

# On Li Dazhao's Human Rights Theory and Practice

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**Abstract:** *Li Dazhao dedicated his whole life to advocating for legal rights, and his human rights theory and practice unfolded in the context of the International Labour Organization and the League of Nations from 1919 to 1920. His human rights activities encompassed both theoretical exploration and practical participation. In his early political commentary, Li Dazhao extensively discussed civil and political rights. Such terms as constitutionalism, democracy, freedom, separation of powers, political parties, speech, equality, elections, and political participation frequently appeared in his writings and were incorporated into his constitutional studies. After embracing Marxism, he paid greater attention to women's political participation, labor movements, labor-capital relations, and labor legislation, actively supporting their rights movements. National self-determination was also a significant component of his human rights theory and practice. He focused on national issues, explored comparative studies of Chinese and Western cultures, and advocated for the right to national self-determination.*

**Keywords:** Li Dazhao's human rights theory ♦ constitutional protection of human rights ♦ women's right to political participation ♦ labor legislation ♦ right to national self-determination

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“The Struggle for Law” is the title of a speech given by German jurist Rudolf von Jhering in 1872. This famous article, which combines legal ideals and legal history, has inspired countless legal professionals. The history of human law is the history of the struggle for rights. The abolition of slavery and serfdom, and the protection of land ownership, business, and freedom of religion all took centuries of bloody battles. In the Roman law tradition, “rights” consisted of “subjective rights” and “objective rights.” Objective rights are rights determined by positive law, while subjective rights are rights that have not yet been confirmed by law but are rights that humans shall enjoy. Therefore, the struggle for rights is the process of transforming human subjective rights into objective rights.<sup>1</sup> Li Dazhao did not mention Jhering's name in his writings, but

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<sup>1</sup> Rudolf von Jhering, *The Struggle for Law*, translated by Hu Baohai, in *Civil and Commercial Law Review*, vol. 2, Liang Huixing ed. (Beijing: Law Press • China, 1994), 18. “Subjective rights and objective rights,”

given the similar era and context, “The Struggle for Law” can be seen as a true portrayal of Li Dazhao’s legal career. As a revolutionary and politician who received legal education, it can be said that Li Dazhao’s life was a life of struggle for legal rights.

The organizational activities of the world human rights movement can generally be traced back to the Paris Peace Conference in 1919, the International Labour Organization, and the League of Nations, which was called for by the 28<sup>th</sup> President of the United States in 1920.<sup>2</sup> The fact that human rights formally became a subject of international politics and law can be traced back to the United Nations’ *Universal Declaration of Human Rights* in 1948, the subsequent *International Covenant on Civil and Political Rights*, and the *International Covenant on Economic, Social, and Cultural Rights*. The historical background of Li Dazhao’s human rights practice and theory is the period of the signing of the *Treaty of Versailles* and the establishment of the League of Nations in January 1920. 1919 is the highlight of Li Dazhao’s academic and social activities. His revolutionary activities were triggered by the signing of the *Treaty of Versailles*. The discussion of modern democracy, the rule of law, and freedom made by President Woodrow Wilson, the advocate of the League of Nations, is the theoretical basis often cited by Li Dazhao.<sup>3</sup> In this sense, Li Dazhao’s human rights theory manifests the era of the rise of international human rights law in China. In other words, Li Dazhao’s human rights theory and practice are integral to the rise of international human rights law.

## **I. A Pioneer in Chinese Human Rights Theory and Practice**

Li Dazhao received a relatively systematic legal education. In his early years, he entered Tianjin Law and Politics School to study law and politics. He

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or “subjective rights and objective law,” are one of the core concepts of the Roman law tradition and the continental jurisprudence. “The core concept of private law, also known as the final abstraction of the complex legal life, is the rights of the subject, that is, subjective rights (ius).” “Jhering ridiculed the old definitions of subjective rights more straightforwardly and proposed a new conceptual statement: subjective rights are interests protected by law.” (Helmut Coing, “The History of the Concept of ‘Subjective Rights’,” translated by Ji Hailong, in *Tsinghua Law Review*, vol. 15, no.1 (Beijing: Tsinghua University Press, 2012), 395, 396 and 411) “If we grasp the relationship between objective law and subjective rights in a dynamic process, the possibility of generating objective law from the assertion of subjective rights will emerge in the field of civil law” (YAMAMOTO Ryuji, *Objective Law and Subjective Rights*, translated by Wang Guisong, in *Law and Economy* 6 (2020).

<sup>2</sup> Steve Chamovitz, “The Emergence of Democratic Participation in Global Governance (Paris, 1919),” 10 *Ind. J. Global Legal Study* 45 (2003); Roland N. Stromberg, *Collective Security and American Foreign Policy: from the League of Nations to NATO* (New York: Frederick A. Pmeger, 1963).

<sup>3</sup> Li Dazhao, “Power and Free Politics,” in *The Complete Works of Li Dazhao*, vol. 2 (Beijing: People’s Publishing House, 2013), 297 (Unless otherwise stated, all citations in this paper are from the 2013 edition published by People’s Publishing House); Li Dazhao, “Populism,” in *The Complete Works of Li Dazhao*, vol. 4, page 147.

also systematically studied jurisprudence, constitutional law, and criminal law, as well as English and Japanese. According to Li Dazhao, Tianjin Law and Politics School was originally named Beiyang Law and Politics School, and the school was quite large. Japanese law doctors Yoshino Sakuzo and Imai Yoshiyuki served as professors at the school, and there were also many professors from the East and the West and legal celebrities who returned from studying abroad. The school enrolled students from all provinces, and the students were very active in the late Qing Dynasty. After the founding of the Republic of China, the school was renamed Zhili Law and Politics School.<sup>4</sup> In 1923, on the 18<sup>th</sup> anniversary of the school, Li Dazhao was invited to give a speech at the school anniversary event. He reviewed the school's history by associating it with Chinese and foreign history. He said that in 1905, five former Qing ministers went abroad, which marked the beginning of constitutionalism and law revision in the late Qing Dynasty. During the same period, anti-Qing revolutionaries set off an explosion at Chaoyang Train Station in an attempt to assassinate Qing government officials who were on an overseas inspection tour, ushering in the modern revolutionary era. In 1906, the Beiyang Law and Politics School was founded following the explosion. Li Dazhao's comment on this was that the emergence of the school could be seen as a preparation for the revolution and reform, as well as an embellishment of the Qing Dynasty's false constitutionalism and the cultivation of relevant talents.<sup>5</sup> Li Dazhao said that the Law and Politics School had a revolutionary tradition and that he was also a participant in the campus movement.

Later, he went to Waseda University in Japan to study political science. In his first year, he systematically studied basic Japanese legal subjects. Li Dazhao was also an active participant in the movement of Chinese students studying in Japan against the "Twenty-One Demands" between China and Japan.<sup>6</sup> In the 1920s, abolishing unequal treaties and eliminating extraterritoriality were urgent issues that needed to be resolved in China's political, diplomatic, and legal history. Li Dazhao paid close attention to them and actively called for action, indirectly participating in the movement for national self-determination.<sup>7</sup>

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<sup>4</sup> Li Dazhao, "Tianjin Law and Politics School to Have a New President and Academic Dean," in *The Complete Works of Li Dazhao*, vol. 2, page 219.

<sup>5</sup> Li Dazhao, "A Review of the Past Eighteen Years — My Speech at the Eighteenth Anniversary Celebration of Zhili Law and Politics School," in *The Complete Works of Li Dazhao*, vol. 4, page 491.

<sup>6</sup> Quan Hexiu, "On Chen Duxiu and Li Dazhao's Study Experience in Japan and its Influence," *Social Science Front* 4 (2012); Dong Baorui, "The Role of Studying in Japan in Li Dazhao's Whole Life," *Hebei Academic Journal* 1 (1990).

<sup>7</sup> Yu Zuhua, "The Intersection and Interaction of the CPC's Discourses on the 'PRC' and 'Chinese Nation' during the Democratic Revolution," *Zhejiang Academic Journal* 1 (2023); Du Pin, "From 'Asian Confederation' to 'Human Unity': Li Dazhao's Early Exploration of the Idea of 'Human Community'," *Journal of Northeast Normal University (Philosophy and Social Science Edition)* 1 (2023); Zheng Dahua,

In the context of China's modern legal history, Li Dazhao witnessed Sun Yat-sen's *Provisional Constitution*, the Kuomintang's *Temple of Heaven Constitution Draft*, Yuan Shikai's *Law of the Republic of China*, and Cao Kun's *Constitution of the Republic of China*. He witnessed the entire development process of the early days of China's constitutions.<sup>8</sup>

One of Li Dazhao's ideals was protecting people's rights by means of the law. He was skeptical and critical of the Chinese people's spirit and tradition of the rule of law. Li Dazhao lamented the lack of legal authority and the spirit of the rule of law in China. "Due to the long-term influence of the legacy of feudal autocratic rule, China has violated the spirit of the rule of law in many aspects." Moreover, when Yuan Shikai was in power, he despised and abandoned legal discipline. "The legal departments dared not investigate these illegal acts, and even if they did, it would be useless." "The general public's faith in and fear of the law are not strong. Once tempted by crime, they forget the authority of the law."<sup>9</sup> The inherent problems of the Chinese are that, firstly, they are "emotional rather than rational"; secondly, they "prefer to fight for everything by force rather than by law."<sup>10</sup> Even so, he still held the idea of protecting rights through law. In his view, a constitutional state needs to be matched with well-educated constitutional citizens, that is, "constitutional citizens shall take freedom, fraternity, and equality as their creed in dealing with the world." He said that there are two kinds of power: one is force, and the other is the power of law. Barbarians prefer force, while civilized people prefer the power of the law. Citizens of a constitutional republic shall respect the law and not fight violence with violence. His statement has a hint of an ideal state ruled by law.

