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# Utopian Socialism's Juristic Concept of Rights in the 19<sup>th</sup> Century

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ZHANG Hengshan\* & FENG Yang\*\*

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**Abstract:** *The theoretical model of Utopian Socialism's juristic interpretation of rights in the 19<sup>th</sup> century can be summarized as follows. The main purpose was to criticize and reform the inequality in real society; the private ownership of land being the main object of criticism; equality in the economic and social is the goal to be pursued; the realization of the basic interests of the working class and the lower classes the direction; the right to work the core content; and the "ought to" of obtaining benefits the main connotation of the concept of rights. This concept of rights guided the European workers' movement in the early- and mid-19<sup>th</sup> century, supplemented the content of modern human rights, promoted legal changes, and advanced social progress. The uniqueness of Utopian Socialism's juristic concept of rights means that it cannot be mixed with other schools' concepts of rights.*

**Keywords:** utopian socialist jurisprudence ♦ equality ♦ rights ♦ ought to

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In both Western and Chinese legal theories, the concept of rights in early- and mid-19<sup>th</sup> century Utopian Socialist Jurisprudence has been largely overlooked. In fact, within the historical evolution of rights doctrines and modern human rights concepts, the perspective of Utopian Socialist Jurisprudence should hold a prominent place.

The Utopian Socialism that emerged in Western Europe in the early- and mid-19<sup>th</sup> century (hereinafter referred to as "Utopian Socialism in the 19<sup>th</sup> century") is a theoretical system of social reform that criticizes the economic and political principles of capitalism and advocates for improving the living conditions of the lower classes, primarily the working class. It also served as the theoretical precursor to the social democratic<sup>1</sup> movements that arose in the

\* ZHANG Hengshan (张恒山), Professor at the School of Law, Tianjin University, Ph. D. Supervisor.

\*\* FENG Yang (冯洋), Doctoral Candidate at the School of Law, Tianjin University. This is one of the articles that represent the research progress of the major project funded by the National Social Science Fund of China, "Promoting the Spirit of Socialist Rule of Law" (Approval Number 22ZDA072), which interprets the spirit of the Sixth Plenary Session of the 19<sup>th</sup> Communist Party of China Central Committee.

<sup>1</sup> Yin Xuyi believes that "the concept of social democracy emerged during the Revolutions of 1848 in Europe, primarily as an ideological expression of petty-bourgeois socialism. During the time of the Second International, it was essentially synonymous with scientific socialism. After World War I, as the international socialist movement split, it became the expression of the social reformist ideology of social democratic parties in various countries. After World War II, while maintaining their fundamental nature, social democratic parties gradually replaced the concept of social democracy with democratic socialism.

mid-19<sup>th</sup> century. While Utopian Socialism in the 19<sup>th</sup> century is not a purely legal theory, it contains substantial reflections on the state and legal phenomena. This aspect is referred to as Utopian Socialist Jurisprudence. The understanding and use of the concept of rights form an important part of Utopian Socialist Jurisprudence and later became one of the theoretical resources for social democracy.<sup>2</sup>

The theoretical propositions of Utopian socialists in the 19<sup>th</sup> century lacked the scientific rigor, completeness, systematic nature, and internal consistency compared to Marxist theory. However, their reflections on rights express the views on rights held by the lower classes of society, mainly the working class during the early- and mid-19<sup>th</sup> century, representing the deepest thought regarding this issue by the advocates for the interests of the working class and lower classes before Marxism.

Utopian Socialism in the 19<sup>th</sup> century significantly expanded the scope of rights within Western law and the connotations of legal rights. It was the Utopian socialists who proposed that labor, relief, education, and retirement are all things that every citizen “ought to have.” In this sense of “ought to,” these were regarded as the economic and social rights of citizens. This concept of rights played a huge role in guiding the early- and mid-19<sup>th</sup> century European labor movement, facilitating legal reforms and advancing social progress. This view of rights also led the social distribution reform movements in Western Europe that accompanied the widespread industrialization from the 19<sup>th</sup> century to the first half of the 20<sup>th</sup> century, providing a legal perspective to support these justice-oriented changes. The concept of “rights” embedded in many of today’s broadly advocated human rights claims largely originate from the perspective of rights from this theoretical school. Therefore, we should give necessary attention and focus to the contributions of Utopian

The main difference between the two lies in the diversification of ideology and the strengthening of ethical socialist elements. After the collapse of the Soviet Union and upheavals in Eastern European countries in the 1990s, the Socialist International and various social democratic parties once again adopted social democracy to express their ideology and political stance. Through this shift, social democratic parties clearly stated that they no longer sought to replace capitalism with socialism as a system but were committed to realising the core values of socialism within a democratic framework.” See Author’s Preface, in Yin Xuyi, *Introduction to Social Democracy* (Beijing: Central Compilation & Translation Press, 2011), 1-2.

“The mission and goal of social democracy is the criticism and transformation of capitalism.” Yin Xuyi, Author’s Preface, *Introduction to Social Democracy* (Beijing: Central Compilation & Translation Press, 2011), 2.

Professor Yang Xiaoqing believes that: “The social democratic movement takes socialism as its banner, acknowledges the existing social, political systems, and rule of law of existing capitalist countries, and implements ‘gradual’ and ‘peaceful’ social reforms featuring ‘cooperation among classes’ in a pragmatic manner. It seeks to gain power through parliamentary struggle and gradually improve the living conditions of the working class and all humanity, opposing proletarian revolution and proletarian dictatorship.” See Yang Xiaoqing, *Research on Social Democratic Legal Thought* (Beijing: Intellectual Property Publishing House, 2007), 3.

<sup>2</sup> The ideological sources of social democracy include Marxism, Lassallism, Christian ethics, humanism, and ethical socialism. See Yin Xuyi, Author’s Preface, *Introduction to Social Democracy* (Beijing: Central Compilation & Translation Press, 2011), 3.

Socialism in the 19<sup>th</sup> century to the concept of rights.

Typically, legal scholars who interpret and categorize human rights classify rights such as the right to work, the right to relief, the right to education, and the right to pension as second-generation human rights. They primarily focus on the substantive contents of these specific rights to work, relief, education, pension, etc. However, almost no one pays attention to the changes in the universal and abstract meaning of "right" inherent in these specific rights: it is not based on "liberty" as its primary meaning, nor on "prohibition of infringement," but rather on "ought to."

