

Principles, Standards, and Applicability of Constitutional Interpretation of Basic Rights

DONG Jian*

Abstract: *For departmental legal norms concerning citizens' basic rights, when multiple interpretations are possible based on individual case circumstances, interpreters representing public authority need to apply the method of constitutional interpretation to screen out the interpretation conclusions that do not violate the Constitution. This means selecting interpretations at the constitutional level that do not overly restrict citizens' basic rights and understanding the specific connotations of legal norms with the principle of "not infringing on citizens' basic rights." The Constitution, as a framework order, does not require interpreters to choose the most constitutionally aligned interpretation among various constitutional interpretations. If a legal norm does not have a constitutional interpretation conclusion in an individual case circumstance, it indicates that the application of that norm in the case is unconstitutional, and the interpreter should avoid applying the legal norm in that case. Regarding judgment standards, interpreters should apply the principle of proportionality to determine whether each legal interpretation conclusion concerning basic rights-related legal norms complies with the Constitution. Out of respect for the legislature, the application of the sub-principles of proportionality should consider the boundaries of interpretative actions.*

Keywords: basic rights ♦ constitutional interpretation ♦ constitutionally aligned interpretation ♦ principle of proportionality

I. How the Subject is Raised

“Constitutional interpretation refers to the selection of an interpretation of a legal provision that does not conflict with or is most aligned with constitutional norms when there are multiple possible interpretations.”¹ When a legal norm has multiple interpretation conclusions in an individual case circumstance, applying the constitutional interpretation method to screen out constitutional interpretation conclusions is crucial for the proper application of the law. Applying the method of constitutional interpretation helps the interpreter make the choice among multiple interpretation conclusions to correctly understand the specific connotations of the legal norm in the individual case. It also helps the interpreter determine whether the application of the legal norm in the case is constitutional. If the interpreter cannot screen out a constitutional interpretation, it means the application of that norm in the case is “unconstitutional,”² and the interpreter should avoid applying that norm. Constitutional interpretation is essential in the process of law application.

Determining whether a legal interpretation conclusion complies with the constitution in an individual case is an important step in applying the method of constitutional interpretation. Considering different judgment standards for constitutional interpretation across different areas of law and the limited length of the paper, the discussion will only be focused on the constitutional interpretation of legal provisions related to citizens' basic rights. In this regard, the current academic community holds different judgment principles for “constitutional interpretation conclusions” in individual cases. Some scholars believe that a constitutional

* DONG Jian (董建), Assistant Researcher, Shandong Academy of Social Sciences.

¹ Huang Mingtao, “The Conceptual Distinction Between Two Types of ‘Constitutional Interpretation’ and the Possibility of Constitutional Interpretation,” *China Legal Science* 6 (2014): 281.

² Lyv Yanbin, “A Study of Several Issues Regarding Unconstitutional Application — Based on Japan’s System of Judicial Review of Unconstitutionality,” in *Constitutionalism Review*, vol. 5, edited by Zhang Qingfu (Beijing: Law Press • China, 2006), 251.

interpretation conclusion is the one that does not violate the constitution,³ and for legal norms related to citizens' basic rights, an interpretation conclusion that does not infringe on citizens' basic rights is a constitutional interpretation. Other scholars point out that a constitutional interpretation conclusion is the one "constitutionally aligned" among various interpretations, i.e., the one that is most aligned with the constitution.⁴ Specifically, for legal norms related to citizens' basic rights, the constitutional interpretation conclusion should be the one that best supports the realization of basic rights. The academic community holds vastly different views on the judgment principles that should be adopted to screen out constitutional interpretation conclusions. There is a lack of clear guidance for applying the method of constitutional interpretation in individual cases in practice. To this end, it is necessary to clarify the judgment principle for constitutional legal interpretation conclusions.

The judgment principle for constitutional interpretation conclusions in individual cases determines the specific judgment standard. If the judgment principle of not infringing on basic rights is adopted, the principle of proportionality should be introduced to judge whether the legal interpretation conclusion is constitutional. If the judgment principle of "constitutional alignment" is adopted for legal norms related to basic rights, the standard for judging whether the legal interpretation conclusion is constitutional should be whether it best realizes the fundamental rights. That is to say, only the interpretation that best meets the requirements of basic rights is the constitutional interpretation. Of course, in addition to not infringing on basic rights, constitutional interpretation conclusions should also satisfy other constitutional principles such as the national protection obligation. However, this paper only discusses legal norms related to basic rights, thus not covering other constitutional principles such as the national protection obligation. Based on the above considerations, this paper starts with the judgment principle of constitutional interpretation and attempts to argue for the legitimacy and feasibility of using "not infringing on citizens' basic rights" as the judgment principle of constitutional interpretation related to citizens' basic rights. It excludes the requirement to seek "constitutionally aligned" interpretation conclusions in constitutional interpretation, and introduces the principle of proportionality as a specific judgment standard for the principle of "not infringing on citizens' basic rights." The author then tries to construct the application of the sub-principles of proportionality in constitutional interpretation by meeting the requirement that legal interpretation should fully respect the intent of the legislature. It should be noted that although it has become relatively clear to apply the principle of proportionality in constitutional review detached from individual cases, there are obvious differences in the applicability of the principle of proportionality in constitutional interpretation in individual cases and in constitutional review detached from individual cases. Specifically, constitutional interpretation in individual cases is to evaluate and screen the interpretation conclusions obtained through traditional interpretation methods such as literal interpretation and teleological interpretation. The application of the principle of proportionality should also consider the specific boundaries of interpretative actions, that is, not to break the value order the legislature has chosen to form. Constitutional review detached from individual cases is a constitutional evaluation of legislative actions, which is no longer bound by the legal order,

³ For related viewpoints, see: Liu Jianlong, "The True Nature and Debate of the Principle of Constitutional Interpretation," *Tsinghua University Law Journal* 1 (2011); Huang Mingtao, "The Conceptual Distinction Between Two Types of 'Constitutional Interpretation' and the Possibility of Constitutional Interpretation," *China Legal Science* 6 (2014); Du Qiangqiang, "The Practice of Constitutional Interpretation in China's Courts," *Chinese Journal of Law* 6 (2016); Du Qiangqiang, "The Classification of Unconstitutional Application of Law and the Functional Allocation of Constitutional Interpretation," *The Jurist* 1 (2021); Li Haiping, "The Function of Constitutional Interpretation," *Science of Law (Journal of Northwest University of Political Science and Law)* 2 (2021); Wang Shucheng, "On the Method of Constitutional Interpretation," *Chinese Journal of Law* 5 (2021).

⁴ For related viewpoints, see: Jiang Fudong, "Constitutional Interpretation in the Judicial Process," *Journal of National Prosecutors College* 4 (2008); Zhou Gangzhi, "On Constitutional Interpretation," *Zhejiang Social Sciences* 1 (2010); Huang Hui, "Constitutional Interpretation and Its Theoretical Review," *China Legal Science* 1 (2014); Zhang Jinbang, "The General Legal Supervision Power of the Procuratorates: Normative Connotation, Constitutional Mechanism and Adjustment Direction — Also on the Amendment of the Former Article 5 of the Organic Law on the People's Procuratorates," *Journal of Gansu Political Science and Law Institute* 4 (2019).

and the principle of proportionality only needs to be applied under the constitutional order. If the legitimacy of each legal interpretation conclusion based on individual cases is evaluated by applying the principle of proportionality only under the constitutional order, the possible additional content beyond the intent of the legislature in the legal interpretation conclusions might be omitted. Therefore, the specific application of the principle of proportionality in individual cases is based on the premise of not overstepping the intent of the legislature. On such basis, it is necessary to clarify the specific application of the principle of proportionality in constitutional interpretation in individual cases.