While working at Peking University, Li Dazhao participated in his colleagues' legal protests. In August 1920, he participated in the *Declaration for Freedom* campaign organized by Hu Shi and Jiang Menglin. The *Declaration* put forward the famous conclusion: "We don't want to talk about practical politics, but they are closely related to us all the time."<sup>11</sup> To defend "some basic minimum freedom," they denounced and called for the abolition of a series of

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"A Re-study of Li Dazhao's Thought on 'National Self-determination'," *Journal of Social Science of Hunan Normal University* 4 (2020); Zhou Jingcheng, "The CPC's Early Advocacy of Federalism and Thoughts on the Right to National Self-determination," *Journal of Yangtze Normal University* 5 (2011); Han Depei, Luo Chuxiang and Che Ying, "Li Dazhao's Thoughts on International Law," *Journal of Wuhan University (Philosophy and Social Science Edition)* 4 (1999).

<sup>8</sup> Zhu Liyu and Wang Chenping, "Some Studies on Li Dazhao's Human Rights Thoughts," *Chinese Journal of Human Rights* 2 (2021); Ouyang Yunzi, "On Li Dazhao's Thoughts on Human Rights," *Hebei Academic Journal* 6 (2007).

<sup>9</sup> Li Dazhao, "Sin and Repentance," in *The Complete Works of Li Dazhao*, vol. 2, page 169.

<sup>10</sup> Li Dazhao, "Well-educated Constitutional Citizens," in *The Complete Works of Li Dazhao*, vol. 1, page 519.

<sup>11</sup> Li Dazhao, "The Declaration for Freedom," in *The Complete Works of Li Dazhao*, vol. 5, page 489.

individual laws that hindered freedom and violated the *Provisional Constitution*.

In the *Declaration*, professors from Peking University listed their rights demands as follows. Firstly, the *Public Security Police Regulations* promulgated in March 1914 should be abolished because they put the freedoms of association, demonstration, speech, etc., under the control of the police, making the freedoms of assembly and association empty talk. Second, the *Publication Law* promulgated in December 1914 should be abolished because it violated the freedom of publication by putting the freedom to publish, print, sell, and distribute books under the control of the police or county governors. Third, the *Newspaper Regulations* promulgated in 1914 should be abolished because it was a law copied from Japan's special laws that putting the freedom of speech of periodicals under the control of the police, and requiring bail. Fourth, the *Regulations on the Management of Printing Businesses* promulgated in 1914 should be abolished because they deprived the Printing Bureau of its business freedom. Fifth, the *Pre-warning Regulations* promulgated in 1914 should be abolished because the crimes of undermining social morality and obstructing local public welfare stipulated in the regulations violated the freedom of residence and migration, and they even punish those who "want to commit" crimes, which is contrary to the principle of freedom. Sixth, the *Martial Law* promulgated in 1914 should be abolished because Article 14 of the law violated the rights of the people to their bodies, homes, speech, writings, assembly, association, confidentiality of correspondence, residence, migration, property, and business. A reasonable regulation should be that martial law should only be declared in the event of a foreign invasion or war.

After criticizing the above six regulations, the professors called for the freedoms of speech, publication, assembly, association, and confidentiality of correspondence. They even suggested the implementation of a British-style writ of habeas corpus to protect people's physical freedom. They also suggested organizing an "election supervision group" to prevent election fraud.<sup>12</sup> In 1922, Li Dazhao also participated in the call for "a good government" by Cai Yuanpei and Wang Chonghui. They put forward several principles of "a good government": "constitutional government," "open government," and "planned politics."<sup>13</sup> In 1924, he participated in the initiative put forward by Jiang Menglin and Ma Xulun to establish diplomatic relations with Russia. They said, "The Governments of China and Russia are both newly established, and it seems appropriate for them to meet each other sincerely and set a new example for world diplomacy."<sup>14</sup>

Additionally, as early as March 1921, eight colleges and universities in

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<sup>12</sup> Ibid., 491.

<sup>13</sup> Li Dazhao, "Our Political Opinions," in *The Complete Works of Li Dazhao*, vol. 5, page 506.

<sup>14</sup> Li Dazhao, "A Letter to Foreign Minister Gu," in *The Complete Works of Li Dazhao*, vol. 5, page 527.

Beijing decided to go on a general strike because the government owed them wages. They organized a joint meeting attended by faculty and staff representatives. Li Dazhao served as acting chairman and secretary of the News Department. In addition to the strike, Li Dazhao also believed in the use of legal means to resolve the government's wage arrears problem. He published an article in Japanese in *New China* to condemn the government's wage arrears.<sup>15</sup> He also published his speech at the joint meeting in the *Morning Post*, saying that "because the government uses the law as a weapon, the faculty and staff have no choice but to deal with it in this way," that is, "filing a lawsuit in court." However, Li Dazhao also expressed his doubts about the effectiveness of the legal approach. "Most groups advocate a legal solution," but "under the current political system, it is difficult to expect the law system to have an independent spirit unless the people support it."<sup>16</sup>

It can be said that Li Dazhao always hoped to solve social problems through political and legal means. In his view, social problems are often mixed with political issues. To solve them, we must "use political and legal means." After embracing Marxism and participating in the movements of the Communist International, he began to study social issues from the perspectives of law and legal history. He believed that women's participation in politics and labor issues were the two biggest social issues. Both issues involve political topics. "Women and laborers are not treated equally in law and economics. They already organize groups, petition the legislature, and campaign vigorously." "The Police Law prohibits women from holding assemblies or associations." However, Li Dazhao preferred political solutions to legal ones. He believed that "it is useless to ask for legal recognition only" and "it is necessary to organize a strong political group to solve these issues." Therefore, the appropriate path was as follows. "Firstly, we must fight for equal rights under a constitution, such as women's participation in politics and labor legislation. Then, we use the political power we've gained to solve various issues."<sup>17</sup>

The legislative provisions and judicial application of legal rights are presented statically when looking at rights from a legal perspective. Therefore, "rule of law" means strictly enforcing the law peacefully. However, when looking at rights from a political perspective, the human rights movement focuses more on how human demands are elevated to law. The realization of rights is dynamic, and "rule of law" means seeking legal protection through struggle. "Freedom has a price," "Struggle for rights," and "Freedom guides the

<sup>15</sup> Li Dazhao, "A Speech on the General Strike of Teachers and Staff of Beijing's Vocational Colleges and Universities," in *The Complete Works of Li Dazhao*, vol. 3, page 393.

<sup>16</sup> Li Dazhao, "A Speech at the Joint Meeting of Various Groups in Beijing," in *The Complete Works of Li Dazhao*, vol. 3, page 395.

<sup>17</sup> Li Dazhao, "Social Issues and Politics," in *The Complete Works of Li Dazhao*, vol. 4, page 138.

people” are all human rights activities in the eyes of political scientists. At this time, the roles of jurists and politicians had different manifestations. A human rights theorist needed to have a spirit of realistic criticism, a spirit of skepticism, and a spirit of unswerving struggle. Realism and critical research in law are both methodologies of legal political science.<sup>18</sup> From a methodological point of view, Li Dazhao is a legal politician with a critical spirit.

According to Li Dazhao's understanding, the military governor was a product of the military law era and not suitable for the constitutional era. When democracy emerged, military power should be returned to the government. After the abolition of the military power of the military governor, the task of maintaining public order fell on the police. “The purpose of establishing the police is to ensure social security and catch thieves.”<sup>19</sup>

Li Dazhao opposed using the empty talk of a saint to suppress people's freedom of thought. He criticized the laws at that time as “contradictory.” “On the one hand, they demand the protection of freedom of belief, while on the other hand, they campaign to make Confucianism the state religion; on the one hand, they respect the self-identity of the people, while on the other hand, they maintain the position of idols.”<sup>20</sup> Li Dazhao opposed the inclusion of Confucius' teachings in a constitution. He said, “Confucius is the remains of several thousand years ago, while a constitution is a product of modern times.” The inclusion of Confucius' teachings in a constitution would create “a constitution of a moldy dead man” or “a constitution in an ancient tomb.”<sup>21</sup> “The characteristic of a democracy lies in the fact that its people may fully express their opinions.”<sup>22</sup>

## II. A Defender of Civil and Political Rights

According to modern human rights theory, civil and political rights are among the most basic human rights. Within a state, the basic rights of citizens are established through basic laws. Li Dazhao was most interested in politics and political science. Among the subjects in the Law and Politics College, he naturally chose constitutional law, which can be classified as political science. Moreover, as a revolutionary, Li Dazhao always had a keen interest in constitutions, democracy, freedom, decentralization, political parties, speech,

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<sup>18</sup> The typical representative of legal politics in legal history is the “critical legal studies” movement in the 1970s and 1980s. Classic works include: Mark Tushnet, “Critical Legal Studies: A Political History,” 100 *Yale Law Journal* 1515 (1991); Robert Gordon, “Critical Legal Histories,” 36 *Stanford Law Review* 57 (1984); Duncan Kennedy, “Form and Substance in Private Law Adjudication,” 89 *Harvard Law Review* 1685 (1976).

