

LAW ON EDUCATION IN MONTESQUIEU'S "THE SPIRIT OF THE LAWS" AND ITS IMPLICATION TODAY

ATUALIDADES SOBRE A LEI DA EDUCAÇÃO EM "O ESPÍRITO DAS LEIS", DE MONTESQUIEU

Kien Pham Thi *

University of Economics Ho Chi Minh City, Ho Chi Minh City, Vietnam

ABSTRACT: The idea of *The Spirit of the Laws* with the Law on education aims to clarify how to manage society and work for the people of each country with different political institutions. From the perspective of approach, this article is about education law to clarify Montesquieu's legal spirit in terms of Law. The report uses analytical, comparative, synthesis, and justification methods to describe the control of state power in different states. Montesquieu's legal thought demonstrated the dominant ability of the Law in a state-owned society to regulate social relations and maintain social order. So any form educates that. That is the basis for the Education Law to be handled in each country.

KEYWORDS: Law; education; Rule of Law

RESUMO: Em sua obra *O Espírito das Leis*, Montesquieu propõe como princípio uma "Lei da educação". Este princípio tem por objetivo estabelecer regras sobre como bem governar uma sociedade, tendo por base que ela se constitui de diferentes instituições, as quais, independente de seus objetivos, devem primar pelo bem comum. Neste este artigo, buscamos apresentar o conceito de "Lei da educação" com o fito de esclarecer o espírito jurídico sobre as leis, de Montesquieu. Em sua construção, usamos métodos analítico-comparativos, de síntese e de justificação, com o objetivo de descrever como se dá o controle do poder estatal em diferentes estágios. Para isso, partimos do pressuposto de que o pensamento político de Montesquieu exhibe, em seu torno a seus eixo maior, certa capacidade dominante do Direito no estado, regulando as relações sociais e mantendo a ordem social.

PALAVRAS-CHAVE: Lei; educação; papel da lei

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INTRODUCTION

Montesquieu put philosophical thought on Law into his work in *The Spirit of the Laws*. The piece outlines the factors that determine the legal system of each country. The rule of Law required in a country represents the relationship between laws. On that basis, the god of Jurisprudence,

* Doctor of Philosophy at University of Economics Ho Chi Minh City, Ho Chi Minh City, Vietnam.
Email: kienpt@ueh.edu.vn

Montesquieu, expressed his views on the Law from all angles, including education. That article with research methods such as analysis, comparison, synthesis, and justification to clarify the nature of the Law and the institutions of the different regimes that make up other people. Montesquieu's work on *The Spirit of the Laws* is the basis for analyzing and clarifying the nature of the Vietnamese State. The role of the Law in demonstrating the leadership of the Party, the Government, and the people's supervision in the development of education laws contribute to the improvement of the socialist-oriented education legal system of Vietnam today.

The Law's spirit expresses the Government's power in social development (Pound, 1910). The Law on Education provides for the national education system, schools, other educational institutions, state agencies, political organizations, socio-political organizations, people's armed forces, organizations, and individuals participating in educational activities.

In Vietnam, the education law expresses through the Education Law and other issues that the written system will adjust under the Law, such as resolutions, decrees, decisions, and circulars... to provide specific instructions and regulations. In particular, for the field of information technology, which is a field with rapid development and an intense integration process, understanding and complying with the Law is extremely important such as regulations on intellectual property, information security or cybersecurity, ... Be aware of the meaning and importance of applying and enforcing the Law (Bengtsson, 2016).

In the rule of law concept, the Government prescribes the Law. Therefore, the rules and characteristics of the Law specify the Government. Philosophers who put forward legal opinions do not bring up the nature of the Government as an instrument of the ruling class. Thoughts on Law are not made clear from the perspective of economic structure. Socio-economics determines the direction (Pound, 1953).

RESEARCH QUESTION

1. What is Montesquieu's *The Spirit of the Laws* conception of the law of education?
2. How is the nature of education law built *The Spirit of the Laws*?
3. What is the relationship between the law on education and the law in the Government?

METHODS

The spirit of Laws - the famous jurisprudence work of the French thinker is Charles de Secondat Montesquieu, first published in Geneva in 1748. The work deals with many topics, including the law, with many problems as primary forms. Not only on the principle of division of power in the organization of the state apparatus but also issues related to the law such as politics, ethics, customs and traditions, marriage and family matters, the influence of climate, geography on law, national income issues, taxation issues, trade liberalization, the impact of religion on law, national education issues. Theory of power division in the organization of the state apparatus according to the principle of three powers, according to which state power divides into legislative, executive, and judicial powers independent of each other, overpowering and balancing balanced against monopoly and abuse of power.

