

Reflections on Police Law Enforcement and Civil Rights Protection based on Constitutional Perspective

-- The Case of Xie Chaoping's Criminal Detention for Publishing His Works as an Example

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Abstract

How to better protect the basic rights of citizens in today's era has increasingly become the focus of attention. In order to guarantee that citizens' rights are not violated in the process of police law enforcement, the police should cultivate constitutional thinking and rule of law thinking, to ensure that the exercise of power abides by the boundaries of the constitution, and to fully protect the constitutional rights of citizens is the effective way to solve the conflict between state power and citizens' rights.

Keywords

Constitutional Construction; Civil Rights; Police Enforcement; Civil Rights Protection.

1. Introduction

With the continuous development and progress of economy and society, people are more and more concerned about how to guarantee the basic rights of individuals when their material needs are basically satisfied. As the distinctive banner of modern democratic politics, rights protection and constitutional construction are also important manifestations of democratic development and social progress. The contradiction and conflict between state power and civil rights has been throughout the development process of human democratic society, and how to balance the relationship between the two has been a major direction of our exploration. In the process of police law enforcement and case handling, learning to use good constitutional thinking is not only a requirement to comply with the explicit provisions of our Constitution, but also conducive to fully protecting the basic rights of citizens. The so-called constitutional government is a political system that limits the power of the state in order to protect the basic rights of citizens, that is, the implementation of democratic politics. Constitutionalism can be simply summarized as a form or process of politics that takes the Constitution as its premise, democratic politics as its core, the rule of law as its cornerstone, and the protection of human rights as its purpose. Whether in a capitalist constitutional state or a socialist constitutional state, police officers with strong constitutional thinking in the process of law enforcement and full protection of citizens' basic rights are effective ways to resolve the conflict between state power and citizens' rights well. On the one hand, respecting and safeguarding citizens' rights requires good cultivation of constitutional thinking and thinking about the rule of law. On the other hand, learning to understand and believe in human rights is a prerequisite for safeguarding citizens' rights. What cannot be ignored is that the supremacy of the Constitution is not unilaterally and explicitly declared by the official on paper as the supreme legal status and effect. The key lies in the application of constitutional thinking and the pursuit of civil rights awareness in political practice. Citizens have a strong constitutional consciousness, and in order to protect their basic rights through the designation and implementation of the Constitution, proactively safeguard the authority of the Constitution, and constantly

consolidate their own constitutional consciousness, which is the true supremacy of the Constitution, and is the ultimate goal we seek to build a socialist state of law with Chinese characteristics. From a constitutional perspective to guide the police law enforcement, so that the constitutional consciousness and the idea of the rule of law is deeply rooted in the hearts of every subject in the state power. Let them believe in the Constitution, understand it, recognize it, and always actively review their law enforcement activities in the spirit of the Constitution is the best way to resolve the conflict between power and right.

2. Organization of the Text

2.1. The Importance of Constitutional Supremacy

The supremacy of the Constitution means that the Constitution is the fundamental law of a country and has the highest legal status and legal effect in the legal system of a country. The Constitution is the law of supreme power, and no other law can contradict the content of the Constitution. The Constitution is the basis for the enactment of other laws, and any law that violates the Constitution is null and void. Article 5 of the Constitution clearly states that "no law shall contradict the Constitution." The Constitution is also the mother law of all other laws, and all other laws are derived from the Constitution. The Constitution is the prerequisite for constitutional government and the specific way and means by which it is implemented. Constitutionalism without the supremacy of the Constitution would be a piece of paper. In political practice, if the constitution is properly applied and implemented, the goal of constitutionalism to balance state power and civil rights can be achieved. Therefore, the supremacy of the constitution is a prerequisite for building a good constitutional government, and only by giving full play to the supremacy of the constitution as the fundamental law can we build a good constitutional government as a democratic politics. In today's world, the vast majority of countries have clearly affirmed the supreme legal effect of the supremacy of the constitution, although the way it is proclaimed differs, but this does not affect the important position of the constitution in the legal system of a country.