<sup>19</sup> Li Dazhao, “A Heated Debate on the Abolition of Military Governors,” in *The Complete Works of Li Dazhao*, vol. 1, page 67.

<sup>20</sup> Li Dazhao, “Contradictory Life and Double Burdens,” in *The Complete Works of Li Dazhao*, vol. 1, page 417.

<sup>21</sup> Li Dazhao, “Confucius and Constitution,” in *The Complete Works of Li Dazhao*, vol. 1, page 423.

<sup>22</sup> Li Dazhao, “Democracy in the War,” in *The Complete Works of Li Dazhao*, vol. 2, page 143.

equality, elections, and political participation. As a result, he incorporated them into his study of constitutional law. In his early political writings, he discussed civil and political rights extensively.

In 1916, the Kuomintang's *Temple of Heaven Constitution Draft* and Yuan Shikai's *Law of the Republic of China* successively "failed." Therefore, there were growing calls for drafting a new constitution in China. Li Dazhao wrote articles to express his understanding of a constitution. His vision for the future constitution fully demonstrated his basic ideas on the making of a constitution. He said that constitution-making is nothing more than reconciliation and resistance. The essence of a constitution is all about balance, balancing the intentions and emotions of all political forces. Once various forces are on the right track and extra-legal forces are included in a constitution, all problems will be solved. In terms of form, he said that historical experience indicated that "the compilation of a constitution should focus on simplicity, stipulating the general principles rather than pursuing cumbersome details. You should leave room for revision so that it can cover everything and leave the detailed matters to other laws."<sup>23</sup>

#### **A. Constitutional protection of human rights**

Li Dazhao believed in using constitutional politics to protect civil rights. He also believed in the self-correcting function of a constitution. He compared the different ways in which autocratic systems and constitutional politics dealt with corruption. In 1915, Yuan Shikai sentenced Wang Zhixin, the acting director-general of the Ministry of Internal Affairs, to death for taking bribes. In 1917, a bribery case occurred in the Ministry of Finance. Li Yuanhong issued a presidential decree to dismiss the Minister of Finance, Deputy Minister, Counselor, and Director, and handed them over to the court for investigation. Li Dazhao said that under autocratic politics, very few officials were caught abusing power and accepting bribes, and even fewer were punished by the law. There was another hidden reason behind Yuan Shikai's sentencing of Wang Zhixin. Wang was actually a victim of party struggles and his crime of taking bribes was a superficial excuse. Under constitutional politics, however, wrongdoers can not escape the punishment of the law because of the supervision of parliament and the exposure of public opinion. This is the function of a constitution.<sup>24</sup>

Li Dazhao applied constitutional theory to political and legal practice. In his view, the Constitution Drafting Committee of the Republic of China established in 1913 was a constitutional group and the foundation of national sovereignty. A constitution is the foundation on which the destiny of a state rests.

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<sup>23</sup>Li Dazhao, "Notes on Drafting a Constitution," in *The Complete Works of Li Dazhao*, vol. 1, page 369.

<sup>24</sup>Li Dazhao, "Bribery Cases and Constitutional Politics," in *The Complete Works of Li Dazhao*, vol. 2, page 165.

“The constitutional convention is how a constitution is produced.”<sup>25</sup> A good constitution can benefit the people, while a bad one will bring disaster to the state. The power of the president is granted by the constitution and is therefore limited by and cannot override it. It can be said that in the power struggle between Yuan Shikai and the Kuomintang in 1913, Li Dazhao theoretically supported the parliament and denied Yuan Shikai. Afterward, Yuan Shikai expelled the members of the *Temple of Heaven Constitution Draft*. Li Dazhao “felt unexpectedly subjected to brutal and insane oppression. He left the capital in a hurry, feeling as if he was the leaves blown away by the autumn wind.”<sup>26</sup>

By November 1914, Li Dazhao's understanding of a constitution had deepened to the level of political struggle. He no longer simply compared the provisions of the constitutions of various states in terms of legal texts. He believed that political struggles were confrontations between powers. Therefore, a constitutional rule was necessary to achieve peace and happiness. Constitutional rule is all about tolerance and balance. Li Dazhao's ideal constitution was as follows: “The goodness of a constitution lies in its ability to cover all aspects broadly without partiality. It should not be limited to a certain period or a certain geographical area, nor should it serve only the interests of a certain force or a certain group.”<sup>27</sup> Li Dazhao identified the British unwritten flexible constitution as a model. The reason is that different political forces confront and compete with each other, and each can follow political principles and norms, as well as be tolerant and accepting. “A fair and just constitution is formed through the mutual game and checks and balances between opposing forces.” Furthermore, “The most important task is to cultivate forces that can confront each other.”<sup>28</sup>

To this end, Li Dazhao put forward four theories, hoping that government officials and prestigious people could develop a spirit of balancing various forces. Firstly, those in power should exercise self-restraint, tolerate political dissent, and maintain political balance. Since the late Qing Dynasty and the early Republic of China, from Russia to Mexico, the politics of various states have been immersed in the tide of revolution, which are all typical examples of the failure of implementing new political programs. Second, political factions should go with the flow and not reject the existence of legitimate dissenting factions. Instead, they should encourage their independent spirit, abandon the wrong path, and move towards the right one. Li Dazhao said that in ancient times,

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<sup>25</sup> Li Dazhao, “Blessings on September 5<sup>th</sup>,” in *The Complete Works of Li Dazhao*, vol. 1, page 360.

<sup>26</sup> *Ibid.*, 361.

<sup>27</sup> Li Dazhao, “The Development of Political Confrontation,” in *The Complete Works of Li Dazhao*, vol. 1, page 179.

<sup>28</sup> Li Dazhao, “The Development of Political Confrontation,” in *The Complete Works of Li Dazhao*, vol. 1, page 179.

disasters were caused by factional struggles, and now different parties were fighting each other. His ideal approach was, “The most important principle in the political field is to consider the checks and balances among multiple political forces, and then use the power you have to match and adjust them to maintain that balance.”<sup>29</sup> Third, those who have failed in politics can immediately transform from a state full of fighting and malice to a state of peace of mind by abandoning any thoughts of grudges and revenge, just like putting down a butcher’s knife. Li Dazhao quoted Tolstoy’s words, “True peace cannot be achieved through violence. Everyone must follow their conscience and hate violence. Then violence will disappear on its own if it is not eliminated.”<sup>30</sup> A negative example was Robespierre from France, who used the excuse of the republic to practice despotism, set up revolutionary trials, and killed dissidents, resulting in the brutal execution of kings, nobles, ladies, and middle-class gentry. As compared to France, the situation in Britain is less tragic. Britain gained political civilization ten times that of France. Fourth, righteous people should not be tempted by wealth, power, and authority, but maintain their spiritual dignity and respect their subjective will.

### **B. Political rights under a constitution**

The first one is the right of political parties and associations.

Political parties are the product of modern parliamentary politics and groups of people with common political goals and interests. Modern political science and law define political parties as a constitutional right of association. However, political associations are different from general social organizations. Since their goal is political power, political parties enjoy special powers under the law but are also subject to special restrictions.<sup>31</sup> Li Dazhao studied the historical experiences and lessons of modern Western politics and was well aware of the role and importance of political parties in modern political life. He later became one of the founders of the Communist Party of China, which was closely related to his study of modern political science. He said, “The political spirit of any state that implements a constitutional system is based on political parties. It seems that political parties are the result of constitutional politics.”<sup>32</sup> “Constitutional states all have two or more major parties that compete with and supervise each other, taking turns in power to support the political situation.”<sup>33</sup> The British Parliament implements a cabinet system under a two-party system,

<sup>29</sup> Ibid., 184.

<sup>30</sup> Ibid., 185.

<sup>31</sup> Xu Aiguo, “Historical Origins of Legal Regulation of Political Parties in the West,” *Democracy & Science* 4 (2021); Song Zeyi, “The Spiritual Core and Institutional Structure of German Political Party Law,” *Democracy & Science* 6 (2021).

<sup>32</sup> Li Dazhao, “Hidden Worries,” in *The Complete Works of Li Dazhao*, vol. 1, page 1.

<sup>33</sup> Li Dazhao, “Unicameral and Bicameral Systems,” in *The Complete Works of Li Dazhao*, vol. 1, page 94.

which fully reflects the significance of the British party system to British democratic politics.

The second one is the right of impeachment and oversight.

