

On the Structure of Constitutional Right Norms

Peng-Hsiang Wang

Abstract

This essay is a structural analysis of constitutional right norms. According to the semantic concept of norms, the concept of constitutional right norms will be defined as the meaning of constitutional right provisions. A constitutional right norm, which usually expresses the liberty or the right of people, can be transformed to norm-sentences containing deontic modalities. The groundwork of my analysis is Robert Alexy's principle theory, which is based on three related main theses: the thesis of optimization, the law of collision, and the law of balancing. The recent development of Alexy's theory, especially the Weight Formula, will be also noticed. After discussing some representative views of the structure of constitutional right norms in the Taiwanese constitutional praxis and doctrine, I argue that the constitutional right norms of the Taiwanese (R.O.C.) Constitution have the features of principles. The principle-like character of constitutional right norms provides a key to the solution of central problems of constitutional rights doctrine: It not only leads to an adequate reconstruction of the limitation of rights, but also implies a wide theory of scope. Finally, I give a brief account of the "Rahmenordnung vs. Optimierungsgebote" debate in the German constitutional doctrine and Alexy's reply to this theme.

Keywords: theory of norms, constitutional right norms, rules, principles, optimization requirements, weighing and balancing, limitations of constitutional rights, internal and external theories of limits, narrow and wide theories of scope, theories of framework (Rahmenordnung)