

# Western Constitutionalism and Human Rights Protection: Essence and Enlightenment

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**Abstract.** The relationship between human rights and the constitution and the law has long been regarded as the core issue in the field of law. This core element essentially originates from the importance of the two concepts in the legal system and the family similarity in the value connotation between the two concepts. The source of western constitutionalism lies in the realistic demand for human rights recognition, and its value lies in the respect for human rights. The development of western constitutionalism has always been closely related to the core issue of "human rights protection". The study and the reveal of the essence of the western constitutionalism and human rights protection are helpful to provide reference for the theory and practice of governing the country according to the constitution in China.

## 1 The origin of western constitutionalism: the recognition of human rights

### 1.1 The etymology of constitutionalism

Etymologically, The world constitutionalism in the western sense comes from the evolution of the Constitution (constitution). This correlation intuitively and clearly reveals the relationship between the constitution and the constitutionalism. The rational existence of the constitution is an important medium for the formation of the constitutionalism, and the constitutionalism is the rational operation of the constitution in the social practice. Of course, from the perspective of concept and practice, the discourse of constitutionalism is more of a western-style theoretical speech and practical narrative. Mr.Liang Qichao was the first scholar who proposed and explained the concept of western constitutionalism in China. Mr.Liang Qichao believes that constitutionalism originated in Britain, and it is a dynamic process from the autocratic regime to the constitutional regime and making it increasingly perfect. This discussion more accurately defines the process and essence of the establishment of western constitutionalism, that is, to establish the constitution on the basis of the constitution, and establishes the constitution as the supreme authority value and norm in political life and social affairs. "The tradition of constitutionalism rests on two themes implied in the dual meaning of the word Constitution. The Constitution may refer to the process of constitution or to the restriction or definition of power.[1] Therefore, the basic problem of constitutionalism is the problem of constitution and limitation ".Whether it is constitutional and restrictive,

its basic direction is the theme of regulating power. The essence of this regulation of power is an institutional construction explored on the basis of realizing the objective fact that the existence of power may infringe on human rights. Accordingly, we can further make the following conclusion, the origin of western constitutionalism is the recognition and recognition of human rights, with the germination of the understanding of human rights, the concept of constitutional government and the value of the witness and consolidate, and through continuous system practice then developed into the core and essential elements of democratic political system.

### 1.2 The function of the Constitution to stipulate and safeguard human rights

The goal of the core of the Constitution is to protect every member of a political society as a politician, and to protect their true autonomy. The Constitution aims to preserve the self with dignity and value, because the self is seen as the primary value, and this priority of the self ultimately triggers the idea of being regarded as a natural right. Therefore, the function of the Constitution can also be interpreted as the regulation and protection of human rights ". In other words, from the perspective of the Constitution, it is a record of and bearing of human rights, so the content of the Constitution is the most intuitive expression of the elements of human rights from the perspective of norms and text, and the formation of the Constitution is the promotion of the powerful real social power that recognizes the value of human rights. Dai Xue, a famous British constitutional scientist, once explained from the perspective of the concept of rights as the basis of the constitution. He noted that " no one in England can be punished or

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compensated for doing something not expressly prohibited by law. Their legal rights and responsibilities are determined by the ordinary court. For this reason, the rights of individuals and the operation of the Constitution is rather the result of the formation of the Constitution." The concept of individual rights and human rights as the basis for the establishment of the Constitution, for the Constitution and constitutionalism.[2]

The generation makes the most convincing analysis, but also provides a definite path to outline the logical relationship between the two values. It is on the basis of this argument, we can reverse reasoning such a conclusion: the origin of western constitutionalism is in the recognition of human rights concept value of recognition and practice requirements, and through the recognition constantly enrich and improve the system of the constitution and constitutional government design, in order to better serve the country's political life and people's social life, and then to the greatest extent respect and protect citizens' human rights. Therefore, "a concept that remains unchanged in the whole history of western constitutionalism is that the individual human being has the highest value, and he should be exempted from the intervention of its ruler, whether the ruler is the king, the political party or the majority of the public". We believe that it is this recognition and respect of human rights that constitutes the most core and essential elements in the history of western constitutional concept, and at the same time provides a strong value protection and ideological source for the enduring history of the constitutional movement.

## **2 The core concept of western constitutionalism: respecting human rights**

The practice of the constitution and the realization of the constitution not only need a relatively perfect constitutional provision, but also need the support and assistance of the specific systems, values and ideas that depend on each other, and promote it together. Which contains the idea, system or value is relatively diverse, such as the concept of the rule of law and its system design, the concept of due process and its text framework, etc., in these ideas has a core concept is not allow to ignore, that is the concept of respect for human rights, and contains in the concept of respect for human rights of a series of specific institutional architecture.

