

Natural Law as the Foundation of Constitutionalism

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ABSTRACT. *From the perspective of historical philosophy, the constitutional system is an important part of the modernization of the rule of law. Analyzing the concept and connotation of the modern constitutional government system, it can be seen that the constitutional government system is a modern state system of the modern constitutional system of the rule of law and democracy. The basic principles of constitutional government are summarized into four points: people's sovereignty, basic human rights, decentralization and checks and balances, and the rule of law. Among them, "is the government committed to realizing constitutional government?" Is an important goal state and verification standard for implementing the rule of law and building a country ruled by law, which determines the value orientation of constitutional government.*

In the historical period when the constitutional system was formed, the natural law school always played an important role, especially the classic naturalist law. It claims that there is a natural law higher than the real law, which is a universal and eternal natural law, and therefore a natural right derived from "nature and nature" is born, supported by the transcendental authority of natural law. Legal thinking. It not only constructs the ideological platform of the modern Western constitutional country, but also provides the value norms of the modern Western constitutional system, and presupposes the legal foundation of the modern constitutional country. The text will start with the main ideas in classical natural law to prove that the natural law school represented by classical natural law is the theoretical foundation of modern constitutionalism under constructivism.

KEYWORDS: *constitutionalism, natural law, classical natural law theory*

1. Introduction

Max Weber, one of the most important thinkers in the 20th century, once proposed the famous "Weber's Question", that is: why the industrial and commercial capitalist civilization emerged in the West rather than elsewhere, and why modern

rational laws first appeared in Western Europe Not in other regions? In this regard, Weber tried to make a hypothesis to answer: there is some spiritual force behind the development of the cause and the destiny of this cause, and this era spirit and specificity expressed by social spiritual temperament The cultural background of society has a certain inherent relationship. Although, we cannot accurately verify empirically whether this hypothesis is sufficiently universal, but by reflecting on and analyzing the internal construction foundation of the modern constitutional system, we can use this to judge that the modern constitutional system has played a close role in promoting The internal dynamics of it even observed and verified the natural law foundation of modern constitutional government.

Admittedly, the important space in this article discusses the constitutional system of modern Western society. However, this article is not just discussing a "modern problem", nor is it a "Western problem" describing the modern constitutional system, but a real "Chinese problem" and "modern problem". As we all know, the formation of modern constitutional government marks a major change in the way and guidance of human society in the governance of the country and society, and highlights the transformation of human society from the ancient "rule of man" society to the modern country ruled by law Officially opened.

The purpose of the research and writing of this article is to build on the judgment and analysis of this issue, and to reflect on the needs of Chinese social development. China's great social transformation over the past hundred years has changed beyond the threshold of the 21st century and has experienced the beginning and beginning of politics and society. Therefore, just like Xi Jinping's analysis of the basic national conditions in his report, he is now in a deep water zone of social reform and a difficult period. On the one hand, China has established a comprehensive modern legal system, and ruling the country according to law has been established as a fundamental national policy. On the other hand, a large number of social problems broke out intensively during this period of social transformation. In addition to this, it is also the most critical that from the perspective of legal thinking, Chinese society lacking sufficient legal philosophy to treat the foundation of the rule of law and constitutional government still retains a strong instrumental value.

Therefore, to analyze the legal thought and legal philosophy foundation of modern constitutional government here, not only is the necessity of sufficient theoretical research sufficient, but also the urgency and practicality of theoretical research. The ideological basis for studying the modern Western constitutional government system is not only a reflection on history, but also a reference and guidance for China's future development.

2. Modern constitutional

2.1 Constitution and Constitutionalism

Each concept has a unique history. The concept carries a past history, and its meaning cannot be given arbitrarily. Therefore, before discussing the theoretical

foundations of the "constitutional system", we must first clarify the conceptual connotation of the concept of "constitutional government".

