



REVIEW

Discussion on the Logical Coordination between Legal Theory and Legal Practice——from the Perspective of the Legal Basis of NPC’s Discussion and Decision-making Power on Major Issues

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ABSTRACT

The decision of local people's congresses to discuss major issues is a basic right granted to local people's congresses by the Chinese Constitution and laws. However, in practice, the implementation of the power of deliberation of major issues by local people's congresses is worrying. By applying the theory of Chinese traditionalism and unity in the theory of law, the theory of “sovereignty in the people” in the social contract theory of Western natural law school, Austin's “legal command theory” in Western positivist law and Hart's “recognition” “Rules theory” to argue that the integrity of rights necessarily involves the dual factors of decision-making and execution. At the same time, the existence and operation of the law always reflects the development of the political system. The realistic political situation requires us to make more precise and meticulous refinement of the external form and specific technical links of the legal system, and to coordinate the rules to make up the legal theory and Conflicts and conflicts in legal practice help to reform social institutions.

1. Introduction

The NPC discussion decided that major issues belonged to the national political system, and the use of legal theory to explain its dual structure of politics and law has important practical significance. Since the 18th National Party Congress, General Secretary Xi Jinping attaches great importance to the important role of the Constitution in governing the country, and has repeatedly stated the essence of the Constitution. “The full implementation of the Constitution is the primary task and basic work for building a socialist country ruled by law.” At the same time, he stressed that “in order to govern the country according to

law, we must first adhere to the principle of governing the country according to the constitution, and insisting on

governing the country according to law must first be governed by the constitution.”^[1] Following the constitutional rules is the highest principle and essence of legal practice. However, the concept of legislative reform in the real state tends to contradict the trend of Western equity and the political system under the guidance of Chinese Marxist theory, which makes the spiritual essence of the constitution encounter an enforcement barrier at the judicial practice level, and reflects similar problems in the legal practice level in a series of judicial reforms.

As we all know, our era is an era of moving towards

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the rule of law, and an era in which the rule of law has received much attention and respect. In all political life and institution building, we are becoming more and more accustomed to understanding and solving social problems from the perspective of the rule of law.^[2] At the same time, the close connection between law and politics in fact and internal logic is objective existence rather than artificial construction. The common ground of their logic is that they all face the responsibility of establishing and maintaining a common social order in the face of common social public interest requirements.^[3] On the one hand, the existence and operation of socialist Chinese law always reflects the political development of the country. On the other hand, politics has a decisive role in the de facto and logical aspects of the law. Therefore, the study of the NPC's rights system still needs to find its theoretical basis at the legal level to guide practical application.

Specifically, the decision of the local people's congress to discuss major issues is taken as an example. The decision of the people's congress to discuss the decision on major matters is a basic right granted by the Constitution and the law to the local people's congresses and their standing committees. However, in practice, the implementation of the decision-making power of major issues is the most important issue facing now. Through the study of the theory of regression law, using the "people's sovereignty theory" in the traditional theory and the social contract theory of Rousseau in the Western natural law school and the western positivist law school, the English jurist Austin's "order theory of sovereigns" The multi-dimensional analysis of Hart's "recognition rule theory" of the new analytic school, to explain the legal theoretical basis for the decision of the NPC to discuss major issues, can provide theoretical guidance for the implementation of the decision-making power of major matters, and realize the value dimension of the theory of legal function. At the same time, to some extent, to resolve the tension between the decision-making power of major issues and the actual mechanism.

2. Legal Explanation of NPC's Discussion and Decision-making Power on Major Issues

As the basic form of the Chinese political power and the fundamental political system, the people's congress system is China's most important form of political democracy and the fundamental way to realize political power. As early as the 1980s, the

theoretical and practical departments formed a general consensus on the "four powers" endowed by the Constitution and the law by the local people's congress and its

standing committee. These four rights are: (1) legislative power, formulation and Promulgate local laws and regulations; (2) Determine the power of major matters, discuss and decide on major issues of political, economic, cultural, educational, health, civil affairs, and ethnic work in the local area; (3) Personnel appointment and dismissal, including decision-making, Approve the three categories of appointment, dismissal, appointment and dismissal; (4) Supervise the power to supervise the work of the government at the same level and the courts and procuratorates.^[4] That is, the local people's congress's decision-making power to discuss major issues (hereinafter referred to as "the decision-making power of major matters") becomes a separate authority other than legislation, personnel appointment and dismissal, and supervision, that is, the decision-making power of major decisions of local people's congresses.

