

Enhancing Humanism in the Construction of the Constitutional Government of China¹

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Abstract

Constructing a constitutional government is the path of the development of modern democracy, but China is different from the West in implementing the constitution. So China has a different result and the reason is that our society lacks humanism of the modern sense. Now we need to understand the core of humanism, set up correct views on freedom and equality, and improve the construction of constitutional government in China.

Key words: Constitution; Constitutional government; Humanism; Freedom; Equality

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INTRODUCTION

“All the sciences have a relation, greater or less, to human

¹ The article does not explain humanism, humanistic spirit, people-centered concepts due to the educational world also has much controversy for these definitions. The paper only discusses how to use these basic values such as respect for people's freedom, equality, fraternity, democracy in the construction of the constitutional government. To express conveniently, use the same concept of humanism instead of these concepts.

nature: and that however wide any of them may seem to run from it, they still return back by one passage or another” (Hume, 1980, Vol.1, p.6). The construction and development of the constitutional government, also is a subject which holds the human beings as the starting point, core, destination. As early as in the cradle of constitution, British as a birth land, its unwritten constitution's theme was: take a “system which inspires and protects the people” as the core system. The core content of The Great Charter of the Liberties was “habeas corpus” to realize the “freedom”. The Declaration of Independence of the United States first announced: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed, That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness” (Zhang, 2004, pp.75-74). Referring to the declaration: equality, rights, and freedom, safety, and happiness, all of them contains the modern humanistic spirit of including people's value, freedom, and dignity.

Over the past more than a hundred years, humanism has also been the most fundamental starting point of the democratic revolutions and democratic constitutional history in our country. In the end of Qing Dynasty, “The Nineteen Articles of Constitution” was under the guise of “establishing republic with a constitutional monarchy”, and had no articles of civil rights. It did not reflect humanism. It deviated from the public and the trend of the pursuit of freedom, living, independent, security and dignity, so led to the failure of the first Chinese constitution. In 1912, Sun Yat-sen set a “Provisional

Constitution of the Republic of China". In the second chapter, there were a total of 11 articles which fully defined the rights and duties of the citizens. People could be entitled to the freedom of person, housing, property and management rights, works and speech, parade, assembly, association, communication, faith, etc. Even though the nationalist constitutionalism attempt failed, the humanistic spirit was in conformity with the essence requirements of constitution. Until now, its content also has influence and it even has the humanistic enlightenment role for the construction of a constitutional government in China.

1. COMPARISON OF HUMANISTIC SPIRIT OF CHINA AND FOREIGN COUNTRIES

Humanistic spirit is throughout the enlightenment of modern constitutions. The goal of a constitution is to establish rights which can circumscribe the politics, economy and society based on this idea, "Let everyone be a human being". Since the birth of constitutions, they have had the mission of defending the interests of the people and have been the most powerful carriers of humanism. Almost all of democratic constitutional governments acknowledge the following principles:

First, Popular sovereignty, namely, the core and the most basic rights belong to the people in the country affairs, and the faith of safeguarding interests and dignity of the people is the theoretical basis of modern democracy. Jean-Jacques Rousseau thought that the people's common will represented the supreme authority in the country, the people were the source of supreme power, a sovereignty was the embodiment of public will, and the sovereignty belongs to the people. Modern democratic theory is that: a law acknowledges and protects personal dignity, and it is the key reason that the law has the strength. To realize this goal of constitutionalism, the keys are that let the people elect their representatives, these representatives can make a law which represents interests of the people, and then the people are managed by the law. Only in this way, the people will abide by the law that is the force source of the law. This idea is accepted by the western countries which put it into their constitutions, and it becomes the first principle of ideological basis of constitutions in modern western countries. Even in the former Soviet Union, its constitution as a representative of the socialist constitutions also publicly acknowledged that "Popular sovereignty" was the philosophical thought of humanism. Since 1982, the constitution of China has stipulated that "All power in the People's Republic of China belongs to the people." Although the political systems are different, the constitutions are all based on the humanistic spirit. The principle of "Popular sovereignty" is the political foundation of a government power, and the humanistic spirit is reflected in a constitution through its emphasizing on the political status of the people.