II. Judgment Principle for Constitutional Legal Interpretation Conclusions in Individual Cases

A. Judgment principle of not infringing on citizens' basic rights

For legal norms related to citizens' basic rights, different legal interpretation conclusions in individual cases may impose varying degrees of restriction on rights. As for legal norms that directly restrict citizens' basic rights, the legislature achieves its legislative purpose by restricting the rights. The interpreter's interpretation conclusions on uncertain concepts may affect the subject and scope of the rights. Therefore, different interpretation conclusions also impose different degrees of restriction on basic rights. Take the case of "cousins getting sterilized for marriage"⁵ as an example. According to the provisions of Article 7-1 of the *Marriage Law*, direct blood relatives and collateral blood relatives within three generations were prohibited from getting married.⁶ The parties in this case were cousins, subject to this restriction. Although the parties underwent sterilization surgery in order to complete the marriage registration, the local civil affairs bureau and the court still refused to register their marriage based on this provision. The focus of the dispute in this case is: Do the cousins who have undergone sterilization still fall within the scope of the restriction of this provision? If different interpretation methods lead to different scopes of rights holders subject to the restriction, different interpretation conclusions will impose different degrees of restriction on citizens' rights. Specifically, according to the literal interpretation method, the subjects restricted by Article 7-1 of the *Marriage Law* include all collateral blood relatives within three generations, without any exceptions. According to the teleological interpretation method, the purpose of restricting the marriage of close relatives within three generations is to prevent the birth of unhealthy offspring, so the subjects regulated by Article 7-1 of the *Marriage Law* are limited to close relatives within three generations who have the ability to bear children. In the case of "cousins getting sterilized for marriage," there are no parties with the ability to bear children. Though the parties' freedom to enter into marriage is still restricted by Article 7-1 under the literal interpretation conclusion, this restriction does not exist under the teleological interpretation conclusion. The parties faced different degrees of restrictions on freedom under the literal interpretation and teleological interpretation conclusions.

The interpretation conclusions of the provisions on the fulfillment of the national protection obligation also impose different degrees of restriction on rights. In such provisions, although the legislature intends to protect the rights of one party, it often comes at the cost of

⁵ The two plaintiffs in this case are cousins. Their parents are siblings of the same mother. In September 2007, they went to the local marriage registration office to apply for marriage registration. After learning that the two were cousins, the marriage registration office refused to issue them a marriage certificate, citing the legal prohibition on marriages between close relatives to ensure the health of future generations. Subsequently, the female party underwent a sterilization surgery and obtained a certificate as proof. In January of the following year, the two went to the marriage registration office again requesting marriage registration, but the office still refused them for the same reason. They then applied for administrative reconsideration, but the result remained the same. In May 2008, the cousins filed an administrative lawsuit with the People's Court of Yancheng District, Luohe City, Henan Province, against the Civil Affairs Bureau for inaction, and demanded that the marriage registration department issue them a marriage certificate. After hearing the case, the court ruled that the provisions of Article 7-1 of the *Marriage Law* are mandatory, and that even though the plaintiff had undergone sterilization, the aforementioned provisions should still apply. Therefore, the court dismissed their claims.

⁶ Article 7 of the *Marriage Law* stipulates: "No marriage may be contracted under any of the following circumstances: (1) if the man and the woman are lineal relatives by blood, or collateral relatives by blood up to the third degree of kinship; or (2) if the man or the woman is suffering from diseases which are regarded by medical science as rendering a person unfit for marriage."

restricting the rights of the other party. If there are different interpretations of the protection duty clause that result in different levels of protection for one party's rights, it implies that there are also different levels of restriction on the other party's rights. In the case of "Wang Deqin vs. Yang Desheng, Luzhou City No. 2 Automobile Team Traffic Accident Compensation Dispute" (hereinafter referred to as the "Wang Deqin" case), the plaintiff Wang Deqin's (one year old) father Wang Xianqiang was killed in a traffic accident by a car driven by Yang Desheng. According to Article 119⁷ of the *General Principles of the Civil Law*, the tortfeasor Yang Desheng should pay the expenses of Wang Xianqiang's funeral and necessary living expenses of the persons Wang Xianqiang supported when he was alive. At the time of Wang Xianqiang's accidental death, his girlfriend, with whom he had been living for years, was pregnant. Whether Wang Deqin, Wang Xianqiang's posthumous child, falls under the category of the "deceased's dependents" as defined in Article 119 became the core dispute in this case. It is a typical national protection obligation clause: when a civil tort results in serious consequences, the legislature provides relief for the rights of the victim and the persons he/she supported by restricting the property rights of the tortfeasor. According to the literal interpretation method, the "deceased's dependents" only include those who were actually supported by the deceased when he/she was alive, and do not include the unborn fetus. However, according to the teleological interpretation method, in order to achieve the purpose of this clause to assist the vulnerable, the "deceased's dependents" should not only include those who were actually supported by the deceased when he/she was alive, but also include his/her children who were yet to be born and supported. Protecting the victim also means restricting the tortfeasor's rights. The higher the level of protection for the victim, the more compensation the tortfeasor has to pay, and the greater the restriction on the property rights of the tortfeasor. In comparison, the literal interpretation conclusion provides a lower level of protection for the victim's rights, as the tortfeasor is not required to compensate for the necessary living expenses of the fetus. Its restriction on the tortfeasor's property rights is also less than that of the teleological interpretation conclusion. It is clear that the interpretation conclusions of the national protection obligation clause also have varying degrees of restriction on rights.

The degree to which different interpretation conclusions restrict citizens' rights at the legal level will only be evaluated as constitutional if they do not infringe on citizens' basic rights. In the process of constitutional evaluation, the rights restricted by the legal norm are transformed from rights at the legal level to basic rights at the constitutional level. In fact, basic rights at the constitutional level and rights at the legal level are not mutually exclusive or distinct. Taking the relationship between civil rights and basic rights as an example, there is no fundamental difference between the two, and they are related in terms of subject, content and value.⁸ "Basic rights and civil rights are simply different devices designed to fend off infringement on the same legal interests from different directions... Basic rights protect against infringement by the state, while citizens' rights protect against infringement by individuals."⁹ When public power is the subject restricting the rights at the legal level, in the process of evaluating the legitimacy of the restrictive action, rights at the legal level will automatically elevate to basic rights, and the illegitimate restriction by public power on legal rights constitutes an infringement of basic rights. The restriction on citizens' rights by legal interpretation conclusions in individual cases can be seen as the legislative power's specific restriction on basic rights in the individual cases, so the restriction on citizens' rights by

⁷ Article 119 of the *General Principles of the Civil Law* stipulates: "Anyone who infringes upon a citizen's person and causes him physical injury shall pay his medical expenses and his loss in income due to missed working time and shall pay him living subsidies if he is disabled; if the victim dies, the infringer shall also pay the funeral expenses, the necessary living expenses of the deceased's dependents and other such expenses."

⁸ Li Haiping, "The Function of Constitutional Interpretation," *Science of Law (Journal of Northwest University of Political Science and Law)* 2 (2021): 49.

⁹ Wang Kai, "Conflicts of Basic Rights and Solutions," *Chinese Journal of Law* 6 (2021): 43.

interpretation conclusions undoubtedly comes from public authorities, and such restriction should of course be limited by not infringing on basic rights.