Discussing the right of impeachment from a theoretical perspective was Li Dazhao's early experience in studying constitutional law. In the political community at that time, politicians were busy drafting a constitution. In the academic community at that time, there were different opinions on the political and legal meanings of the word "impeachment." The purpose of Li Dazhao's articles on impeachment was not only to reconcile the differences among scholars but also to analyze the exact meaning of the word "impeachment semantically." From a technical point of view, Li Dazhao's views were quite consistent with those of modern linguistics, especially the philosophy of language.

Li Dazhao said that the meaning of "impeachment" in ancient China referred to "reporting or accusing violations of the law." In modern Western states, the word refers to the way the legislative body holds the executive body accountable. In the academic community at that time, there was a view that impeachment was a "legal" issue, while the corresponding "political" issue was "votes of no confidence"; another view was that impeachment was both a political and legal issue. Li Dazhao believed that the disagreement between the two sides was only a difference in "language" rather than a difference in "legal principles."

Li Dazhao tried to integrate the two statements and eliminate their differences. On the one hand, impeachment means both political and legal responsibility. Li Dazhao quoted the impeachment case of Thomas Osborne Leeds in Britain and the impeachment principles of the House of Commons. "The punishment of the monarch shall be in accordance with the law." This is about the legal responsibility. While "integrity, fairness, and national interests" are about the political responsibility.<sup>34</sup> On the other hand, after William III of England, with the formation of the British parliamentary cabinet political system, the right of impeachment changed. The majority party in the parliament formed the executive branch of the government. The word impeachment slowly shifted from having both political and legal implications to referring solely to legal responsibility. It legally meant the parliament supervised executive ministers.

He went on to explain that the French Constitution of 1875 stipulated that the president shall be prosecuted by the House of Commons and tried by the House of Lords, which is the word impeachment's political meaning; while the criminal accountability of government officials is its legal meaning. Li Dazhao then traced the translation of the word impeachment from Japanese to Chinese.

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<sup>34</sup>Li Dazhao, "Resolving the Impeachment Language Controversy," in *The Complete Works of Li Dazhao*, vol. 1, page 13.

When the Japanese introduced the European and American usage of the word impeachment to Japan, they did not distinguish between its political and legal meanings. In the *Provisional Constitution* of the Republic of China, Li Dazhao attributed “dereliction of duty” to political responsibility and “violation of the law” to legal responsibility.<sup>35</sup> Therefore, in the era of the *Provisional Constitution*, impeachment had both political and legal meanings.

Li Dazhao analyzed the British impeachment system from the perspective of historical development. In the transition from monarchy to parliamentary democracy, he explored the transformation of British impeachment from political and legal meanings to merely legal meaning. According to his understanding, before the Glorious Revolution, the relationship between the monarch’s administration and parliamentary legislation was political and legal; after the revolution, the relationship between the administration and the parliament was legal. Li Dazhao’s “postmodern interpretation” approach to semantics is quite brilliant. Finally, he applied linguistic analysis to the political context, arguing that semantic issues are relevant to constitutional matters. The cabinet system and the presidential system have different settings. Under the cabinet system, distrust is a political issue, while impeachment is a legal issue; under the presidential system, legislation and administration are separated, and impeachment is a way to hold people accountable under the law.

The third one is the right to participate in democratic politics.

Li Dazhao said that the state and sovereignty are actually one. When they are united, they are the state, and when they are separated, they are the sovereignty. In the case of an autocratic state, the state is built on force; in the case of a constitutional state, the state is built on public opinion. Li Dazhao’s views on the democratic system can be traced back to Aristotle. Aristotle divided political systems into six types: the good ones include monarchy, aristocracy, and democracy, while the bad ones include tyranny, oligarchy, and the mob.<sup>36</sup> Modern “rule by the people” is actually classified as mob rule by Aristotle, but it also has the three characteristics of good governance. Li Dazhao said that the spirit of democracy lies in the fact that every member of the political body has the opportunity to be included in it and to give full play to their talents. “Under the laws of their state, they are free to abide by the rules, fulfill their duties, and work towards a common goal.”<sup>37</sup>

The core of political participation is that citizens realize their political demands through elected representatives. “The spirit of constitutional politics begins with the electoral system.” “If it is a constitutional state, then the

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<sup>35</sup>Li Dazhao, “Resolving the Impeachment Language Controversy,” in *The Complete Works of Li Dazhao*, vol. 1, page 13.

<sup>36</sup>Aristotle, *Politics*, translated by Wu Shoupeng (Beijing: The Commercial Press, 1965), page 132-134.

<sup>37</sup>Li Dazhao, “Violence and Politics,” in *The Complete Works of Li Dazhao*, vol. 2, page 242.

appropriateness of the electoral system is the key to whether its governance is stable or chaotic, safe or dangerous.”<sup>38</sup> Li Dazhao therefore discussed the citizens' right to participate in politics from the two perspectives of the separation of the central bicameral system and the decentralization of power between the central and local governments.

Regarding the unicameral and bicameral systems, Li Dazhao said that the modern democratic system includes the House of Lords, which is composed of aristocrats, and the House of Commons, which is composed of commoners. The bicameral system is a common practice in the world. Li Dazhao believed that Britain was the birthplace of the parliamentary system and that it originally had a bicameral system. However, he thought that Britain's House of Lords at the time was in name only and that the formal bicameral system was actually unicameral. Therefore, he opposed the bicameral system and supported the unicameral one. To avoid the risk of autocracy brought about by the unicameral system, Li Dazhao designed two auxiliary systems. The first is the party system in parliamentary politics, where the two-party system ensures the balance of political power; the second is the indirect and restricted electoral system, rather than the direct one. Li Dazhao's ideal system originated from the design of the British cabinet system, rather than the federal and state system of the United States.<sup>39</sup>

Li Dazhao also made a special discussion on whether to adopt centralization or decentralization. He said that the Qin dynasty changed from a feudal to a prefecture-county system in Chinese history. The state power was transferred from local decentralization to centralization, leading to major state structure changes. Li Dazhao used legal terms to explain the phenomenon of land “owned by princes” evolving into “owned by the emperor.” He said, “Although the people and land were no longer privately owned by the princes, they belonged to a certain royal family, which was merely a transfer of ownership at the level of private law.”<sup>40</sup>

In modern society, the dispute over adopting the feudal or prefecture-county systems has ended. The issue has evolved into a debate on choosing between national unity and federalism. Li Dazhao compared the differences between ancient feudalism and modern decentralization. The feudal system is based on the monarch, while the decentralized system is based on national politics; the feudal system focuses on the safety of the royal family, while the decentralized system focuses on the distribution of power between the central and local governments; feudal princes privately own their land, while the

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<sup>38</sup>Li Dazhao, “A Study on the Electoral System in European States,” in *The Complete Works of Li Dazhao*, vol. 1, page 132.

<sup>39</sup>Li Dazhao, “Unicameral and Bicameral Systems,” in *The Complete Works of Li Dazhao*, vol. 1, page 93.

<sup>40</sup>Li Dazhao, “Provincial System and Constitution,” in *The Complete Works of Li Dazhao*, vol. 1, page 379.

decentralized system regards land as a national public affair; in ancient times, centralization was to prevent local governments from endangering the royal family, while today it is to prevent local governments from isolating the central government; in ancient times, decentralization was to prevent treacherous officials from usurping power, while today it is to create heroes; decentralization was difficult to be implemented in ancient times because people were afraid of the dignity of the emperor and the autocracy of the princes, but now there is no such worry under the rule of the people. Despite the differences between ancient and modern times, the concentration and separation of power “interact with each other to maintain a balance, so that the state’s social order can be stable and the people’s lives can be secure.”<sup>41</sup> This is a common practice in ancient and modern times, both in China and abroad. Li Dazhao believed that federation and unification were not contradictory and that examples of states unified by federation include powerful Germany and the United States.

### **C. Freedom and human rights**

Li Dazhao emphasized the constitutional protection of freedom. “Constitutional freedom is necessary for the lives of constitutional citizens. Without constitutional freedom, there is no value for the lives of constitutional citizens.”<sup>42</sup> Among the freedoms, Li Dazhao elaborated on were Freedom of the press, freedom of religion, and freedom of teaching. There were criminal punishments for books in ancient China, such as the burning of books and burying of scholars, and literary inquisition in the Qing Dynasty; in the West, books such as *The Spirit of the Laws* and *The Philosophy of Heavenly Principles* were destroyed and their authors were imprisoned. Modern constitutions established freedom of publication. Examples include *The Declaration of the Rights of Man and of the Citizen* from France, the constitutions of the U.S. states, and the constitutional amendments of Belgium, Prussia, Austria, and the United States. They all stipulated similar provisions. Li Dazhao believed that publications must not be subject to censorship. “Except for defamation and leaking secrets, which are clearly defined in the law, publications are not subject to any legal restrictions.”<sup>43</sup> Regarding freedom of belief, Li Dazhao studied the history of the separation of church and state in Europe and said that in modern states, “the state religion system shall not exist in today’s progressive society.” What Li Dazhao called “freedom of teaching” refers to the spread of academic theories and ideas in the teaching field. According to the European Constitution, “freedom of teaching” actually refers to “freedom of scientific research,” which comes from Article 9 of the French *Declaration of the Rights of Man and of the Citizen* issued on July 5, 1815: “All the essentials of scientific knowledge, skills,

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<sup>41</sup>Li Dazhao, “Provincial System and Constitution,” in *The Complete Works of Li Dazhao*, vol. 1, page 383.

