



社会主义宪政的 伦理价值研究

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金城出版社
GOLD WALL PRESS



法治建设与法学理论研究部级科研项目成果

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图书在版编目 (CIP) 数据

社会主义宪政的伦理价值研究/陈寿灿等著. —北京: 金城出版社, 2011. 4

ISBN 978-7-80251-877-3

I. ①社… II. ①陈… III. ①宪法—研究—中国
IV. ①D921.04

中国版本图书馆 CIP 数据核字 (2011) 第 038270 号

社会主义宪政的伦理价值研究

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责任编辑 谢艳芝

开 本 880 毫米×1230 毫米 1/32

印 张 10.75

字 数 230 千字

版 次 2011 年 5 月第 1 版 2011 年 5 月第 1 次印刷

印 刷 北京金瀑印刷有限责任公司

书 号 ISBN 978 7-80251-877-3

定 价 25.00 元

出版发行 金城出版社 北京市朝阳区和平街 11 区 37 号楼 邮编: 100013

发 行 部 (010) 84254364

编 辑 部 (010) 84258699

总 编 室 (010) 64228516

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法律顾问 陈鹰律师事务所 (010) 64970501

内容提要

人本法律观作为一种新的法学学术思潮有着重要的引领意义，也构成宪政伦理研究逻辑前提，同时，宪政伦理的研究成果将成为构建人本法律观的现实材料。对依法治国的辩证法考察，构成了以辩证的思维研究宪政伦理的独特视野和制度背景。社会主义宪政伦理是一个客观存在的问题域，伦理维度在社会主义宪政建设中有着特殊的地位，社会主义宪政的表象与实质是其理论视野中的基本线索。对社会主义宪政伦理历史逻辑的追述与阐发，不但体现了历史与逻辑的一致性，而且为法理解释提供了批判与反思的对象。我国社会主义宪政伦理从观念、规范到实践，在一定程度上借鉴了资本主义国家宪政伦理的成果，从而极大丰富了我国宪政建设研究的成果。

权力伦理观是社会主义宪政的根本性伦理观。这是从世界上曾经存在和现存的社会主义国家宪政实际状况和马克思主义的国家理论考察得出的结论。从国家维度考察社会主义宪政伦理价值，必须考察国家与公民的关系。国家与公民关系的核心经历了从古代国家权力对公民义务的关系、中世纪国家权力对公民义务的关系、近代国家权力对公民权利的关系、现代国家义务对公民权利的关系的历时性演变过程。社会主义国家与公民的关系的核心是国家义务对公民权利的关系，是一种表达善的伦理关系，因而比其他社会关系有着更高的价值地位。基于

公民与国家在宪法上的关系，国家对公民权利承担义务，尊重和保障公民基本权利是国家最基本的义务。国家义务存在的伦理目的保障公民权利，为此，必须对国家权力进行限制。从法理上考察国家权力的来源的学说大致有三种：神授国家权力说、契约主义国家权力说和马克思主义国家权力说。马克思主义国家权力说是社会主义国家权力来源的理论基础。社会主义宪政国家的权力规范与权力保障既与其权力观有紧密联系，又与其人性论密不可分，人性论是社会主义宪政国家权力的伦理基础。社会主义宪政的根本性伦理观是权力伦理观。所谓社会主义宪政的权力伦理观，就是指无论是从历史还是现实看，社会主义宪政都是一种以权力行使为最高工具性价值取向的伦理观。考察社会主义宪政权力伦理观应结合社会主义国家权力运作的价值和社会主义的伦理目的——社会主义和谐社会的基本特征。社会主义和谐社会是社会主义宪政国家建设的目标，这一宪政目标全面反映了社会主义宪政权力伦理观。社会主义和谐社会，应该是民主法治、公平正义、诚实友爱，充满活力、安定有序、人和自然和谐相处的社会。民主法治是社会主义国家权力运作的根本价值诉求，公平正义是社会主义国家权力运作的核心价值诉求，安定有序是社会主义国家权力运作的重要价值诉求。