The theoretical model of Utopian Socialism's juristic interpretation of rights in the 19<sup>th</sup> century can be summarized as follows. The main purpose is to criticize and reform the inequality in real society; the private ownership of land is the main object of criticism; equality in the economic and social fields is the goal to be pursued; the realization of the basic interests of the working class and the lower classes is the direction; the right to work is the core content; and the "ought to" of obtaining benefits is the main connotation of the concept of rights. The theoretical model and objectives of Utopian Socialism's juristic interpretation of rights result in a concept of rights that is almost entirely different from those in analytical positivist jurisprudence, which are characterized mainly by coercion,<sup>3</sup> and also fundamentally different from the 17<sup>th</sup>- and 18<sup>th</sup>-century classical natural law concept of rights, which is based on freedom.<sup>4</sup> Analyzing and identifying the notion of rights in Utopian Socialist Jurisprudence helps us clarify the polysemy of the concept of rights used in Western academia and also helps us avoid the mixing of different meanings of the concept of rights in theoretical discussions and legal practice.

There were many thinkers of Utopian Socialism in the 19<sup>th</sup> century, but few systematically explained their ideas on rights, especially the concept of abstract rights. It can be said that the concepts of rights of Utopian Socialism in the early 19<sup>th</sup> century were mainly represented by the ideas of Paine and Owen, while the concepts of rights of Utopian Socialism in the mid-19<sup>th</sup> century were mainly represented by the ideas of Proudhon and Lassalle. This

<sup>3</sup> According to Bentham's explanation of the relationship between rights, obligations, and punishment, obligations exist because of punishment, and rights exist because of obligations. Therefore, Bentham believes that the ultimate function of rights is to enforce punishment on those who fail to fulfill their obligations. See Jeremy Bentham, *A Fragment on Government*, in John Bowring, *The Works of Jeremy Bentham*, vol. 1 (New York: Russell & Russell, Inc., 1962), 293.

Austin believes that: "The party would not be obnoxious to the legal or political sanction by which the duty and the right are respectively enforced and protected." John Austin, *The Province of Jurisprudence Determined*, translated by Liu Xing (Beijing: China Legal Publishing House, 2002), 306-307.

Kelsen further emphasized that "rights" have the characteristics of "law," and coercive "sanctions" are the essential embodiment of objective law. See Hans Kelsen, *General Theory of Law and State*, translated by Shen Zongling (Beijing: Encyclopedia of China Publishing House, 1996), 92-93.

<sup>4</sup> "THE RIGHT OF NATURE, which writers commonly call *jus naturale*, is the liberty each man hath, to use his own power, as he will himself, for the preservation of his own nature; that is to say, of his own life; and consequently, of doing anything, which in his own judgment, and reason, he shall conceive to be the aptest means thereunto." "RIGHT, consisteth in liberty to do, or to forbear..." Thomas Hobbes, *Leviathan* (Oxford: Oxford University Press, 1998), 86.

article primarily analyzes and evaluates the concepts of rights of Paine, Owen, and Proudhon as representative of Utopian Socialism in the 19<sup>th</sup> century.

### **I. Paine's Concept of Rights**

Paine's concept of rights originated from the classical natural law theory of rights. When the classical natural law view of rights was criticized and abandoned by the positivist legal scholars led by Bentham in the late 18<sup>th</sup> century, Paine's concept of rights, derived from natural law, initiated the rights discourse of Utopian Socialism and had a widespread and lasting impact among the lower classes, primarily composed of the working class in society.

Paine set aside the concept of natural law and directly attributed the origin of rights to those granted by the Creator at the time of creation.<sup>5</sup> The rights endowed by the Creator are natural rights. Paine asserted that the rights given to humans by the Creator at the time of creation are equal, and the rights enjoyed by those born later are equal to those of the first created.<sup>6</sup> Natural rights are those which appertain to man in right of his existence. Of this kind are all the intellectual rights, or rights of the mind, and also all those rights of acting as an individual for his own comfort and happiness, which are not injurious to the natural rights of others.<sup>7</sup>

Paine believed that after entering society, people retain, as well as give up some natural rights, and instead enjoy certain civil rights. The rights that people retain are those they can exercise through their own power, such as intellectual rights, the rights of the mind, and the right to religious belief.<sup>8</sup> People give up some natural rights because these rights cannot be exercised or realized solely through individual power, necessitating their transfer to society, relying on social cooperation and social power to realize these rights. These are the newly formed civil rights, which are related to security and protection.<sup>9</sup>

Paine did not focus on the abstract question of the original meaning of "right," but rather on the origin, classification, and fulfillment of specific

<sup>5</sup> Thomas Paine, *Rights of Man*, translated by Wu Yunnan and Wu Youren, proofread by Zhu Zengwen, in *The Selected Work of Tom Paine*, translated by Ma Qinghuai, et al. (Beijing: Commercial Press, 1981), 139.

<sup>6</sup> "Every history of the creation, and every traditionary account, whether from the lettered or unlettered world, however they may vary in their opinion or belief of certain particulars, all agree in establishing one point, the unity of man; by which I mean that men are all of one degree, and consequently that all men are born equal, and with equal natural right, in the same manner as if posterity had been continued by creation instead of generation, the latter being the only mode by which the former is carried forward; and consequently every child born into the world must be considered as deriving its existence from God. The world is as new to him as it was to the first man that existed, and his natural right in it is of the same kind." Thomas Paine, *Rights of Man*, translated by Wu Yunnan and Wu Youren, proofread by Zhu Zengwen, in *The Selected Work of Tom Paine*, translated by Ma Qinghuai, et al. (Beijing: Commercial Press, 1981), 141.

<sup>7</sup> Thomas Paine, *Rights of Man*, translated by Wu Yunnan and Wu Youren, proofread by Zhu Zengwen, in *The Selected Work of Tom Paine*, translated by Ma Qinghuai, et al. (Beijing: Commercial Press, 1981), 142.

<sup>8</sup> *Ibid.*, 143.

<sup>9</sup> *Ibid.*, 142-143.

rights. Since Paine's understanding of the abstract concept of "right" is reflected through his interpretation of specific rights, we need to identify his understanding of "right" in its abstract sense.

In 1792, Paine called for the implementation of universal public education, advocated for child allowances and pensions (notably, he proposed that pensions start at age 50 and slightly increase by age 60), and urged public measures to provide paid work for the unemployed,<sup>10</sup> funding these initiatives through a progressive income tax. From Paine's arguments, we can clearly see that he regarded various human interests as rights. By listing specific human interests as rights, Paine implicitly expressed the idea that these interests are necessary for people and thus are what individuals "ought to have." Security and protection are essential needs for people and should be provided to them, but these are not benefits that can be achieved based on individual power. Therefore, it is up to society to provide such security and protection, and society should indeed offer them. Paine's line of thinking reveals a concept of rights: since interests are personal needs, they are what individuals ought to have; since they are deserved by individuals, they should be provided by society or the state. Simply put, Paine was essentially understanding the abstract concept of "rights" in terms of the "ought to" of obtaining certain benefits.

## **II. Owen's Concept of Rights**

### **A. A concept of rights based on the value of equality**

Owen's concept of rights stems directly from the idea of equality for all people. Owen believed that "everyone is born with equal rights."<sup>11</sup> Equality is the value basis of Owen's advocacy for rights.