In the above-mentioned case of “cousins getting sterilized for marriage,” the marriage freedom at the civil law level was restricted to varying degrees under different legal interpretation conclusions. The restriction on rights by each interpretation conclusion comes from the interpretative power of the interpreter. Therefore, to fend off the infringement by the public power of interpretation, the marriage freedom at the civil law level transforms into the basic right of marriage freedom at the constitutional level. The restriction on rights by each interpretation conclusion should not go as far as infringing on the marriage freedom at the constitutional level. Otherwise, the restriction will no longer be legitimate, and the legal interpretation conclusions will not be evaluated as legitimate accordingly. It should be pointed out that the teleological interpretation conclusion of Article 7-1 of the *Marriage Law* in this case has narrowed the scope of the applicable subjects, essentially excluding the restriction on the marriage freedom of the sterilized cousins. This means that, apart from the literal interpretation conclusion, there are still other possible interpretation conclusions for Article 7-1 of the *Marriage Law* in this case. Interpreters should not rigidly interpret this provision based on the literal interpretation conclusion. In other words, the literal interpretation conclusion of this provision does not absolutely apply to this case, but interpreters should not directly determine the application of the provision as “unconstitutional” just because it is not applicable for this case.¹⁰

On such basis, interpreters should screen out the interpretation conclusions that do not infringe on citizens’ basic rights from those that restrict citizens’ rights to varying degrees. The restriction on rights at the legal level by each interpretation conclusion can only be evaluated as constitutional and become the constitutional interpretation conclusion on the premise of not infringing on basic rights. It can be seen that the legal application of constitutional interpretations is based on the ultimate interpretation of the legal norm by the constitution and does not directly address the dispute over the rights and obligations between the parties.¹¹ By excluding unconstitutional interpretation conclusions that infringe on citizens’ basic rights, interpreters achieve constitutional control over legal norms in individual cases.

B. Judgment of violation of constitution can be incorporated into constitutional interpretation

Constitutional interpretation in individual cases under the judgment principle of “not infringing on citizens’ basic rights” “clearly contains elements of constitutional review.”¹² Specifically, constitutional interpretation under the principle of “not infringing on citizens’ basic rights” aims to judge whether the legal interpretation conclusion is constitutional, requiring the interpreter to choose an interpretation conclusion that is aligned with the constitution from the possible interpretations, in order to avoid infringement on citizens’ basic rights by applying an unconstitutional legal interpretation conclusion. Based on the understanding that only a constitutional review authority can conduct constitutional review, some scholars in China believe that constitutional interpretation is merely a constitutional review technique and cannot be incorporated into the method of constitutional interpretation in individual cases.¹³ According to this view, the screening of legal interpretation conclusions

¹⁰ For related viewpoints, see Du Qiangqiang, “The Classification of Unconstitutional Application of Law and the Functional Allocation of Constitutional Interpretation,” *The Jurist* 1 (2021): 74.

¹¹ Li Haiping, “The Function of Constitutional Interpretation,” *Science of Law (Journal of Northwest University of Political Science and Law)* 2 (2021): 49.

¹² *Ibid.*, 51.

¹³ For related viewpoints, see Zhang Xiang, “Two Types of Constitutional Cases: An Analysis of the Potential Impact of the Constitution on the Judiciary from the Perspective of Constitutional Interpretation,” *China Legal Science* 3 (2008); Hu Xiaohua, “Breaking Free from the Myth of Unconstitutional Review — An Analysis of the Path for Judicialization of Constitution in Contemporary China,” *Journal of Xiangtan University (Philosophy and Social Sciences)*, vol. 33, no. 4 (2009); Xie Libin, “The Constitutionalization of German Law and Its Implications for China,” *Zhejiang Social Sciences* 1 (2010); Liu Lianjun, “What is Constitutional Interpretation: Nature, Legitimacy, Limitations and Application,” *Journal of Southwest*

based on the principle of “not infringing on citizens’ basic rights” should also not be a judgment standard for constitutional interpretation conclusions in individual cases.

The reason why scholars in China reject the constitutional review attribute of constitutional interpretation in individual cases has something to do with their narrow understanding of constitutional review. Scholars holding this view mistakenly believe that a constitutional review is one that is conducted only when there is a dispute over a legal norm to be unconstitutional or when the parties of the case request for a constitutional review of a legal form.¹⁴ Furthermore, the academic community avoids the discussion about the constitutional review attribute of constitutional interpretation due to their concern that the interpreters, such as administrative organs and courts, which are public power organs other than the constitutional review authorities, do not have the power to interpret the constitution and make constitutional evaluations. The author believes that, according to the provisions of the *Constitution* of China, the Standing Committee of the National People’s Congress does not have the exclusive power to interpret the constitution. Other public power organs also have the right to judge whether the legal interpretation conclusions are constitutional, as long as they do not make a declaration that they are unconstitutional.

First, interpreters have the right to interpret the constitution. When interpreters apply the method of constitutional interpretation, they are interpreting the constitution, not the law. Specifically, the method of constitutional interpretation is not a superior interpretation method that takes precedence over the traditional legal interpretation methods. It is merely a supplement to the latter aiming to screen traditional legal interpretation conclusions based on the constitution as a standard. In this process, traditional legal interpretation methods have already completed the interpretation of the law. As scholar Huang Mingtao said: “Given that the pure interpretation of the law has been completed at this point, the remaining task of comparing the interpretations with constitutional norms is actually the interpretation of the constitution.”¹⁵ The interpretation of the constitution in constitutional interpretation does not cease to exist simply because the target of interpretation is directed to the legal provisions. According to Article 67 of the *Constitution*, only the Standing Committee of the National People’s Congress has the power to interpret the constitution.¹⁶ However, this provision should be understood as the NPC Standing Committee having exclusive power to interpret the constitution only at an abstract level.¹⁷ Otherwise, whenever there are multiple possible interpretations of a legal norm in an individual case that require constitutional interpretation, a request has to be made to the NPC Standing Committee. Therefore, the power to interpret the constitution in individual cases is not exclusive to the NPC Standing Committee under Article 67 of the *Constitution*.¹⁸ In addition, “from a legal perspective, judges interpret the constitution during the application of law due to the conceptual and linguistic gaps, conflicts and loopholes between the constitution and the law. They don’t aim to establish a final interpretation of the constitution.”¹⁹ The NPC Standing Committee can still establish a final interpretation conclusion for individual cases. On such basis, interpreters have the right to interpret the constitution in individual cases.

University of Political Science and Law, vol. 12, no. 4 (2010); Liu Zhaochen, “The Methodological Construction of Constitutional Interpretation of Legal Norms,” *Chinese Journal of Law* 6 (2020): 81.

¹⁴ Li Haiping, “The Function of Constitutional Interpretation,” *Science of Law (Journal of Northwest University of Political Science and Law)* 2 (2021): 51.

¹⁵ Huang Mingtao, “The Conceptual Distinction Between Two Types of ‘Constitutional Interpretation’ and the Possibility of Constitutional Interpretation,” *China Legal Science* 6 (2014): 288.

¹⁶ Article 67 of the *Constitution* stipulates: “The Standing Committee of the National People’s Congress shall exercise the following functions and powers: (1) interpreting the Constitution and oversee its enforcement...”

¹⁷ Huang Mingtao, “The Conceptual Distinction Between Two Types of ‘Constitutional Interpretation’ and the Possibility of Constitutional Interpretation,” *China Legal Science* 6 (2014): 297.

¹⁸ Wang Kai, “Reflections on Constitutional Interpretation,” *The Jurist* 1 (2015): 53.

