

The Historical Flow of Modern Western Social Contract Thought and Its Constitutional Implications

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Abstract: Modern western social contract thinkers have written a series of colorful chapters in the history of world political thought. From Hobbes to Locke, from Rousseau to Kant, they deduced theories of natural state, natural rights, and natural law, such as innate human rights, popular sovereignty, limited government, and constitutional supremacy. These theories not only advocated for individual rights, but also investigated constitutional issues in public law, thus playing an important and indispensable role in the establishment and improvement of the Western bourgeois revolution and democratic system. In-depth investigation of differential absorption and application of these theories will undoubtedly aid in promotion.

1. Introduction

The historical retrospection of social contract thought: Contract is a universal social phenomenon that exists widely in economic and social life, so the Latin word contractus, which means common transaction, can be found as the prototype of English contract, emphasizing the agreement of two or more parties in the transaction. Article 1101 of the French Civil Code defines a contract as “the agreement of one or more people to another or more people to deliver something, do or not do something.” [1] The theory of social contract is a national theory: people are endowed with natural rights, but people in the original “natural state” transfer their own natural rights in the form of contract to form government power, thus entering the state, in order to overcome their mutual fear, based on the common public will. In other words, political obligation is analyzed as a contractual obligation in this theory. [2] Historically, the social contract concept has evolved along the following lines.

2. Methodology

2.1 Hobbes' Social Contract Theory

Thomas Hobbes was a well-known British philosopher of the 17th century. “It was only in Hobbes' political theory that western political thought completely broke with the Middle Ages

political tradition and formed a comprehensive and systematic modern political philosophy system.” [3] Hobbes was influenced by Grotius's social contract theory, which was based on natural law theory. He established the first complete system of social contract theory in the west on the basis of the combination of natural law and the contract concept. Hobbes' social contract theory is primarily embodied in three aspects: (1) Concerning human nature theory. Hobbes, who was heavily influenced by Machiavelli's political thought, believes that human nature is evil and divides human nature theory into two “most conclusive axioms of human nature”: the first is “natural desire” and “desire to grab things that occupy other people's common interests” [4]. The meaning of life is to have a “endless desire for power” and to constantly develop desire from one goal to another. However, just because man is a creature with insatiable desires does not preclude him from being rational. Hobbes' second axiom of human nature is thus man's “natural rationality,” or the principle of self-preservation. Preserving life is an absolute prerequisite for satisfying any desire. As a result, rational people prioritize self-preservation over all else. (2) On the state of being and natural law. Hobbes believes that “man to man is wolf to wolf” in the natural state of society. “When there is no common power to subdue everyone, people are in a state of so-called war, which is everyone's war against everyone,” he explained [5]. To avoid destruction during the war, people have formed some commandments or laws to follow each other, which is natural law. According to Hobbes, there are two basic principles of natural law: first, people should seek peace and use all available means to defend themselves, rather than endlessly invading each other; and second, when everyone asks others to satisfy their freedom rights, they must meet the equal demands made by others. This necessitates people giving up or transferring their innate rights in some way in order to end the painful natural state of disputes. This type of formula is used to seal a social contract. (3) Concerning the state and political society. Hobbes asserted that natural law has only internal binding force because people are self-interested. To ensure that people do not break contracts for self-interest and return humanity to a state of war, there must be a collective “public power” strong enough to make people universally revere, keep peace, and represent universal personality. People submit their will and judgment to the collective judgment and achieve union through mutual trust. This is the land. Hobbes bestowed absolute power on the sovereign, and the sovereign's will is the law. The law pursues the value of state power as the guarantee of peace, freedom, equality, order, and justice.