As a separate power of local people's congresses, the decision-making power of major matters is mainly based on the relevant provisions of the Constitution and the Local Organization Law, and gives local people's congress deputies the right to discuss major issues and make relevant decisions. The local government accepts the decision of the National People's Congress. It is also responsible for implementation, with a view to complying with and giving back to the people's wishes. The essence is the sovereignty of the people and the people being the masters of the country. The implementation steps of the decision-making power of major matters in specific procedures can be summarized as follows: "one government and two Supremes"(the Central People's Government, the Supreme People's Court and the Supreme People's Procuratorate) are invited to the local people's congress for discussion and decision-making according to major events in the region. The NPC discusses and decides on major issues before handing it over to the specific government. The department goes to perform. In the process, due to the imperfect existing mechanism and power allocation, the following problems occurred in the actual situation, and concentrated in three situations: (1) The ambiguity of rights, the government departments cannot effectively implement the discussion of major issues in local people's congresses. Deciding to make major matters determine the ambiguity of rights; (2) the concept is unclear, the concept of "major matters" is too general, and no scientific standard has been found to refine major issues except for example and generalization. The arbitrariness of the proposals for major issues has been raised in the "one house, two houses", but in reality, due to conflicts of interest in the department, the major incidents that need to be resolved are brought to a halt. (3) The implementation is weak, and

there is no specific operability requirement for how the local people's congress initiates the proceedings.

Furthermore, a result in the logical chain of “draft-resolution discussion-specific implementation” can be summarized as follows: its theoretical logic is feasible, but if a certain link is not strictly implemented, it will make a major decision. It is theoretically feasible and difficult to practice. In view of the above three specific

problems, it can be concluded that although the three issues have different focuses, they all have one common feature—That is to say, the decision-making power of major matters of local people's congresses has been blurred, and people's sovereignty has not been properly expressed and implemented. Furthermore, the falsification of the decision-making power of the NPC to discuss major events essentially weakens the people's sovereignty, thus making it lose its foothold in theoretical guidance and practice. In order to solve this problem, we need to re-examine the legal basis for the decision-making power of major decisions of the NPC, establish a theoretical framework for the application of rights, and better guide the practice from it.

3. The Legal Basis of Decision-making Power on Major Issues

According to the above analysis, the decision of the local people's congress on the discussion of major events is essentially the sovereignty of the people and the people being the masters of the country. Furthermore, the theoretical basis for the decision-making power of major events can be explained from the three dimensions of Chinese traditional political theory, legal theory, Western natural law school and Western analytical positivist law school. See Table 1:

Table 1. The Legal Basis of Decision-making Power on Major Issues of Local People's Congress

Theoretical School	Specific Doctrine	Relevant insights
Traditional Chinese Theory	Combination of Legislative and Executive Powers	Under the central monopoly system, the decision and implementation of the work of state organs is highly coordinated.
Western Natural Law School	Popular Sovereignty Theory	Rousseau elaborated on “sovereignty in the people and democratic centralism” in his “social contract theory”. All power of the government comes from the people, and the government is the agent of the people.

Western Positivist Law school	Legal Order Theory	Austin believes that “the behavior of the legislator is regarded as the behavior of the sovereign and the law is defined as a command of the sovereign” is realistically targeted. The claim of “law is power” has its staged historical correctness, because such a “legal command theory” contains the elements of the will of the sovereign and execution.
Western Positivist Law School	Recognition Rule Theory	Hart believes that the recognition rule is not stated, but that its existence is manifested by a court or other power organization in a certain behavior, and its existence is a matter of fact. Is a measure of whether other rules have legal force.

Firstly, in the traditional Chinese legal theory, the theoretical basis for the NPC's decision-making power to discuss major issues can generally be found in the principle of “combination of legislative and executive powers”. The so-called “combination of legislative and executive powers” means that the decision and implementation of the work of the state organs are highly coordinated.^[5] Since the National People's Congress is the highest authority, there is only one center in the power structure, the National People's Congress. The NPC is absolutely absolute in the legislative power, the decision-making power, the personnel appointment and dismissal power and the supervision, and has the centralized characteristics of the exercise of rights. Therefore, through the “combination of legislative and executive powers”, the NPC can explain the series of rights such as the decision-making power of major matters. The integrity and necessity of both the decision and implementation elements should be available. Make the local people's congress unified in power and responsibility in decision-making and policy implementation.