There is no doubt that Anglo-American constitutionalism has become a model for modern countries to learn from in terms of constitution-making, and its path to building constitutionalism has significant implications for later countries. 1215 Magna Carta and the emergence of a written constitution in 1787 each marked the formation of the British constitution and constitutionalism. And the success of the creation of constitutionalism in Britain and the United States was due to the above individual demands for the protection of civil rights that arose from their political practices. In the United States, a country with a written constitution, for example, the state has made it clear in the most authoritative way that the constitution has the supreme force of law, and at the same time the constitution has been well implemented in political practice, playing the role of the fundamental law, and the citizens themselves have a very strong constitutional consciousness and recognition of the supremacy of the constitution. In contrast, in some countries, although the constitution is clearly defined as having the supreme legal status and legal effect, in real life, the fundamental role of the constitution is difficult to be played, and it has become an appendage of political power. It is evident that the supremacy of the Constitution is not unilaterally and explicitly declared by the official on paper to have the supreme legal status and validity. The key rather lies in the application of constitutional thinking in political practice and the pursuit of civil rights consciousness. Citizens have a strong constitutional consciousness, and in order to protect their basic rights by designating and implementing the Constitution, proactively uphold the authority of the Constitution, and constantly consolidate their own constitutional consciousness, which is the true supremacy of the Constitution and the ultimate goal we seek in building a socialist state of law with Chinese characteristics. Although China's constitutional

exploration and development has been more than a hundred years, we are still stuck in the paper level of constitutional supremacy, the national constitutional awareness is weak, lack of awareness of rights protection, constitutional supremacy has not yet been implemented into political practice, we need to further explore and constantly improve the road of constitutionalism. The United States, on the other hand, limits government power through strict separation of powers and checks and balances, and specifies the principle of fundamental human rights in the Bill of Rights, stating that no one may deprive individuals of their rights. In addition, citizens in the U.S. can assert their legal fundamental rights through a system of constitutional review in lawsuits, and citizens' proactive assertion of their fundamental rights has become a powerful motivation for the development and growth of the Constitution and constitutional government.

2.2. The Relationship between Civil Rights and Constitutional Government

Constitutionalism is to protect civil rights as the main purpose, and at the same time the protection of civil rights depends on the construction of constitutionalism, and the two embody a mutually complementary and interdependent relationship. The protection of civil rights is one of the important motives and reasons for the emergence of Anglo-American constitutionalism, which is mainly reflected in the principle of popular sovereignty in the constitution. The major difference between capitalist constitutionalism and socialist constitutionalism is that the former protects the human rights of the bourgeoisie, while the latter protects the human rights of the proletariat and the people. England has fought the king since the Magna Carta of 1215 to protect the rights of the individual to limit the power of the state. The Petition of Right, the Habeas Corpus Act, and the Bill of Rights followed, and then the principles of fundamental human rights were established one after another. The modern natural law school advocated natural human rights, and they believed that rights existed before government and law, and that government and law existed to be established and enacted to preserve and safeguard individual rights. The theory of the value of rights is also particularly instructive for us. The tension between rights and power is also something that governments and lawmakers must consider. The operation of individual rights also requires government to protect rights, not exclude them altogether. Rather, rights-value theory tells us that rights and power are interdependent, and that it is possible to establish a harmonious relationship that promotes their own development. Of course, the direction Holmes and Sunstein took in studying this right was unique in the West and in the context of the time. For in a relatively mature democracy, the power of the state must be subject to many of the limitations that the United States clearly possesses in such a mature democracy. Given the "rights explosion" generated by human rights rhetoric, there is a bias against an active role for government. However, in light of our current situation, we must focus equally on both theoretical and practical dimensions. We must pay attention not only to strengthening the power of government, but also to the wisdom of government in controlling public opinion and public policy-making, because the protection of human rights requires public finance, which consists mainly of citizens' taxes. Improving our public finance system is therefore crucial to guaranteeing the basic rights of individuals and the stability of social order. Our government must be fair and just in allocating social resources in order to build an effective government that always acts in the interest of the masses. Today, in the United States, people have more political, economic, cultural and social rights because the government has established these rights by law, and when these rights are violated, citizens can demand that the government protect them so that they can truly enjoy these rights. Indeed, the successful exercise and effective protection of these rights necessarily requires positive action by governments based on the use of public resources. This applies not only to the defense of constitutional rights, but also to areas directly related to private rights, such as the free market, which can only function effectively if governments take steps to remove obstacles and stop the destructive behavior of

criminals. Thus, the protection of rights requires affirmative action by the government. Human rights are confirmed and guaranteed as a fundamental principle in the entire legal system through the Constitution, which is the fundamental law, and constitutionalism is the concrete path and method for their realization. In short, human rights cannot be guaranteed without the national government, but only through the construction of constitutional government can the power of the state be restrained, thus guaranteeing the basic rights of citizens, which is the democratic politics pursued by constitutional states.