¹⁹ Cai Lin, “Constitutional Interpretation and Its Interpretative Rules — Discussion with Dr. Zhang Xiang,” *Zhejiang Social Sciences* 10 (2009): 54.

Second, the interpreter's screening of legal interpretation conclusions in individual cases does not involve declaring the application of a legal norm unconstitutional, nor does it encroach on the exclusive power of the constitutional review organ. Under China's constitutional review model, the representative body as the main body of constitutional review, only has the power of "re-examination," "terminal review" or "final review" similar to the "ruling monopoly in the negative sense" enjoyed by the German Federal Constitutional Court.²⁰ In other words, the representative body in China is not the sole authority with constitutional review power. However, it has a monopoly on the final declaration of whether a law is unconstitutional and is the only entity that can declare a law unconstitutional. Even if the interpreter believes that certain laws and legal documents do not have an interpretation conclusion that is aligned with the constitution in an individual case, i.e., applying them in the individual case is unconstitutional, the interpreter does not have the power to change or revoke these laws,²¹ but can only refuse to apply the legal norms in that case. When the interpreter makes a constitutional evaluation of legal interpretation conclusions by avoiding the application of specific legal norms, it does not infringe on the exclusive power of the constitutional review organ to make a "final review."

Therefore, the screening of legal interpretation conclusions based on the principle of "not infringing on citizens' basic rights" is not only a constitutional review technique, but also a form of constitutional interpretation in individual cases. The exclusion of unconstitutional legal interpretation conclusions not only binds the constitutional review authority, but also binds the interpreter in the interpretation of legal norms in individual cases.

C. "Constitutional alignment" should not be applied as the judgment principle

As mentioned earlier, many scholars in China believe that constitutional interpretation requires interpreters to choose the one most aligned with the constitution from multiple possible interpretation conclusions to understand the connotation of legal norms. Compared to the principle of "not infringing on citizens' basic rights," which is not unconstitutional, the principle of "constitutional alignment" places higher demands on interpreters. Interpreters should not only exclude unconstitutional interpretation conclusions that infringe on citizens' basic rights, but also determine which interpretation conclusion is most aligned with the constitution. Although the two principles do not conflict in the application of constitutional interpretation, the application of different principles determines whether interpreters need to continue screening for "constitutionally aligned interpretations" after excluding unconstitutional legal interpretation conclusions. Different judgment principles impose different degrees of restrictions on interpretation power, making it necessary to clarify the judgment principle for constitutional interpretation conclusions. The author believes that the judgment principle of "constitutional alignment" should not be applied in the method of constitutional interpretation. The main reason is that the constitution, as a framework order, does not require either legislation or constitutional interpretation to be most constitutionally aligned. If the judgment principle of "constitutional alignment" is applied, it would mean that the constitution, by requiring interpreters to choose the most constitutionally aligned interpretation conclusion, once again restricts legislation. This undoubtedly infringes on the space reserved for the legislature to form democracy by the constitution.

Through applying the method of constitutional interpretation, the constitutional will is manifested at the level of departmental legal norms. "Overall, constitutional interpretation is the process where the value order represented by the constitution is integrated into the entire system of legal norms."²² The essence of this interpretation method is "to make legal

²⁰ Zhao Juan, "On 'Strengthening' Filing Review Through Court Review — From a Case of Citizen's Recommendation for Review," *Jiangsu Social Sciences* 1 (2021): 103.

²¹ Chen Zheng, "Possibility and Necessity of Unconstitutional Review by Chinese Courts," *Study & Exploration* 5 (2011): 107.

²² Du Qiangqiang, "The Practice of Constitutional Interpretation in China's Courts," *Chinese Journal of Law* 6 (2016): 124.

interpretation aligned with the basic value decisions of the constitution.”²³ From the perspective of the degree of realization of the constitutional value order, based on the principle of “not infringing on citizens’ basic rights,” the constitution only requires that legal interpretation conclusions do not violate its own order and do not require additional realization over the bottom-line standard. In contrast, the principle of “constitutional alignment” places higher demands on the implementation of the restrictive order in departmental laws, and in addition to non-unconstitutionality, it also needs to realize and implement the constitutional order to the greatest extent possible.

However, the constitution, as a framework order, always needs to exercise restraint over the legislative power. The status of the constitution as a basic law, the highly abstract nature of its provisions, and the complexity of the amendment procedure all contribute to its inability to regulate every detail of social life. The constitution only defines the bottom-line requirements and expectations for the exercise of power. Under the framework order constructed by the constitution, the legislature enjoys the space of democracy formation, and interpreters enjoy the space for interpreting legal norms without interference from the constitution. The constitution also needs to exercise restraint over legal interpretation conclusions that reflect the interpretation power in individual cases, and it only requires that each interpretation conclusion does not violate the constitution. This means that, as long as the interpretation conclusion does not violate the constitution, it meets the framework expectation of the constitution. It is not the interpretation conclusion with the maximum implementation of the constitutional will that is constitutionally aligned. If constitutional interpretation requires the interpreter to choose the interpretation conclusion most aligned with the constitution, it undoubtedly limits the space for the formation of legislative power beyond the constitution by restricting the interpretation power. No such limiting requirement can be derived from the constitutional framework order.

Therefore, for norms related to citizens’ basic rights, the interpreter only needs to choose one of the constitutional interpretation conclusions to understand the connotation of the legal text. As for which constitutional interpretation conclusion to choose, the interpreter’s decision should be respected without too much intervention by the constitution.

III. The Principle of Proportionality Guarantees “Not Infringing on Citizens” Basic Rights

A. Apply the principle of proportionality as the judgment standard

Germany was the first to apply the principle of proportionality in the constitutional field. In the famous “pharmacy decision,” the German Federal Constitutional Court constructed the principle of proportionality based on the principles of legitimate purpose, appropriateness, and necessity, providing a feasible solution for the application of the principle of proportionality at the constitutional level.²⁴ Since then, the principle of proportionality has gradually established its constitutional status in Germany and become the standard for reviewing the legitimacy of all state powers’ restrictions on citizens’ basic rights, which is a “restriction on restrictions.” In other words, if the state power’s restriction on citizens’ basic rights does not comply with the principle of proportionality, it constitutes an excessive intervention in basic rights, and such a restrictive action is evaluated as an infringement of basic rights at the constitutional level. With its establishment at the constitutional level, the principle of proportionality is no longer just a discretionary standard of the administrative power. As a standard for reviewing the legitimacy of restrictions on basic rights, it applies to all circumstances where state power restricts citizens’ basic rights.

China’s *Constitution* also implies the principle of proportionality. From the normative perspective, Article 51 of China’s *Constitution* clearly stipulates: “When exercising their

²³ Huang Maorong, *Juridical Methods and Modern Civil Law* (Beijing: China University of Political Science and Law Press, 2001), 287.