和谐伦理观与劳动伦理观是社会主义宪政的基础性伦理观。这是从世界上曾经存在和现存的社会主义国家宪政实际状况和马克思主义的劳动理论、社会发展理论考察得出的结论。从社会维度考量社会主义宪政伦理，主要分析两个问题：即社会主义宪政伦理与中国传统社会的政治伦理之间的关系，以及社会主义宪政伦理在当前建设社会主义和谐社会中的作用。社会主义宪政伦理在国家权力架构、强化权力监督、追求亲民和谐的

价值等方面体现了对中国传统社会政法伦理的继承，同时，在继承基础上形成超越，主要体现在：契约对身份的超越、平等权利对“差序格局”的超越、民主对专制的超越等。在当前构建社会主义和谐社会的进程中，社会主义宪政伦理发挥着重要的作用。社会主义宪政伦理为建设社会主义和谐社会提供政法伦理基础，并为建设社会主义和谐社会提供一个稳定的政治环境；同时，社会主义和谐社会也是社会主义宪政伦理所追求的目标，只有在和谐社会中，社会主义宪政伦理的各项价值才能实现。鉴于宪政之劳动伦理观对这个社会伦理构建的根本意义，寻找两者之间的实质性差异是构建我国宪政伦理观的必然要求。以上论证表明，基于新教伦理的资本主义宪政之劳动伦理观与基于共产主义理想信念的社会主义宪政之劳动伦理观截然不同。从形式上讲，资本主义国家宪法一般不直接就劳动权作出规定。所有社会主义国家宪法文本中都直接规定了对劳动权的保障。从内容看，资本主义宪政秉持一种义务本位的劳动伦理观，即劳动是人对上帝的职责。而社会主义宪政更多地强调劳动权利、劳动义务与劳动责任三位一体的统一，劳动不但是人自由全面发展的条件，而且是人的解放的必由之路。

保障人权、维护人的尊严、促进人的全面发展是社会主义宪政的发展性伦理观。这是从世界上曾经存在和现存的社会主义国家宪政实际状况和马克思主义的人学理论考察得出的结论。由于具有现代权利意识的公民是社会主义宪政国家的历史与逻辑起点，所以从个人维度来研究社会主义宪政伦理价值，必须以公民为视角。社会主义宪政伦理价值包含三个方面的含义：社会主义宪政伦理的目的性价值、社会主义宪政伦理本身所包含的价值和社会主义宪政伦理的价值评价标准，这三个方面相互联系、相互依存，共同构成个人维度的社会主义宪政伦理价

值内涵。社会主义宪政伦理的目的性价值，在宪政价值内涵中占据突出地位，是社会主义宪政伦理价值的核心内容。社会主义宪政所追求的根本目的，应该在于逐步消除人们对国家的依附，不断推动社会主义社会政治关系的进步，保护和促进公民的自由和民主权利，保障人权。保障人权也是社会主义宪政伦理价值的核心。维护人的尊严是社会主义宪政伦理本身所包含和反映的价值，在一定程度上反映着社会主义宪政本身的科学性，它反映着社会主义宪政是否在现实生活中充分发挥作用，它是保障人权这一目的性价值有效实现的必要条件。人权、社会主义法治、社会主义民主、有效政府是社会主义宪政的题中应有之义，而人的尊严是人权的正当根据，是社会主义民主的价值导引，是社会主义法治的核心价值，是有效政府的正当性基础。而社会主义宪政伦理的价值评价标准是目的性价值的延伸和演绎，反映了社会主义宪政伦理对于它所促进的各项价值的重视和表现程度，体现着社会主义宪政伦理的发展趋向。人的全面发展既作为社会主义宪政的出发点，也是社会主义宪政追求的目的，社会主义宪政导源于对人的全面发展的向往，促进人的自由全面发展是社会主义宪政伦理价值的评价标准，是保障人权、维护人的尊严价值的延伸和演绎。

维护正义是社会主义宪政的保障性的伦理观。这是从法哲学高度论证得出的结论。正义是人类的永恒追求。古往今来，实现正义的方式多种多样，从原始社会的血亲复仇、同态复仇，到阶级社会的居间公权力的裁决，再到法治社会的司法裁判。在当代社会，司法已经成为实现正义的必不可少的方式，人们对司法正义的期待也越来越高。随之而来，司法伦理的研究逐渐兴起，而作为司法伦理的核心内容范畴——司法正义的伦理审视成为司法伦理的研究前沿。本书立足于司法本身的伦理特

