

**Positive Law and Subjective Values: The Administration of
Constitutional Functions Based upon Human Rights under the
Paradigm of International Law**

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Abstract

This essay used ‘paradigm’ to connote the traditional international theory. To begin, Part II and III described briefly the nature, characteristics and problems derived from traditional international theory. Then, Part IV used the model of ‘paradigm shift’ to analyze the possibility of international normative framework to shift its ground, and got a negative answer to the question. Be an alternative to it, and due to the necessity of pursuing contemporary aims under the vested paradigm, Part V demonstrated that it’s possible to shake off formalism and delve into the normative values behind the rules. Meanwhile, States’ consent may be a means to ‘materialize’ human rights values and ‘harmonize’ States’ and individuals’ values. To go a step further, Part VI brought up two propositions—human rights may lead to the status of international constitutionalism, and the international society may function constitutionally. The concluding remarks and the rethinking on individuals and States are the final.

Keywords: paradigm shift, normative foundation, values, human rights, international constitutionalism

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