<sup>42</sup>Li Dazhao, “Constitution and Freedom of Thought,” in *The Complete Works of Li Dazhao*, vol. 1, page 401.

<sup>43</sup> Ibid., 405.

and ideas shall be taught in universities.”<sup>44</sup>

In 1919, Li Dazhao was dissatisfied with the current situation and expressed regret. He revealed the dilemma between “freedom in the constitutional text” and “un-freedom in real life”: the *Provisional Constitution* stipulated “freedom of speech,” but “journalists are arrested at will and newspapers are closed at will”; the *Provisional Constitution* stipulated “freedom of publication,” but “laws governing printing are promulgated at will”; the *Provisional Constitution* stipulates “freedom of confidentiality of correspondence,” but “letters and telecommunications are inspected at will at any time.”<sup>45</sup> Li Dazhao also opposed using government power and laws to judge the correctness of historical documents, as this would affect the freedom of publication. The basis for freedom of publication is the *Provisional Constitution*, and the standard for judging the quality of articles lies in society. One cannot “use laws to determine what is ‘official history’ and what is distorted history.”<sup>46</sup> If the government does this, it infringes on people’s right to freedom of authorship and publication.

Li Dazhao’s understanding of the liberal constitutional theory of Europe and the United States in the 18th century was accurate. In 1922, he summarized populism by citing the writings of then-U.S. President Wilson: “In modern times, legitimate government is based on the consent of the governed, rather than its use of force. This means that the government is regulated by the Constitution and laws, and the Constitution and laws are derived from social customs. The power contained here is not the power that a monarch exercises autocratic rule, nor the power of a few tyrannical people, but the power that comes from the unanimous opinion of the majority of people.”<sup>47</sup>

### **III. An Advocate for Women’s and Labor Rights**

According to the spirit of the *Universal Declaration of Human Rights* and the International Covenants on Human Rights, human rights roughly consist of two categories: Civil and political rights, and social, economic, and cultural rights. the concept of political and civil rights originated from the Enlightenment in the 17<sup>th</sup> and 18<sup>th</sup> centuries and is related to modern liberalism. The concept of social, economic, and cultural rights originated from 19<sup>th</sup>-century “leftist” theory and was related to the labor movement and communism. The linear origins and development of human rights theories in the Western world were superimposed after being introduced to China, that is, they occurred simultaneously in Chinese society in the late Qing Dynasty and early Republic of China. Li Dazhao came at the right time. On the one hand, he cared about politics and the constitution and called for civil and political rights; on the other hand, he accepted the ideas

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<sup>44</sup> Ibid., 407.

<sup>45</sup> Li Dazhao, “Where is the freedom?” in *The Complete Works of Li Dazhao*, vol. 3, page 118.

<sup>46</sup> Li Dazhao, “What is distorted history?” in *The Complete Works of Li Dazhao*, vol. 3, page 175.

<sup>47</sup> Li Dazhao, “Populism,” in *The Complete Works of Li Dazhao*, vol. 4, page 147.

of the Communist International and the Soviet Union and supported the women's movements and the labor movements. Typically, Li Dazhao's legal understanding of the women's movements involved both the civil and political rights of women to participate in politics, as well as the social, economic, and cultural rights of women to receive equal pay for equal work and education.

#### **A. Feminist activities and the abolition of prostitution**

Li Dazhao has always supported the women's rights movements in China. In 1922, the Women's Rights Movement League was established in Beijing, but the Beijing Police Department banned the association from being established using the *Public Security Police Law*. The Women's Rights Movement League held a tea party for the press and academic community. Li Dazhao attended and delivered a speech, in which he made the following appeals. Firstly, he demanded the repeal of the *Public Security Police Law*; second, he demanded that the *Election Law* include women's voting rights; and third, he hoped that the *Labor Protection Law* would include provisions to protect female workers.<sup>48</sup> In 1923, Li Dazhao gave a speech at the Hubei Women's Rights Movement League, "summarizing" the goals of feminist reforms from a legal perspective. He listed ten goals as follows. First, establish women's right to vote and to be elected in the constitution; second, establish women's parental rights, property rights, and behavioral rights in the civil law; third, establish women's rights in the marriage law; fourth, establish the crime of bigamy and amend the provisions on concubinage in the criminal law; fifth, prohibit the buying and selling of women in the criminal law; sixth, raise the age of criminal responsibility; seventh, establish women's right to hold official positions in the administrative law; eighth, establish women's right to receive education as men; ninth, establish women's right to equal employment; and tenth, establish women's right to employment as men.<sup>49</sup>

In the early 20<sup>th</sup> century, as compared to the thriving women's movements for their right to political participation in Europe and the United States, China's women's rights movements were still in the initial stages of respecting women, personal freedom, and gender equality. The first was the movement to abolish prostitution in the early years of the Republic of China. The movement to abolish prostitution is part of China's modern and contemporary social progress movements. Li Dazhao's attitude towards this was clear. He advocated launching a movement to abolish prostitution. He listed five reasons for abolishing prostitution as follows. First, respecting humanity requires the abolition of prostitution. He said that "it is a painful and shameful thing that prostitution still exists in human society and national laws still allow public

<sup>48</sup>Li Dazhao, "A Speech at a Tea Party for the Press and Academic Communities Held by the Women's Rights Movement League," in *The Complete Works of Li Dazhao*, vol. 4, page 109.

<sup>49</sup> Ibid., 184.

prostitution.” This is selling one’s body, spirit, and personality. “If such things that insult human rights and violate humanity are not prohibited, how can we talk about humanitarian freedom?”<sup>50</sup> Second, respecting love requires the abolition of prostitution. The sexual relationship between two persons should remain free, sacred, pure, and noble, and should not be forced, insulted, slandered, or suppressed. The prostitution system not only insults human rights but also insults life. Third, respecting public health requires the abolition of prostitution. Li Dazhao said that the reason why the law recognizes public prostitution is that they believe it is better to openly recognize it and place it under state surveillance than to let it hide under the surface and lead to the spread of sexually transmitted diseases. In Li Dazhao’s view, the health system was not enough to prevent sexually transmitted diseases, let alone the corruption of the souls, and prostitution also posed a risk to the continuation of the human race. Fourth, legal personal freedom requires the abolition of prostitution. Li Dazhao said that the public prostitution system is closely related to human trafficking. Most prostitutes are bought and sold. “To allow public prostitution is to allow the sale of human bodies, which is to allow the violation of personal freedom under the law.”<sup>51</sup> Fifth, maintaining the status of women requires the abolition of prostitution. The prostitution system undermines the dignity of women and encourages people to humiliate and play with women, so it is necessary to eliminate the prostitution and concubine system. Li Dazhao proposed several methods to abolish prostitution: first, prohibit the sale of human beings; second, prostitutes must be registered and no more brothel households should be added; third, reformatory schools should be built to teach skills and help them select spouses; fourth, public schools should be founded to provide compulsory education for women.

### **B. Women’s right to political participation**

Li Dazhao was a politician with an international vision. In his time, the women’s movements in Western Europe and North America had already begun to take shape. Li Dazhao said that women should have equal opportunities in politics, society, economy, and education, develop their personalities, achieve equal status, and enjoy legal rights. This is the internal driving force of the women’s political participation movement. According to his understanding, women’s movements had already begun before World War I. By the end of the war, the United States, Britain, and Germany had all recognized women’s right to political participation.

Li Dazhao wrote many articles arguing for women’s right to political

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<sup>50</sup> Li Dazhao, “The Issue of Abolition of Prostitution,” in *The Complete Works of Li Dazhao*, vol. 2, page 452-453.

<sup>51</sup> Li Dazhao, “The Issue of Abolition of Prostitution,” in *The Complete Works of Li Dazhao*, vol. 2, page 454.

participation. The criterion for his argument was to recognize the equality of men and women in cognitive ability. Li Dazhao opposed labeling women as having “poor judgment,” “emotional,” and “lacking rationality.” He gave examples such as a female minister of relief in Russia and a congresswoman in Montana, U.S. In fact, many American women have more independent judgment and knowledge than men who have the right to vote. He gave an example of a couple in Colorado who each had voting rights and supported their candidate. Later, the candidate that the wife supported lost the election. However, this did not affect the relationship between the couple. This shows that women have independent judgment and that women’s participation in politics will not affect family harmony. Li Dazhao said that Chinese women do have knowledge differences with men in terms of cultural and educational systems and legal customs, but they should have “the opportunity to express their opinions” in matters of “women’s vital interests,” which is more appropriate than letting men do it on their behalf. Women should not be excluded from politics.<sup>52</sup>

After British women were given the right to vote, they continued to expand their gains. Li Dazhao listed 11 demands of the British women: the right to be a member of parliament, the right to participate in international economic conferences, the right to marry a foreigner and retain British citizenship, the right to be a judge and juror, the right to be a lawyer, the right to be a senior government official, the right to be a police officer, the right to be equal to male teachers, the right of orphans and widows to receive state assistance, the right to equal rights of parents, and the right to the same moral standards for men and women.