2.2 Locke's Social Contract Theory

After Hobbes, another well-known British political thinker was John Locke. The following are the heart and soul of his social contract theory: (1) Concerning the natural state, natural law, and natural rights. Locke, like Hobbes, believed that before the emergence of political society, humans were in a “natural state,” but this natural state was a peaceful state with natural law as its rules of conduct. Everyone was equal and free, and “no one should infringe on the life, health, freedom, or property of others” [6] 94. However, the state of nature has insurmountable flaws: “there is a lack of definite and prescribed well-known laws, a standard for the public to accept and acknowledge right and wrong, and an individual scale for judging all disputes between them.” [6] 77, and there is a lack of impartial judges and public power to carry out acts against nature effectively. In terms of natural law and natural rights, Locke believes that the most important provisions of natural law can be divided into two categories. One is that everyone should protect his own life, freedom, and property without infringing on the self-preservation of others; the other is that he should do his best to preserve others on the premise that there is no conflict in self-preservation; and among the natural rights, the right to life is the premise for realizing all rights, the property right is the material guarantee for the continuation of life, and the freedom right is the barrier to self-preservation. When

you lose your freedom, you lose everything. (2) Concerning the formation of political society Locke believes that, because of human nature, natural laws and natural rights are frequently violated, requiring people to give up some of their rights and entrust them to society.

The law or designated specialized personnel must exercise power in accordance with the wishes of all members of society. (3) On the rule of law and the limitation of power. Locke adopted Grotius's double social contract theory: "The first is the contract between everyone and everyone, which allows people to build a civil society with each other; the second is the contract between people and the government, which allows the state and the government to be established." [7] Locke believes that if the government issues harsh or even absurd orders based on its own whim or unconstrained will, it will place humans in a worse situation than the natural state. As a result, "rulers should rule in accordance with officially published and accepted laws rather than temporary orders and undecided resolutions." [6] 86. In terms of government authority, Locke believes that government power stems from the assignment and entrustment of civil rights. Government power is relative, limited, subject to popular oversight, and cannot override public rights. The government is essentially the tool and means by which civil rights are realized. Locke also believes that by adjusting the contradiction between legislators' limited rationality and the richness and variability of social life, we can compensate for the rule of law's deficiency according to the principle of autonomy.

2.3 Rousseau's Social Contract Theory

Rousseau was the most well-known French enlightenment thinker of the 18th century, as well as a master of modern western social contract theory. Rousseau's social contract theory was most visible in the following areas: (1) From the natural to the social state. The natural state, like Hobbes and Locke, is the starting point for Rousseau's social contract theory: Rousseau sees human history as a story of moral decay, and the natural state is portrayed as an ideal society. Everyone is free, equal, and self-sufficient in their natural state. "Because the natural state is a state in which everyone is concerned with self-preservation and does not interfere with the self-preservation of others, this state can best keep peace and is most suitable for human beings." [8] However, the natural state is simply a metaphysically conceived natural state by Rousseau. It "does not exist now, may not have existed in the past, and may not exist in the future." The natural state will inevitably give way to political society as private ownership and civilization emerge. Although people are born free, after entering the social state, they will conclude a contract, form a certain group, enter the social state, and restore their own rights because they are unable to solve the problem of interdependence and struggle between people due to their desires. (2) Concerning the social contract. According to Rousseau, "it is extremely necessary for people to unite in the process of transformation from natural state to social state." Individuals can only achieve self-preservation in this manner. So, how can we avoid losing our personal self-justification in this process? This is the fundamental question that the social contract must address: who owns national sovereignty, i.e. the internal structure of a legitimate country. [9] Rousseau believes that in order to overcome and eliminate social inequality, as well as restore and protect people's natural rights, a democratic system based on the social contract must be established. The legitimacy of the state can only be achieved through the free agreement of the people. The fundamental goal of a social contract is to "seek out a combination form, so that it can defend and protect each coalescer's personal and wealth with all shared power, and because of this combination, each individual who is connected with the main body is only in." [10] (3) On public will and people's sovereignty The concept of "general will" and sovereignty in the people is central to Rousseau's social contract thought system. Self-interest is the logical starting point for "general will," and "except for the part of these individual wills that

offset each other's positive and negative, the sum of the rest is still general will.” [10] 35. General will prioritize the public interest, or the common interest of people, over personal interests. People's freedom is manifested in obedience to the law as the embodiment of the public will in political society, that is, “each of us is placed under the highest guidance of public welfare with its own and all its strength, and we accept every member in the community as an integral part of the whole” [10]. Rousseau proposed that sovereignty belongs to the people based on public welfare. According to Rousseau, sovereignty is simply the embodiment and application of the general will. Sovereignty is the highest power, absolute and inviolable, that cannot be transferred, divided, or represented. Sovereignty belongs to all people and serves only to protect them. People have the ability to take the necessary organizational forms and directly exercise supreme power to supervise and restrain the government.