2.3. Exploring the Ways of Police Law Enforcement and Civil Rights Protection in Constitutional Practice

Whether in a capitalist constitutional state or a socialist constitutional state, having a strong constitutional mindset in the process of police law enforcement and fully safeguarding the basic rights of citizens are effective ways to resolve the conflict between state power and citizens' rights. The following is an analysis of the basic path of police law enforcement and civil rights protection in constitutional practice, using the case of Xie Chaoping's criminal detention for publishing his works as an example.

On August 19, 2010, Xie Chaoping, 55, was taken away from his home in Beijing by police in Weinan, Shaanxi Province, for alleged "illegal activities. The alleged "illegal activity" was the result of Xie's self-published 10,000-volume literary work "The Great Migration", which documented the historical problems left behind by the Sanmen migrants. On September 17, 2010, the prosecutor of Weinan City, Shaanxi Province, decided not to authorize Xie's detention and granted him bail pending trial. According to the logic of the Weinan police, the charge of "illegal business practices" was due to the use of inappropriate supplements by the magazine in which Xie Chaoping wrote the article, and Xie was one of the main participants in the publication of the supplements. According to the Constitution, first, the actions of the Weinan police violated Xie's freedom of publication. Freedom of the press is a fundamental freedom guaranteed by the Constitution of the People's Republic of China. Article 35 of the Constitution of the People's Republic of China provides that the People's Republic of China enjoys freedom of speech, of the press, of assembly, of association, of demonstration and of protest. Then, we analyze the constitutionality of Xie Chao's Ping's publishing behavior. First, whether the subject of exercising the freedom of speech and publication meets the requirements. In this case, Xie Chao-ping was not deprived of his political rights as a lawful citizen of the People's Republic of China. According to his curriculum vitae, he went from being a retired judicial official to a part-time journalist or writer, did not violate discipline, and enjoyed freedom of speech and publication under the Constitution. The second issue is whether the manner in which the freedom of expression and press freedom were exercised was lawful. For Xie Chaoping, the key determination of whether the constitutional freedoms of speech and press were properly exercised was whether the content of the book went beyond the restriction of fundamental rights, that is, if the content of the book was consistent with the restriction of fundamental rights under the relevant law. The content of this book deals with the tragic stories of many unnamed immigrants. There are no false accusations, no defamation or slander of another person's reputation, no acts against the state, no incitement of famous people to secede from the state, and no disclosure of state secrets. The content of this book is permitted by law and does not go beyond the law. Xie Chaoping has recorded the objective facts with his own pen, which also demonstrates his legitimate right to question the legality of the actions of state organs and state officials, i.e., the right to monitor them. This is a reasonable and legitimate question, without fabricating or distorting facts to falsely accuse and slander. Therefore, Xie Chaoping's normal exercise of putting freedom of speech and freedom of publication is legal. Second, the actions of the Weinan police violated Xie's right to supervision. The right of supervision is a fundamental right of citizens under the Constitution of China. Article 41 of the

