



Strengthening the Construction of the Constitutionalism and Promoting the Healthy Development of the Socialism Market Economy

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Abstract

After about thirty years' reform, the socialism market economy system has been basically founded, and the function of the market in the distribution of resource is increasingly obvious. In the new century and new stage, the reform is in the process of assaulting fortified position, and we must eliminate the system obstacles which baffle the function of the socialism market system. Therefore, we have to carry out the legal basic status of the constitution, establish the legal base of the market economy, i.e. the constitutionalism, establish the democratic system of the constitutional supervision, and perfect the national power structure. And we have to confirm the rule of law of the judicial independence, perfect the judicial control, limit the right of the government, establish the public government with the democratic laws, promote the nonofficial system transformation of the constitutionalism, perfect the system of the socialism market economy, follow the rule of the market economy, establish the macro-control system according to the national situation and the constitutional order, and establish the distribution system adapting the socialism market economy through the reform of the constitutionalism. So we can strengthen the construction of the constitutionalism and promote the healthy development of the socialism market economy.

Keywords: Constitutionalism, Socialism market economy, Construction, Reform

The constitutionalism means the existence and operation of the government accord with the constitution because its right is limited by the public opinion. American famous political commenter Thomas Paine (1737-1809) had said that "the constitutionalism is not the action of the government, but the behavior that human establish the government, and the government without the constitution is only the power of without right". And he also pointed out that "the constitution is the thing before the government, and the government is the production of the constitution" and "the function of the constitution for the freedom likes the function of the expression for the language". Therefore, the essential of the constitutionalism is that there is a set of higher law, i.e. the constitution, to limit the power of the government and its administration range on the governmental power. And we can think the limited government under the limit of law and democracy can compose the constitutionalism. Even there is the constitution without the limit of law and democracy, and there is not the real constitutionalism (Wang, 2006).

In the history, the constitutionalism had made very important contributions for the economic and social development of the western countries. In the present transformation process from the planned economic system to the market economic system, because of the faultiness of the constitutionalism, the deficiency of the market economic rule based on the constitutionalism has produced negative function (Wang, 2006). So we can adopt following measures to confirm the constitutionalism and fully exert the functions of guarantee and promotion for the economic development.

1. Putting the basic legal status of the constitution into effect and establishing the base of the legal rule of the market economy, i.e. the constitutionalism.

Up to now, China all along puts the economic development on the primacy, so the assistant construction of the constitutionalism is ignored. Because the constitution has not been effectively implemented in recent years (most economic policies, active rights and civilian obligation in present constitution can not been implemented), so people produce a sort of universal mistakes, i.e. as the essential law, the constitution has no relationship with the actual living in the society. The common legislations such as civil law, property law, company law, law of against competition by inappropriate means, securities exchange act and environmental protection law are independent of the constitution. The constitution offers a sort of meaningless reference of "mother law" for the productions of these laws, and it doesn't put the basic legal status of the constitution into effect. Because the constitution has not been as the base, so the implementation of many laws is not ideal. Chinese laws has not prevented the continual losses of stated assets, protected the successive decrease of the lands which are the national strategic resources, stopped the jobbery of the securities business, and effectively restrained the counterfeit and shoddy products and coal safety accidents. Though there

are many problems from the laws, but we more and more realize that only good regulations are not far enough, and they can not be implemented, even perfect laws like nothing. Nowadays, the main problems of China are not “whether there are laws?”, “who participate the constitution of laws?”, “what laws we should constitute?” and “what mechanisms can supervise the implementation of laws?” These problems can not be solved by the legal texts themselves, and they are the problems about the constitutionalism before the legal texts, and they are the preconditions for that the laws are laws, and if they can not be solved, the legal order can not be established and the economic development will get in unhealthy and un-continual dangers and confusions. So we have to put the basic legal status of the constitution into effect and establish the base of the legal rule of the market economy, i.e. the constitutionalism.

2. Establishing the democratic system supervised by the constitution and perfecting the national right structure

The national right structure includes the relationship between the central government and the local government, and the power allocation of the legislation, administration and jurisdiction. For the democracy without live constitutional base, the departments and officials of the central government and the administration discretionary powers of local governments will be infinitely expanded, and their behaviors and decisions can not be limited in the effective supervision and control of the public, and restricted by the legal systems and regulations. Under that situation, even more laws constituted by the legislatures can not restrict them, and there is not real legal democracy. So we have to establish the democratic system supervised by the constitution, supervise the constitution and the implementation of the laws and the regulations, supervise the public management of the administration departments and local government institutions, perfect the national right structure and realize real legal democracy.