### **2.1The relationship between western constitutionalism and human rights is mutually reinforcing**

The relationship between western constitutionalism and human rights is mutually superficial, and there are logical family similarities between the two concepts. Both the advocacy of constitutional government and the practice of human rights are more or less dependent on each other's support in values and strengthening in practical operation. At the heart of a man's dignity is his

conviction, his faith, his faith. For the security and survival of a constitutional order, ensuring that this deepest self is more about life and death than any boundary or any secret. Therefore, it is very important to respect and protect human dignity and human rights in the constitutional order. Without the support of this concept of respect for human rights, the security and survival of the constitutional order may be challenged or even disintegrated. Therefore, when we discuss the value of western constitutionalism, we must bear in mind the insightful words put forward by Foer, deeply understand the concept of respecting human rights in western constitutionalism, and deeply grasp the practical rationality, institutional form and the source of power of the operation of western constitutionalism.[3]

### **2.2 The perspective of the specific system design**

From the perspective of the specific system design, the representation of human rights needs to depend on the normative system and guarantee system set up by the Constitution to some extent. his system is the system of the constitution itself. Through the status and strength of the constitution, unlike other laws, it protects human rights in the whole structure of the constitution. The complete constitutional system constitutes the protection system of human rights. Western recognition of human rights based on constitutionalism can be roughly reflected in the following levels: 1. Through constitutional provisions, To stipulate and reveal the contents of human rights, Provide a normative basis for the recognition and recognition of human rights; 2. Through the design of the constitutional system, Provide basic evidence for human rights and dignity, To further demonstrate the primacy and nobility of civil rights in front of state power. The nobility here reflects the sanctity of human rights itself, and the rights of the state can not be violated at will without any reason; 3. To stipulate the scope and limits of civil rights through the design of the specific legal system; 4. Through the intervention of the judicial system, To provide practical and effective relief ways and ways for citizens' rights may be invaded by state power, To ensure that the recognition of human rights is fully implemented, well-informed and has rules to follow.[4]

### **2.3The way of human rights protection**

The concept of human rights and the development of human rights protection have profound historical origins. Influenced by social, economic, cultural and other factors, the mode of human rights protection shows a diversified development trend. Multiculturalism means different values, which in turn determine the diversity of views on human rights, resulting in different views on human rights and different means of realization. The concept of human rights in France is rationalism. In the process of the development of human rights protection in France, it believes in the rational structure of individuals to protect human rights. Britain is different from France,

the implementation of empiricism, through the operation of its political model, to promote the concept of 'parliamentary supremacy' to promote human rights. In some Nordic countries, such as Denmark, Finland, Iceland and Sweden, it is 'social people's livelihood' that promotes social welfare, through social welfare, relying on large sparsely populated and the original economic base, the implementation of high tax and high welfare policies to narrow the gap between the rich and the poor in society, thus protecting human rights.

### **3 The development of Western Constitutionalism: the protection of human rights**

Equations should be centred and should be numbered with the number on the right-hand side. As is known to all, the history of human rights is a history of human struggle for freedom, democracy and rights. The value of human rights contains the basic characteristics such as human subjectivity, human freedom and human sociality. The history of human rights is mainly a history of rights struggle and protection of rights through the recognition, respect and protection of human rights. In the West, the history of human rights protection is essentially a vivid history of the development of constitutionalism, which records the development and progress of the Constitution, as well as the richness and perfection of human rights theory and practice. In a word, the development of constitutionalism and the improvement of human rights protection are complementary to each other, and there are close logical and practical links between the two concepts.

#### **3.1The level of citizens as an individual**

From the level of citizens as an individual, the law of freedom is actually another kind of discourse of human rights, human rights from the content is a kind of claim of freedom and autonomy, the claim is the law and state, but in the state of society at the same time, it must be subject to the provisions of the law and the protection of the state, the paradox to a certain extent can explain the reality of human rights violations and challenges. It is based on this concern that Locke limits the content of the power of the government, so as to ensure that its operation always focuses on the fundamental value goal of protecting human rights. "All the powers of the Government, since they are only for the happiness of society, should not be arbitrary and happy, but should be exercised by established and published laws; in the power for the people to know their duties and secure them within the law, and on the other limits, for the rulers to exercise the powers by such means as they were not familiar to or unwilling to admit." Seeking happiness for the society and seeking stability and certainty for citizens is an important connotation of human rights. Putting this requirement for human rights protection in the value of power operation has a direct and realistic significance for the protection of human rights, and also in essence meets the practical needs of the country as the

subject of human rights protection obligations. From a similar perspective, The Japanese scholar Ohashi proposed the idea of "incorporating human rights into the Constitution for the protection of individuals threatened by the abuse of state power. Since people have a living memory of the persecution caused by the state power, it is expected that the human rights provisions in the Constitution can constitute a restriction on the state power, and this expectation has become an important reason for the creation of the human rights provisions in the modern state constitution and its realization mechanism." In such an expectation mechanism, the protection of human rights from the infringement of state power has become an important motivation for the development of the constitution, and also constitutes the eternal theme of the development of western constitutionalism, and defines an important boundary standard for the good operation of power.