Constitution of the People's Republic of China provides that the People's Republic of China has the right to criticize and make suggestions to any state organ and state official. They have the right to make complaints, allegations or reports to the relevant state organs regarding the illegal acts of state organs and state officials, provided that they do not fabricate or distort the facts or make false allegations. The relevant state organs shall ascertain the facts and deal with citizens' complaints, grievances or reports. No one can suppress or retaliate. Those who suffer losses due to violations of citizens' rights by state organs or officials are entitled to compensation in accordance with the law. The Weinan police retaliated against Xie for exposing the truth and criticizing local officials in his work, clearly violating Xie's right to criticism, advice and supervision. If the Great Migration really records and reflects the truth of the issue, then it is the author's legal right, a normal way for citizens to exercise their right to freedom of expression, and a normal way for the public to monitor the government. The use of public opinion to monitor public power is much more effective and is not only a violation of citizens' rights, but also an abuse of public power. Therefore, Xie Chaoping's right to supervise must be protected. Finally, the actions of the Weinan police violated Xie's personal freedom. Personal freedom is a fundamental freedom guaranteed by our Constitution. Article 37 of the Constitution of the People's Republic of China provides that the personal freedom of citizens of the People's Republic of China is inviolable. No citizen may be arrested without the approval of the People's Procuratorate and the decision or decisions of the people's courts will be enforced by the public security organs. Unlawful detention or other deprivation or restriction of a citizen's personal freedom, or unlawful search of a citizen's body is prohibited. According to the Constitution, the detention, custody, search, deprivation or restriction of a citizen's personal freedom shall be carried out by the relevant state organs in accordance with legal procedures, and no organization or individual may exercise these powers. Our Constitution clearly states that the personal freedom of citizens is inviolable, and our criminal procedure law contains many procedural provisions that restrict personal freedom. The Weinan police did not comply with these provisions and seriously violated the personal liberty of citizens during detention. Therefore, the criminal detention of Xie Chaoping by the police in Weinan, Shaanxi Province, is illegal.

3. Summary

In this case, the police did not do a good job of applying constitutional thinking in the process of law enforcement, but instead abused their power to infringe on the basic rights of citizens. Therefore, police officers should be good at cultivating and applying constitutional thinking and rule of law thinking to ensure that the exercise of power abides by the boundaries of the Constitution and fully protects the constitutional rights of citizens.

On the one hand, to respect and protect the rights of citizens, we must be good at cultivating constitutional thinking and thinking about the rule of law. In the daily law enforcement process of the police, constitutional thinking and rule of law thinking is the guide to action. This requires police law enforcement behavior must adhere to the boundaries of the Constitution, always bear in mind the spirit of the Constitution, to learn to interpret the case to achieve the desired effect of closing the case, law enforcement administrative personnel should not only seriously study the theoretical knowledge of relevant laws and regulations, but also in the face of complex law enforcement issues, to be able to explain to the parties in layman's terms. At the same time, the police case to have constitutional thinking is a clear requirement of our Constitution. The so-called "constitutional thinking" includes five elements: constitutional thinking, human rights protection, rules for the exercise of power, rule of law thinking and democratic thinking. In practicing constitutional thinking, public security organs and people's police must have a "constitutional basis" in applying the law and must not engage in acts that infringe on the basic

rights of citizens. In the absence of constitutional authority, any execution must be stopped immediately. The development of constitutional and rule of law thinking relies on the development and implementation of a well-developed constitutional and legal system and the supervision of specialized institutions. On the other hand, learning to understand and believe in human rights is a prerequisite for the protection of civil rights. In the current judicial practice, a large group of people in the police law enforcement team lack understanding and trust in human rights, and often put police law enforcement and citizens' civil rights protection in opposition to each other, which is a reflection of their own rule of law thinking is not strong enough. In fact, the strengthening of the subject's rule of law thinking is conducive to accelerating the construction of a society based on the rule of law. As discussed above, the true supremacy of the Constitution does not lie in the official written declaration of its supreme legal effect, but in the consolidation and implementation effect of the citizens' own thinking about the rule of law. This not only requires the subjects of power to strengthen the awareness of the rule of law in the process of law enforcement to protect the rights of citizens, but also requires the subjects of rights themselves to actively pursue the protection of individual rights. Only on the basis of spontaneous understanding and belief in human rights can citizens' rights be effectively guaranteed.

The topic of conflict between citizens' rights protection and police law enforcement has existed for a long time since we entered the society of rule of law. Guiding police law enforcement from the perspective of constitutionalism makes constitutional awareness and the idea of rule of law deeply rooted in the heart of every subject in state power. Making them believe in the Constitution, understand it, recognize it, and always actively review their law enforcement activities in the spirit of the Constitution is the best way to resolve the conflict between power and rights.

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