forces. The United States has done this well and achieved the balance of state power in the dynamic constitutional practice. Therefore, the American people have pushed forward the history of the United States in the social reform plagued by obstacles.

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