²⁴ Xie Libin, *Pharmacy Decision in Selected Cases of German Constitutional Law (Collection I): General Theory of Basic Rights*, edited by Zhang Xiang (Beijing: Law Press • China, 2012), 66.

freedoms and rights, citizens of the People's Republic of China shall not undermine the interests of the state, society or collectives, or infringe upon the lawful freedoms and rights of other citizens." Accordingly, for citizens, as long as their actions neither harm the interests of the state, society, the collective, nor infringe on the lawful freedoms and rights of other citizens, they are free to exercise their personal rights. This shows that the constitution does not prohibit the state from restricting citizens' basic rights, but prohibits the state from restricting basic rights illegitimately.²⁵ This is aligned with the principle of proportionality. Some scholars have also pointed out that the "restriction of rights" clause established in Article 51 of China's *Constitution* imposes a responsibility on the state to exercise its power to restrict rights, which reflects the idea of proportionality.²⁶

In the field of private law, there is also room for the application of the principle of proportionality. As mentioned earlier, the principle of proportionality serves as a "restriction on state power's restrictions" on citizens' basic rights. "Civil law norms are the product of the state's legislative power, and the principle of proportionality applies without exception wherever state power is exercised, particularly in the activities of the legislature in private law."²⁷ "Such intervention in and restriction of private rights must not exceed the necessary limits to achieve the relevant purpose. Otherwise, it violates the requirement of preventing excessive intervention emphasized by the principle of proportionality and should not be recognized as valid."²⁸ When there are multiple interpretation conclusions for a civil law norm, each interpretation conclusion restricts citizens' basic rights to varying degrees. Since such restriction comes from public power organs, the restriction of citizens' basic rights by each interpretation conclusion of the civil law norm is also subject to the principle of proportionality.

Although the screening of interpretation conclusions for the national protection obligation clause is also based on the principle of not infringing on basic rights, it differs from the screening of interpretation conclusions for clauses that directly restrict basic rights. When judging whether an infringement occurs, in addition to introducing the principle of proportionality, it is also necessary to determine whether the legal interpretation conclusion works to the principle of the national protection obligation. The reason is that if the state imposes a restriction on a certain basic right while realizing its national protection obligation, it implies that there are conflicting legal interests. The legislature protects one of these legal interests by enacting the protection obligation clause. Therefore, the screening of legal interpretation conclusions should also apply the principle of the national protection obligation. According to the "Wang Deqin" case, the literal interpretation conclusion of Article 119 of the *General Principles of the Civil Law* excludes persons who should be actually supported by the deceased from the category of "deceased's dependents." This conclusion does not provide the protected persons with anticipated possibility²⁹ and "can hardly be regarded as aligning with the positioning of the state's duty to protect set out in Article 49 of the *Constitution*."³⁰ Since the realization of the protection obligation involves restrictions on citizens' property rights, the interpreter should further judge whether the interpretation conclusion is constitutional, i.e., whether the interpretation conclusion that meets the requirement of the national protection obligation excessively restricts property rights. If the interpreter cannot screen out a legal interpretation conclusion that works to both the principle of the national protection obligation and the principle of not infringing on citizens' basic rights, it means that

²⁵ Chen Zheng, *Boundary Between State Power and Citizens' Rights* (Beijing: Tsinghua University Press, 2015), 10.

²⁶ Liu Quan, "A New Interpretation of the Chinese Constitutional Basis of the Principle of Proportionality," *Political Science and Law* 4 (2021): 78.

²⁷ Zheng Xiaojian, "Application and Manifestation of the Principle of Proportionality in Civil Law," *China Legal Science* 2 (2016): 149.

²⁸ *Ibid.*

²⁹ For the judgment standard of whether the legislature has fulfilled the national protection obligation, see Chen Zheng, "Prohibition of Inadequate Protection in the Constitution — A Comparative Argument with the Principle of Proportionality," *Chinese Journal of Law* 4 (2021).

³⁰ Du Qiangqiang, "The Practice of Constitutional Interpretation in China's Courts," *Chinese Journal of Law* 6 (2016): 115.

the application of this legal norm in this case is not constitutional, and the interpreter should avoid declaring unconstitutional application by refusing to apply this clause. The judgment of the legitimacy of the restriction on property rights by the teleological interpretation conclusion of Article 119 of the *General Principles of the Civil Law* will be further analyzed below.

B. Evaluation target of the principle of proportionality

The prerequisite for a legal norm to be applicable to an individual case is not literally unconstitutional, i.e., the legal norm itself is constitutional and can pass the constitutional review abstracted from the individual case. The judgment of a legal norm to be literally unconstitutional is not based on specific case facts, but only in an abstract way. If a norm is literally unconstitutional, it means the declaration that it is unconstitutional will radiate to all possible applications of the norm. There can't be any constitutionally aligned legal interpretation of the norm, including for the individual case. In this context, it is only possible to judge whether legal interpretation conclusions are constitutional in individual cases if legal norms themselves are constitutional. Constitutional legal norms are the prerequisite to judge whether legal interpretation conclusions are constitutional in individual cases. Before applying a legal norm, the interpreter should first confirm that the legal norm itself is constitutional, and then use the principle of proportionality as the standard to screen if the legal interpretation is constitutional in the individual case.

As an interpretation method after a legal norm is confirmed to be abstractly constitutional, constitutional interpretation in individual cases makes evaluation targets of the principle of proportionality different in individual cases and abstract literal reviews. Specifically, the legitimacy of the purpose of restricting basic rights by legal norms and the proportionality between the restriction purpose and restriction means have already been verified in the abstract constitutional judgment. When evaluating the legal interpretation conclusion in an individual case, the interpreter does not need to analyze whether the legislature's purpose and means chosen to achieve it comply with the principle of proportionality. Therefore, the evaluation targets of the principle of proportionality in the individual case are the concretized restriction purpose, means, and the proportionality between the two based on the circumstances of the case. Taking the interpretation conclusion of Article 7 of the *Marriage Law* in the case of "cousins getting sterilized for marriage" as an example, when evaluating whether Article 7-1 itself is constitutional, the evaluation target of the principle of proportionality is the restriction means (prohibiting marriage) and the restriction purpose (preventing the birth of unhealthy offspring by close relatives) of the legal norm. However, in the case of "cousins getting sterilized for marriage," as far as the purpose of restricting marriage freedom is concerned, the evaluation target should be the purpose indicated by each legal interpretation conclusion. As far as the restriction means is concerned, the restriction means under evaluation is no longer the restriction of marriage freedom by prohibiting it, but rather the different means of restricting marriage freedom that are concretized in the individual case. Specifically, the restriction means in the literal interpretation and teleological interpretation are "restricting all cousins to get married" and "restricting only cousins with the ability to bear children to get married," respectively. The interpreter should apply the principle of proportionality to evaluate the concretized restriction means. If the two evaluation targets of the principle of proportionality in individual cases and abstract literal reviews are confused, it will lead to the interpreter's repeated judgment of whether the legal norm itself is constitutional when evaluating whether the legal interpretation is constitutional in the individual case, thus failing to screen out the constitutional interpretation conclusion in the individual case.

Furthermore, although constitutional interpretation and unconstitutional application in individual cases are closely related, there are still some differences between them. They are closely related in: When all possible legal interpretation conclusions constitute an infringement on basic rights, the application of the legal norm in the individual case is

unconstitutional. When the uncertain concepts in the legal norm that needs to be interpreted in the individual case have both constitutional and unconstitutional legal interpretation conclusions, the constitutional interpretation conclusion should be chosen to avoid declaring the application of the norm unconstitutional in the individual case. It should be noted that, unlike the judgment of unconstitutional application, the method of constitutional interpretation is not intended to directly answer whether the legal norm can be constitutionally applied to the individual case or not. In individual cases, the interpreter can only judge the true connotation of the legal norm after completing the screening of the legal interpretation conclusions. The person applying the legal norm then needs to “shift the gaze” between the major premise and the case facts to determine whether the major premise can be “subsumed” into the case facts. If the method of constitutional interpretation is directly regarded as a judgment on whether the specific norm can be constitutionally applied to the case, the interpretation conclusions drawn from the constitutional screening would be either “applicable to the case” or “not applicable to the case,” which ignores the role of the method of constitutional interpretation in defining the connotation of the uncertain concepts.

