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論「社會基本權利」

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在憲法內規定人民擁有「社會基本權利」曾是二十世紀以來西方憲法的常例。這些「權利」是以社會正義及人道思想爲理想，由國家積極的提供福利措施，使人民可以享有最起碼及合乎人類尊嚴之生活。

社會基本權利與傳統的自由權利，不論是目的及效力方面，皆有差異。國家在實踐社會基本權利時，不可犧牲人民的自由權利爲代價，否則「法治國家理念」便會淪喪！鑒於社會基本權利，不論在概念方面及其特性，西方學界普遍認爲，人民並不可以由憲法該些權利條文，取得直接付諸實踐之「請求權利」。因而，除非由「法律層次」來履踐，光憑憲法規定，無法使社會基本權利在實證的法律規範體系內，能夠獲得存在。

但，我國憲法遵循德國威瑪憲法前例，這種大幅度承認社會基本權之憲法例，今世已少見。惟必須肯定我國憲法諸項規定有「法規範拘束力」——不論是將諸些「權利」歸屬在屬於「方針條款」，「制度保障」「憲法委託」或是「公法權利」之程度皆然——方符合憲法「最高位階性」之鐵例。

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The Concept of Social Human Rights

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Abstract

Social human rights—rights to an adequate standard of living, housing, employment, life and health insurance, unemployment compensation and a decent education have been garanteed by most of the constitutions of the world since the end of World War I. The goal of such rights is to protect human dignity and to promote humanism.

This concept of social human rights is different from so-called classical, traditional human rights, Traditional human rights, as provided in such documents as the Bill of Rights, are designed to protect individual rights against governmental power and interference. But social human rights are just the opposite: they depend upon positive action by gover

Because of the difficulty in bring about the realization of social rights, it has been suggested that it is the job of lawmarker, not job of the constitution, to create these positive rights for individuals. But social rights are guaranteed formally by our Constitution, and it should the so interpreted, that the individual my enjoy these rights directly by way of the provisions of Constitution itself.