Li Dazhao admitted that the above rights were demanded by middle-class women. In this regard, Li Dazhao discovered an interesting phenomenon: there is an essential difference between labor movements and women’s movements. Labor movements are a class struggle between capitalists and individuals, while women’s movements cannot eliminate class differences. He gave an example, saying that a proletarian woman was engaged in prostitution and was caught by a female police officer, interrogated by a female judge, and defended by a female lawyer.<sup>53</sup> Those middle-class women have rights, but they cannot solve the problem of prostitution of proletarian women. Prostitution is a social problem. To solve the problem of prostitution, we need to reform the social system. Middle-class women cannot liberate proletarian women. Li Dazhao’s conclusion was clear: to solve the women’s problem, we must first unite the strength of all women to break the male-dominated social system, and second, unite the proletarian women of the world to break the bourgeoisie’s autocratic system. Li Dazhao combined gender differences with class differences, which is consistent

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<sup>52</sup> Li Dazhao, “Women’s Issues after the War,” in *The Complete Works of Li Dazhao*, vol. 2, page 411.

<sup>53</sup> Li Dazhao, “Women’s Issues after the War,” in *The Complete Works of Li Dazhao*, vol. 2, page 415.

with the methodology of modern feminism and critical racial jurisprudence.<sup>54</sup> Power domination and subordinate relations are everywhere. Men oppress women, the middle class exploits the proletariat, and the most oppressed group in society is female workers. Li Dazhao's concern for female workers fully demonstrates his deep thinking on human rights issues.

In this regard, Li Dazhao raised a question worthy of modern people's consideration: What is the difference between a male judge interrogating a female defendant and a female judge interrogating a female defendant? A scholar in the 1920s was not yet able to think in the same way as those post-1960s scholars. Li Dazhao believed that there is no difference between the two circumstances, but in the view of contemporary feminists, there are significant differences in legal judgments under the two circumstances. Especially in common law states where judges have discretion and juries have the right to determine facts, men and women differ in their judgment regarding legal standards. Taking civil rights cases as an example, regarding sexual harassment, the understanding of male judges is different from that of female judges. What a male judge considers to be "ordinary behavior" of a man may be considered sexual harassment by a female judge. Taking tort law as an example, male judges and female judges have different views on whether a woman's spirit has been damaged. A woman may not be able to tolerate the mental shock that a man can tolerate.<sup>55</sup>

Li Dazhao is a politician with a sense of history, and he was good at proving his views from the perspective of legal history. In his view, women's political participation movements are an important legal issue. He reviewed the early history of women and summarized the origins of the political participation movements: In ancient human society, citizenship was a privilege, and women were not eligible for citizenship. In modern times, the market economy excludes women and confines them to the family, resulting in women's subservient position in society. With the rise of the Renaissance, large-scale women's movements began to flourish.

### **C. From civil and political rights to social, economic, and educational rights**

Li Dazhao concluded that between 1904 and 1909, the International Women's Political Participation Federation began to take shape, and its membership expanded to 21 states. The demands of the feminist movement are generally similar, including equal rights to education, equal pay for equal work, the right to participate in social life, and legal rights. In this regard, Li Dazhao

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<sup>54</sup> Olson, "Gender of The Law," in *Politics in Law: A Progressive Critique*, edited by David Kairys, translated by Xin Chunying (Beijing: China University of Political Science and Law Press, 2008), 483.

<sup>55</sup> Martha Chamallas, "Importing Feminist Theories to Change Tort Law," 11 *Wis. Woman's L.J.* 389 (1997); Gary Schwartz, "Achievements and Prospects: Tort Law: Feminist Approaches to Tort Law," 2 *Theoretical. Inq. L.* 175 (2001); Patricia Cain, "The Future of Feminist Legal Theory," 11 *Wis. Woman's L.J.* 367 (1997).

used his legal knowledge to single out “legal rights” and distinguish between rights under civil law, rights under criminal law, and rights under public law. “Under civil law, a wife shall have full legal personality and full civil authority before the law. Under the criminal law, all provisions that discriminate against women shall be completely abolished. Under public law, women shall have the right to political participation.”<sup>56</sup>

Li Dazhao also admitted that even in the so-called free European and American states, they have not yet reached the level of democratic populism, and “legislation, speech, and thought are still based on men.”<sup>57</sup> In Li Dazhao’s view, the class difference between workers and capitalists can be improved through social transformation, but “the difference between men and women is a permanent boundary that cannot be changed.” The temperament of men is prone to despotism, while the peace, grace, and kindness of women show the true spirit of populism. Therefore, “if you want to realize true populism in China, a women’s liberation movement must first be launched.”<sup>58</sup>

#### **D. Labor movements and labor law**

As a Chinese pioneer of the Communist International movements, Li Dazhao had a natural affinity for labor movements. After becoming a Marxist, he was deeply concerned with labor movements, labor-capital relations, and labor legislation.<sup>59</sup> Looking back at legal history, in the era of Li Dazhao, China’s labor legislation had not yet been initiated, and the *Provisional New Criminal Law of the Republic of China* applicable to the Beiyang Government at the time regarded workers’ strikes as crimes. The *Public Security Police Regulations* promulgated by the Beiyang Military Government in 1914 authorized the public security police to disperse labor gatherings. Trade union legislation and “decriminalization of strikes” did not begin until the era of the Guangzhou Military Government in 1924. From a theoretical perspective, only Sun Yat-sen’s New Three Principles of the People at that time included social and economic rights for workers and trade union legislation.<sup>60</sup>

However, the workers’ movements and labor legislation in Europe and the United States had developed considerably by the 1920s. Li Dazhao conducted

<sup>56</sup> Li Dazhao, “Modern Feminist Movements,” in *The Complete Works of Li Dazhao*, vol. 4, page 20.

<sup>57</sup> Li Dazhao, “Populism,” in *The Complete Works of Li Dazhao*, vol. 4, page 155.

<sup>58</sup> Li Dazhao, “Populism,” in *The Complete Works of Li Dazhao*, vol. 4, page 156.

<sup>59</sup> Yao Wenjun, “An Analysis of the Initial Combination of Scientific Socialism and the Chinese Movements — Taking the Changxindian Workers Movement as an Example,” *Scientific Socialism* 5 (2023); Cui Meng and Chen Hongyou, “An Analysis on Li Dazhao and China’s Early Workers Movements,” *Journal of Hotan Teachers College* 2 (2023).

<sup>60</sup> Shi Tanjing, “A Study on the History, Current Situation, and Related Issues of Chinese Trade Unions,” *Global Law Review* 2 (2002); Tian Ming, “From ‘Lawlessness’ to ‘Illegality’: Labor Legislation and Practice during the Beijing Nationalist Government period,” *Journal of Taiyuan University of Technology (Social Science Edition)* 6 (2017).

extensive research and actively followed up, disseminated the latest information on labor movements and laws in China, and wrote many related political essays. His famous essay, "*History of the May Day Movement*," introduces the labor movements and their legal achievements in the United States and France from a political science perspective. He gave a detailed account of the history of May Day in the United States and the circumstances of the Chicago bombing case.<sup>61</sup>

Li Dazhao traced the origin of May Day to the eight-hour workday advocated by the American Federation of Labor at its Chicago Convention on October 7, 1884. After the Labor Union and Labor Federation Convention held in 1885, May 1, 1886, became the anniversary of the great victory of labor across the United States. In Europe, Li Dazhao traced the May Day anniversary back to the International Socialist Congress held in Paris in 1889. The Socialist Party called for demonstrations and the establishment of an eight-hour workday<sup>62</sup> through "labor union activities and legislative means."

In the essay, he gave a detailed account of the Chicago bombing case of 1886, which is considered to be the direct cause of May Day in the United States. The organizers of the strike were the Chicago Trade Union Conference, the Central Labor Federation, and the Chicago International Socialist Party. The strike leaders included George A. Schilling, Albert R. Parsons, August Spies, Samuel Fielden, and Michael Schwab. The incident originated from a strike by workers at the McCormick Farm Implement Factory, and the conflict between the employer and the workers was on the verge of breaking out. On May 3, 1885, workers gathered near the factory, and August Spies gave a speech. Anti-union factory security guards appeared, and the two sides confronted each other, leading to a conflict and finally a street fight with stones thrown at each other. The police were dispatched, rocks were thrown, police fired shots, and some people were injured. The next evening, workers' meetings and speeches continued. August Spies, Albert R. Parsons, and Samuel Fielden all delivered speeches, and by 10 p.m., 176 policemen were trying to disperse the crowd. A bomb exploded among the police, killing one policeman. After a fierce gun battle, seven policemen were killed and about 60 injured, while four workers were killed and about 50 injured. The person who threw the bomb was unknown. As a result, the union was dissolved, and eight strike organizers were arrested. The preliminary hearing was held on May 17, and the verdict was handed down on August 20. Seven of them, including August Spies, Michael Schwab, Albert R. Parsons, and Samuel Fielden, were sentenced to death, and the other one was sentenced to 15 years in prison. The defendants appealed to the state Supreme Court, which upheld the original verdict. The defendants then appealed to the

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<sup>61</sup> For details, see Wang Lei, "Collation and Revision of Li Dazhao's 'History of the May Day Movement,'" *CPC History Research and Teaching* 3 (2021).