Based on the equality of humans, Owen first proposed that everyone has the right to a happy life. He believed that humans are endowed by their Creator with the desire and natural inclination to seek happiness — the desire to sustain life, enjoy life, and reproduce life. They are also endowed by the Creator with the faculties to accept ideas and acquire knowledge.<sup>12</sup> "The purpose of all human efforts is to achieve happiness."<sup>13</sup> The main conditions for people to achieve happiness are threefold: good health, true knowledge, and wealth. Without these three conditions, it is impossible to attain and enjoy happiness, or to preserve it.<sup>14</sup>

### **B. The equal right to a good education is a fundamental right for**

<sup>10</sup> Ibid., 306-313.

<sup>11</sup> Robert Owen, "The Book of the New Moral World," *Selected Works of Robert Owen*, vol. 2, translated by Ke Xiangfeng, He Guanglai and Qin Guoxian (Beijing: The Commercial Press, 2009), 33.

<sup>12</sup> Robert Owen, "A New View of Society or, Essays on the Principle of the Formation of the Human Character, and the Application of the Principle to Practice," in *Selected Works of Robert Owen*, vol. 1, translated by Ke Xiangfeng, He Guanglai and Qin Guoxian (Beijing: The Commercial Press, 2009), 60.

<sup>13</sup> Robert Owen, "A Sketch of Some of the Errors and Evils Arising from the Past and Present State of Society," in *Selected Works of Robert Owen*, vol. 1, translated by Ke Xiangfeng, He Guanglai and Qin Guoxian (Beijing: The Commercial Press, 2009), 223.

<sup>14</sup> Ibid.

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**people's happiness**

To achieve happiness, people must reform unreasonable systems and adopt better, more rational ones. Workers and the poor live amid harm and suffering due to the failures of various educational and political systems — failures stemming from complete ignorance of human nature. According to Owen, a person's nature is shaped by their living conditions, and through education, one can develop any emotion, habit, or character.<sup>15</sup> In reality, everyone receives flawed education from a young age, lacking correct knowledge and rational judgment, preventing the formation of a sound personality.<sup>16</sup> This flawed education comes from sectarian, class-based, party-based, and national education, and is filled with errors and biases. The result is ignorance, selfishness, confusion, opposition, aversion, jealousy, hatred, anger, revenge, and destruction. Social systems designed based on such ignorance and bias keep people in harm and suffering.<sup>17</sup> To eliminate existing harms and sufferings, political systems and laws based on ignorance must be changed, especially the education system. Children of the poor and working classes must receive a good education from an early age, developing healthy bodies, good habits, kind emotions, sound reasoning, and noble character.<sup>18</sup> Thus, during his management of the New Lanark mills, Owen invested in establishing kindergartens. In his later years, he envisioned breaking the industrial city living pattern, building garden-style new villages in square areas, providing children with good education, ensuring their health, and engaging them in appropriate labor according to their age and strength.<sup>19</sup> Owen firmly believed that, given people's inherent ignorance and the need to use natural instincts to gain knowledge, everyone is "naturally entitled to equal rights."<sup>20</sup> In 1849, in the second article of the Constitution for his envisioned new villages, Owen proposed that "everyone from birth to adulthood should be educated and nurtured in the best way currently known."<sup>21</sup>

<sup>15</sup> Robert Owen, "A New View of Society or, Essays on the Principle of the Formation of the Human Character, and the Application of the Principle to Practice," in *Selected works of Robert Owen*, vol. 1, translated by Ke Xiangfeng, He Guanglai and Qin Guoxian (Beijing: The Commercial Press, 2009), 69.

<sup>16</sup> *Ibid.*, 61-62.

<sup>17</sup> Robert Owen, "A Sketch of Some of the Errors and Evils Arising from the Past and Present State of Society," in *Selected Works of Robert Owen*, vol. 1, translated by Ke Xiangfeng, He Guanglai and Qin Guoxian (Beijing: The Commercial Press, 2009), 224-227.

<sup>18</sup> Robert Owen, "A New View of Society or, Essays on the Principle of the Formation of the Human Character, and the Application of the Principle to Practice," in *Selected works of Robert Owen*, vol. 1, translated by Ke Xiangfeng, He Guanglai and Qin Guoxian (Beijing: The Commercial Press, 2009), 43 and 73-81.

<sup>19</sup> Robert Owen, "A Sketch of Some of the Errors and Evils Arising from the Past and Present State of Society," in *Selected works of Robert Owen*, vol. 1, translated by Ke Xiangfeng, He Guanglai and Qin Guoxian (Beijing: The Commercial Press, 2009), 231-233.

<sup>20</sup> Robert Owen, "The Book of the New Moral World," in *Selected works of Robert Owen*, vol. 2, translated by Ke Xiangfeng, He Guanglai and Qin Guoxian (Beijing: The Commercial Press, 2009), 33.

<sup>21</sup> Robert Owen, "The Revolution in the Mind and Practice of the Human Race or, The Coming Change from Irrationality to Rationality," in *Selected works of Robert Owen*, vol. 2, translated by Ke Xiangfeng, He Guanglai and Qin Guoxian (Beijing: The Commercial Press, 2009), 132.

### C. The right to lifelong access to necessities

Based on the equality of people, Owen proposed another important right: the right to lifelong access to everything necessary for human beings.

Owen firmly believed that labor and knowledge are the sources of all wealth and that workers, as laborers, are the creators of all wealth. From his experience of managing a factory and earning profits, Owen discovered that under the existing monetary exchange system and wage pricing system, workers did not receive the labor results they deserved based on the principle of equivalent exchange. On the contrary, the existing social monetary system became a cleverly constructed tool for exploiting people, causing those who actually produced wealth to lose their rightful labor results, while allowing a few to seize and possess large amounts of wealth from the many.<sup>22</sup> Owen pointed out that most of the residents in Britain had long been living on just two and a quarter pennies a day. These people were the working class, who created the wealth of the nation. Meanwhile, others who never worked, neither creating wealth nor knowledge, had annual incomes of a hundred thousand pounds, with some even reaching three hundred thousand pounds.<sup>23</sup> Therefore, Owen believed that “after producing surplus products, workers should receive fair and reasonable compensation.”<sup>24</sup> Based on the understanding that, from the principle of fairness, laborers mainly represented by workers have the right to receive a larger share of the social wealth they create, Owen strongly advocated for advancing social system reforms to fairly distribute wealth to everyone<sup>25</sup> in a proper manner, ensuring that everyone is taken care of in this system and has the opportunity to enjoy the wealth created by human labor.<sup>26</sup>

In the constitution of the new villages envisioned by Owen in 1849, which embodies communist ideals, the first article states: “Everyone should, through public measures, receive all the necessities of life based on the principle of equality, for their entire life. These measures should ensure that everyone’s labor and talents are guided in the best possible way.”<sup>27</sup>

The new social constitution envisioned by Owen also states that men and

<sup>22</sup> Robert Owen, “A New View of Society or, Essays on the Principle of the Formation of the Human Character, and the Application of the Principle to Practice,” in *Selected works of Robert Owen*, vol. 1, translated by Ke Xiangfeng, He Guanglai and Qin Guoxian (Beijing: The Commercial Press, 2009), 214-216.