性，对司法正义的理论内涵进行了重新诠释；就司法正义是司法伦理的价值归属问题进行了详尽解析，并从制度构建和司法职业者个体德性培养两个维度探析司法正义的实现进路，论证司法正义实现的可能，以期纠正当代社会中司法不公的弊病，为法治社会的构建和完善提供理论支持。

Abstract

As a new kind of jurisprudence academic trend, the ideal of humanist law not only has an important leading significance, but also constitutes a logical prerequisite for the research of constitutional ethics, and the constitutional ethics research will be constructed the reality material of the ideal of humanist law. Study on the dialectics of the rule of law, constitute the unique dialectical perspective and institutional background on constitutional ethical. Socialist constitutional ethics is an objective problem areas, ethical dimension in socialist constitutional construction has a special status, appearance and essence of socialist constitution is the basic clues in theory of vision. Recount and elucidation on historical logic of socialist constitution not only reflects the historical and logical consistency, but also provides the object of criticism and reflection for jurisprudence interpretation. Socialist constitutional ethics in China will not only learn the outcome of the idea、rules and practice of the constitutional ethics from capitalist countries, but also as constitutional achievements of the evaluation criteria to a large extent, which provide us a condition of systematic reflection, although to do so will lead to many criticisms.

The power ethics idea is the fundamental ethics idea of the socialist constitution, which is the conclusion from the Marxist national

theories and the actual socialist constitutional practice of once existed in the countries and the existing position in the world. Study from the national dimensions on socialist constitutional ethical value, we should examine the relationship between country and their citizens. The core of the relationship between country and their citizens of the ancient state power has gone the process of evolution from the relationship between state power and civic duty in the ancient times, the relationship between national duty and civic obligation in the medieval times, the relationship between state power and the rights of citizens in the modern country, the relationship between civil rights and obligations of States in the contemporary age. The core relationship between the citizens and socialist countries is national obligations and the rights of their citizens, which is a good expression of ethics, and so, has a higher value than other social status. Citizens and the state based on the constitutional relationship, the state has responsibility for civil rights, to respect and protect the basic citizens rights is the most basic obligation of the state. The existing ethical purpose of state obligation is to protect civil rights, so state power must be restricted. Study from the theory of the origin of state power, there are three sources basically: state power divine doctrine, theory of the social contract and the Marxist state power. Marxism state power is the theoretical basis of origin of the socialist state power. Power norms and power protection of socialist constitutional state not only has close ties with power view, but also inextricably is linked to its theory of human nature, human nature view is the ethical basis of socialist constitutional state power. The power ethics idea is the fundamental ethics idea of the socialist constitution. The so-called power ethics idea of

socialist constitution means the ethic idea which means, socialist constitution is the highest values of exercise of the power tool of ethics, whether it is from the historical or reality view. Studying the constitutional power of socialist ethics should be combined with the value of the operation of the socialist state power and socialist ethical purpose — the basic characteristics of a harmonious socialist society.

Harmonious socialist society is the goal of building socialist constitutional state, which reflects the constitutional power of the socialist ethics fully. Socialist harmonious society should be democracy, the rule of law, justice, honesty and fraternity, vitality, stability and order, man and nature live in harmony. Democracy and rule of law is essential value appeal of socialist constitutional state power execution, fairness and justice is core value appeal of socialist constitutional state power execution, stability and order is vital value appeal of socialist constitutional state power execution. The harmonious ethics idea and labor ethics idea are the basis ethics idea of the socialist constitution, which is the conclusion from the actual situation of socialist constitutional and the Marxist labor theory, social development theory to examine the world used to exist and the existing socialist countries. There are two main issues from the social dimension considerations on the socialist constitutional ethics, that is the relationship between the Socialist constitutional ethics and ethics of Chinese traditional society political ethics, and the role of constitutional ethics in the current construction of a socialist harmonious society. Socialist constitutional ethic reflects the political ethics inheritance from traditional Chinese political-legal ethics, such as structure of state power, strengthening supervision of power, the pursuit of value people-ori-