Constitutional government generally corresponds to the expression of institutionalism or institutional government in English. When decomposed from the perspective of Chinese characters, it can be understood as a kind of "constitutional politics" or "organization of the government by the constitution." The root of Constitution comes from the Latin "constitutio", and its basic meaning refers to the composition, composition and structure of things. In the "The Oxford Compenion to Law", constitutional government is interpreted as constitution government or constitution principles, which refers to clear principles. Or a government governed by a rule or a political community formed by the rules.

The two terms "constitution" and "constitutional government" differ in five aspects: (1) Constitution is a noun, and constitutional government is a verb, a behavior, activity, and practice that implements the Constitution. (2) The Constitution is a text and a document, while Constitutionalism is a movement, a practice, and a set of systems and operations. (3) With a constitution, there may or may not be a constitutional government; but a country with a constitutional government must have a constitution, or it is written, such as the United States, France, Germany, Japan, etc .; or it is unwritten, such as the United Kingdom Wait. (4) The constitution is an ideal, a declaration, and constitutional government is a result, a state where the constitutional ideal is realized or basically realized (5) With the constitution, the rule of law may not necessarily be achieved, it can Is a country ruled by man. China's modern constitutional history can prove this. However, a country with constitutional government must be a country ruled by law. In this sense, constitutional government and the rule of law are interlinked, and even coincide.[1]

In modern society, the Constitution, as the fundamental law of the country, has the highest legal effect, is the fundamental activity criterion of all organizations and individuals, and is an important part of the system of national laws. The constitutional government of a national government or a political community that is governed by clear principles or rules is a democratic political system recognized and stipulated by the constitution and its realization. Specifically, constitutionalism is based on the premise of the constitution, with democratic politics at the core, and a political form or political process aimed at protecting human rights. It can be seen that the constitution is the premise of constitutional government and the form element of constitutional government; and constitutional government is the product of constitutional implementation and the life of the constitution.

In the study of modernization theory, "modernization" and "modernization" have the same or similar meanings, both come from the English "modernization"; in terms of constitutional ideas and systems, "modern" and "modern" are in the same line. Therefore, from the birth to the maturity of modern constitutional government, this process can be understood as an important part of the process of modernization of the rule of law in human politics and society. The stipulation of "quality" in modern society is the characteristics and qualities of the modern tiger shooter, that is, modern factors and modern standards. The so-called "modernization" is a process in

which modern factors and modern standards continue to grow and be realized in a society, that is, the value and time significance of the spirit and characteristics that are different from the medieval new era.

Therefore, the modern Western constitutional system can be understood as: a capitalist modern country that differed from the traditional medieval king or church authority during the 16-19th century, with a modern constitutional system that advocates "rule of law" and "democracy" as its core and value pursuit system.

2.2 The Changing Process and Characteristics of Constitutional Government System

The so-called paradigm of historical philosophy in the research process of the modernization of the rule of law refers to the development of law as an understanding tool of the natural historical process. That is: In the process of the growth of civilization and the change of law, there is a relatively fixed development trajectory. This trajectory runs from a simple to complex, from low-level to high-level process. The final destination of the legal growth of various nationalities and countries is the improvement of the constitutional system and the establishment of modern rule of law.

Fundamentally speaking, human experience is historical, and truth has time. Combining history and philosophy, this is "historical philosophy". Therefore, when exploring the trajectory and generation mechanism of modern constitutional government, we must first trace the historical starting point of modern constitutional government. The historical starting point of constitutional government must first consider the origin and historical development of the modern constitution. At present, the domestic and foreign academic circles generally believe that the earliest constitutional document, the "Magna Charta Libertatum" formulated by Britain in 1215. This constitutional government imposes the necessary restrictions on the rights of kings, and also protects all classes in the Middle Ages based on their own needs. The rights that should be enjoyed. Especially the city's free decision-making power and church freedom, which is consistent with the constitutional concept of the Japanese scholar Minobu Daji: "as opposed to a country with authoritarian politics, and recognizes the right of the citizens to participate in politics, the citizens are directly or represented Organs participate in the rule of the country." However, its main content may only have a certain degree of historical and theoretical value. The main historical contribution is to promote the spirit of the rule of law that focuses on the protection of rights. During this historical period, there were discrepancies in the practice of the law in British political practice. In this kind of political practice of interest, the two parties continued to compromise and struggle until the British "Glorious Revolution" in 1688 formulated The Bill of Rights laid the foundation of the modern British Constitution. Among them, the bill clearly declares: "In order to ensure the traditional rights and freedoms of the British people, the law will be enacted by both houses of parliament." This bill first requires that, without the consent of Congress, the authority of the king be used to stop the law or the person who enforces the law as an unauthorized person; the pledge to the king is the right of