<sup>23</sup> Robert Owen, “Several Convicted Persons in Dorchester,” in *Selected Works of Robert Owen*, vol. 2, translated by Ke Xiangfeng, He Guanglai, and Qin Guoxian (Beijing: The Commercial Press, 2009), 239.

<sup>24</sup> Robert Owen, “Report to the County of Lanark,” in *Selected Works of Robert Owen*, vol. 1, translated by Ke Xiangfeng, He Guanglai and Qin Guoxian (Beijing: The Commercial Press, 2009), 314.

<sup>25</sup> Robert Owen, “The Book of the New Moral World,” in *Selected Works of Robert Owen*, vol. 2, translated by Ke Xiangfeng, He Guanglai and Qin Guoxian (Beijing: The Commercial Press, 2009), 63.

<sup>26</sup> Robert Owen, “Mr. Owen’s Address Delivered at the Charlotte-street Institution on October 6, 1833,” in *Selected Works of Robert Owen*, vol. 2, translated by Ke Xiangfeng, He Guanglai and Qin Guoxian (Beijing: The Commercial Press, 2009), 217.

<sup>27</sup> Robert Owen, “The Revolution in the Mind and Practice of the Human Race or, The Coming Change from Irrationality to Rationality,” in *Selected Works of Robert Owen*, vol. 2, translated by Ke Xiangfeng, He Guanglai and Qin Guoxian (Beijing: The Commercial Press, 2009), 131.

women should receive the same education and enjoy equal rights, privileges, and personal freedom; they should have the freedom to marry and divorce; they should have freedom of thought and religious belief; and they should jointly own real estate and other specific rights.

Owen did not interpret the concept of rights like the analytical positivist jurists in the 19<sup>th</sup> century who represented official legal thinking. However, from the context and field in which he elaborated and used various specific concepts of rights, it can be seen that Owen's concept of rights originated from the value of equality among people and was aimed at criticizing the social realities of inequality and injustice. His purpose was to reconstruct the model of economic and social systems, with the connotation of expressing the "ought to" of the lower classes, mainly the working class, to obtain and enjoy various basic benefits.

Simply put, the concept of rights used by Owen, in its abstract and universal sense, refers to the "ought to" of obtaining or enjoying a certain specific benefit.

### **III. Proudhon's Concept of Rights**

Proudhon's Utopian Socialism was a doctrine that had a wide influence among the working masses in countries such as France and Italy in the mid-19<sup>th</sup> century. Proudhon's critique of private property rights (primarily private ownership of land) was one of the most remarkable theories of rights that emerged among the working class in the mid-19<sup>th</sup> century, aside from Marxist theory.

#### **A. The conflict between the value of equality and property**

Proudhon's concept of rights is also based on the admiration for the value of equality. Confronted with the hardships and suffering of the working class and the lower classes, Proudhon questioned: "Why is there so much sorrow and misery in society? Must man always be wretched?"<sup>28</sup> Proudhon strongly advocated for an end to privilege, the abolition of slavery, equality of rights, and the reign of law.<sup>29</sup> He believed that *The Declaration of Rights* in 1789, the constitutions of 1790 and 1793, the Charter of 1814 granted by Louis XVIII, and the Charter accepted by the people during the July Monarchy in 1830 all stated equality before the law, but none clearly explained the connotation of such equality.<sup>30</sup> Moreover, they all presupposed several inequalities in civil rights, namely, inequalities in status, wealth, and promotion.<sup>31</sup> Due to these inequalities, even a shadow of equality in rights could not be found.<sup>32</sup> Especially when the people endorsed property through constitutions, they fell

<sup>28</sup> Pierre-Joseph Proudhon, *What Is Property?*, translated by Sun Shubing (Beijing: The Commercial Press, 1963), 40.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*, 59-60.

<sup>31</sup> *Ibid.*, 60-61.

<sup>32</sup> *Ibid.*, 59-60.



back from seeking liberty and equality into privilege and slavery.<sup>33</sup> Proudhon believed that as long as private property exists, true equality cannot be achieved.

### **B. Property is not a natural right**

Proudhon began by analyzing the four so-called natural rights listed in The Declaration of Rights: liberty, equality, property, and security. He pointed out that these four rights are not the same. According to Proudhon's analysis, the rights to liberty, equality, and security are inalienable and cannot be transferred or sold,<sup>34</sup> making them absolute rights. "Liberty is an absolute right, because it is to man what impenetrability is to matter — a sine qua non of existence; equality is an absolute right, because without equality there is no society; security is an absolute right, because in the eyes of every man his own liberty and life are as precious as another's. These three rights are absolute; that is, susceptible to neither increase nor diminution; because in society each associate receives as much as he gives — liberty for liberty, equality for equality, security for security, body for body, soul for soul, in life and in death."<sup>35</sup> However, property is different. Proudhon noted that for those who do enjoy property, it is susceptible to certain transactions and modifications that do not harmonize with the idea of a natural right, and therefore, it is not a natural right.<sup>36</sup>

### **C. Property cannot be justified**

Proudhon pointed out that according to *The Declaration of Rights*, published as a preface to the *Constitution of 1793*, property is "the right to enjoy and dispose at will of one's goods, one's income, and the fruit of one's labor and industry." Article 544 of *Code Napoleon* of 1804 stipulated: "Property is the right to enjoy and dispose of things in the most absolute manner, provided we do not overstep the limits prescribed by the laws and regulations."<sup>37</sup> These definitions are derived from Roman law, where property is the right to use and abuse one's own within the limits of the law (*jus utendi et abutendi re sua, quatenus juris ratio patitur*).<sup>38</sup> They all emphasize that property is the absolute right of the owner over the object. However, Proudhon precisely believed that property defined in this way cannot be justified.

#### **1. Property cannot be justified by historical facts**

Proudhon opposed Grotius's study of the origins of property from a historical perspective. In Proudhon's view, neither Grotius's use of historical wars and conquests as the basis for property nor his use of treaties and contracts can justify property because existence does not equate to justice. Justice means equality among people, while the reality of property is the

<sup>33</sup> Ibid., 61.

<sup>34</sup> Ibid., 71.

<sup>35</sup> Ibid., 77.

<sup>36</sup> Ibid., 70.

<sup>37</sup> Ibid., 67.