Second, human rights, namely, the primary task of the operation of a government power is guarantee of human rights. A country is existing for its people, and the people do not live for the country. "A country is a means for the people, it never has own purpose" (Xu, 1994, p.256). "The end of all political associations, is the preservation of the natural and imprescriptible rights of man." (The Declaration of the Rights of Man and of the Citizen of France). "That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed." (Declaration of Independence of the United States). A constitution is the guarantee of human rights, and its safeguarding human rights is the legitimate source of the power operation and the ethical basis of the power operation.

Third, the principle of limited government, namely, the principle advocates to limit a government power. Protecting the people's rights is the criteria of the government power operation. A government power is limited not to harm the people's rights and the government power is restricted by the people's rights. The people's rights are above and prior over the government power. Humanism thinkers believe that the government power is transferred from the people, the rights of the people appear before the appearance of countries, a right is not given by the country and the constitution which is only to confirm, not create the right. The nature of government power determines it must be restricted and supervised although the purpose of existence, configuration and operation of government power is to protect people's rights. But "a government power is once formed, it is easily, in turn, to control the rights of citizens and even enslave these civil rights, so that it makes political master-servant relations of citizens and the country organs, officials change each other's positions in real life" (Yang, 2001, pp.245-246). For fostering strengths and circumventing weaknesses, on the one hand, we should affirm the safeguard function of government power, on the other hand, also prevent abuse of government power and violation of people's rights. We should rely on the constitution to limit government power, namely, rationally allocate government power, safeguard people's rights and implement constitutionalism.

1.1 Humanistic Spirit's Influence in China's Ancient Times

China has had its own traditional humanistic spirit since ancient times. As early as the Western Zhou Dynasty, "Being moral for matching heaven, preaching morality, cautious punishment" were reflected in the processes of rulers establishing governments. "Heaven morality is awesome, and we need to help honest people, then public feelings are visible" (The Books, Kanggao), namely, the people play a role in strengthening a regime. Because of emphasizing on that the "people" and "heaven" were equal, gods' influence on the country's decision-making declined, and some governments even took public opinion

as the destiny. "People like, heaven will agree" (The Books, Kanggao). Guanzhong put forward: "To build a powerful country, should be based on the people, and the governance is solid because of the reason" (*Journal of Hangzhou Normal University*). As the power of the people was taken more seriously by rulers, the people's social status and value increased. Some thinkers (philosophers) in the process of evaluating these "based on the people" systems promoted the thought to a philosophical thought. The first "people-centered" theory is Confucius' benevolence theory. "The benevolence theory was founded, that marked the god standard was changing to the people standard in Chinese traditional culture. Gods were being replaced by the people, that was an important symbol of early-maturing of the Chinese civilization" (Wang & Yang, 2005). Confucius' follower Mencius said, "People are the most important, the country is the second, and the monarch is less" (*The Mencius*: Jinxin, Vol.2). Xunzi put forward: "The emperor is like a boat, and civilians are like water. Water can float a boat as it can capsize it" (*The Xunzi*: Wang Zhi). In conclusion, Guanzhong respected people's status and role, and emphasized to properly handle the relation between the government and the people in the system; humanistic ideas of Confucius, Mencius and other intellectuals paid more attention to inner feelings of the people, and wanted to enhance the people's inner moral accomplishments and interpersonal relations. Their attention was different, but was based on the people who were the foundation of their theory. These theories affirmed the human value, and acknowledged the people having positive significance in social development.

Unfortunately, the humanistic spirit of ancient China is difficult to form the foundation for a modern constitution. The reason is that the ancient humanism is only part of the sovereign maintenance means, can not have evolved into the thought of the limited government. "The Chinese humanistic spirit is not a rational, independence and pure spirit, but a practical, utilitarian, belonging to the secular politics 'ethical spirit' or 'political spirit'" (Wang, 1999).