the people, and all judgments or accusations against the plea are illegal, and regular assembly of members of Congress . It is not difficult to see through the above provisions that the supreme power in the secular society has been transferred from the king to the elected parliament, laying the foundation of the popular opinion of the secular supreme power (Principle of Constitution 48)

From the 16th century to the 18th century, during the European and American bourgeois revolution, it marked the beginning of a new era in human history. Although the bourgeois revolution in various countries differs in time, characteristics, specific processes, and results, the basic causes, motivations, requirements, and leadership of the revolution are indeed the same. The bourgeois revolution overthrew the feudal system and established capitalist rule. The capitalist production method replaced the feudal production method. The bourgeois dictatorship replaced the feudal landlord dictatorship. This was a leap in human history.

In this context, the bourgeois political and legal thoughts have also undergone tremendous changes and leaps compared to the political and legal thoughts of ancient slavery and medieval feudalism, forming a set of systematic and solitary legal thoughts, embodied as follows: Rationalism and humanism surpassed the traditional naturalism and theological ideas, and became the new philosophical starting point of legislation and justice; natural law and social and monthly theories dominated, choosing the rule of law and constructing the political system of the democratic republic against the monarchy He is very eye-catching with the ranks; theories such as gifted human rights and people's sovereignty are more mature.

Through the combination of the above-mentioned normative documents with the definition of the concept of constitutional government and the historical background of the modern constitutional system, it can be seen that the theory of constitutional government summarizes the basic principles of constitutional government as the four principles of people 's sovereignty, basic human rights, decentralization and balance, and the rule of law The generation process of this principle, that is, the formation process of constitutional culture, Britain and the United States and other countries have specific factors that generate these constitutional culture traditions. Reasoning from this perspective, constitutional government and the rule of law have an inherent and inevitable connection: constitutional government theory is the advanced form of the theory of rule of law, constitutional government practice is the highest level of the rule of law practice; constitutional government is the highest level of the rule of law, it determines the state power by law Restricting state managers, so that political power is controlled by law.

In other words, the rule of law reflects and supports the important value and spirit of constitutional government with its series of basic principles, and can be strengthened and more accurate through constitutional government. Therefore, an important goal state and verification standard for implementing the rule of law and building a country under the rule of law is to see whether it is committed to the realization of constitutional government. The important judgement on the degree of implementing a rule of law in a country is to see its degree of achieving

constitutional government and the level of governing the country according to the constitution. The constitutional system is a system of behavior rules composed of the rules of conduct established in accordance with constitutional principles, constitutional norms and constitutional policies, and the necessary guarantees of organization, institutions, procedures and other facts. Its core content must be the constitutional norms, which are the foundation of the rules of conduct on which the constitutional system is built. The value orientation of its provisions is the value orientation of the constitutional system, and its legal function is through the effective operation of specific constitutional systems. To be implemented.