2.4 Kant's Concept of the Social Contract

Kant's social contract theory must be mentioned as “the last representative of the tradition of modern social contract theory.” Kant's social contract theory is unique in two ways: (1) Government doctrine. Kant's “original contract” is used to explain the emergence of the state, emphasizing that our fictitious natural state is one in which there is no law and no state, and no one is bound by habit. Property rights, however, are not guaranteed because there are no mandatory laws and regulations. People recognize that in order to protect property rights, they must form a public will with others. By concluding the original social contract, people with free will abandon the natural state based on private power and enter the law recognized by the public. (2) Concerning the social contract. Kant believes that the contract is based on everyone's kindness rather than individual interests. He continued by claiming that the social contract is a rational command. Because absolute right reason can only be created and mastered by God, the social contract about state theory is a “normative ideal” that should be regarded as a value standard and moral standard when assessing the legitimacy of the state, or, in Kant's words, a “idea of reason” rather than a historical event. “Although the political system is obviously not derived from such a real contract, the concept of social contract can and should be used to test their fairness: such a system should be able to get the consent of all those who obey them and be produced by the common will of this nation,” rational concept most likely means. [2]

3. Contribution: Consider the Constitutional Implications of Social Contract Thinking.

The origins of modern social contract thought can be traced back to profound economic and political circumstances. On the one hand, as European history was deduced to modern times, the commodity economy was rapidly restored and developed, and cities centered on the Renaissance radiated outward, giving birth to one economic center after another in Europe. Contracts are used as a link for commodity production and business activities in this setting, and the ever-present and omnipresent contractual behavior not only breeds the spirit of fairness, justice, and order, but also provides intuitive social background and theoretical thinking materials for social contract thought. On the other hand, as emerging citizens' economic power grows, their desire to change the existing political and legal system becomes more pressing in politics. In the process of opposing brutal sovereignty, various social forces eventually forced the king to sign the Magna Carta, which limited royal power, thereby realizing the leap from the universal contractual relationship to the legal power relationship. The implication of his thought is that instead of discussing individual rights in private law, he should explore the relationship between individuals and society, as well as individuals and countries, in public law.

In English, constitutionalism is known as Con-Tutorial Government, and its name is derived