The society of each type of state is not the same, and the people of each state are not the same. On that basis, the article uses the method of analysis, synthesis, and justification to clarify Montesquieu's arguments about the law, including the regulation of education, to see the relationship of social consciousness in life. From there, it shows that the superiority of education law is the basis and motivation for the society to develop in the direction of modern and civilized people.

CONCEPTUAL FRAMEWORK

In the history of philosophical thought, the rule of law state formed when the class division was in society. Both the ruling and the ruled classes must obey the Law to stabilize society when the condition places under the ruler's arbitrary control (Tamanaha, 2004). The idea of a state-organized and operated based on Law appears in the community, governing and managing society's Law. The Government is the one who makes the laws. The philosophy of Rule of Law has a guiding role in affecting the economic structure of society. However, the philosophy of the power of Law manifests itself in many areas of social life. Therefore, the Law, from an educational perspective, needs to understand that this is a purposeful, programmatic activity affecting people through a system of measures aimed at transmitting knowledge and experience, training skills, and lifestyle. The Law stipulates that learning is both the right and the responsibility of each citizen. Stemming from the practice and demand of society for education to train multi-level human resources and high-quality labor, social relations groups have formed between the contents of organization and educational activities. On that basis, the implementation of the Law on education is understood as the process of operation to make the legal provisions of education arise in organizing

and operating instruction.

From the Renaissance to the 18th century, the rule of law philosophy affirmed the role of Law in social management. The philosophy emphasizes the education of people according to the Law (de Secondat Montesquieu, 1977). The essence of the Law is to be democratic and progressive, express the will and aspirations of the people, and belong to the natural rights of people. From the late 19th century onwards, philosophers raised the view of the rule of Law associated with building the state model. Currently, philosophical thought on the rule of Law is related to the development of civil society. Therefore, the Government of law state has become a solid theoretical basis for building and perfecting the form; The question is, what is the Rule of Law? What features does it have? Principles of organization and how it works?

First, The spirit of the Laws exists in thinking, which is the product of thought.

To assess the rule of law of a state, such as "the dominance of the law in social life" and "the relationship between the legislative-executive-judicial bodies is the binding and limited power relationship," are all superficial manifestations of the relationship between the Government and the Law, or state power and the organization of state power. The essence of State management is the power of the Law to express. The spirit of the Law does not come naturally, so told through the ruling class's ruling regime. And the educational level of the people shows through law enforcement. What kind of Government is that Law. In a feudal state, the corresponding Law is the feudal Law. The Republic state represents democratic power. Thus, the rule of law state corresponds to a specific state model.

Second, the objective content personality reflected in the concept of the rule of law state is the unity between society organized in a defined way with the state apparatus - the central expression of the way community organizes. Living in the French Renaissance, Charles de Secondat Montesquieu (1689-1755) was a true philosopher, having had a particular influence on many philosophers, including Rene Descartes, Pascal, Jean-Jacques Rousseau... Born into a family of wealthy aristocratic descent, enjoying a perfect medieval-style education (learning entirely in Latin), and celebrated among the French aristocracy, Montaigne also experienced many events when France descended into a religious war (de Secondat Montesquieu, 1977). As a result, he is considered a French political thinker, sociologist, and historian. His philosophy is the experience in life, dealing with people in the face of social and religious conflicts, and the motto of life and existence in the

context of social turmoil and uncertainty. Montesquieu wished to liberate the French people from the draconian domination of the French feudal Government in the 18th century. In an autocratic feudal state, the king holds absolute power and exercises his right to rule the king's human rights and civil rights deprived in feudal society. The thought embodied the spirit of enlightenment and influenced science, democracy, and humanism in 18th-century Europe.

In October 1748, Montesquieu published a book on *The Spirit of the Laws*. Due to the intense work of studying and drafting this book, his health deteriorated, especially his eyesight. Montesquieu does not look at the Law as a pure jurist but as the soul, *The Spirit of the Laws*. For all his theoretical contributions, Montesquieu deserves to be honored as one of the great thinkers in the history of 19th-century human thought. The French Enlightenment philosopher is known for promoting the "*The Spirit of the Laws*" that always expresses the will and desire to build a new society in which, No more oppression, injustice, and an organization capable of bringing freedom to all and peace to humanity. For more than two centuries, Montesquieu's philosophical thought on *The Spirit of the Laws* has been continuously developed and perfected by thinkers and politicians. He explored the order of the Law in the chaos of the Law in all peoples and times. Discussing the Spirit of Law is a work of profound philosophical significance, in which Law interprets from many different aspects. The Spirit of Law demonstrates Montesquieu's deep hatred of dictatorship. It advocated replacing with a new form of Government so that the French people at that time had an escape from the oppression and coercion of the dictatorship and tyranny. However, after it was published, criticized from many sides. Therefore, Montesquieu continued to write the thesis defense of *The Spirit of the Laws* spirit (1750) to clarify his position.