The method of constitutional interpretation for defining the connotation of uncertain concepts is prominently demonstrated in the case of “Ding Xiaochun vs. Nantong Municipal Education Bureau and Jiangsu Fine Arts Publishing House for copyright infringement” (hereinafter referred to as the “Ding Xiaochun” case). The “Ding Xiaochun” case concerns the statutory licensing system for intellectual property in the education industry. Specifically, the *Copyright Law* stipulates that when compiling textbooks for compulsory education and national education planning, it is permissible to directly compile already published works into textbooks without the permission of the copyright owner.³¹ The plaintiff Ding Xiaochun argued that the books published by Jiangsu Fine Arts Publishing House did not fall under the category of “textbooks” as defined in Article 25-1 of the *Copyright Law*. Therefore, the interpretation of the uncertain concept of “textbooks” became the focus of the dispute in this case. The defendant and the court handling the case interpreted “textbooks” using the literal interpretation method and the systematical interpretation method, respectively: the defendant argued that the literal interpretation method should be applied, i.e., all books compiled and published for the implementation of nine-year compulsory education and national education planning fall under the category of “textbooks” under Article 25 of the *Copyright Law*. However, Nantong Intermediate Court handling the case pointed out that the systematical interpretation method should be applied. The interpretation of “textbooks” in the clause under dispute should be consistent with the scope of textbooks defined in the *Charter of the Review Committee of National Primary and Secondary School Textbooks* (hereinafter referred to as the “*Charter*”), i.e., only books compiled with the approval of the central or provincial education administrative departments, reviewed by the discipline review committee, submitted to the textbook review committee for approval, and included in the national ordinary primary and secondary school teaching materials catalog by the State Education Commission fall under the category of “textbooks.” The court pointed out that: “Article 23-1 of China’s *Copyright Law* regarding the application of statutory licensing is intended to balance copyright protection with the needs of public interest, but this clause only imposes a moderate restriction on copyright, and the textbooks to which this clause applies do not refer to all teaching materials used in primary and secondary schools.”³² Nantong Intermediate Court’s interpretation of “textbooks” has a constitutional connotation, as it aims to prevent an

³¹ Article 25-1 of the *Copyright Law* stipulates that: “Textbooks compiled and published for the purpose of implementing compulsory education and national education planning may compile in the textbooks, without the permission of the copyright owner, excerpts of works, short literal works, musical works, or single pieces of art, photographic or graphic works that have already been published, provided that royalties have been paid to the copyright owner in accordance with the regulations, that the names of the authors and the titles of the works are specified, and that the compilation does not infringe on other rights enjoyed by the copyright owner under this law.”

³² “Ding Xiaochun vs. Nantong Municipal Education Bureau and Jiangsu Fine Arts Publishing House for Copyright Infringement,” in *Gazette of the Supreme People’s Court of the People’s Republic of China* 9 (2006).

overly broad interpretation of the concept that would unduly restrict copyrights. Although different interpretation conclusions lead to different judgments on whether the books compiled by the defendant fall under the category of “textbooks,” the method of constitutional interpretation does not directly define whether the books compiled by the defendant are subject to Article 25-1 of the *Copyright Law*. Instead, it responds to the question by clarifying the concept of “textbooks.” In this context, the method of constitutional interpretation should not be equated with the judgment of unconstitutional application.

IV. Application of the Principle of Proportionality in Constitutional Interpretation

Since the constitutional interpretation in individual cases makes constitutional evaluation and screening of the interpretation conclusions drawn from the traditional interpretation methods such as literal interpretation and teleological interpretation, the application of the principle of proportionality as a judgment standard should also consider the specific boundaries of interpretative actions. It should not break the value order that the legislature has chosen to form. If an interpretation method “goes beyond the fundamental value decisions and normative core of legislation to forcefully attribute any law content clearly not intended by the legislature and then declares it constitutional, it is, rather than being in a position to show the greatest possible respect for the intent of the legislature, a way of the judiciary legislating over the position of the legislature, which is no different from a benevolent tyranny over the legislature.”³³ In order to avoid falling into the majoritarian difficulty, the pursuit of the legitimacy of constitutional interpretation has shifted from seeking the “constitutional authority” based on general literal principles to seeking the “legislature authority with democratic legitimacy.”³⁴ Therefore, the specific connotation of each sub-principle of proportionality should be applied on the premise of respecting the intent of the legislature.

A. Principle of legitimate purpose

The principle of legitimate purpose has different standards in different legal activities. Generally, it requires that public power organs’ restrictions on citizens’ basic rights should have a legitimate purpose. However, the specific standard for “legitimate purpose” varies in different legal activities. In legislative activities, the legislature, as the creator of the constitutional goals, should set the purpose in line with the constitution. At the same time, to avoid political jurisprudence becoming a fortress of legal dogmatics,³⁵ it is not advisable to make excessive criticisms of the legislature’s purpose of restricting basic rights. As much leeway as possible should be given to the legislature’s judgment, and any purpose not explicitly or implicitly prohibited by the constitution should be considered a “legitimate purpose.”³⁶ In contrast, although each legal interpretation conclusion is an extension of legislative actions in individual cases, such extension is achieved through the application of legal interpretation methods by the interpreter. Legal interpretations are essentially the interpreter’s deduction of the legislature’s intent based on the individual case circumstances. In this context, the legitimacy of restricting basic rights by each legal interpretation is not from realizing the goals that are not prohibited to be realized by the constitution, but rather from respecting the intent of the legislature and maintaining consistency with the legislative order. Otherwise, the interpretative actions will create a new legal purpose and result in legal renewal. As mentioned earlier, only legal norms that are themselves constitutional require the screening of legal interpretation conclusions in individual cases. Therefore, the purpose of restricting basic rights by the law itself is already constitutional, and the interpreter’s correct interpretation of the purpose of restriction on the premise of respecting the intent of the legislature satisfies the principle of legitimate purpose.

³³ Interpretation No. 585 of the “Council of Grand Justices” of the “Judicial Yuan,” Taiwan.

³⁴ Wang Shucheng, “On the Method of Constitutional Interpretation,” *Chinese Journal of Law* 5 (2012): 63.

³⁵ Chen Zheng, “On the Constraints of the Principle of Proportionality on Legislative Power and its Limits,” *China Legal Science* 3 (2020): 146.

³⁶ *Ibid.*, 156.

It should be further clarified how to determine whether the legislative purpose obtained from the interpreter's application of legal interpretation methods is beyond the scope of the legal purpose. The author believes that the interpreter's interpretation of the legislative purpose should be reflected in the wording of the statute, and the main objectives of the legislature should be retained.³⁷ In judging whether the main objectives of the legislature are retained, it should be limited to the extent that the legal purpose of the legislature is not omitted or distorted. The reasons are: First, legal purposes are often hidden and uncertain,³⁸ making it extremely difficult to fully interpret the political value decisions made by the legislature at the purpose level. Second, due to the positioning of the legislature in the democratic system, legal purposes are by no means the intent of a single person or a particular drafter, but rather the legislative expression of the collective intent of the majority, making it impossible for the interpreter to perfectly reproduce the legislature's intent in the legislation process when seeking the legislative purpose. Interpreting the legislative purpose without omission or distortion under literal interpretation satisfies the requirement of respecting the legislature.