#### **3.2Theoretical level**

Theoretically, western constitutionalism is not only the product of the concept of human rights, but also an important institutional basis for protecting human rights. In the view of the Western scholars, The signs of a national constitutional government are: first, all the activities of the state must be carried out within the scope of the Constitution and laws, Must be regulated by the definite legal norms published in advance; Second, when the state power is in conflict with the provisions of the law, The law has a certain sense of veto power, in other words, The state power is subject to the law; third, the content of the Constitution must reflect the clear intention to respect and protect human rights, And in the judicial practice; fourth, establish the unconstitutional review system, Ensuring that the highest rank of the Constitution, Ensure the fundamental guidance of the Constitution to law and social practice; fifth, establish a perfect right relief system and relief channel. As Dai Xue said in summarizing the characteristics of the Constitution, "Under the Constitution, the full spirit of the law pays attention to the remedy method. This is to say that the legal affairs must be conducted in a certain way, and then the rights under the law are respected, and then the nominal rights can be turned into real rights." [5]

#### **3.3The importance of Western constitutionalism in human rights protection**

First of all, under the western constitutional system, the clarity, standardization, openness, universality and system of laws can be guaranteed, and good laws can be effectively generated. Whether human rights can be guaranteed and their guaranteed degree has an important correlation with the quality of the law. Only under the premise of good law, the protection of human rights will not turn into an empty theoretical preaching. Second, in the western constitutional system, the authority of the constitution and the law is an important goal of constitutional operation, by establishing authority, to ensure the supremacy of the constitution and law, which

can reveal the constitution and law as the ultimate specification of social affairs and interpersonal basis, the protection of human rights fundamentally depends on the existence of the authoritative specification. Thirdly, western constitutionalism requires that the constitution and laws be universally observed and recognized by government organs, social organizations and citizens, and stipulates the basis, procedure and boundaries of the operation of state power. Only through the meticulous regulation of the exercise of power and the universal requirement of citizens to abide by the law can the protection of human rights change from concept to action and from text to reality. Finally, the western view of human rights believes that without the confirmation, declaration and protection of the constitutional government and the constitution, the concept of human rights may persist in the stage of proper rights, but cannot be converted to the level of real rights. This is also a big problem in the protection of human rights. Only through the confirmation, declaration and protection of the constitution and laws in the constitutional system, human rights not only have lofty theoretical value, but also have fresh vitality in practice.

#### **4 The enlightenment of western Constitutionalism for human rights protection**

We cannot simply give the conclusion about the superiority of the Chinese and Western political and legal systems. However, rational analysis and reasonable reference of scientific and cultural values and reasonable institutional elements in the western constitution and legal system will undoubtedly promote the modernization of China's national governance system and governance capacity, and promote the progress and improvement of China's human rights constitution and legal guarantee system. It also has great theoretical and practical value significance. From the perspective of the human rights protection system of western constitutionalism, it has important enlightenment significance and reference value for China at least in the following aspects:

##### **4.1 We will vigorously promote the development of the Constitution and the legal protection system for human rights**

To realize the rule of law of human rights protection. "The purpose of the Constitution is to become a fundamental statement of the people of a country when they are united as citizens, to state the basic rules and values that they share and agree to for self-restraint. The meaning of the Constitution is that it is, once approved by the democratic process, called the blueprint of the institutions of the government, and the criteria for examining any subsequent action of the government to determine its validity. The inherent standard of validity is whether the consent of the governed is respected". The Constitution is a concentrated expression of the common will and fundamental interests of the Party and

the people. Therefore, to promote the development of national human rights protection, safeguard the people's basic human rights, in the legislative level, to further strengthen the constitution, the law confirmation and declaration of human rights, strengthen the basic rights and freedoms of citizens, citizens protect the legitimate rights and interests of the constitution law system construction, establish the basis and the scope of human rights protection, as far as possible comprehensive and detailed construction accord with our national conditions and follow the trend of the world of human rights system, human rights protection into the text of the constitution, and in the practice of governing the country according to the constitution.[6]