<sup>38</sup> Ibid.

inequality of wealth among people. This inequality undermines the equal status given to people by the Creator and the equality of property in primitive communist societies, making it impossible to justify property as just.<sup>39</sup>

## **2. Property cannot be justified by law (civil law)**

Proudhon fiercely criticized the law that created property. He critically pointed out that “property” is a right “created” by law. It has realized an abstraction, a metaphor, a fiction. It has sanctioned selfishness; it has endorsed monstrous pretensions; it has received with favor impious vows. Blind law; the law of the ignorant man; a law which is not a law.<sup>40</sup>

Proudhon pointed out that the principle behind the creation of property laws was equality. Agriculture was the foundation of territorial possession, and the original cause of property. To secure to the farmer the fruit of his labor, fortify the weak against the invasion of the strong, and suppress spoliation and fraud, it was deemed necessary to establish some permanent boundaries between lands. Thus, due to the need for equality, which is essential for maintaining public security and the well-being of everyone, land was privatized. However, later on, through the natural instinctive use and wrong interpretation and application of property, as well as through foolishness and violence, other so-called rights and privileges emerged from the extension of property.<sup>41</sup> These include the rights to transfer, sell, gift, acquire, and abandon, the right to retain property solely by intent alone (*nudo animo*), the rights to lease, rent, collect interest on loans, profit from transactions, grant annuities, and levy taxes on a deliberately retained but uncultivated piece of land, among others. Proudhon noted that even if the legislators of land property initially created this perpetual absolute right to maintain equality by allowing a person to retain their property, when this right extended to include the aforementioned rights, this right to property turned towards destroying equality.<sup>42</sup>

What Proudhon meant was that the creation of property in early human societies, which has been passed down through generations as legislation, was actually a mistake made by early lawmakers due to their simplicity and lack of foresight. Property, the creation of such legislation, should have ensured equality, but instead, it undermines and destroys it. Therefore, its justice and legitimacy cannot be justified simply because it is a creation and stipulation of law.<sup>43</sup>

## **3. Property cannot be justified by mere possession (occupation)**

According to Proudhon, possession (occupation) is a temporary right to material resources, especially scarce resources such as land. Possession (occupation) is not permanent ownership of land and does not harm people’s

<sup>39</sup> Ibid., 80-81.

<sup>40</sup> Ibid., 101.

<sup>41</sup> Ibid., 102.

<sup>42</sup> Ibid., 103.

<sup>43</sup> Ibid., 101-104.

equality. Possession and use of land, as Cicero described, is like someone entering a large theater and taking a seat. It is based on the principle of equality, where no one can possess (occupy) more seats than they need to watch the show. At the same time, any new entrant has the right to a seat, so whenever a new spectator arrives, the existing seats need to be adjusted to accommodate them. However, each spectator cannot turn their possession (occupation) of a seat into permanent ownership or arbitrary control; otherwise, equal possession (occupation) would cease to exist. If those who enter the theater first turn their seat possession (occupation) into permanent property, it would be equivalent to depriving newcomers of their right to watch the show. Similarly, if those who first possess (occupy) land turn their possession (occupation) into permanent property, it infringes on the survival opportunities of later arrivals, effectively depriving them of their right of life.

#### **4. Property cannot be justified by labor either**

Proudhon also scoffed at the political economists and jurists in the 19<sup>th</sup> century who argued that labor was the basis for property.<sup>44</sup> Proudhon believed that labor has no inherent power to appropriate natural wealth.<sup>45</sup> If a possessor works on a piece of land, he can only possess and use the land and claim the property right of the products of his labor, but he cannot claim ownership of the land itself as a means of production.<sup>46</sup> Even if his diligence and creativity increase the productivity of the land, the laborer is entitled to the fruits of his increased labor but cannot claim ownership of the land itself on such basis. In short, Proudhon believed that the right to products cannot be extended to the right to the tools (means) of production.<sup>47</sup>

If labor were to create the property right of the land, then tenant farmers in reality should own the land, which would inevitably negate the existing land property system. However, this is something that legal scholars and political economists, who defend the current property system on the grounds of labor, cannot agree with. This also demonstrates that the assertion of property as born of labor is untenable.<sup>48</sup>

#### **5. Property cannot be justified by prescription**

Regarding Article 2219 of The *French Civil Code* on the prescription of property, Proudhon pointed out that “prescription” is actually a manifestation of people’s stubborn adherence to old prejudices and superstitions, often used to justify evil and atrocities. “When the evangelical reform was broached to the world, there was prescription in favor of violence, debauchery, and selfishness; when Galileo, Descartes, Pascal, and their disciples reconstructed philosophy and natural sciences, there was prescription in favor of the

<sup>44</sup> This argument originally comes from Locke. See John Locke, *Two Treatises of Government*, Chapter 5 — Note by the author of this book.

<sup>45</sup> Pierre-Joseph Proudhon, *What is Property?*, translated by Sun Shubing (Beijing: The Commercial Press, 1963), 127.

<sup>46</sup> *Ibid.*, 132.

<sup>47</sup> *Ibid.*, 131.

<sup>48</sup> *Ibid.*, 133-135.

Aristotelian philosophy; when our fathers of 1789 demanded liberty and equality, there was prescription in favor of tyranny and privilege.”<sup>49</sup>

Proudhon further emphasized that acquiring property through prescription must meet certain conditions, and lacking any of these conditions would render the acquisition invalid. Generally, even if a possessor’s occupation of land is civilized, open, and continuous, the property cannot be established due to a lack of legitimate title or good faith.<sup>50</sup> Moreover, since the right of life cannot be extinguished, people’s right to occupy land (*usufruct*) cannot be extinguished or lost. Therefore, others cannot acquire land property through “prescription.”<sup>51</sup>

Proudhon also pointed out that no matter how long the prescribed time is for acquiring land property through prescription, it is impossible to legitimately obtain land property. His conclusion is that “property cannot be established by prescription.”<sup>52</sup>

#### **D. Workers’ right to share in the means of production**

Proudhon was one of the thinkers in the mid-19<sup>th</sup> century who proactively advocated for workers’ rights. In Proudhon’s discourse, the concept of “rights” when applied to workers implies “benefits that should be received,” or more precisely: the “ought to” of receiving certain benefits. It is in this sense of “ought to receive” that he uses the term “rights.” Proudhon emphasized that everyone has the right to work, meaning they ought to have work, and therefore ought to have the working conditions necessary for employment — means of production. Thus, those who come first should make room for those who come later. “With me who, as a laborer, have a right to the possession of the products of Nature and my own industry — and who, as a proletaire, enjoy none of them — it is by virtue of the *jus ad rem* that I demand admittance to the *jus in re*.”<sup>53</sup> Proudhon’s theoretical logic is that as laborers, workers’ objects of labor are things, and their labor should realize the possession of these things. However, the reality is that those who should possess things are forced to be separated from them, and thus workers have the right to demand the restoration of their *jus in re* rights to possess and use things. This is because the possession and use of things are what workers rightfully deserve.