3. Prerequisite assumptions of natural law

3.1 The Origin of Classical Natural Law Theory

The philosophy of natural law can be traced back to Plato's idea theory, Aristotle's theory of natural justice and Stoicism's idea of natural law. As a relatively clear concept and the theory of constructing natural rights, natural law originated from the Stoic school. Then, the first to systematically elaborate rationalist natural law theory is Cicero. His basic idea is that there is a universal and eternal natural law, and all individuals, countries and laws must be followed. This theoretical model has been inherited by later natural law philosophy. Because the church, the monarch, the nobles, and the citizens each did not overwhelm all other political power advantages. In the Middle Ages of Europe, political competition and power struggle could not be concluded by naked force. Therefore, they turned to political and legal theories for legality disputes, and natural law and natural rights theories were inherited and developed. The most important contributions to natural rights in the Middle Ages were property rights and resistance rights. Aquinas, the master of scholastic philosophy, regards natural law as the "spiritual channel" that communicates eternal law with human law. It is the law on which God inspires human reason, and it is also the light of reason that people can distinguish good from evil.[2]

In the 17th and 18th centuries, bourgeois thinkers interpreted natural law as a manifestation of human reason or nature to oppose feudal autocracy, privileges and national oppression, and theology that served feudal rule. development of. Thinkers in the age of classical natural law are convinced that rational power is available to all people, nations, and times, and that a perfect and satisfactory constitutional system can be based on the rational analysis of human social life. Therefore, the legal thinking of rationalism not only constructs the ideological platform of the modern Western constitutional state, but also provides the value norms of the modern Western constitutional system and presupposes the legal basis of the modern constitutional state. On the one hand, it proposes a brand new political concept from the perspective of "human reason", thus providing a philosophical basis for the emergence of a constitutional state and the protection of civil political rights. On the other hand, rationalistic legal thinking liberated people from the bondage of God, and realized that the internal relationship between individual rights and state rights

with a secular vision has determined the essential stipulation of human beings. Proceeding from this basic concept, it not only further affirmed the dignity of the individual, but also set the value shared by human society and public political and social life. The legal thinking of rationalism not only reminds human beings of respecting their own rights and hence authoritarianism, but also requires humans to recognize the necessity of the country and oppose anarchism.[3]

3.2 The Basic Standpoint of Classical Natural Law in Value

Through the simple summary above, we can see that modern natural law has realized the shift from natural law of objective meaning to natural rights of subjective meaning, which is the natural result of the rise of modern natural science viewpoint. The content of natural law has therefore undergone more fundamental changes. Despite the above changes, the traditional natural law theory still maintains some unchanged features, as follows:

First, natural law is immutable and universal, suitable for all time and all people. The so-called "natural" is to admit that it is undoubtedly like "basic natural facts" and exists with the birth of human beings. Therefore, natural law is universal, as long as it is accepted by everyone. At the same time, it is detached from the times, and it will not change because of the changes of the times. It is for this reason that the effect of natural law is eternal. Therefore, whether it is natural law in the classical period or modern theory of natural law, they believe that natural law and real law are different, invariable and universal.

Second, people can understand natural law with the help of reason; they all resort to substantive value. From Plato to Locke, natural law firmly believes that natural law can be perceived and recognized, and "human nature" is not perfect, and therefore requires people to use "rationality" to understand the natural law that constrains "human nature". After recognizing natural law with the help of reason, they all raised natural law to the discussion of the substantive value of ethics. Whether it is Locke's claim to natural rights (essentially the pursuit and protection of "free" values), or classical natural law that emphasizes that natural law is to achieve a moral "goodness", it is an argument that resorts to substantive values. Prove the legitimacy of natural law.