In many chapters of the Book *The Spirit of the Laws*, his view of education is inevitably the hesitation between a scientist and an ethicist in educational content. For example, in the main branches of the work, the moralist, not the scientist, defined the principles of the three types of polity (morality, honor, fear) as the moral foundations that prescribed different regimes. Although the results of this analysis are very actual, one might wonder if Montesquieu had sought the psychology of political control just as one deduced an individual's behavior in his character. The reasoning of a moralist created class in the formation of regimes: if the democratic Government is introductory on a spiritual inheritance, how could one not conclude that it was more than the monarchy based on moral prejudice and much more than a dictatorship, is it, therefore vital because of fear, i.e., the denial of all moral sentiments? Such conclusions

clearly express the wishes of a moralist rather than the objective result of scientific observation(Lowenthal, 2017).

RESULTS AND DISCUSSIONS

One of the contents that the work mentions is the Law in education that the article wants to clarify to express the philosophical spirit that Montesquieu said:

Firstly, the management of society by Law requires Government to formulate and promulgate laws.

If the Law promulgates a lot, but little comes to life, the effectiveness of the regulation of legal regulations is not high, proving that state management is ineffective. Education serves as a place to educate citizens for society. "The laws of education are our first receivings. For education prepares us to be citizens and makes each family governess according to the extended family plan of the whole people" (de Secondat Montesquieu, 1977).

As a law, Montesquieu founded the theory of decentralization with three departments: legislative, executive, and judicial. Each department operates independently and is subject to other factors, restraint, control, and constraints. Accordingly, these departments must be divided and given to separate organizations and individuals to implement; no part of power is considered supreme. As the initiator of the rule of Law, Montesquieu saw the Law as an effective means of maintaining social order and the institution of state power. However, this rule of law democracy has only positive meanings. Its effectiveness is primary on morality and tolerance, the spirit of responsibility, and the sacrifice of privacy rights for a common purpose. Based on the decentralization of power in Law, he also clarified the education position in each regime expressed as different in Book IV (Carrithers et al., 2001). And he mentioned five chapters with the contents of the Law on education, education in the monarchy, education in the authoritarian regime, the difference between the educational effect of the ancients and ours today, and education in the communist Government that he placed education concerning politics which specific in various political institutions.

Based on the Law of education corresponding to the regime's principles in the monarchy, the dictatorship itself. Compare that to the era he lived in to draw education in the Republican administration. According to him, the education law in the republic contributes to improving the quality of education to educate people superior to previous

periods. From a legal-educational perspective, it can be viewed as the regime's power, making it possible for the ability of individuals or organizations to force other individuals or organizations to submit to their wills. According to Montesquieu, societies manifest these types of states through state power. State power is the most guaranteed form of power. Montesquieu's political philosophy was much more advanced than during his lifetime. During this period, the French bourgeoisie was fighting against tyranny. Therefore, Montesquieu's work on the spirit of the Law is the basis for the heart of French Law. Later, the most famous democratic constitutions of humanity inherited the idea of The Spirit of the Laws regarding people's rights, the Constitution of the United States of America of 1776, the Constitution in 1789 France, and the spirit of the United Nations Universal Declaration of Human Rights (1948). Constitutions all mentioned natural rights, democracy, decentralization, political ethics, and tolerance in Montesquieu and became the basic principles of the Rule of Law (Hendrickson, 2013).

Second, who is the principle of education laws

Montesquieu wrote about education and attached to it the corresponding types of State. At the beginning of Volume 4, he wrote, "The principle of education is the first thing we must grasp. As education prepares for civic life, each family runs a comprehensive general plan that embraces all". Like John Locke, Montesquieu considered the goal of instruction to produce exemplary citizens to integrate into society. Society will create that citizen through the canon of education because education will train citizens who live in the organization of a given political institution and the educational principles defined by that political institution. "In a monarchical society, honor plays an important role... Montesquieu points to an academic monarchy that aims to produce obedient human beings. As for the republican regime, the Law stipulates that education promotes human values and the teaching of love for the Law. Thus, Montesquieu's *The Spirit of The Laws* is a work of progressive value at the time (de Secondat Montesquieu, 1977).