1.2 Development of the Humanistic Spirit in the West

As early as in ancient Greece, "man takes the place of nature as the centre of speculation" (Robin, 1965, p.163). The people turned their attention from the origin of the world, the cognition of all natural things to the cognition of the people themselves. "Man is the measure of all things, of the things that are that they are, of the things that are not that they are not" (*Selected readings from the western philosophy originals*, 1999, Vol.1, p.54). "Ancient Greek thought one of the most attractive is that it is people-centered rather than God-centered" (Bullock, 1997, p.14). In view of this, the thought of humanism is throughout the development history of the West. Because of the continuing research, the humanistic connotation

is more extensive. In Europe, the rise of the medieval theology also led to rational thinking about the people, and connected the people and the god. The nature of infinite or belonging to god became the human spirit essence. It made the people lose themselves. Until the Renaissance movement from the 14th to 16th century, begun to promote the secular people as the center, carried out the humanism, revived the ancient Greek humanistic spirit, and advocated the pursuit of the goals of freedom, equality, etc. The enlightenment only was one stage of humanistic tradition, but this tradition itself can be traced back to the world the ancient world and Renaissance found (Bullock, 1997, p.270).

Because of this, the humanistic spirit which contains equality, freedom, human rights and democracy revives the people's pursuit of the rule of law, and also becomes the core content of the western constitutionalism (the rule of law).

The enlightenment of humanistic ideas was different in China and the West. China has carried out the constitutionalism in the lack of freedom, equality, democracy, limited government power and the context of constitutionalism, thus it is necessary to reshape humanistic spirit in the construction of a constitutional government now.

2. CURRENT HUMANISM STATUS IN THE CONSTRUCTION OF THE CONSTITUTIONAL GOVERNMENT OF CHINA

Humanism's another expression is "people-centered". The article 9 of the constitution of the year of 1982 declared: "the personal dignity of citizens of the People's Republic of China is inviolable." In 1979 and 1979, Chinese delegations were as an observer status to attend the 35th, 36th, 37th sessions of the UN human rights council respectively. And in 1981, China which was elected by a majority became a member of the human rights committee. China has been re-elected ever since. Although our constitution has reflected and carried out the humanistic spirit, there is still insufficient.

2.1 The Humanistic Spirit Is Not Widespread

For more than three decades, the economic reform has promoted the rise of China. In the process of becoming a modern country, China needs to have reconstruction of cultural modernity in addition to important tasks of political reform. But some social trends of getting rich quick, efficiency being the highest standard, etc expose the problem of neglecting humanism in the pursuit of modernization. The problem has caused environmental destruction, resource waste and even making counterfeit, prompted the moral landslide and led to a crisis of confidence between people. When consider this predicament, we can say that the economic profit has flooded the human development. For example, on March 15, 2011, the central station broadcasted that individual farmers in Henan province fed pigs with feed containing

some “clenbuterol”, and they mainly sold these pigs to the Shuanghui Group. The food processed by various medicines has great harm to human bodies. That shows that humanities spirit goes backward in our social life. Why can some outlaws get profit from harming other people’s life and health? The lack of laws and the weak enforcement are important reasons except these outlaws who lose moral values act outrageously. Although some law enforcers can find out some illegal behavior which disregards human life and health sometimes, they often only impose a fine rather than crack down.

The meaning of developing economy is to let the people become well-being. If connecting all work to the economic development which becomes the sole criterion for testing a work value, that will get backfire. This thought neglects the importance of people in the development process, and also violates the “people-centered” concept of scientific development which the party and the government advocate. This thought comes from the negative effect of traditional thoughts. Ancient China had the feudal system which put individual home and the country into one concept. The people were just passive social subjects and the ideology of “worship heaven for the people” and “people obey the government” was deep. Now some officials disregard the dominant position of the people in the politics, economy and culture, strengthen social management and control by using the guise of seeking the people “well-being”, enhance the legitimacy of centralized control which evolves into a national image of “people obey the government”, limit or deprive the citizens’ rights of independence and freedom. This kind of “authoritative” politics wants to show that human beings can be in order without freedom, but freedom without order (Huntington, 1988, p.38). Because of Chinese citizens’ lack of modern spirit of freedom, equality, etc, so the categories of “economic man”, “moral person”, “legal person” are chaotic, even blind. In the run of the market economy, the value of the profit often is the only core, and morals are forgotten. Although the development of market economy does not deny the differences of personal values when recognizes the “self-interest”, if the development lacks humanistic spirit, the humanities spirit declines and loses in the tide of market economy. This situation highlights the urgency and importance of the reconstruction of humanistic spirit for the whole nation.