Third, natural law not only provides standards for real law, but also loses its effectiveness when it contradicts it. In the traditional theory of natural law, through the study of natural law, we can provide a set of evaluation criteria for real law. When the content of a certain actual law is not formulated in accordance with natural law, the actual law of this department will be criticized by the public, and even accused that it should not bear the name of "law". Not only that, traditional natural law also emphasizes that natural law has priority in conflict. After conflicting with natural law, positive law is not only inferior in effectiveness, but the public has the right to fight against the related obligations required by real law according to natural law (Although Hobbes does not claim that citizens have the right to say "no" to substantive law that does not conform to natural law, the key is

that Hobbes believes that there is no substantive law that does not conform to natural law.[4]

4. Constitutionalism developed from Natural law

Where is the constitutional foundation point? Cicero argues that "what we need is to explain the nature of the law, which needs to be sought from human nature". The elaboration of constitutional thought is also often carried out around the theory of human beings, and finally returns to the people from the beginning of the people. In fact, constitutionalism is the product of the development of the inherent contradiction between human's natural and social attributes, individuality and group.[5]

From the analysis of the basic value position of classical law in this paper, classical natural law is neither as philosophical as the ancient natural law says, nor is it the interpretation of natural law from dogmatic doctrine, as the traditional law of medieval Christian theology says, but for the first time to explore a humanist natural law from the human nature of human nature. It takes a detached, calm mind to gain insight into human nature, abstracts out a set of natural laws applicable to different countries, different times, different people, and geniusly designs their ideal kingdom : constitutional ity in order to protect natural law.

4.1 Natural Status and Jus Nafural

The theory of natural human rights is derived from word: "jus nafural" in Latin, which should be translated into natural rights in Chinese. It was translated into "natural human rights" in China in the early years and has been used since then. It is an important concept of the modern school of natural law, meaning that people have the right to survive, freedom, and pursue happiness and property.

From the perspective of the development of natural law, in the philosophical field of view of ancient Greece, the value of the individual is fully emphasized, which provides a philosophical basis for the generation of natural rights. At the same time, they seriously discussed the concept of justice, and on the basis of distributive justice, they produced the concept of "deserved", which provided an ethical basis for the concept of rights. However, from the perspective of philosophical logic, the rise of the concept of rights must also be premised on the division between state and society and the rise of individualistic philosophy. To Roman jurists, the term "jus" has the equivalent meaning of rights, law and justice. Ancient Rome emphasized the division of public law and private law to distinguish between public interest and private interest; the establishment of a private property system and a contract system also strengthened the concept of natural rights.

British common law is a natural fertile ground for the growth of natural rights theory. The common law has been built on habits from the beginning, and these ancient habits have gradually developed into national or ordinary ones through the circuit court system to distinguish local customs. In the common law tradition,

natural rights are seen as a *fait accompli* based on tradition and custom. In the logic of common law, natural rights are "rights of the past", "rights that have been recognized" or "original rights".

Hobbes believes that the "natural state" is the initial state of human society, in which everyone has the natural right to "use all possible means to preserve themselves". In the natural state, intelligence and ability are equal to each other, and people invade, hurt and fight each other in order to survive, and are in a state of extreme chaos where security is never guaranteed. The natural law is to ensure the realization of this natural right, human society has at least two rules of natural law. The first natural law requires whenever there is hope for peace, peace shall be sought; The second natural law requires that be subjected to the willingness of others to do so, when a person deems it necessary for the purposes of peace and self-defence, he or she voluntarily waives this right to all things. Natural law makes it clear that people enjoy two natural rights that belong to human beings: self-preservation and equal treatment. Under the guidance of natural law, people can establish a national legal order by transferring their natural rights to the sovereign in order to survive and tranquillity. Natural law in natural state becomes the standard for judging the legitimacy of the real law.[4]

4.2 Natural right and Limited government

The empirical and transcendent nature of the common law provided a hotbed for the prosperity of natural rights, and at the same time provide philosophical inspiration for Locke's outstanding theory of natural rights. In Locke's view, society precedes government, and natural law is similar to positive law from the beginning. After the government was established, people still obeyed natural law and enjoyed natural rights. For this reason, society is higher than the state, and the government cannot create any rights, nor can it infringe on the rights people enjoy in their natural state—natural rights.

