

法學方法與基本權解釋方法導論

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法學作為一種學科或學術，時受到欠缺方法及不具客觀性的質疑，尤其涉及人民基本權利之憲法解釋，經常遭逢流於主觀恣意或政治考量的批判。緣此，本文以基本權解釋為探討核心，嘗試從法學方法的基本觀念與運作要素出發，一則分析法學方法之一般性特徵，另則聚焦於憲法基本權的解釋方法，檢視現行司法解釋下之基本權構造體系，並反思基本權釋義學及對其實務的影響。最後，分別針對自由權與平等權的憲法規範構造，提出憲法解釋（違憲審查）之基本法學方法，以供學術討論與實務運作之參考。

關鍵字：法學方法、基本權利、憲法解釋、比較法學、自由權、平等權

Reflections on the Legal Methodology and the Interpretation of Basic Rights: An Introductory Overview

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ABSTRACT

The study of law, as an academic discipline, can sometimes be questioned for lacking methodology or objectivity, especially concerning the constitutional interpretation of the basic rights of people where these basic rights are subject to the criticisms of subjective or political considerations. Thus, this paper explores the interpretation of basic rights, and attempts to use the fundamental conceptual and operational factors of jurisprudence as its starting point. First, it analyzes the general characteristics of jurisprudence, and second, it focuses on the constitutional interpretation of basic rights, and examines the interpretation of basic rights and the impact of this interpretation on their practice. Last, it presents the basic legal methodology of the constitutional interpretation (constitutional review) of constitutional liberty and equality separately, to provide references for both academic discussion and practical application.

Key Words: Legal methodology, basic rights, constitutional interpretation, comparative law, right to liberty, right to equality