from the Latin word *constitutio*. Scholars' views on its connotation are diverse and inconsistent, but classic dictionaries reveal its basic meaning. Constitutionalism is defined by the Oxford Law Dictionary as “a national government or a political community that is in power according to clear principles or rules.” The International Encyclopedia of Sociology defines constitutionalism as “the development of various rules that restrict the highest authority of the government.” According to the Concise Encyclopedia of Great Britain, constitutionalism includes the following elements: procedural stability, voter accountability, a representative system, separation of powers, openness and disclosure, constitutionality, and so on. Overall, constitutionalism is a democratic political system based on the Constitution. Constitutionalism, as a political concept, is infused with historical tradition and a humanistic spirit. Its core value orientation is centered on standardizing and restricting political rights, as well as preserving and expanding human dignity, rights, and freedom. Modern social contract thought is rich in constitutional implications, which primarily include the following elements: (1) The concept of “the constitution is supreme” pervades modern Western social contract thought. The “supremacy of the constitution” refers to the constitution as the fundamental law with supreme status and the highest legal effect in the process of state and social management. According to modern western social contract theory, the state did not always exist, but was created through contracts between people. At the level of the relationship between individuals and the constitution, the constitution was founded on individual rights, and individual rights are the constitution's highest value. It is the state rights derived from the constitution, rather than the state rights derived from the constitution, that govern the relationship between the constitution and the state. The constitution, which modifies the general rules of social behavior, should be regarded not only as the behavioral norms of every citizen, but also as the norms of the operation of the state's and government's rights. As a result, the supreme concept of the constitution can be established. (2) The concept of “natural human rights” pervades modern Western social contract thought. According to modern western social contract theory thinkers, long before political society existed, everyone had innate and inalienable natural rights, including but not limited to the right to life, freedom, equality, property rights, and so on. Not only that, but their works went to great lengths to protect and defend these rights. According to Locke, “people's freedom” means “not being bound by any superior rights among people.” Rousseau believes that the fundamental purpose of people's social contract is to pursue a free and equal social state, and Kant clearly states that freedom is the compulsory will independent of others, and that under universal law, he can coexist with the freedom of all people. Because of his humanity, he is the one-of-a-kind, original, and innate right of everyone. It is precisely because of the incisive exposition and cry of thinkers of modern social contract theory that awakened people gradually realize and fight for their right to life, freedom, property, and so on. (3) The concept of “sovereignty lies with the people” pervades modern Western social contract thought. On the one hand, modern western social contract theory thinkers despised brutal autocratic rule, while on the other, they made no secret of their desire for democracy. Rousseau argued that the individual cannot sell himself to the king because the monarch monopolizes power in an autocratic regime, and only when the people control the state power and participate in the management of public affairs can it conform to the contractual spirit that the state power is derived from natural rights transferred by the people. People enter into contracts, which give the government legitimacy; however, if the people discover that their trustees have violated their own authorization, they can cancel the authorization and return power to the original authorized people's hands, thus profoundly explaining the profound constitutional implication of sovereignty in the people. (4) The constitutional concept of “limited government” pervades modern Western social contract thought. They believe that people convert some of their natural rights into state power through contracts, while keeping some of their natural rights that have not been transferred and manifesting as civil rights in political society. This type of civil rights is prioritized

over state power, and the abuse of government power is prohibited; that is, the ruler's power should be limited to their proper scope so that they are not tempted by the power they have. So, how can we limit the power of the government? Brilliant thinkers put forward the correct position.

Divide power, create a state of separation of powers and checks and balances within the government, and delegate legislative and administrative authority to different organs to avoid oppression and tyranny and the violation of people's natural rights. It should be noted that the thinkers of the recent social contract theory discovered that government power must be limited, and that unchecked public power will inevitably lead to the shrinking of civil rights, and invented the fundamental path of rights restricting power, which embodied the profound constitutional implication in their thoughts.

4. Conclusion

In contrast to the social and historical conditions of western social contract thinkers, Chinese society has long practiced the feudal autocratic monarchy system, in which all power is held by the monarch, i.e., “heaven and earth give birth to a gentleman, and a gentleman governs heaven and earth.” “Gentleman, the participation of heaven and earth, the sum of all things, and the people's father and mother.” Even in modern times, due to the deep-rooted feudalism of feudal kingship, concepts of rights such as the right to life, freedom, and property have not developed, and individual rights are still dominated by family interests, social interests, and national interests. The Constitution confirmed that all powers were given to the people following the victory of the new-democratic revolution and the establishment of the socialist social association system. People's rights, however, were seriously violated by public power due to the inadequacy of the rights guarantee mechanism. Furthermore, when the western contract thought appeared and matured, the commodity economy in western society tended to develop as well. During this time, the feudal system dominated Chinese society, and small-scale farming remained the foundation of its social system. Due to the influence of the former Soviet Union's economic model, the planned economic system with high concentration was adopted at the start of the socialist system's establishment, the role of the market was denied, and the living space of the commodity economy was continuously compressed, resulting in very few economic contract practices. Social and economic contracts emerged with the deepening of China's political and economic system reform, particularly after the establishment of the socialist market economic system, from the end of the last century to the beginning of this century. Looking at history and reality, modern social contract thought has provided significant illumination to the construction of a constitutional society in China.