3. Confirming the legal system with independent justice and perfecting the judicial control

As we know, in all governmental institutions, the judicial institution contributes more to the development of the market economy, because the market economy first means free competition, not the governmental control, but both the legislation and the administration means the control of the government in the special domain, though it is the control by the law. According to the classic liberalism theory, the market is a sort of spontaneous order produced by the economic behaviors through the voluntary trades, but sometimes the market order also needs the protection of the governmental laws, and so we have to establish a sort of constitution, i.e. the judicial constitution among the legislation, administration and justice, and it is necessary to fairly settle private confusions. Through five years' judicial reform, there are many disadvantages in the judicial institution which still could not offer firm legal guarantee and establish the perfect market order. Therefore, we must confirm the legal system of the judicial independence, perfect the legal control, strengthen the restriction of the administration behaviors and maintain the various rules of the market economy.

4. Limiting the right of the government and establishing the public government with law and democracy

As a big administration country, the characters of traditional China include not only weak justice, but strong administration. Especially after 1949, because of the influences of the all-powerful government and the development strategic selection (Wang, 2006), the power of the administration is expanded largely, and it has exceeded the limitation of any law, and it can obstacle the development of the market economy. To healthily develop the market economy, the administration right must be limited and controlled firstly. In recent years, China has gradually realized the limitation of the government, and the “limited government” has been the important principle of the administrative law. The “Administrative Permission Law” implemented in 2004 definitely embodied the principle of the limited government, i.e. if the market could be effectively adjusted by the civil decision or the market competition mechanism, the government should not set up the administrative permission (Zhang, 2004).

The economic crisis in the earl of the twentieth century indicated that the market economy had not been the myth which could sustain itself, and it needed the proper interference and protection from the government, of course, it was not the random interference of the administration, and it included the constitutions of a series of laws such as the anti-monopoly law, the securities exchange act, the social security act, the environment and consumer protection law. The effective implementation of these laws can not only protect the healthy free competition, but correct some bad social consequences in the market. So we must limit the administrative right of the government, and under the restriction of the law and democracy, the administrative right of the government only is limited to offer the protection of the national security, the maintenance of the social justice, the provision of the social public products and the compensation of the market deficiency.

5. Promoting the nonofficial system transformation of the constitutionalism and perfecting the socialism market economy system

In the market economy system, there is market failure and the government failure, and they all can be solved through the establishment of the constitutionalism, but under the special condition, the “constitutional failure” will occur. As viewed from the new system economics, the essential is that both the official system and the nonofficial system of the constitutionalism can not harmonize and integrate, and in the economic development and the social transformation process of China, the essential is the lag of the nonofficial system of the constitutionalism.

Because of many characters such as spontaneity, non-compulsion, universality, durative and lagged transformation possessed by the nonofficial system and many characters possessed by the government leading the compulsory systems, the nonofficial system transformation in the system transformation process of the marketization of China seriously lagged, and the transformation of the nonofficial system and the harmony and the integration with the official system of the constitutionalism are influenced. So we must promote the nonofficial system transformation and perfect the socialism market economic system from following aspects (Xiong, 2002). First, quicken up the gradual reform, increase the knowledge storage of modern market economic law and democracy, and drive the transformation of the nonofficial system of the constitutionalism from the exterior. Second, increase the educational investment for the ideal cultural consciousness of the modern market economy, drive the transformation of the nonofficial system of the constitutionalism from the exterior, and form the basic concept of the modern market economy. Third, accelerate the cultural basic construction of the market economy, establish new socialism market economic culture and promote the transformation of the nonofficial system of the constitutionalism. The cultural tradition decides the public attitudes, and the public attitudes directly decide the construction and perfection of the socialism market economic system. Some foreign famous experts such as Samuel Huntington and Michael Porter discussed the function between the culture and the economic development in the book of “the important function of the culture, how the value view influence the human advancement”. And in Latin America, the culture is baffling the economic development, but in Japan, Korea, Singapore and some western countries, the culture has been a sort of active power to drive the economic development and the social advancement. Especially in the situation that the compulsory system transformation and traditional idea and culture are so deep in China, when the official system of the social market economy system transforms, if the nonofficial systems according with the ideal cultural bases are deficient, and if the nonofficial systems of the traditional economic system don't transform or transform slowly, the perfection and the operation of the socialism market economic system will be certainly influenced. And we are required to accelerate the cultural basic construction of the market economy, quicken up the alteration of the traditional culture, establish the socialism market economic culture combining with the traditional culture and the legal democracy of the modern market economy, and establish the bases of ideas and cultures of the constitutionalism in the process of perfecting the socialism economic system.