2.2 Lack of Foundation of the Rule of Law

The understanding levels of “the rule of law” and “the constitution is supreme” are closely related to a country’s legal cultural tradition. Due to the traditional Chinese legal culture lacks the standard of universal justice to transcend secular power, it was unable to form the people’s common

religious beliefs. So the small-scale rural economy made the peasant consciousness directly evolve into worship for secular power, formed moral, political and legal concepts based on the deification of political power. Because of the deep influence of modern western constitutionalism thought over the traditional Chinese culture, and inspired by the reform of becoming a rich country, the people had passively received the western constitutional philosophy and political system. But the introduction of the western constitutionalism does not form the true sense of democratic constitutionalism and the action of protecting human rights. This is the historical reason that the constitution cannot be supreme in China, at the same time, it also restricts the people’s understanding level of “the constitution is supreme” and the people’s acknowledging of universal values (Zhu, 2000).

Although the ancient Chinese humanistic spirit contained the people-centered thought, failed to create modern rule of law spirit and instead became a “hotbed” of the rule of the government or virtue. The main reason of this happening was that the ancient Chinese humanistic spirit did not have freedom, equality, fraternity, democracy as the core content of humanism. “Because of the Chinese traditional humanistic spirit lost the independent character of transcendent, lacked proper rational factors, paid more attention to the shaping group spirit and social personality, paid less attention to individual value and so on, thus eventually failed to create the spirit and entity of the rule of law” (Wang, 2001).

Although some people can also know that China needs the humanism of modern sense to establish a “constitutional government” and “the rule of law” sometimes, there is misunderstanding of humanism. In recent years, some newspapers, magazines and companies often say: “people-centered”, need to be “people-centered” in urban management or need to be “people-centered” in education reform, etc. Unquestionably, the thought of “people-centered” has the characteristics of vagueness and abstractness. When talking about the specific category of the subject, there are controversial issues: is it “people-centered”, “human beings-centered”, “person-centered”, “common people-centered” or even “what the people are”?

Therefore, the lack of humanism in the citizens’ ideology cannot make a good foundation of public constitutionalism consciousness for the construction of a constitutional government. In addition, China and the West’s development backgrounds of market economy are different, and the negative effect of China’s market economy hinders the normal evolution process from the people-centered thought of the traditional culture to the modern humanism.

3. PERFECTING HUMANISM (SPIRIT) IN THE CONSTRUCTION OF CONSTITUTIONAL GOVERNMENT

3.1 Pay Attention to the Positive Role of Our Socialist Market Economy, and Enhance Correct Freedom and Equality

The social and economic structures form the realistic base in each era. In each historical period, the whole superstructure consisted of the legal and political systems, religion, philosophy and other theories, in the final analysis shall be explained by the base (*Marx and Engels anthology*, volume 3, 1972, p.423). The constitutionalism culture as a category of the superstructure has to base on the economic base. The development of constitutionalism culture can not separate from the existing social system and the economy, especially the economy. As a result, China's constitutionalism culture must be based on the market economy. To develop Chinese constitutionalism culture, the key is based on the correct development of socialist market economy.

Only the people are the determinants of the market economy, and play an irreplaceable role in the operation of the market economy. From the empirical level, the core content of humanism is freedom, equality, etc concept. The concepts of liberty and equality are not only to go deep into politics, economy, ideology, but also play the role of "leading" in the economy.

In the normal operation of market economy, first of all market subjects should be free to enter or exit the market, not be forced. Under the premise of market subjects being freedom, they can rationally allocate resources and make the profit maximization by their own ability. Freedom is the core content of humanistic spirit. The value of an individual has a direct correlation with his society. And don't interfere in other people's freedom that is one of the premises. Every individual should not do what he wishes without restraint.

The market economy is not only to cultivate liberal ideas, but also requires market subjects' activities to conform to the established rules and requirements. The cheating is not allowed in the market economy, otherwise, it can damage the common interests, make competition order imbalance, easy have corruption, and make unable to implement legal equality. Equality does not mean the average. Equality only emphasizes the laws protecting the right of each social member for equality of opportunity. Equality in the market is like a tool, because too familiar with what it does, when people can use it, often leave it in the drawer (Lindblom, 1995, p.108). Market is equal to everyone; the key is to have this consciousness.