First, “natural human rights” protect the fundamental rights of social people. This school of thought holds that people's rights are not given by God, nor by the state or government, but are innate human rights that cannot be interfered with or deprived by the government. According to the content of rights, “natural human rights” are a set of rights that include the right to life, health, self-preservation, freedom, and property. The right to life and health is the first human right, and the right to property is the foundation of human existence (private property is thus sacred and inviolable), and the right to self-preservation is the guarantee. In terms of the protectability of rights, on the one hand, public authorities should respect private rights, that is, the law is unlimited, that is, freedom; on the other hand, a series of natural rights should be respected among people, that is, rights and interests should not be abused and the boundaries of rights should not be crossed without authorization; otherwise, everyone's rights will be in doubt.

Second, the constitutional cornerstone of the ruling idea of “power is given to the people and power is used by the people” is “sovereignty lies with the people.” The relationship between government power and people's rights, which is the transfer of people's rights into government

power, is at the heart of this thought. Government power should be used to better realize and ensure the realization of people's rights. If this goal is not met, the legitimacy, legality, and rationality of government power will be called into question, and it may even be replaced or deprived. Heigl praised the idea that the sovereignty of the modern social contract lies with the people as "a magnificent sunrise," which awakened the broad masses of people under feudal rule and enabled them to find a weapon of struggle. This thought has also had significant ramifications in our country. Kang Youwei and Liang Qichao praised the ideas of western contract theorists in modern society during the early period of the Reform Movement. During the 1911 Revolution, their ideas were regarded as "a banner of the 1911 Revolution, which inspired the Chinese bourgeoisie to fight against China's feudal system." Sun Yat-sen, inspired by this concept, defined the three people's principles of democracy as "establishing democratic governance shared by the common people, rather than the private gains of a few people." Since the founding of the People's Republic of China, Chinese leaders have believed in and practiced the concept of popular sovereignty. At the moment, the ruling idea in China is that power is given to and used by the people, which is a modern reflection of the social contract theory's idea of "sovereignty lies with the people."

Third, the concept of "limited government" necessitates reasonable limitations on public rights. In modern society, western contract theorists all mentioned the tyranny of the autocratic government and their concerns about the abuse of the government's public power, thus proposing the idea of limiting government power. In China, during the planned economy era, the state attempted to establish an all-powerful government. Under this all-powerful government system, the government's functions and scale expanded infinitely, and the government's power was not limited by subordinate or independent authority, resulting in the government's offside, absence, inefficiency, and even corruption. People have realized that the omnipotent government may be an incompetent government since the establishment of the socialist market economic system. The government is no longer the spokesman for all economic decisions in the age of economic and political democracy. Participation of the public in decision-making can not only reflect democracy and decision-making science, but also enrich it in moral rationality, allowing it to be better followed. Of course, the limitation of government power does not stop with the separation of powers; it also includes the limitation of power and rights through the establishment and improvement of power.

Fourth, the concept of "constitutional supremacy" ensures the continuation of a secure political ecology. The Constitution's supremacy means that the Constitution, as the country's fundamental law, is strictly followed by citizens, particularly the government. Legislation, judicial decisions, and administration must all adhere to the provisions of the Constitution as well as the spirit of the Constitution. In essence, it is the supremacy of people's rights, because the Constitution is a legal text drafted by the legislature, which is entrusted by the people, and which reflects the will and interests of clients. Respecting the Constitution entails more than just respecting people's rights. Pursuing the concept of "constitutional supremacy" will not only weaken the authority of the constitutional law because of the opinions of political authoritative figures, but will also not change the basic system of the country because the constitution is the mother law. It is at the top of the right system when compared to general law and personal authority, and it plays a unified and dominant role in lower laws and individuals, ensuring the most solid protection of the people's basic interests. The supremacy of the Constitution, on the other hand, is beneficial to the realization of political civilization. The standardization and civilization of political conflict resolution methods highlight the civilization of political life. Political conflicts are placed in a democratic, controllable, and balanced political framework as a result of the Constitution's rational allocation of social rights and obligations, and the safe political ecology can be maintained.

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