Secondly, from the perspective of “social contract theory”, theoretical traceability can also be found. The theoretical basis of China's “reunification and parliament” system is: “people's sovereignty and democratic centralism”. The master of the people's sovereignty theory is the modern French enlightenment thinker Rousseau. He advocates that sovereignty belongs to the people and the government's power comes from the people. The government is the agent of the people. Under all circumstances, the people have the highest authority. Rousseau's thoughts on the sovereignty of the people are relatively thorough and have a great influence, even affecting Marx's early ideas.^[6] Thus, depending on the research path, this theory can also be traced back to the Western natural law school's position on the social contract theory: “Sovereignty is in the

people”, public opinion is indestructible, and the people should assume an active role in the government. From the will of the citizen—the sovereign will—the general will, the common interests and the common interests are common prosperity. This is the cornerstone of the modern democratic system and one of the theoretical traces of the idea of sovereignty in the people's thoughts to the people's sovereignty. From this standpoint, the NPC represents the will of the people in discussing major issues, reflecting the public opinion of the people, and the nature of the matter belongs to the broad and deeper people's livelihoods in the region from a vertical and horizontal perspective. Another key point of sovereignty in the people is that the government is the agent of the people and the power of the government comes from the people. The ultimate basis for the government to carry out various organizational activities is to complete the people's will decision. If the government's decision-making basis does not belong to this power traceability, then its legitimacy needs to be investigated, and its government's logic deviates from the national legal mechanism and government mechanism. The normal operation track, the government's discretion on social management functions is actually the neglect of the constitution and legal authority. In the long run, it is not conducive to the long-term stability of the country. Furthermore, from this perspective, the sovereignty of the people is at the highest level of power, and its effectiveness is extended to the

functional organs at all levels. Therefore, in order to transfer individual rights in exchange for public rights, the people can form a social community of “sovereignty in the people” according to the model of social contract.

Thirdly, the analysis of the positivist legal school Austin's interpretation of the law as “the order of the sovereign” can also support the mandatory and necessity of the decision-making power of the decision-making and enforcement of major matters, he believes that “the behavior of the legislator is regarded as the behavior of the sovereign and the law is defined as a command of the sovereign” is realistically targeted. The proposition that “law is power” has a staged historical correctness, because such a “legal command theory” contains elements such as the will and execution of sovereigns.^[7] Austin's argument for “the law is the order of the sovereign” revolves around the protection of human rights and the supremacy of the law, which is consistent with the principle of the sovereignty of the people and the spirit of governing the country according to law.

At the same time, the analysis of the positivist jurist Hart's “recognition rule theory” also has a certain persuasive power. He believes that “recognition rules refer to the

specific indication of one or some characteristics. These rules possess these characteristics and can be decisively certified as the rules of this group backed by the social pressure exerted by it.”^[8] Recognition rules themselves is not a specific legal rule. It is only a measure of whether other rules have legal effect. The recognition rule is not stated, but its existence is manifested by a court or other power organization in a certain behavior, and its existence is a matter of fact. Therefore, if the NPC discusses the right to decide on a major matter, its rights are only stated and not implemented by the government, then the law ends with the declaration and is not recognized as a rule. This right is not a right of fact. Furthermore, on the other hand, if the NPC discusses the decision-making power of a major matter as a legitimate right criterion, then it needs to be established by the fact that the government organization consciously implements it.

4. Exploration and Analysis on the Contradiction between Current Law and Political Operation

Through the above discussion, we understand two persuasive aspects at the theoretical level: First, under the theoretical perspective of the Western natural law school, the decision-making power of major decisions of the National People's Congress has theoretical support points in decision-making and execution, and at the same time it can be in the natural law school. The theoretical source is found in the positivist law school; the second is that it can be interpreted in the traditional Chinese legal theory through the theoretical perspective of “reunification and deliberation” to explain the necessity of implementing its rights. However, back to the reality level, the current situation of the NPC's discussion on the implementation of the decision-making power of major issues makes us reflect on the logical integration of the theoretical level, which is difficult to implement in the practical level. The reason for this can be considered two points: First, in terms of theoretical ideology, China is not much different from the West in terms of legal education and theory. Most scholars also cite Western theoretical views to reshape the theoretical insights of law; second, in the practice of judicial reform, the principle and form of the judicial reform system centered on trials are more inclined to the western equity model, and many problems in the field of Chinese law are similar to this trend. However, the fundamental contradiction of Chinese law at the practical level is that most of the theories have a reference to the status quo in the West, but China's political system still maintains Marxist ideology and there is no substantive reform in the political system.