The development of market economy allows some people to become rich first, breaks the equalitarianism and introduces the competition mechanism. The competition makes the social progress but the key is that a market

economy needs the competition with freedom and equality. Freedom is the must of the society, but freedom is only one aspect of social life. When freedom and equality are closely combined, society takes on the role of the referee, and its tasks are to do justice and prevent abuse of power (Hobhouse, 1996).

Freedom and equality confirm the independent positions of the subjects of the market, and also guard against the government-centered power. Through reshaping the independent consciousness of the market subjects, form a social self-development model, make the people free from some restrictions, further promote the social and economic development, realize the move "from identities to contracts", and form the basis of power restriction theory. Through paying attention to the cultivation of independent consciousness that will be conducive to enhance the "rights-based" thought of the people. Through the strengthening the consciousness of the restricting power, help the formation and development of the constitutionalism culture which is based on the democratic constitutionalism theory.

3.2 Popularize the Constitutionalism Consciousness and Establish the Authority of the Constitution

The constitutionalism consciousness is the subjective reflection of the effect of the constitution adjusting the specific social relations, and is the direct embodiment of constitutional authority in a human brain. "Through adjusting the people's behavior, the constitution as a kind of external specification order is gradually received by the people's psychological structure. Thus the people consciously form all kinds of mental sets of behavior in accordance with the requirements of the constitution. These mental sets make up the social psychological support for the effective operation of whole social legal system" (Mo, 2002). However, Chinese modern constitutionalism movements tell us that the constitutionalism consciousness must be based on democracy, otherwise, it goes nowhere. "The so-called constitutional government and citizen politics, which can be realized or not, only depend on the fundamental condition with the majority of citizens determining to take the initiative positions in the politics... if the initiative position of doing the constitutionalism politics belongs to the government but the people, not only the constitution is a dead letter and there is no permanent guarantee of routinely carrying out the constitution, but also the constitutional freedom will be looked as a object of insignificance by the people who will not advocate it deadly. So the spirit of constitutionalism politics will completely lose" (Wang, 2001). The constitutionalism consciousness should use proper constitutionalism connotations as a benchmark. In this way, the social subjects' inner feelings will be convinced of constitutionalism. It can strengthen the consciousness

of constitutionalism, and the constitution will work consciously in the social life—as a code of conduct.

Though the constitutionalism movement failed at the end of the Qing Dynasty, it had an enlightenment effect for China's constitutionalism thought, and the western constitutionalism consciousness was gradually into the people's field of vision. It influences the process of China's gradual establishing a fundamental constitutionalism system. Since 1982, the people have paid attention to the constitution and constitutional government because of the implementation of the constitution, but the constitutionalism construction and the people's constitutionalism consciousness are not matching in the current China. The China's implementation of the constitution is not like the West's because of different backgrounds. In China, the government as the leading factor, from top to bottom, pushes the constitutional government movement. So in terms of maintaining the constitutional authority, the government has an important position and role.

As we all know, the constitutionalism's goal is the realization of human rights by means of democracy. The constitutionalism uses the rule of law as a guarantee mechanism. If a government wants to consolidate the constitution authority, it should not stop in those normative articles, and it should overcome obstacles for the efficient operation of the constitution. The protection of the citizen rights should not stop on the paper, and it should implement the constitution through the constitutional supervision. In this way, it will form the constitutional belief in the hearts of the citizens. Between the government power and civil rights, civil rights is the first goal of constitutional protection. And the citizens exercise their constitutional rights to supervise and restrict the government power. The constitution written in 1982 placed "citizens' basic rights and duties" in the second chapter, it has highlighted the citizen status in the national life and reflected the "people-centered" concept of our constitution.

The "people-centered" concept is the inherent thought in our constitution. To spread the humanistic spirit of the constitution, we should implement the constitution. Of course, the widespread dissemination of humanism (spirit) can also make more contribution to the establishment of constitutional authority. The two reinforce each other. Let them have positive development that is the necessity of enhancing humanism in the construction of the constitutional government.

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