<sup>62</sup> Li Dazhao, "History of the May Day Movement," in *The Complete Works of Li Dazhao*, vol. 3, page 235.

Federal Supreme Court, but it did not accept the case. After the government pardon, Michael Schwab and Samuel Fielden were reduced to life imprisonment, but August Spies, Albert R. Parsons, and the other four were hanged in 1887. In 1893, the governor pardoned and released the three organizers, including Michael Schwab and Samuel Fielden.<sup>63</sup>

Li Dazhao's discussion in the essay provides us with a deconstruction technique of legal political science. According to U.S. legal records, the case was prosecuted as murder.<sup>64</sup> As far as the case is concerned, it is an American criminal case. The judge did not discuss politics, but only talked about the rules of law. The core questions of the court debate are: Were the seven suspects accomplices in the crime? Is the charge explosion or murder? Who were the principal offenders, and who were the accomplices? Was it a completed crime, an attempted crime, or a legal conspiracy? The crime had nothing to do with the suspects' ideology, ethnicity, or social movements. The judge analyzed the facts of the crime of murder using pure judicial language and rules and gave a criminal verdict. However, Li Dazhao was different. He discovered substantive political appeals from purely legal cases and sought political factors in the legal form of criminal judgments: he found the labor movement and the conflict between labor and capital in the Chicago bombing case. This is a common technique used in later legal and political science. From the perspective of modern legal techniques, there is a difference between the "form and substance of the judicial decision" in this case. A legal political scientist must be able to discover the essence of politics from judicial precedents.<sup>65</sup>

#### **IV. An Advocate of the Right to National Self-determination**

The three major issues that modern Chinese politicians are concerned about are the nation, civil rights, and people's livelihood. National issues come first. China was weak and bullied by foreign states. Since China was exploited and oppressed by imperialism, the primary task of the revolution was to oppose imperialism. Within the legal framework, it means eliminating extraterritoriality and restoring China's inherent national sovereignty.<sup>66</sup> Li Dazhao lived in the era,

<sup>63</sup> Li Dazhao, "History of the May Day Movement," in *The Complete Works of Li Dazhao*, vol. 3, page 237-241.

<sup>64</sup> *Spies v. People*, Supreme Court of Illinois, September 14, 1887, 122 ILL 1; 12 N. E. 865; 1887 II.

<sup>65</sup> Duncan Kennedy, *A Critique of Adjudication: Fin de Siecle* (Cambridge: Harvard University Press, 1997); Duncan Kennedy, "Teaching from the Left in My Anecdote," 31 *N. Y. U. Rev. L. & Soc. Change* 449 (2007).

<sup>66</sup> Modern consular jurisdiction and extraterritoriality have always been hot topics in modern historiography and international law history. There have been many academic achievements in these areas in recent years. See Andrew Cobbing, "A Victorian Embarrassment: Consular Jurisdiction and the Evils of Extraterritoriality," translated by Qu Wensheng and Zhan Jixu, *ECUPL Journal* 2 (2021); Wu Wenhao, "The Process of China's Abolition of Extraterritoriality from the Perspective of Transnational History (1919-1931)," *Modern Chinese History Studies* 2 (2020); Huang Xingtao, "The Privileges of the Strong and the Discourse of the Weak: The Spread and Application of the Concept of Extraterritoriality in Modern China," *Modern Chinese History*

so national issues naturally became a part of his human rights theory and practice. In his early years, Li Dazhao paid attention to national issues and was also concerned about the comparison between Chinese and Western cultures. Later, he advocated the theory of national self-determination.

**A. The right to self-determination, national self-determination, and human rights**

“Self-determination” is a common term in human rights documents of the United Nations, meaning “the right to determine one’s destiny,” or in other words, to freely determine one’s own political identity and pursue one’s own economic, social, and cultural development without external interference.

The concept of the “right to national self-determination” originated from nationalism in the 17th and 18th centuries, generally traceable to the French Revolution and the American War of Independence. It means that sovereign and independent states respect the will of their people and are not controlled or dominated by other authorities. By the 19<sup>th</sup> century, national self-determination had become the mainstream concept in European international law. Historically, the right to national self-determination originated from the League of Nations after World War I and was derived from the ideals of U.S. President Wilson: Every nation has the right to choose the sovereign under whom they wish to live. After World War II, the United Nations was established, and the principle of national self-determination was written into the *UN Charter*, the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, and the *International Covenant on Economic, Social, and Cultural Rights*.<sup>67</sup>

Scholars have verified that Li Dazhao’s theory of national self-determination has two basic sources: one is the theory of independent self-determination of weak nations against powerful ones as proposed by President Wilson, and the other is the Marxist-Leninist theory of national independence and self-determination. The former focuses on national independence between different states, while the latter considers both national self-determination between states and between different ethnic groups within a state. Therefore, Li Dazhao’s theory of national self-determination includes: opposing the Qing Dynasty’s foreign policy of “using barbarians to control barbarians,” calling for the Chinese national theory of uniting the “five ethnic groups,” opposing the

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*Studies* 6 (2019); Gao Hancheng, “A Lexical History Study on the Concept of ‘Extraterritoriality’ in Modern China,” *Journal of Xiamen University (Philosophy and Social Sciences)* 5 (2018).

<sup>67</sup> The word “Nation” refers to peoples and the criteria for a nation are: (1) a common history; (2) racial or ethnic ties; (3) cultural or linguistic ties; (4) religious or ideological ties; (5) a common territory or geographical location; (6) a common economic base; and (7) a sufficient number of people. See John Howard Clinebell & Jim Thomson, “Sovereignty and Self-Determination: the Rights of Native Americans under International Law,” 27 *BUFF. L. Rev.* 669 (1978).

secret diplomacy with the great powers, abolishing extraterritoriality, taking back consular jurisdiction, and establishing a world of great harmony with a multinational alliance.<sup>68</sup>

### **B. Civilization, culture, and nation**

The advantages and disadvantages of Eastern and Western civilizations and the choice between Eastern and Western cultures have been discussed since the time of Yan Fu and Liang Qichao, and Li Dazhao also made considerable discussions on these topics. He said, “The natural law of Western life is self-preservation, while the natural law of Eastern life is self-sacrifice. The purpose of reconciliation is to allow the two to coexist.”<sup>69</sup> The characteristics of Eastern civilization are static, while those of Western civilization are dynamic. In the East, livelihood is mainly based on agriculture, families are growing larger and larger, and large-scale familialism is prevalent; in the West, livelihood is mainly based on business, families are becoming more divided, and simple individualism is prevalent. The East practices polygamy, tends towards autocracy, and emphasizes classes, while the West respects women, tends towards freedom, and values equality.<sup>70</sup> After summarizing the general differences between Eastern and Western civilizations, Li Dazhao turned to the differences in their legal cultures: “In the East, constitutions are mostly made with a rigid approach, giving authority to idols, hoping that they will remain unchanged so ever-changing principles have no chance to be included in them; in the West, constitutions are mostly made with a flexible approach, leaving room for compromise, hoping that they will keep pace with the times so the established laws can be adapted to changes at any time.”<sup>71</sup>

After the Soviet Revolution, Li Dazhao looked forward to the rise of the Soviet “third new civilization” combining both Eastern and Western civilizations.<sup>72</sup> Between 1923 and 1924, Li Dazhao reinterpreted law and culture, distinguishing between nature and culture. He believed natural sciences are far from values, while cultural sciences involve value judgments. What is isolated from one’s views is nature, and reality with personal opinions is culture. “Culture is closely related to subjective consciousness, so we have to say that value is

<sup>68</sup> Zheng Dahua, “A Re-study of Li Dazhao’s Thought on ‘National Self-determination’,” *Journal of Social Science of Hunan Normal University* 4 (2020); Han Depei, Luo Chuxiang and Che Ying, “Li Dazhao’s Thoughts on International Law,” *Journal of Wuhan University (Philosophy and Social Science Edition)* 4 (1999).

<sup>69</sup> Li Dazhao, “The Law of Reconciliation,” in *The Complete Works of Li Dazhao*, vol. 2, page 38.

<sup>70</sup> Li Dazhao, “Dynamic Life versus Static Life,” in *The Complete Works of Li Dazhao*, vol. 2, page 137.

<sup>71</sup> Li Dazhao, “The Fundamental Differences between Eastern and Western Civilizations,” in *The Complete Works of Li Dazhao*, vol. 2, page 310.