##### **4.2 Standardize state power in accordance with the law**

The Constitution starts from human rights and civil rights, and takes it as the axis of power operation and the forbidden area and final destination of power (purpose). The Constitution is a guarantee document of human rights and civil rights and a treaty to balance public power with public rights.[7] The supremacy of basic human rights and basic civil rights is the highest concept and principle of the Constitution. "These discussions clearly reveal the dependent path of human rights protection and the fundamental direction of constitutional government development from the normative level of the constitution or the value level of human rights protection. To comprehensively promote the rule of law, promote the rule of law in accordance with the Constitution, and promote the development of the national human rights cause, we should actively integrate the protection of human rights with the improvement of the legal system of human rights, and organically integrate the protection of human rights with the restriction and supervision of power, so as to realize the rule of law of human rights protection.[8]

##### **4.3 We will strengthen education in modern views on human rights and the rule of law, and raise awareness of the whole society of protecting human rights**

The values of fairness should be further firmly established, and the normative foundation and practical foundation of such values should be consolidated, because people's desire for fairness may be deeply rooted, because fairness strengthens the inner motivation of a social group, thus encouraging them to cooperate with each other. Such behavior habits, in the specific context of frequent contact between people, have a strong practical significance. Such a sense of fairness will almost necessarily become the most important part of a society that hides its national wealth.[9] "In the process of governing the country according to the Constitution and the rule of law in China, attention should always be paid to the normative construction and practical maintenance of fair values, so as to ensure that the most

basic, essential and core values are fundamentally confirmed in contemporary China.

#### **4.4 Strengthen the development of a law-based government and continue to improve our law-based administration.**

In the level of law enforcement, the administrative organs should be fully guided to establish the concept of respecting and protecting human rights, and eliminate various obstacles that may violate human rights in practice, to ensure that human rights protection is an important concept and source of legitimacy of administrative law enforcement; refine the requirements of the rule of law and the construction of law enforcement, closely adhere to the theme of human rights protection, and take it as the fundamental value of measuring law enforcement civilization.[10]

### **5 conclusion**

Historically, the western constitutional movement originated from a series of value lineage of human society generated during the Enlightenment Movement, and the constitution is the intuitive embodiment and external expression of this value lineage at the normative level. The constitution and the constitutionalism all essentially conform to and continue the basic connotation of the revolutionary concept of human rights produced in the enlightenment period. The concept of human rights emphasizes the value spirit of recognizing, respecting, affirming, caring for and protecting people. At the same time, it also reflects the mutual ethnic identity and willing acceptance of human subjectivity. The root of the concept of human rights lies in the concept of human nature of "empathy and civilization". At the same time, human rights are not only a concept, but also an ideal that human beings strive seek. The protection and respect for human rights is always ongoing and it is a vivid interpretation of this quality of human rights. As a value and concept, human rights is like a benchmark, marking the degree of civilization in the normative context of human social life and politics and the degree of civilization that should be achieved in the future. Under the inspiration and common inspiration of human rights and constitutionalism, many problems and challenges encountered in the process of globalization, civilization and socialization will be fully, effectively and positively responded to. We should view constitutionalism with human rights and promote human rights with constitutionalism. Through the frequent interaction and close connection between the system and values, supplemented by precise local knowledge and human spiritual needs, the political order, social order and civilized order of human beings will show a more colorful pattern. Rule of law in accordance with the Constitution, and promote the development of the national human rights cause, we should actively integrate the protection of human rights with the improvement of the legal system of human rights, and organically integrate the protection of human rights with the

restriction and supervision of power, so as to realize the rule of law of human rights protection.

### **References**

1. Fan Zhongxin. Liang Qichao 's Law Collection [ M ]. Beijing : China University of Political Science and Law Press, (2000.)
2. Milne. Human rights and human diversity--the philosophy of human rights [ M ]. Beijing : Encyclopedia of China Press, (1995)
3. SHIMICHEV. Selected Works of International Trade Law [ M ]. Beijing : China Encyclopedia Press, (1993)
4. Stephen Elkin et al. New Constitutionalism : Designing Political Systems for Good Society [ M ]. Shanghai : Sanlian Bookstore, (1998.)
5. Carl Friedrich. Transcendental Justice - The Religious Dimension of Constitutionalism [ M ]. Shanghai : Triple Bookstore, (1997)
6. [ U.S. ] Scott Gordon. Control of the State - - The History of Western Constitutionalism [ M ]. Nanjing : Jiangsu People 's Publishing House. (2001)
7. Madison. Debate : Record of the United States Constitutional Convention ( I ) [ M ]. Shenyang : Liaoning Education Press, (2003)
8. Jin Fenglin, Feng Lei. The British capitalist constitutional system and the moral characteristics of the three classes [J]. Socialism in Science.(2020)
9. Lan Jinjin. The influence of the Glorious Revolution on the British constitutional system [J]. Youth and Society.(2019)
10. Yin Jie, Wang Mingyue. The relationship between human rights and the Constitution and constitutionalism in the United States [J]. Fortune Today.(2017)