Proudhon further argued from the perspective of mutual obligations among humans that those who initially possess land resources have an obligation to share them with newcomers. He believed that in order to live, people need to work; therefore, they need tools and means for production. This need for engaging in production creates their right to produce. This right is guaranteed by their peers, and they also have the same responsibility to

<sup>49</sup> Ibid., 119.

<sup>50</sup> Ibid., 120-121.

<sup>51</sup> Ibid., 121.

<sup>52</sup> Ibid., 122.

<sup>53</sup> Ibid., 69.

guarantee it for others.<sup>54</sup> In reality, human society cannot refuse to share land, a means of labor, with newcomers just because the existing land has been fully allocated by those who came first. Proudhon gave an example. One hundred thousand men settle in a large country such as France with no inhabitants: each man has a right to 1/100,000 of the land. If the number of possessors increases, each one's portion diminishes in consequence; so that, if the number of inhabitants rises to thirty-four million, each one will have a right only to 1/34,000,000. Now, so as to regulate the police system and the government, labor, exchange, inheritance, etc. that the means of labor shall be shared by all equally, and that each individual shall be free; and then society will be perfect.<sup>55</sup>

Proudhon further argued that refusing to share land resources with newcomers on the grounds of existing property is tantamount to committing murder. "If the right of life is equal, the right of labor is equal, and so is the right of occupancy. Would it not be criminal, were some islanders to repulse, in the name of property, the unfortunate victims of a shipwreck struggling to reach the shore? The very idea of such cruelty sickens the imagination. The proprietor, like Robinson Crusoe on his island, wards off with pike and musket the proletaire washed overboard by the wave of civilization, and seeking to gain a foothold upon the rocks of property. 'Give me work!' cries he with all his might to the proprietor: 'don't drive me away, I will work for you at any price.' 'I do not need your services,' replies the proprietor, showing the end of his pike or the barrel of his gun... Then the unfortunate proletaire abandons himself to the waves; or, if he attempts to land upon the shore of property, the proprietor takes aim, and kills him."<sup>56</sup>

#### **E. The rights of workers (laborers) arising from labor**

Among the workers' rights explained by Proudhon are the right of life/work (right of employment), the right to possess and use the means of production (without property in the means of production), and the right to access essential living resources. Proudhon believed that workers, through their labor, create wealth and thus have the right to share that wealth.

The primary right of workers is to receive wages. This is the most basic right of workers. Workers' rights also include obtaining a share of the value of incremental wealth; simply put, sharing in the profits. Proudhon emphasized that merely providing food and wages to workers is insufficient; workers should receive a portion of the value added by their labor. He pointed out that wages are the necessary expenses for workers to maintain daily life and replenish their energy, while capitalists, after paying wages, take possession of all the value produced by the workers' labor. This is akin to a transaction where capitalists, at a minimal cost, which is paying wages, acquire the entire added value of the products produced by workers. This is a

<sup>54</sup> Ibid., 92.

<sup>55</sup> Ibid., 92-93.

<sup>56</sup> Ibid., 83.

highly unequal transaction. Capitalists exploit workers' ignorance of the added value of their own labor, seizing the portion of value that should rightfully belong to the workers.<sup>57</sup> "And it is this fraudulent denial which causes the poverty of the laborer, the luxury of idleness, and the inequality of conditions. This it is, above all other things, which has been so fitly named the exploitation of man by man."<sup>58</sup>

Proudhon further argued that every worker has the right to receive equal wages as others. Proudhon did not agree that the principle of "more work, more pay" is a just principle. He opposed using a person's extraordinary intelligence, talent, or unique skills cultivated by society, or the position they hold, as reasons for them to receive wages far exceeding others.<sup>59</sup> Proudhon proposed a law of wage equality: "The limited quantity of available material proves the necessity of dividing the labor among the whole number of laborers. The capacity, given to all, of accomplishing a social task — that is, an equal task — and the impossibility of paying one laborer save in the products of another, justify the equality of wages."<sup>60</sup> This law implicitly or explicitly contains several key ideas of Proudhon: (1) The productive resources owned by society are limited; (2) Everyone has the right to participate in socially productive labor; (3) Society must distribute work based on the number of workers so that everyone can participate in work; (4) Social production is the collaborative production of all workers, where all workers equally exchange labor products; (5) The labor product represented by each person's wage can only be the labor result of another worker; (6) Only wage equality is just. Proudhon's conclusion is that "the condition of all producers is equal: consequently, that all comparison between them, and all distinction in fortunes, is impossible."<sup>61</sup>

#### **IV. The Utopian Socialist Demands for Rights in Labor Movement in the 19<sup>th</sup> Century**

The mid-19<sup>th</sup> century was a time of intense political change, marking the transition from agrarian to commercial and industrial civilizations. It was also an era of widespread bourgeois revolutions across the European continent. The European Revolutions of 1848 were movements where the continental bourgeoisie, with the help of workers and lower classes, overthrew various autocratic monarchies to establish bourgeois constitutional governments. During these revolutions that erupted across European countries in 1848, the working class emerged as a political force with its own relatively independent economic demands and political legal consciousness, though this consciousness was not fully developed. They not only helped to complete the bourgeois revolutions but also expressed their own political and legal

<sup>57</sup> Ibid., 136.

<sup>58</sup> Ibid., 140.

<sup>59</sup> Ibid., 147, 150, 152, 154, 161 and 164-166.

<sup>60</sup> Ibid., 150.

<sup>61</sup> Ibid., 161.

demands, prominently highlighting their rights. Influenced by Utopian Socialism, the workers' demands for rights indeed reflected the concept of rights of Utopian Socialism.

In the Paris uprising of February 1848, the Parisian people, primarily workers, overthrew Louis Philippe's July Monarchy and declared the establishment of the Republic (the French Second Republic) and a provisional government. Although the provisional government was controlled by the bourgeoisie, under pressure from the workers, it announced the implementation of a 10-hour workday in Paris, issued a general amnesty, abolished restrictions on joining the National Guard so that workers could also participate, lifted restrictions on freedom of the press and assembly, granted universal suffrage to men over 21, and set the daily wage for deputies at 25 francs. The number of voters increased from 200,000 to 9.3 million.<sup>62</sup> At that time, the most urgent demands of the workers were the right to work, the right to rest, and the right to education. The right to work mainly entailed the workers' demand for employment; the right to rest was primarily reflected in the reduction of working hours from the previous 16, 14, or 12 hours per day to 10 hours; the right to education was the workers' demand for compulsory education. Therefore, Parisian workers held large demonstrations, demanding the provisional government establish a Ministry of Labor, create industrial or agricultural labor organizations, and realize workers' right to work.<sup>63</sup> On February 25, 1848, a delegation of workers submitted a petition to the city hall, demanding the immediate enactment of a law on the right to work. Under public pressure, the provisional government passed a labor decree. This decree declared: "The provisional government of the French republic pledges itself to guarantee the means of subsistence of the workingman by labor. It pledges itself to guarantee labor to all citizens. It recognizes that workingmen ought to enter into associations among themselves in order to enjoy the advantage of their labor."<sup>64</sup> However, the provisional government did not adequately fulfill its legal obligations. In October 1848, the French Constituent Assembly rejected the proposal to include the workers' urgent demands for "the right to work" and "the right to education" in the Constitution.<sup>65</sup> In 1849, Parisian workers continued to fight for the right to work and right to education. In Paris, the "Committee of Democratic Socialists" led the workers to participate in the elections for the French Legislative Assembly on May 13, 1849, with the committee requiring candidates for worker representatives to adhere to certain principles, including recognizing the right to work and implementing universal compulsory education.<sup>66</sup>

<sup>62</sup> Han Chengwen et al., *The History of the 1848 European Revolutions* (Shanghai: Shanghai People's Publishing House, 1983), 56.

