

A BRIEF ANALYSIS OF THE CONCEPT, CHARACTERISTICS AND SIGNIFICANCE OF SOCIAL CONSTITUTIONALISM

Feng Yue,

Mogilev State University named after A. A. Kuleshov
(Mogilev, Belarus)

The article mainly studies the concept, characteristics, and significance of social constitutionalism.

The concept of social constitutionalism was first proposed by American sociologist Sciulh in his book *Social Constitutional Theory* published in 1992. He focused on defining the concept of social constitutionalism from a sociological perspective. In his view, social constitutionalism is the fundamental way to solve what called the “iron cage of slavery and the authoritarianism of political and social order that are inevitably produced in the process of modern rationalization.”

The representative of social constitutionalism theory in Europe is German jurist Thomas Teubner. He mainly discussed the concept of social constitutionalism at the level of international law. He believed that social constitutionalism is the diversity of the constitution of civil society.

From the perspective of constitutional law, social constitutionalism can be defined as: the institutional system and its operating process that regulates and controls social public power and protects individual basic rights.

First, social constitutionalism is constitutionalism at the level of “social organizations”. Traditional constitutionalism is constitutionalism in the sense of the state, with the state as the carrier of constitutionalism. Social constitutionalism is different from traditional constitutionalism, in that its carrier is not the state but social organizations. The so-called social organization refers to a social group formed by a certain number of social members for common interests.

Secondly, social constitutionalism is the “constitutionalism” of social organizations. Regulating and regulating public power is the commonality between social constitutionalism and national constitutionalism. The difference is that social constitutionalism regulates and regulates social public power, while national constitutionalism regulates and regulates national public power.

Social public power is the core of social constitutionalism, and it is necessary to further explain it. The so-called social public power refers to the power of social organizations to manage public affairs in a certain field and scope based on the authorization of laws or contracts.

Thirdly, social constitutionalism is constitutionalism under the national constitution. "Constitutional restrictions, even if not the most important part of constitutionalism, are undoubtedly its oldest principle." Constitutionalism starts with the constitution. There is no constitutionalism without a constitution, and constitutionalism is the operating state and process of the constitution.

Finally, social constitutionalism is a new form of constitutionalism, but it is different from the so-called "new constitutionalism". The new constitutionalism is a constitutional theory that has emerged in recent years. It advocates that the lack of checks and balances between state powers should be compensated by restricting state power with social power. Professor Dahl is a representative of the new constitutionalism in the West. He believes that the institutional design to restrict state power should not be limited to checks and balances at the national level, but should "shift the focus to informal means of controlling power", "political elites' commitment to restricting administrative power; the existence of various interest groups; and most importantly, the existence of various autonomous organizations". Professor Guo Daohui has clearly proposed the constitutional theory of controlling state power with social power, and is a leading figure in China's new constitutionalism. Although the new constitutionalism indirectly or directly raises the issue of social power, the focus of this constitutional theory is still on how to restrict state power, which still belongs to the category of national constitutionalism. Social constitutionalism has something in common with the new constitutionalism in that it focuses on the issue of social public power. However, the focus of social constitutionalism is not on restricting state power with social power, but on the regulation and restriction of social public power itself, which is substantially different from the new constitutionalism.

Social constitutionalism is a concept that originated in the West. From the development context of the West, social constitutionalism emerged only after national constitutionalism developed to a certain stage, and the implementation of social constitutionalism is inseparable from the promotion and guarantee of national constitutionalism. From this point of view, social constitutionalism in the West has a bit of postmodern color. This makes it inevitable for the academic community to question the value and significance of social constitutionalism theory. In the world, national constitutionalism is still an unfinished business, and it seems a bit out of place to talk about social constitutionalism. However, under the impact of the wave of globalization, the world is in a synchronic pattern of pre-modern, modern and even postmodern coexistence. Although

the constitutional transformation at the national level of various countries has not yet been completed, the demand for social constitutionalism has already arisen. Although there is still a lot of room for improvement in the institutional environment and legal environment for the development of social organizations, the rise of a large number of social organizations in various countries is an indisputable fact. This actually means that countries around the world are facing the dual tasks and pressures of building national constitutionalism and social constitutionalism. In particular, the public power enjoyed and exercised by some semi-governmental and semi-social organizations is even more dangerous to citizens' rights and freedoms than nominal state organs. These public powers are not only difficult to be constrained by the national constitutional system, but also difficult to be governed by the constitutional system at the social level. They have become an independent kingdom without any constraints. This shows that the pressure of social constitutional construction is no less than that of national constitutionalism. Therefore, all countries in the world should attach importance to social constitutionalism both in theory and practice. In addition, in some late-developing countries with rule of law modernization, social constitutionalism not only has the characteristics of being relatively easy to accept, but also has the special role of cultivating people's constitutional democracy awareness, accumulating constitutional democracy experience, and making up for the inherent deficiencies of constitutional enlightenment in various countries. This is very beneficial to promoting the construction of constitutional democracy at the national level in various countries in the world.