Taking the interpretation of the legislative purpose of Article 7 of the *Marriage Law* as an example, the prohibition of consanguineous marriage is to prevent the birth of infants with congenital defects and to improve population quality.³⁹ "Prohibiting consanguineous marriage is a requirement for eugenics. The development of human sexual relationships has proved that marriage between close relatives is likely to pass on the physiological defects of both parties to their offspring, affecting family happiness and endangering national health."⁴⁰ In the case of "cousins getting sterilized for marriage," the marriage registration department refused the couple's marriage application on the grounds of preventing the birth of unhealthy offspring.⁴¹ The marriage registration department interpreted the purpose of preventing the birth of unhealthy offspring through the literal interpretation of Article 7-1 of the *Marriage Law*. The interpreter's interpretation of the purpose in the legal interpretation conclusion retained the main legislative purpose of the legislature, without distorting or omitting the content of the legislative purpose, and respected the intent of the legislature. The purpose of restricting citizens' rights in the literal interpretation conclusion complied with the principle of legitimate purpose. The teleological interpretation conclusion of this clause also interpreted the restriction purpose as preventing the birth of unhealthy offspring, which also complied with the principle of legitimate purpose. In the "Wang Deqin" case, among the interpretation conclusions of the "persons who were supported by the deceased when he/she was alive" in Article 119 of the *General Principles of Civil Law*, the literal interpretation conclusion was excluded because it did not comply with the principle of the state's duty to protect, so it is only necessary to judge whether the teleological interpretation conclusion complies with the principle of proportionality. Neither the teleological interpretation conclusion of Article 119-1 of the *General Principles of the Civil Law* in the "Wang Deqin" case, nor the two interpretation conclusions of Article 25-1 of the *Copyright Law* in the "Ding Xiaochun" case omitted or distorted the legislative purpose, and thus complied with the principle of legitimate purpose.

³⁷ Vgl. BVerfGE 86, 288 (320).

³⁸ Yang Tongtong, "On the Methodological Path of Judicial Application of Legislative Purpose," *Studies in Law and Business* 4 (2021): 86.

³⁹ Wu Xinyu, "Explanation of the Marriage Law of the People's Republic of China (Draft Amendment) and the Nationality Law of the People's Republic of China (Draft) — at the Third Session of the Fifth National People's Congress on September 2, 1980," in *Gazette of the State Council of the People's Republic of China* 13 (1980): 392.

⁴⁰ Publicity and Education Bureau of the Publicity Department of CPC Central Committee, Civil Law Office of the Legislative Affairs Commission of the Standing Committee of the National People's Congress, and Bureau of Law Popularization and Rule of Law of the Ministry of Justice, *Study Guide for the Marriage and Family Chapter of the Civil Code of the People's Republic of China* (Beijing: China Democracy and Legal System Publishing House, 2021), 24.

⁴¹ Deng Hongyang, "Can the Law Make an Exception for the Cousins Getting Sterilized for Marriage," *Government Legality* 1 (2009): 33.

There are two different perspectives on judging the intent of the legislature: the subjective view and the objective view. The subjective view holds that legal interpretation should aim to explore the actual intent of the historical legislature, i.e., the views, intentions and values of the legislature.⁴² While the objective view holds that: “First... the objective of legal interpretation is not to explore the actual intent of the historical legislature... Second, the legal meaning is determined at the time of judgment.”⁴³ From the perspective of legal hermeneutics, the understanding of any text inevitably involves two factors: the text as the carrier of meaning and the context of the text.⁴⁴ Therefore, when seeking the purpose of the law, different legislative purposes will be interpreted based on different perspectives of the subjective view and the objective view. Whether the legislative purposes interpreted from different perspectives comply with the principle of legitimate purpose should be further explored.

The author believes that the legislative purposes interpreted from different perspectives do not violate the principle of legitimate purpose. The legal interpretation based on the objective view may go beyond the original intention of the legislature, but it does not constitute a violation of the legislature’s intent. The reason is that the subjective view and the objective view are both partially truthful. Neither of them can independently reflect the overall legislative purpose. As for the subjective view, although seeking the intent of the historical legislature cannot be the ultimate goal of interpretation, it is not meaningless for interpretation. As for the objective view, the transcendence of the legislature’s intent is a response towards the unforeseen circumstances by the legislature. Without drawing on this perspective, the subjective view cannot be applied.⁴⁵ In this context, the objective view is an extension of the legislature’s intent in specific circumstances. Therefore, whether based on the subjective view or the objective view, the interpretation of the purpose of the law does not violate the principle of legitimate purpose. The interpreter, who supports one perspective, should not exclude the interpretation conclusions from the other perspective. Such additional screening behavior would restrict the effectiveness of the law it should have.

B. Principle of appropriateness

The principle of appropriateness requires that the restriction means in the legal interpretation conclusion help realize the legal purpose. The principle of appropriateness does not require that the restriction means in the legal interpretation conclusion can fully realize the legislative purpose. As long as the means help realize the legal purpose, it does not violate the principle of appropriateness. This is because the purpose of applying the principle of proportionality is not to ensure the maximum realization of the legislative purpose. If the principle of appropriateness requires the interpreter to choose the restriction means that can achieve the public goal to the greatest possible or maximum extent, then only those means that are most or extremely helpful in achieving the public goal will be able to pass the appropriateness review and proceed to the next review stage. Regardless of the extent to which the means restrict citizens’ rights, they comply with the principle of appropriateness as long as they help achieve the public goal. It is very likely that the restriction means imposing the least or lesser restriction on citizens’ rights will be excluded because their contribution to the legislative purpose is limited. This will turn the principle of proportionality into a tool for merely realizing the legislative purpose, rather than a “restriction on restrictions.” However, from the origin and formation process of the principle of proportionality, it is based on the protection of rights and essentially aims to limit state power from excessively restricting rights in order to achieve public interests. If the principle of necessity uses the standard of

⁴² Huang Maorong, *Juridical Methods and Modern Civil Law* (Beijing: China University of Political Science and Law Press, 2001), 265.

⁴³ *Ibid.*, 267-268.

⁴⁴ Yang Tongtong, “On the Methodological Path of Judicial Application of Legislative Purpose,” *Studies in Law and Business* 4 (2021): 95.

⁴⁵ Karl Larenz, *Methodenlehre der Rechtswissenschaft*, translated by Huang Jiazhen (Beijing: The Commercial Press, 2020), 400-401.

realizing the legislative purpose to the greatest extent possible to screen restrictive means in legal interpretation, the original intention of the principle of proportionality to protect citizens' rights will be changed. In addition, it will also lead to the failure to achieve the purpose of introducing the principle of proportionality to avoid infringement on citizens' basic rights, and the significance of introducing the principle of proportionality in constitutional interpretation will no longer exist. For this step, the interpreter only needs to exclude those restriction means that are completely unhelpful in achieving the legal purpose, which means that interpretation conclusions that are completely unhelpful in achieving the legislative purpose do not comply with the principle of appropriateness and constitute an excessive restriction on citizens' basic rights.

Based on the above conclusions, as far as the literal interpretation conclusion of Article 7-1 of the *Marriage Law* in the case of "cousins getting sterilized for marriage" is concerned, whether restricting the marriage of all cousins or only sterilized cousins is helpful to achieve the legislative purpose and comply with the principle of appropriateness. The teleological interpretation conclusion of Article 119 of the *General Principles of the Civil Law*, which includes the unborn fetus of the deceased in the category of the "deceased's dependents," is helpful to achieve the legislative purpose of protecting the survival of the vulnerable group, and thus complies with the principle of appropriateness. As for the literal and systematic interpretation conclusion of Article 25-1 of the *Copyright Law* in the "Ding Xiaochun" case, although the two interpretation conclusions impose different degrees of restriction on copyright due to the different definitions of the scope of textbooks, such restriction can undoubtedly promote the development of education, and therefore can withstand the review of the principle of appropriateness review.