Locke also assumes that there is a natural state before people enter the political society, and there is a natural law that represents people's rationality in the natural state. Locke does not agree with Hobbes's natural state of aggression against each other, and in his theory the state of nature is a perfect state, "it is also a state of equality in which all power and jurisdiction are mutual, in which no one enjoys more power than others." In Locke's view, natural law is not just a selfish law of self-preservation, but "a teaching of all mankind who intends to follow the right will of reason: that as all equal and independent people, no one should harm others in life, health, freedom, or possession." "They determine their actions and their property and persons, within the scope of natural law, in such a way as they see fit, without the permission of any one or at the will of any person. On that basis, a Government has been created to enforce natural law on behalf of all. "In order to restrain all persons from violating the rights of others and to harm each other, so that all of us abide by the laws of nature, which are designed to maintain peace and defend all mankind, the law of nature is given to everyone in that state, so that everyone has the right to punish those who violate the laws of nature in order to put an end to

violations of the laws of nature." But, "the natural freedom of man... "No one may be placed outside this state and subject to the political power of another person" without the consent of the individual, using the law of nature only as its yardstick". In a political society, people should surrender only part of their natural rights, the rest of which are reserved for citizens as a fundamental right, and people have the right to rebel against the Government. In Locke's theory of natural law, freedom and equality are not only the key basis for giving legitimacy to the law, but also the right of citizens to disobey the true legal norms, that is, people have the right to disobey unjust law in order to protect people's moral rights of freedom and equality.

Through questioning the relationship between natural law and constitutional government, this article points out that the higher law of natural law includes the basic rights that belong to all people under the natural order. These basic rights are very important for human survival. Not only can they not be transferred, but they automatically constitute restrictions on the behavior of the ruler. This doctrine provided a theoretical basis for France's "Declaration of Human Rights", the United Kingdom's "Bill of Rights", the United States' "Declaration of Independence" and the United States Constitution, and it gained legal force due to its integration into the United States Constitution.

Take the US Constitution as an example: it is with this natural law theory that the due process clause in the US Constitution can be established. The so-called due process clause refers to the law that the United States Supreme Court can vigorously overturn the laws passed by Congress and the State Assembly, but is considered to be incompatible with some basic principles of natural justice and natural rights in natural law. What this clause regulates is not just a question of pure form or procedure, a legal claim to due process may also refer to a constitutional right, which is established to have some effect on the activities of the government constraint. In the history of the United States, a series of civil constitutional rights have been recognized and developed through the application of due process clauses. These rights can be not only procedural but also substantive. Some even argue that due process does not necessarily refer to a specific procedural requirement, it should refer more to the protection of "substantial content of personal life, freedom, and property." The substantive due process is a formal transcendence of natural law. In the practice of using due process, the United States has developed the theory of substantive due process, evaluating the legitimacy of the content and purpose of law, and paying attention to the vested rights in substantive law. Substantive due process not only inherits the spirit of natural law, but also achieves a formal transcendence over natural law. Due process review of the legitimacy of legal procedures and content is essentially a reflection and questioning of the legitimacy of power. The value of due process is reflected in the protection of human rights. The long-standing distrust of power and the desire and demand for power and freedom in the Western constitutional culture are important reasons why the due process can exist and continue to play a role. Restricting power to protect rights is the fundamental pursuit of constitutionalism and the rule of law aims.

The brand-new concepts developed by these classical natural law thoughts have also transformed the distorted state power allocation mechanism in feudal society.

Under the authoritarian rule of the feudal monarchs in the Middle Ages, the public power of the country was in a dominant position, and the rights of citizens were only its appendages, with only the obligation to obey, but no right to resist. The theory of natural rights and the theory of social contract demonstrated the source and nature of state power, and concluded that the value orientation that people should have when forming a government is to protect human rights, and the government that should be formed is a limited government. In practice, it also provides an entry point for how a constitutional country can maintain a good constitutional state. Judging from the constitutional practice of various countries, public rights and private rights always seek to compromise in conflicts, while the continuous expansion of human rights content limits the scope of public power, and the actual expansion of administrative power in the real world also affects the human rights of citizens. threatening. Therefore, how to maintain a coordinated dynamic balance between the public power of the government and the private rights of individuals is a problem that modern countries should pay close attention to. Due to the consistent arrogance of public power in history and private rights in a natural weak position, modern countries always achieve the purpose of protecting human rights by means of controlling and restricting public power, which is the essence of limited government.