This makes China's existing political system and ideology conflict with the former, thus reflecting that it will encounter obstacles that are difficult to advance in the level of legal practice. Due to the existence of this fundamental reason, the current law and political system have formed a dislocation pattern, which is the main reason why many new types of legislation and reforms cannot be smoothly implemented in China's judicial reform. The advancement of various reforms may face the possibility of full bankruptcy in practice. The ambiguity of the decision-making power of major events of the National People's Congress is only a kind of phenomenon reflected under this fundamental reason. Individuals as problems are individually sorted out for interpretation. To repair this problem, we can only make up for this shortcoming through various conflicts coordination rules while maintaining the existing political system, which requires us to understand the constitutional spirit and to be more thorough and precise in the legitimacy of legislative technology.

5. Conflict Coordination between Legal Theory and Legal Practice

Take the practical logic of law as the research path and return to the essence of the problem through the phenomenon. Hegel believes that law as a discipline, its main nature and development source comes from its logical complement to philosophy. The theoretical logic and practical logic of the law itself need to find a unique law of operation in the space of the specific political system. The seemingly divided Chinese and Western methodological theories based on the "people's sovereignty theory", "relationship between the people and the government", "sovereignty in the people", "legal order theory" and "recognition rule theory" based on the major issues discussed by the National People's Congress It reveals a common legal logic: the sovereignty of the people is the ladder of the highest effectiveness, and all the people are the masters of the country as the fundamental purpose of the operation of the state machine. At the same time, as a legally determined rights system, it must contain the dual elements of "decision-execution", otherwise it cannot be called a right alone. Understanding the spiritual essence of the constitution and the legal system of China's constitution as the supreme legal principle cannot be separated from the analysis and guidance of the

traditional legal level; this is the argument support and logic law we found on the theoretical level of jurisprudence, and most of them still come from the traditional views of Rousseau, Austin, and Hart and other jurists in the Western natural law school and the positivist law school. However, at the level of legal practice, the power

of the NPC to discuss the power of decision-making on major issues makes this constitutional regulation difficult to advance. China's existing political system requires that the current judicial reform should have more precise and perfect coordination rules to make up for the dislocation gap and dislocation pattern at the practical and theoretical levels.

Furthermore, through theoretical analysis and argumentation, the practical problems faced by the local people's congresses in deciding the important decisions of major issues are the research opportunities. The legal basis is introduced to explain and answer this question, and the application of the rights attribute guidance is clarified. It can be countered to the general view of the dialectical logic between the current political system and the legal system: the political system as the purpose and practice background of the realization of the law, there is always a repeated game relationship between the two. This point also shows that the actual political situation has always had an important impact on the substantive content and implementation of the law. Therefore, we are more required to make more intensive and meticulous refinement of the external form of the legal system and specific technical links, such as improving the proposed procedure from a technical perspective, clarifying the scope of major issues, strengthening enforcement and strictly implementing the decision-making power of the National People's Congress. Therefore, the legal basis behind the institutional rights should also be more technical and functional to express and reflect the practical needs of real political wisdom. Politics, as a practical background of law, is almost always a common problem faced by law and politics. Both are the basic means and methods for the governance and disposal of social affairs by society and the state. The law can be regarded as the people. An expression and means of nomination of will, however, it cannot completely shake off the norms of the national political system. It is the legislative expression of the sovereign will of the people and also a unique political practice.

6. Conclusion

Therefore, the implementation of the decision-making power of the National People's Congress to decide on major issues needs to be improved in terms of execution and the standardization of the system. On the other hand, starting from the source, we need to find the root cause of the tension between "decision-making" and "execution", which is related to all aspects of social manpower, material resources, financial resources and checks and balances of rights. Therefore, in the internal links of the NPC decision-making, we need to determine the scope of

scientific rules of procedure and major issues. In order to implement the “Political Effects, Social Effects, and Legal Effects” on the issue of implementing the decision-making power of major issues of local people's congresses, we will achieve a high degree of unity.

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