<sup>63</sup> *Ibid.*, 56-57.

<sup>64</sup> Raymond William Postgate, iHarcourt, 1923, page 191, quoted in Han Chengwen et al., *The History of the 1848 European Revolutions* (Shanghai: Shanghai People's Publishing House, 1983), 57.

<sup>65</sup> *Ibid.*, 82.

<sup>66</sup> *Ibid.*, 93.

On the eve of the Revolution of 1848, Germany was still an agricultural country. In 1846, farmers made up 72 percent of the total population. Even so, during the Revolution of 1848, alongside the bourgeoisie's political demands, there were also demands from the working class. These demands were primarily articulated in *Demands of the Communist Party in Germany* (hereafter referred to as "*Demands*") by Marx and Engels. The document contained 17 points and served as the political program of the Communist League during the German Revolution. The main demands representing workers' interests included universal suffrage, universal national education (right to education), establishment of state factories to ensure workers' right to labor, guarantee of them livelihood for workers, care for those who lost their ability to work, convert all the territories of the monarchs of various states and other feudal estates into state property, nationalization of all mines, pits, banks, and means of transportation, etc. *Demands* concluded by stating: "It is in the interests of the German proletariat, the petty bourgeoisie and the peasantry to work with all their might to implement the above measures. Because it is only through the realization of these that the millions who have until now been exploited by a small number in Germany and whose exploiters will attempt to keep them in subjection will attain their rights and that power owed to them as the creators of all wealth."<sup>67</sup> These demands indicate that even though Marx and Engels had more mature and long-term political and social reform proposals and programs representing the fundamental interests of the working class, they adopted the revolutionary demands of the time to focus on the rights that were of most concern to the workers of that era. On March 26, 1848, workers held a rally in Berlin, Prussia, where they presented the following demands to the Prussian government: (1) the establishment of a Ministry of Labor composed of workers and employers; (2) reduction of the standing army; (3) universal public education; (4) support for disabled workers; (5) affordable government; (6) convening of a united parliament.<sup>68</sup>

During the Revolution of 1848 in Austria, the demands put forth by workers included the right to work, a 10-hour workday, higher wages, the establishment of mutual savings banks, and the reduction of indirect taxes.<sup>69</sup>

The American labor movement in the 19<sup>th</sup> century also concentrated on the struggle to secure workers' rightful interests. In 1831, the New England Association of Farmers, Mechanics and Other Workingmen was established. The association published Seth Luther's *An Address to the Workingmen of New England*, in which Luther condemned American capitalists for trampling on the principles of the *Declaration of Independence* and depriving farmers,

<sup>67</sup> Marx and Engels, "Demands of the Communist Party in Germany," in *The Complete Works of Marx and Engels*, vol. 5, page 5, Han Chengwen et al., *The History of the 1848 European Revolutions* (Shanghai: Shanghai People's Publishing House, 1983), 137.

<sup>68</sup> *Ibid.*, 156.

<sup>69</sup> *Ibid.*, 212.



mechanics, and ordinary laborers of their freedom and equal rights.<sup>70</sup> At the end of October 1873, the North American Federation of the International Workingmen's Association issued a declaration calling on workers to organize and present the following demands to local government authorities: "(1) Provide work for all willing and able workers under the general wage standards and the eight-hour workday principle; (2) Offer enough cash or food to sustain a week's living for workers and their families in actual hardship; (3) From December 1, 1873, to May 1, 1874, landlords shall not evict tenants for unpaid rent."<sup>71</sup> In December 1873, the North American Federation joined forces with local unions in Chicago to form a Workers' Committee, presenting four demands to the government: "(1) Provide employment for all individuals able to work; (2) The treasury should provide money or food to those in need; (3) To ensure fair distribution, all funds and food should be distributed by a committee appointed by the workers..."<sup>72</sup> On December 21, 1873, some unemployed workers held a meeting in New York, demanding that the government provide jobs. The banner at the meeting read: "The unemployed demand work, not charity."<sup>73</sup>

From the demands put forward in the workers' movements mentioned above, it can be seen that the most important rights workers sought during that era were the right to work, the right to rest, and the right to education. The so-called right to work refers to the opportunity to be employed, meaning the chance to get a job. For workers facing an economic crisis during the revolution, their primary concern was securing employment. Due to the lack of job opportunities and the desire to obtain them, they viewed work as a right. In other words, the "right" in the "right to work" means something that "ought to be obtained." This concept of "right" in this sense clearly originates from the theory of Utopian Socialism.

## **V. Evaluation of the Utopian Socialism's Juristic Concept of Rights**

Before the emergence of Marxism, the ideas of Utopian Socialism represented the demands of the working class in the early- and mid-19<sup>th</sup> century, providing ideological guidance for their movement to secure their own interests.

Utopian Socialism's juristic concept of rights in the 19<sup>th</sup> century was almost entirely different from the concept of rights in analytical positivist jurisprudence in the 19<sup>th</sup> century. The latter offered a diverse interpretation of rights, but its mainstream perspective held that rights were the coercion on the

<sup>70</sup> Zhang Youlun and Lu Jingsheng, *History of the Labor Movement in the United States* (Tianjin: Tianjin People's Publishing House, 1993), 98.

<sup>71</sup> Philip S. Foner, *History of the Labor Movement in the United States*, vol. 1, 657-658, quoted in Zhang Youlun and Lu Jingsheng, *History of the Labor Movement in the United States* (Tianjin: Tianjin People's Publishing House, 1993), 238.

<sup>72</sup> *Ibid.*, 239.

<sup>73</sup> *Ibid.*, 238.

obligor by the rights holder, supported by the will of the sovereign.<sup>74</sup> This concept, which sees state will as the source of rights, interprets rights in the context of actual legal relationships between individuals, and emphasizes the coercive function of the rights holder over the obligor, was unacceptable to the Utopian socialists in the 19<sup>th</sup> century. Such an interpretation of rights was evidently unhelpful in achieving the interests desired by the working class and the lower classes of society.