<sup>72</sup> Li Dazhao, “The Fundamental Differences between Eastern and Western Civilizations,” in *The Complete Works of Li Dazhao*, vol. 2, page 311.

contained in culture.”<sup>73</sup> In this way, Li Dazhao distinguished race, nation, and citizen: “The meaning of citizen comes from the concepts of politics and law”; the concept of nation depends on history and culture. People or citizens with the same history and culture can be classified as the same nation; race is based on physiological research. Race is neither about the unity of politics and law nor about the differences and similarities in history and culture.<sup>74</sup>

### **C. Diplomatic relations and national self-determination**

Li Dazhao believed that the fundamental reason for the disturbance in China at that time was the rise of Europe. They “use various unequal treaties to restrict the independence and autonomy of China’s legal and taxation rights.” He lamented that “if these unequal treaties are not abolished, China will never be able to restore its free and equal position in the international community.”<sup>75</sup> He reviewed history and said, “China’s foreign policy has been peaceful and inactive. Even if other states fought each other, China treated all of them equally, without showing partiality, forming alliances, showing special favor, and making enemies with anyone.” In today’s world, isn’t it absurd that China “makes no enemies and does not compete with others?”<sup>76</sup> “Before the Sino-Japanese War of 1894-1895, the Chinese were arrogant and thought that other states in the East and the West were either barbarians or uncivilized; after the defeat in the War, they were submissive, which was a sad thing.”<sup>77</sup>

Li Dazhao’s ideal was unionism or federationism. Local forces, states, and nations all have their personalities like individuals, and only unionism can preserve their freedom from infringement by other parties. Local forces, states, and nations also have their commonalities, and only federationism can fulfill their commonalities, form an equal organization, and achieve their goal of mutual assistance. China has five major ethnic groups: Han, Manchu, Mongolian, Hui, and Tibetan. Therefore, it is suitable for implementing federationism. A grand international alliance called the World Federation can be formed if federations are further expanded. The federation is a country with a united government and sovereignty, while the states are autonomous and self-determined. The World Federation is an international organization. “As long as the peace conference becomes the world’s parliament, the arbitration referee becomes the world’s court, and the international police can be realized and

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<sup>73</sup> Li Dazhao, “Marx’s Philosophy of History and Rickert’s Philosophy of History,” in *The Complete Works of Li Dazhao*, vol. 4, page 430.

<sup>74</sup> Li Dazhao, “The Issue of Race: a Speech at the Political Science Association of Peking University,” in *The Complete Works of Li Dazhao*, vol. 4, page 572.

<sup>75</sup> Li Dazhao, “A Statement in Prison,” in *The Complete Works of Li Dazhao*, vol. 5, page 298.

<sup>76</sup> Li Dazhao, “Since the U.S.-German Diplomatic Relations Have Been Severed, China Must Make a Statement,” in *The Complete Works of Li Dazhao*, vol. 1, page 447.

<sup>77</sup> Li Dazhao, “The Dawn of China’s Diplomacy,” in *The Complete Works of Li Dazhao*, vol. 1, page 449.

become the world's administrative body, then the world's united government will be formally established.”<sup>78</sup> Finally, Li Dazhao put forward the following slogan: “We should believe in the power of national self-determination to resolve all disputes and should not repeat the previous wrong policy of ‘using barbarians to control barbarians.’”<sup>79</sup>

Li Dazhao paid attention to the diplomatic events of the time. He listed several major events in 1923 as follows. The first was the Zhangjiakou Carmen incident. Chinese military authorities suspected that Carmen, an American businessman, was smuggling 60,000 taels of silver. Carmen refused the search and opened fire. The Chinese soldiers fired back, and Carmen was seriously injured. The U.S. ambassador issued a note of protest, and the Beijing government apologized and gave compensation of US\$ 50,000. The second is the case of the Hankou workers' strike. Someone organized a labor union in a British textile factory, the organizer was fired, and three worker representatives were arrested. The workers marched in protest, and Britain dispatched troops and warships. Thirty-three workers were arrested, and the worker representatives were later sentenced to five months in prison. The third is the Lincheng case. Bandits attacked a train in Lincheng, hijacking 100 Chinese and 20 foreigners. Britain, the United States, Japan, France, and Italy lodged a strong protest to the Beijing government. President Cao Kun agreed to the demands of the powers: Paying compensation, organizing railway protection teams, and removing Chinese soldiers from their posts.<sup>80</sup> In 1927, the Wuhan National Government was established and all sectors of society held a celebration. British sailors landed and stabbed five people. The Wuhan Nationalist Government lodged a protest, and Foreign Minister Chen Youren negotiated with it. Government representative Xu Qian supported the protest. On January 5, the Wuhan National Government took back the British Concession in Hankou.<sup>81</sup> “The last time the French Concession in Tianjin arrested a member of the party, they released him immediately.”<sup>82</sup> The 24 people in Tianjin held a meeting in the French Concession. The next morning, the French consul ordered their release.

Historical records also show that Li Dazhao once discussed the issues of national self-determination and the abolition of extraterritoriality with Japanese politicians. Ouchi Chozo is a member of the House of Representatives of Japan,

<sup>78</sup> Li Dazhao, “Federationism and World Organization,” in *The Complete Works of Li Dazhao*, vol. 2, page 399.

<sup>79</sup> Li Dazhao, “On New Asianism,” in *The Complete Works of Li Dazhao*, vol. 3, page 99.

<sup>80</sup> Li Dazhao, “A Report at the 22<sup>nd</sup> Session of the Fifth Congress of the Communist International,” in *The Complete Works of Li Dazhao*, vol. 5, page 1, 2 and 5.

<sup>81</sup> Li Dazhao, “A Report to the Kuomintang Central Political Conference (Part 5),” in *The Complete Works of Li Dazhao*, vol. 5, page 293, note 1.

<sup>82</sup> *Ibid.*, 291.

a university professor, and the secretary of the Sino-Japanese Cultural Association. He discussed Sino-Japanese relations with Li Shizeng and others in Beijing. Ouchi Chozo and others drafted an informal six-point political program. Li Shizeng introduced Ouchi Chozo to Li Dazhao, and they agreed to meet at the location of the Russian Fund Committee.

The content of the conversation between Li Dazhao and Ouchi Chozo is as follows. Firstly, Li Dazhao asked whether the first point, “jointly resolve all international constraints of the East,” meant that Japan was willing to assist China in abolishing all unequal treaties. Ouchi Chozo said “yes,” but Japan could not make a clear statement. Second, Li Dazhao asked whether the second point, “eliminating extraterritoriality and canceling all unequal treaties on schedule,” included consular jurisdiction and foreign administrative power in the concessions (Tianjin and Hankou) and leased territories (Dalian)? Ouchi Chozo replied, “Of course, they’re all included,” but it would take time, saying, “The Japanese people suffered great sacrifices when Japan was in the Meiji Restoration Movement to regain its legal and taxation rights.” Li Dazhao said that when he read Japanese history, this period of history made him most excited. Third, does the third point, “regaining full tariff autonomy,” mean that China will completely take back the customs administration power that has been held by Britain for decades? Ouchi Chozo replied, “That’s what it means.” Britain wanted to maintain its right to collect customs taxes, so even if it recognized the Southern Government’s demand to collect the 25 percent additional tax on its own, it still demanded that the taxes be collected by the customs. Li Dazhao commented that the purpose of the Southern Government’s levy of the additional tax “is not to increase revenue, but to treat it as an inland tax, collected by China’s agencies instead of going through the customs. The intention is to break the customs administration power controlled by Britain.”<sup>83</sup>

## Conclusion

1. Li Dazhao lived in the transition period from the late Qing Dynasty to the early Republic of China, that is, the transformation from a feudal autocratic and aristocratic society to a democratic and free society. The calls for civil and political rights were particularly prominent at this time. Li Dazhao’s legal education background and his political enthusiasm led him to take the initiative to study and actively participate in political and legal activities. He witnessed the entire process of the *Provisional Constitution*, the *Law of the Republic of China*, the *Constitution of the Republic of China*, and the *Temple of Heaven Constitution Draft*. Protecting political rights and freedoms through the constitution was the original intention of Li Dazhao’s human rights activities in his youth.

2. After embracing Marxism and participating in the activities of the

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<sup>83</sup> Li Dazhao, “A Report to the Kuomintang Central Political Conference (Part 5),” in *The Complete Works of Li Dazhao*, vol. 5, page 287.

Communist International, Li Dazhao began to pay attention to labor movements and women's movements. He called for the abolition of prostitution, participated in the women's rights movements, cared about and supported the labor movements, and placed special emphasis on the economic, social, and cultural rights of women and workers. As a Marxist, he opposed oppression and advocated equality. Li Dazhao was familiar with history and understood the latest political and legal trends abroad. He introduced the history of women's right to political participation in Europe and the United States and provided legal information on labor movements.

3. "National self-determination" is an issue of common concern in the *UN Charter*, the *Universal Declaration of Human Rights*, and other international covenants on human rights. It can be traced back to the League of Nations initiative after World War I. Li Dazhao's political, diplomatic, and legal activities were consistent with this hot topic in the world. He opposed the imperial court's foreign policy of "using barbarians to control barbarians" in the Qing Dynasty, advocated national equality and self-determination, and called for and participated in the abolition of unequal treaties on extraterritoriality.

4. The world's human rights movement is a product after World War II, but the human rights cause has existed since ancient times, and the struggle for rights has accompanied the entire process of human history. Li Dazhao spent his entire life pursuing and fighting for the nation and the people. He was a defender of legal rights. From the perspective of modern human rights theory, Li Dazhao's rights demands include: civil and political rights, social, economic, and cultural rights, and the right to self-determination, peace, and development.

(Translated by JIANG Yu)