Montesquieu assesses the principle that education must follow the self-consciousness, the self-promotion of citizens in absorbing education. Montesquieu argues that representative democracy will push individual citizens to do things they can't afford to do. For example, if any job needs all the people to decide, there will be things that most people are not qualified to understand. "The people should only participate in water work by choosing their delegates capable of working." He criticized Germany, where delegates had to consult voters with small things,

arguing that this approach would lead to prolonged processing of tasks and suspend national power in urgent cases. Besides, he is also intense when pointing out a weakness of representative democracy.

Although Montesquieu's "The Spirit of the Laws" had methodological limitations, he also recognized a close relationship between education and Law: "political order creates education that serves goals of the country" (de Secondat Montesquieu, 1977). He thinks: In monarchical countries, education creates honor; in educational republics, that creates value; In authoritarian governments, education creates fear "in the secularization of Natural Law. Montesquieu's ideas on education law will be the basis for perfecting the legal system in other countries, including Vietnam.

In the state education sector, the legal Law is a political system. Implementing the Education Law is to actively put the Law into practice, raise the people's intellectual level, and promote social development (de Secondat Montesquieu, 1977).

Thirdly, The principle of the education law is to build a developed Vietnamese education

Firstly, the Education Law is the way to achieve the goal of educating Vietnamese people to develop and develop a civilized society. Improving intelligence, training human resources, and fostering talents. So the criteria, Educational content must operate following the Law on education, building the country "rich people, strong country, fair and civilized society" (de Secondat Montesquieu, 1977).

Secondly, education aims to educate the Vietnamese people systematically and comprehensively so that every citizen has a fair and equal education and has the courage and creative ability. Create knowledge, high professional skills, be deeply educated in culture, ethics, lifestyle, ideals, love family, love homeland - national pride, social responsibility,... become a solid subject of the country's development in the new period.

Thirdly, develop a scientific, advanced, modern, and mass education, promoting the nation's good value and absorbing the quintessence of the world - international integration.

Fourthly, ensuring the rights and interests of each citizen in learning, ensuring equity and social equality in education and training. At the same time, it is necessary to harmoniously and effectively the subject's rights - interests - obligations in developing education - training.

Fourthly, Developing education and training is to build a civilized

and modern society with a socialist orientation

Firstly, education is a system operated by socio-political institutions to realize the goals of each country's political institutions. Therefore, education must comply with the Law and implement the guidelines, guidelines, and dreams of educational development of the State. Legal frameworks, mechanisms, and policies implemented in educational institutions. For the Government to develop the education laws to ensure education, implement procedures to ensure fairness and equality in education and training, and prioritize investment in education and training development in disadvantaged areas, ethnic minority areas, and policy beneficiaries.

Secondly, develop and effectively implement mechanisms and solutions to develop and improve the quality of education and training in market economy conditions and international integration. In particular, the State promulgates a policy mechanism for international cooperation and integration in education and training to ensure the set objectives to improve the quality of teaching and promote highly effective instruction. The State's leading role is concretized differently for the levels of study and type of training.

Third, building an environment (social environment, school environment, family environment) is healthy for education. They are diversifying components and subjects participating in the development of education - training, provision of goods and services of education - training, cowardly for higher education and vocational training; Forming the market of educational and training services (particular market - imperfect market); creating competition in education and training. Forming various forms of education - training, operating mechanisms of educational and training institutions: not for profit, for-profit, selling for profit. Promote innovation and develop modern - dynamic - creative school models. Create practical public-private cooperation in education and training development. Play an essential role in building a healthy educational environment and implementing social policies in education and training (Lowenthal, 2017).

CONCLUSION

The above is the generalization of organic links between the subjects. These factors create the synergy for developing education and training in the market economy and international integration conditions. Social institutions need to be concretized by the necessary legal system, mechanisms, policies, and solutions and applied appropriately to each

level, form of education - training, and development conditions of each region.

In summary, education aims to develop the country, orienting human values - social values. Based on the Law on education, the objectives are to create educational content and programs. The Law's goal builds democratically and somewhat, especially on education. Educational contents, programs, and education methods must take Law as the basis for implementation. Therefore, Vietnam's education law needs innovation - development - improvement. The role of educational institutions must be suitable to each level of education, type of training, and requirements of the new period to effectively perform the functions of educational institutions to create a strong motivation for students in the process of the fundamental and comprehensive reform of education in the country.

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