6. Following the market economic rules and establishing the macro control system according with the national situation according the constitutional order

In the market economy, the macro control is that the government adjusts and controls the national economic gross of by the financial and coin measure on the macro layer. The main body of the control is the central government, and the control object is the gross of the national economy. But because of the influences of the all-powerful government and the development strategic selection, the macro control of China has been the tool that the government expands the market and controls or invades the market. At present, the product overstock and production ability surplus in China are not the economic crisis of the production surplus for the economic meaning, and in the special condition with Chinese feature, the system obstacles seriously restrain the social security, medical health protection, compulsory education, middle and higher education, middle and high class houses in the nonpublic products, make them get in the deficient status, and that is not the problem of purchasing power (Liu, 2007). Therefore, we have to follow the rule of the market economy, and establish the financial and tax system with the restriction of the rules according to the constitutional order. The effect of the macro control is not simply decided by the composing or the type of the government finance or the coin policy, and it is more decided by the system environment of the macro control. For example, which constitutions decide the economic policy? What motivations do people in these constitutions have? Does the power center advocate certain policy such as the financial policy? Does the individual have enough knowledge to supervise the politicians' political activities? Does free news or free speech which makes the public the dope of the policy constitution influence the aim and the effect of the macro control? So, the precondition of the macro control of the transformation economy is to establish the financial and tax system in the restriction of the constitutionalism rules, and based on that, the macro control system according with Chinese situation can be established.

7. Establishing the distribution system according to the socialism market economy through the reform of the constitutionalism

The unfair income distribution has been the most serious problem faced by Chinese society, and it seriously influences the stability of the society and the healthy environment of the economic development. From the development experiences of various countries, the early income distribution difference in the high-speed economic development process is inevitable, but the instance like China is very few. At present, the serious inequality of the individual income in China is not the result of the marketization, and it is the result of the popular unfair trades induced by the deficiency of the system in the economic transformation process, and it is also the result of the marketization of the money-power trade. In the transformation process from the planned economy to the market economy, on the one hand, individual hierarch leaves no stone unturned to control, expand and snatch the power of the national resource distribution, and on the other hand, with the quick development of the domestic market economy, many unperfected systems offer sorts of convenient condition for translating power to coin. Under the conditions of the market trade internationalization and the

financial capitalization, the money-power trade is largely released and expanded in time and space, and the social wealth flows to the people with power through sorts of money-power trade (whether it is illegal or “legal”), which induces the serious unfair income distribution. So the expanded income difference in present China is mainly induced by the power (including power monopolization, power corruption and power capitalization), i.e. the restriction of the constitutionalism and the standardized power are deficient.

Therefore, the present distribution system should be reformed and the socialism market economic distribution system should be established and perfected. First, the power offside should be limited through the reform of the constitutionalism to reduce that the power participates in the monopolization and competition. Only the power range of the government is reduced to only maintain the public order and offer public production an other public domains, the governmental right can be transparent, and the corruption can be basically eliminated (Zhaoxiaoxiao, 2007). Second, the industrial monopolization should be forbidden and the industrial free competition should be guaranteed. Third, the first distribution system should be perfected and the second distribution system should be reformed. Fourth, the distribution order should be standardized to ensure the justice of the distribution process. Fifth, many control measures such as law, economy and information should be perfected, and the macro control system of the income distribution should be established. Sixth, the low income group should be guaranteed and the high income level should be adjusted. Though above six aspects, a real fair society can be established, and the fair income distribution can be realized and the healthy and stable development of the socialism market economy can be really guaranteed.

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