The government under the constitutional system is a limited government that protects human rights as its ultimate goal and reflects the gifted human rights and sovereignty of the people. Under this new social system, modern countries ruled by law have all established "sovereignty as the people" as a basic principle in the Constitution, although their manifestation in the Constitution and the way and degree of implementation in constitutional practice may be somewhat different. different. But it is unquestionable: the principle of "sovereignty over the people" was confirmed in the Constitution after the victory of the modern bourgeoisie in the revolution. This was mainly influenced by Locke's and Rousseau's theory of "people's sovereignty". Locke and Rousseau used natural rights theory and social contract theory as the theoretical basis to discuss how state power is transformed by people's natural rights. Therefore, national sovereignty belongs to the people, and Rousseau further pointed out: National sovereignty is manifested in the will of the people, and the public will be determined by the majority of the people. The grant can only be exercised by all citizens, not by representatives. Therefore, the theory of power restriction in natural law provides a rational basis and ideological guidance for people to choose a limited government and a system where the separation of powers is mutually restricted and balanced when the constitutional system is established.

5. Conclusion

Through the above analysis, we can see the internal relationship between the modern constitutional system and the natural law school, especially the classic naturalist law. Classical natural law not only opened the curtain of the bourgeois revolution, but also provided the impetus for the ideological and historical transformation of the establishment of the constitutional system, and it was also the

rational framework for the constitutional system. The rational foundation of classical naturalist law overthrew the divine power and kingship in the authoritative society, and the assumption of the "natural state" successfully presupposed an original state. Affirmed the basic values of equality and freedom of human nature and personality.

On this basis, the values of personality and equality can be deeply integrated, and the theory of human rights can be developed. On the other hand, the Constitution protects "natural rights" through legislation, thus forming the core content of the constitutional system: the basic rights of citizens. With the support of the "innate human rights" theory, the modern rights-based view of the rule of law has been established and developed. In the end, the constitutional government formed by human rights theory and natural rights was further manifested in power constraints. Under the influence of the theory of "sovereignty over the people", the two core modern state systems, limited government and power checks and balances, were established. Of course, because there is no closed enumeration of the constitutional system in this article, there are still a series of constitutional systems including elections, which have also taken root under the guidance of the natural law school. Moreover, more importantly, while the classic naturalist jurisprudence has made tremendous contributions to the establishment of the constitutional government system, the significance and role of modern natural jurisprudence and new natural jurisprudence in constitutional government cannot be ignored. In a word, classical natural law is the rational foundation of constitutional system.

References

- [1] XiaoBo Dong(2009). *Civil Spirit and Constitutionalism : The Formation of Western Rule-of-law Tradition*, University of International Business and Economics Press. 16-18
- [2] Rudolf Stammler, *Fundamental Tendencies in Modern Jurisprudence*. Michigan Law Review, Vol. 21, No. 6 (Apr., 1923), pp. 633-639.
- [3] Edited by Jules L. Coleman, Kenneth Einar Himma, and Scott J. Shapiro(2004). *Oxford Handbooks of Jurisprudence & Philosophy of Law*. Oxford University Press. 2-30.
- [4] Samuel Encoh Stumpf, Jmaes Fieser(2002). *A History of Philosophy: Socrates to Sartre and Beyond*. Peking University Press. 220-259.
- [5] Marcus Tullius Cicero(1999). *On the Commonwealth and On the Laws*, Cambridge University Press. 118-119.
- [6] John Locke(1988). *Two Treatises of Government*, Cambridge University Press. 105-111.