Utopian Socialism's juristic concept of rights in the 19<sup>th</sup> century is fundamentally different from the classical natural law concept of rights in the 17<sup>th</sup> and 18<sup>th</sup> centuries.<sup>75</sup> The classical natural law's concept of rights, centered on "freedom," played a significant role in guiding the liberation from feudal restrictions, promoting individual freedom, and advancing social progress. However, rights in this sense do not equate to substantive benefits. The Utopian socialists in the 19<sup>th</sup> century could not use this concept of rights to advocate for the interests of the working class and the lower classes of society. As we all know, ever since Locke proposed the idea that labor in the state of nature creates property ownership, and that property rights as natural rights are inviolable,<sup>76</sup> this concept has become a foundational legal principle for economic activities in modern commercial and industrial civilization. However, since people do not have equal innate abilities to acquire property, and due to historical inheritance and mutual exchange, the distribution and possession of social production resources in practice are unequal, leading to unequal freedom in economic activities and unequal acquisition of property. The disparity between rich and poor caused by this problem was already quite evident in the 17<sup>th</sup> and 18<sup>th</sup> centuries and became extremely serious in the 19<sup>th</sup> century as industrialization spread across the European continent. Utopian socialists such as Paine, Owen, and Proudhon keenly observed the social injustices accompanying Locke's concept of rights and, standing from the perspective of the lower classes, proposed a new concept of rights: the meaning of rights equates to "ought to." For example, the right to work, the right to education, the right to rest, and the right to retirement,<sup>77</sup> each meaning "ought to have work," "ought to receive education," "ought to rest," and

<sup>74</sup> Jeremy Bentham, "A Fragment on Government," in *The Works of Jeremy Bentham*, vol. 1, John Bowring (New York: Russell & Russell, Inc., 1962), 292; John Austin, *The Province of Jurisprudence Determined*, edited by Wilfrid E. Rumble (Cambridge: Cambridge University Press, 1995), 236; Hans Kelsen, *General Theory of Law and State*, translated by Shen Zongling (Beijing: Encyclopedia of China Publishing House, 1996), 92-93.

<sup>75</sup> Thomas Hobbes, *Leviathan* (Oxford: Oxford University Press, 1998), 86; John Locke, *Two Treatises of Government (Final Part)*, translated by Qu Junong and Ye Qifang (Beijing: The Commercial Press, 1964), 16 and 86; Jean-Jacques Rousseau, *The Social Contract*, translated by He Zhaowu (Beijing: The Commercial Press, 1996), 30.

<sup>76</sup> John Locke, *Two Treatises of Government and A Letter Concerning Toleration*, edited by Ian Shapiro (Yale University Press, 2003), 111-121.

<sup>77</sup> Thomas Paine, "Rights of Man," translated by Wu Yunnan and Wu Youren, proofread by Zhu Zengwen, in *The Selected Work of Tom Paine*, translated by Ma Qinghuai et al. (Beijing: Commercial Press, 1981), 308.

“ought to receive a pension.” The slogans for rights used by the lower classes, primarily the European working class in the 19<sup>th</sup> century, in their struggle for their own interests can almost all be traced back ideologically to the Utopian socialist concept of rights. By the 20<sup>th</sup> century, Jacques Maritain further elaborated on the dual meanings of “ought to” and “non-infringement”<sup>78</sup> in his interpretation of human rights, providing a basis of thought for the human rights declaration in the United Nations Charter. It can be said that the 1948 *Universal Declaration of Human Rights*<sup>79</sup> and the subsequent *International Covenant on Economic, Social and Cultural Rights*,<sup>80</sup> and *International Covenant on Civil and Political Rights* partially inherited the rights claims of Locke during the bourgeois revolution era and the rights declarations represented by the 1789 French *Declaration of the Rights of Man and of the Citizen*, while more significantly reflecting the rights demands and claims proposed by Utopian socialists in the 19<sup>th</sup> century representing workers and lower classes. Therefore, the influence and significance of Utopian Socialism's juristic concept of rights concerning the “ought to” of benefits in the social reform practices from the 19<sup>th</sup> to the 20<sup>th</sup> century are enormous.

However, this concept of rights concerning the “ought to” of benefits has theoretical shortcomings. Firstly, the original meaning of such a “right” is “ought to” which means the “ought to” for an entity to receive certain benefits. However, the benefits associated with this “ought to” cannot be realized through the actions of the entity itself but must be realized through the “ought to” actions of another party as an obligation. Therefore, there must be another party that bears the obligation to provide the benefits. If this “ought to” as a right does not transform into the “ought to” as an obligation for the other party, then this right, whose original meaning is “ought to,” has no practical significance. Thus, although with the name of “right,” in reality, it imposes an obligation on the other party to provide benefits.

Second, what is the basis for this concept of rights concerning “ought to”? From Paine's explanation of the right to a pension, this right is based on personal needs and demands; from the discussions of Owen and Proudhon, it is based on the principle of the value of equality. However, relying solely on personal needs and demands as the basis for rights, especially as a reason for requiring others to bear the obligation of providing benefits, is clearly insufficient. Using the principle of equality as the basis and reason for the “ought-to-have” right is also not free from doubt: What is the specific content of the principle of equality on which this right is based? Taking the right of workers to receive wages as an example, is it based on the principle of equality of “more work, more pay and less work, less pay”? Or, as Proudhon said, is it based on the principle of equal wages for all? Therefore, the principle of

<sup>78</sup> Jacques Maritain, *Natural Law: Reflections On Theory & Practice*, edited by William Sweet, translated by Ju Chengwei (Beijing: China Legal Publishing House, 2009), 20-22, 55 and 56-57.

<sup>79</sup> *The International Bill of Human Rights*, New York: United Nations, 1988, page 10-20.

<sup>80</sup> *Ibid.*, 21-39.

equality on which the right (ought to) is based alone can lead to endless debates. Marx once criticized the rights ideology of Lassalle reflected in the 1875 German Workers' Party Program (the *Gotha Program*), which was about distributing all labor earnings according to the principle of equality. Marx's critique can be summarized as: a right is not something you ought to have simply because you want it,<sup>81</sup> nor is it something you ought to have based on the imagined principle of equality.<sup>82</sup> "A right can never be higher than the economic form of society and the cultural development conditioned by it."<sup>83</sup>

Marxist theory places the consideration of rights representing the interests of the working class within a broader context of social-historical development and comprehensive societal transformation. It provides a more scientific and reasonable argument for the working class's concept of rights based on the principle of "ought to," thereby elevating the concept of rights reflecting the interests of the working class to an unprecedentedly high intellectual level. However, this requires further elaboration in a separate discussion.

(Translated by *SU Yilong*)

<sup>81</sup> Karl Marx, "Critique of the Gotha Program," in *Marx & Engels Selected Works*, vol. 3 (Beijing: People's Publishing House, 1995), 302.

<sup>82</sup> *Ibid.*, 302-305.

<sup>83</sup> *Ibid.*, 305.