entedness and harmony, and so on. Socialist constitutional ethics transcends the traditional political-legal ethics, which mainly reflects the transcendence of identity contract, equal right to “differential pattern”, democracy than dictatorship. The socialist constitutional ethics have played an important role in the current process of building socialist harmonious society. Constitutional ethics provides political-legal ethics basis for the construction of socialist harmonious society, and provides a stable political environment for building a socialist harmonious society. Meanwhile, socialist harmonious society is the goal of constitutional ethics, and only in the harmonious society, the value of the socialist constitutional ethics may be achieved. In view of the fundamental significance of labor ethics idea of constitution social ethics, to find substantial differences is to build the necessary requirements for constitutional ethics in our country. The above discussion shows that there is a fundamental difference between the labor ethic ideas based on protestant ethic of capitalist constitution and the the labor ethic ideas based on communist ideals and beliefs of the socialist constitution. Formally, the capitalist countries do not provide for the right to work directly in constitution generally, but text of the Constitution in all socialist countries were provided directly to the protection of labor rights. From the content of view, an obligation-based to uphold the constitutional capitalist labor ethics ideas, that is, labor is man's duty to God. There is more emphasis on labor rights, labor obligations and responsibilities of labor unity of the Trinity, the labor is not only the conditions for free and all-round development of the humanity and is the only way to human liberation in socialist constitutional country.

Ensuring human rights, protecting human dignity, promoting the all-round development of the humanity is the developmental ethics of the socialist constitution, which is the conclusion from the actual situation of socialist constitution and the Marxist human theory in the world used to exist and the existing socialist countries. Citizen who is awareness of their rights is the history and logical starting point in modern socialist constitutional state, so from a personal dimension to study the ethical values of socialism constitutional, should be from citizen perspective. Constitutional ethical values of socialism consists of three aspects: the motivated value of socialist constitutional ethics, the value implied in socialist constitutional ethics, the evaluation standard for the theory of socialist constitution society, which are interrelated and interdependent, and constitute values of socialism constitutional ethics meaning from personal dimension. The motivated value of socialist constitutional ethics, is the socialist constitutional core of ethical values, which has a prominent place in the content of constitutional value. Socialist constitutional pursuit of the fundamental purpose should be the gradual elimination of the people dependent on the state, promote socialism progress of society and political relations, the protection and promotion of civil liberties and democratic rights, protection of human rights, which is the core values of socialist constitutional ethic. Protecting human dignity is the value implied in socialist constitutional ethics, to some extent, reflects the scientific nature of the socialist constitution itself, and reflects the reality of socialist constitution which is in full effect or not, protecting human dignity is a necessary condition to protect human rights which is the effective realization of the motivated value of socialist constitutional

ethics. Human rights, the socialist rule of law, socialist democracy, and effective government are the proper meaning of socialism constitution, and human dignity is legitimate basis of human rights, guiding values of the socialist democratic, core values of the socialist rule of law, and effective basis for the legitimacy of the government. The evaluation standard for the theory of socialist constitution society is an extension and interpretation of the motivated value of socialist constitutional ethics, reflects the socialist constitution of the ethics in promoting the value of its attention and performance levels, reflects the development trend of the socialist constitutional ethics. The all-round development of humanity, both as a starting point of the socialist constitution, and the purpose of the pursuit of the socialist constitution, socialist constitution derived from the comprehensive development of human yearning, and promote comprehensive development of human freedom is standards for the evaluation of the socialist constitutional ethics, and the deduction and extension of protection of human rights and the value of human dignity.

Maintenance justice is the socialist constitutional ethics, which is the conclusion from view of Jurisprudence. Justice is man's eternal pursuit. Throughout the ages, there is a variety of ways to achieve justice, from the primitive society of blood revenge and the revenge with the state to the intermediation of the class society the ruling public authority, to the rule of law and social justice. In contemporary society, justice has become an indispensable way to achieve justice and people's expectations to justice are increasingly highly, the research of the judicial ethics rise gradually. As the core content areas of judicial ethics, the research to the ethics examining of the judicial

justice is becoming the forefront research of the judicial ethics. Based on the characteristics of judicial ethics itself, this paper try to re-interpretate the theory meaning of the judicial justice and deeply analyze why the justice is the attributive value of judicial ethical. Through researching the system construction of the judicial and the moral training of justice professionals individual, it expects to find the path and possibility of the judicial justice's realization. In this way, it wants to resolve the judicial justice fault in the contemporary era and provide theoretical support for the construction and improvement of jural society.

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