C. Principle of necessity

The principle of necessity requires that the means used to achieve a legitimate purpose be the least harmful to the parties involved.⁴⁶ Furthermore, the principle of necessity only requires the legislature to choose the least infringing option among equally effective restrictive means. The extent to which the legislative purpose should be achieved falls within the structural scope for the legislature.⁴⁷ In other words, the legislature has the prerogative to choose to which degree the legislative purpose should be achieved without the intervention by any other entity. As far as the legal interpretation conclusion in an individual case is concerned, as long as it is not beyond the scope of literal interpretation, it is legitimate regardless of the degree to which it achieves the purpose. The principle of necessity does not require the legislature to achieve the intended purpose to any particular degree, but only to choose the means that least infringes on the basic rights of the parties. If the principle of necessity only requires the selection of the least harmful means while ignoring the premise of equal effectiveness, then the degree to which the legislature has chosen to achieve the legislative purpose may be replaced by the degree to which other less-infringing means would achieve the legislative purpose. This would be a transgression of the legislature's intent.

In the case of "cousins getting sterilized for marriage," compared to only restricting the cousins who have undergone sterilization to get married, prohibiting all cousins from getting married better helps to achieve the legislative purpose without the presence of a proviso clause. The means of restricting all cousins from getting married may be considered an excessive restriction on marriage freedom for fully achieving the legislative purpose in this case. However, as long as the restriction means can be interpreted from the legal norm, regardless of the degree to which the restriction means in the interpretation conclusion achieves the legislative purpose, it is not subject to criticism because the legislature has the prerogative to choose it. The principle of necessity only needs to be used to judge whether there are less-infringing means among equally effective means. As far as the literal

⁴⁶ Liu Quan, "On the Objectification of the Principle of Necessity," *China Legal Science* 5 (2016): 178.

⁴⁷ Chen Zheng, "On the Constraints of the Principle of Proportionality on Legislative Power and its Limits," *China Legal Science* 3 (2020): 159.

interpretation conclusion of Article 7-1 of the *Marriage Law* is concerned, the same effect as restricting all cousins from getting married can be achieved by requiring collateral blood relatives within three generations who apply for marriage to undergo sterilization. Compared to the means of directly prohibiting collateral blood relatives within three generations from getting married, requiring the applicants for marriage registration to undergo sterilization is a less-infringing means, so the literal interpretation conclusion of this clause does not comply with the principle of necessity. However, no less-infringing restriction means can be chosen in the teleological interpretation conclusion of Article 7-1 of the *Marriage Law*, so it complies with the principle of proportionality. In the “Wang Deqin” case, regarding the restriction on the tortfeasor’s property rights in the teleological interpretation conclusion of Article 119 of the *General Principles of the Civil Law*, there are no less-infringing restriction means among equally effective means to achieve the purpose other than providing the victim with necessary living expenses, so the teleological interpretation conclusion can withstand the review of the principle of necessity. Similarly, in the “Ding Xiaochun” case, as far as the interpretation conclusion of Article 25-1 of the *Copyright Law* is concerned, there are no other equally effective and less-infringing means other than restricting copyright and having copyright give way within the scope of the statutory licensing system, so both the literal interpretation conclusion and the systematic interpretation conclusion in this case comply with the principle of necessity.

D. Principle of proportionality in narrow sense

The principle of proportionality in narrow sense, also known as the principle of proportionality of legal interests or the principle of balance, refers to that a measure (that restricts citizens’ rights), which needs to be used to achieve the purpose, should not cause a factual result that infringes on people’s rights to the extent that exceeds the value of the purpose.⁴⁸ In addition, the means of restricting basic rights should not impose an excessive burden on the holder of basic rights, meaning they must have anticipated possibility (unzumutbar).⁴⁹ Specifically, the first level of the principle of proportionality in narrow sense requires judging whether the “gain” outweighs the “loss,” which essentially evaluates the infringement caused by the restriction means and the extent to which the legislative purpose is achieved. The second level requires judging whether the means of restricting basic rights constitute an “excessive burden” because they don’t have the anticipated possibility.

Taking the interpretation of Article 25-1 of the *Copyright Law* in the “Ding Xiaochun” case as an example, as far as its literal interpretation conclusion is concerned, from the perspective of “loss,” compulsory education covers multiple fields such as literature, mathematics, foreign languages, music and physics. If the scope of “textbooks” is judged based on the standard of “being related to compulsory education”, then the number of “textbooks” will be enormous. This will significantly restrict the copyright of the copyright owners, suppressing their motivation to create. If technological and cultural innovation stagnates, social development will also be significantly hindered. From the perspective of “gain,” the absorption of knowledge by children and adolescents receiving compulsory education is limited and will not continue to increase with the unlimited expansion of the scope of “textbooks.” Therefore, the enormous number of “textbooks” has limited impact on the promotion of compulsory education. Compared to the “gain” and “loss” in the literal interpretation conclusion, the concessions made by copyright owners benefit compulsory education less than they hinder social development. Therefore, the literal interpretation conclusion does not comply with the principle of proportionality in narrow sense and should be excluded. In the systematical interpretation conclusion, the scope of “textbooks” is narrowed by the *Charter*, and copyright owners only need to make concessions for textbooks that are in line with the *Charter*. In this context, the statutory licensing system doesn’t harm copyright restrictions greater than it promotes the achievement of the purpose, and doesn’t

⁴⁸ Chen Xinmin, *General Introduction to Administrative Law (9th Edition)* (Taipei: San Min Book Co., Ltd., 2015), 113.

⁴⁹ Vgl. BVerfGE 9, 338 (345); 30, 292 (316); 100, 226 (244).

infringe on human dignity. The restriction means has “anticipated possibility” and complies with the principle of proportionality in narrow sense. Therefore, the systematical interpretation conclusion is a constitutional interpretation. As for other legal interpretation conclusions, there are no circumstances where the “loss” outweighs the “gain” or where there is no anticipated possibility, so they can withstand the review of the principle of proportionality in narrow sense.

In addition, the teleological interpretation conclusion of Article 7-1 of the *Marriage Law* in the case of “cousins getting sterilized for marriage” and the teleological interpretation conclusion of Article 119-1 of the *General Principles of the Civil Law* in the “Wang Deqin” case can also withstand the review of the principle of proportionality in narrow sense. The author does not elaborate on them one by one due to the length of the paper. Based on the above analysis, the teleological interpretation conclusion of Article 7-1 of the *Marriage Law* in the case of “cousins getting sterilized for marriage,” the teleological interpretation conclusion of Article 119-1 of the *General Principles of the Civil Law* in the “Wang Deqin” case, and the systematical interpretation conclusion of Article 25-1 of the *Copyright Law* in the “Ding Xiaochun” case can withstand the review of the principle of proportionality. Therefore, they are constitutional interpretation conclusions that do not infringe on citizens’ basic rights. Interpreters should understand and apply legal norms based on the above interpretation conclusions.

V. Conclusion

When there are multiple possible interpretations of a legal norm, how to select an interpretation conclusion that aligns with the constitution is a very important step in applying the method of constitutional interpretation. The significance of constitutional interpretation lies in its ability to connect the constitution and departmental legal norms. The legitimacy and appropriateness of departmental legal norms in individual cases are further evaluated and supplemented through constitutional interpretation. In addition, the clarification of the judgment standards for constitutional interpretation conclusions and the content of various sub-principles provides clear direction and guidance for the interpretation of legal norms by interpretation entities such as administrative authorities, judicial authorities and supervisory authorities. Overall, the refinement of the application of this interpretation method is an important advancement of legal methodology in the era of constitutional review.

(Translated by TAO Yu)